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DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(**Agriculture** and Fisheries)
15 April 2019

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1. **Adoption of the agenda**

The Council adopted the agenda set out in 8198/19.

2. **Approval of "A" items**

a) **Non-legislative list**

8201/19

The Council adopted the "A" items listed in 8201/19 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

For the following items the documents should read as follows:

Agriculture

1. Council Decision on the conclusion of the Voluntary Partnership Agreement between the EU and Viet Nam on forest law enforcement, governance and trade
Adoption
approved by Coreper, Part 1, on 03.04.2019
3. Conclusions on the mid-term review of the EU Forest Strategy
Adoption
approved by Coreper, Part 2, on 11.04.2019



5969/19
10861/18
+ COR 1 (de)
10877/18
FORETS

7709/1/19 **REV 1**
FORETS

Transport


4. Council Decision authorising the opening of negotiations on an agreement between EU and each individual European Neighbourhood Policy South country for the extension of EGNOS
Adoption
approved by Coreper, Part 1, on 27.03.2019

7701/19
7050/19
+ COR 1 (da)
+ ADD 1
TRANS

- b) **Legislative list** (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)


8202/1/19 REV 1

Environment

1. **Regulation on CO2 standards for cars and vans (recast)**  8091/19 + ADD 1
Adoption of the legislative act PE-CONS 6/19
approved by Coreper, Part 2, on 11.04.2019 CLIMA

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Hungary voting against and Bulgaria abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) TFEU). Statements to this item are set out in the Annex.

Energy

2. **Revision of the Gas Directive**  8089/19
Adoption of the legislative act PE-CONS 58/19
approved by Coreper, Part 2, on 11.04.2019 ENER

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Bulgaria abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 194(2) TFEU).

Internal Market and Industry

3. **Directive on Copyright in the Digital Single Market**  7986/2/19 REV 2
Adoption of the legislative act + 7986/19 ADD 1
approved by Coreper, Part 2, on 11.04.2019 REV 2
PE-CONS 51/19
+ **COR 1 (pt)**
PI

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Italy, Finland, Luxembourg, the Netherlands, Poland and Sweden voting against and Belgium, Estonia and Slovenia abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) and Articles 62 and 114 TFEU). Statements to this item are set out in the Annex.

4. **Directive on SatCab**

Adoption of the legislative act

approved by Coreper, Part 2, on 11.04.2019



8088/19 + ADD 1
PE-CONS 7/19
PI

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Slovenia abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 53(1) and 62 TFEU). Statements to this item are set out in the Annex.

Justice and Home Affairs

5. **Directive on Digital Content (DCD)**

Adoption of the legislative act

approved by Coreper, Part 2, on 11.04.2019



8084/1/19 REV 1
+ REV 1 ADD 1
PE-CONS 26/19
+ COR 1 (de)
+ COR 2 (el)
JUSTCIV

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the United Kingdom abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU). Statements to this item are set out in the Annex.

6. **Directive on Contracts for the Sales of Goods (DSG)**

Adoption of the legislative act

approved by Coreper, Part 2, on 11.04.2019



8087/1/19 REV 1
+ REV 1 ADD 1
PE-CONS 27/19
+ COR 1 (de)
+ COR 2 (el)
JUSTCIV

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the United Kingdom abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU). Statements to this item are set out in the Annex.

General Affairs

7. **Council Decision concerning the dock dues in the French outermost regions** **SC** 8028/19
5975/19
REGIO
Adoption
approved by Coreper, Part 2, on 11.04.2019

The Council adopted the above Council Decision, as finalised by the legal/linguistic experts, as set out in 5975/19. (Legal basis: Article 349 TFEU)

Research

8. **Decision implementing Horizon Europe - Specific Programme** **SC** 7911/1/19 REV 1
+ 7911/19 ADD 1
RECH
Partial general approach
approved by Coreper, Part 1, on 03.04.2019

The Council approved the partial general approach on the entire non-bracketed text of the Decision on the Specific Programme as set out in 7911/1/19 REV 1 (Legal basis: Article 182(4) TFEU). Statements to this item are set out in the Annex.

Economic and Financial Affairs

9. **Council Decision amending the Protocol on the Statute of the European Investment Bank** **S** 6895/19
6518/19
Adoption
approved by Coreper, Part 2, on 11.04.2019

The Council adopted the above Council Decision, as set out in 6518/19 (Legal basis: Article 308 TFEU). Statements to this item are set out in the Annex.

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

3. **Post 2020 CAP reform package** **IC** 8359/19
Regulation on CAP strategic plans
Exchange of views on the green architecture

Based on the Presidency background note set out in document 8359/19, the Council exchanged views on the green architecture of the future Common Agricultural Policy and took note of delegations' comments on it.

Non-legislative activities

4. Task Force Rural Africa: "An Africa-Europe agenda for rural transformation"
Exchange of views 7936/19 + COR 1
5. Market situation
Information from the Commission
Exchange of views

Any other business

6. a) EU action against deforestation and forest degradation
Information from the Netherlands delegation 8233/1/19 REV 1
- b) Joint Declaration of the Ministers of Agriculture of Czech Republic, Poland and Slovakia on "Renewable Energy Directive post 2020"
Information from the Slovak delegation, on behalf of the Czech, Polish and Slovak delegations 8381/1/19 REV 1
- c) Research and agriculture
Information from the Presidency 8360/19

-
- 1** First reading
- S** Special legislative procedure
- C** Item based on a Commission proposal
-

Statements to the legislative "A" items set out in 8202/1/19 REV 1**Ad "A" item 1: **Regulation on CO₂ standards for cars and vans (recast)*****Adoption of the legislative act***STATEMENT BY THE COMMISSION**

During the review provided for in Article 15 and when proposing, if appropriate, a legislative amendment to this Regulation, the Commission will carry out the relevant consultations in accordance with the Treaties. It will, in particular, consult the European Parliament and the Member States in that context.

As part of that review, the Commission will also examine the appropriateness of the cap of 5% specified in point 6.3 of Part A of Annex I in view of the need to accelerate the promotion of zero- and low-emission vehicles in the concerned Member States.

JOINT STATEMENT BY LUXEMBOURG AND BELGIUM

Luxembourg and Belgium welcome the fact that the co-legislators have reached an agreement before the end of the current parliamentary term on the proposal for a Regulation setting emission performance standards for passenger cars and light commercial vehicles, thus providing for continuity in the EU's legislation in a key emitting sector and ensuring clarity for investors, vehicle manufacturers, public authorities and citizens.

Nevertheless, we regret that the agreed level of ambition has been set well below the level needed to bring CO₂ emissions from road transport in the EU into line with the objectives set by the Paris Agreement or to enable Member States to meet the national emission reduction targets for CO₂ laid down in the Effort Sharing Regulation, despite the fact that a higher level of ambition would have been technically feasible and could have brought many benefits to the EU's economy, to its industrial policy and to the environmental integrity of its policies.

We also regret that some of the provisions agreed as part of the incentive mechanism for zero- and low-emission vehicles (ZLEVs) will lessen the actual reduction in CO₂ emissions achieved through this Regulation, and we are concerned that manufacturers may exploit them in a manner that could distort the internal market.

We therefore call on the Commission and the co-legislators to put in place additional European measures and instruments, and particularly funding, to promote the swiftest possible transition to zero-emission vehicles in the EU. We also call on the Commission to monitor closely how manufacturers comply with the new Regulation and to take steps to address any instances of abuse.

JOINT STATEMENT BY THE NETHERLANDS, LUXEMBOURG, POLAND, ITALY AND FINLAND

"The objectives of this Directive were to enhance the good functioning of the internal market and to stimulate innovation, creativity, investment and production of new content, also in the digital environment. The signatories support these objectives. Digital technologies have radically changed the way content is produced, distributed and accessed. The legislative framework needs to reflect and guide these changes.

However, in our view, the final text of the Directive fails to deliver adequately on the above-mentioned aims. We believe that the Directive in its current form is a step back for the Digital Single Market rather than a step forward.

Most notably we regret that the Directive does not strike the right balance between the protection of right holders and the interests of EU citizens and companies. It therefore risks to hinder innovation rather than promote it and to have a negative impact the competitiveness of the European Digital Single Market.

Furthermore, we feel that the Directive lacks legal clarity, will lead to legal uncertainty for many stakeholders concerned and may encroach upon EU citizens' rights.

We therefore cannot express our consent with the proposed text of the Directive".

STATEMENT BY ESTONIA

"Estonia has always supported the objective of the Directive, namely better access to content online, the functioning of key exceptions in the digital and cross-border environment and the better and balanced functioning of the copyright marketplace.

However, Estonia considers that the final text of the Directive does not strike a sufficient balance between different interests in all aspects.

Furthermore, Estonia has recently had parliamentary elections and our new government and parliament have not been able to give their position on the final compromise text."

STATEMENT BY GERMANY

- "1. The German Federal Government agrees with the proposed Directive on copyright and related rights in the Digital Single Market (hereinafter: 'the Directive') in the version set out in the trilogue compromise of 13 February 2019, because the reform as a whole achieves urgently needed adjustments to the outdated European legal framework, such as the provisions on text and data mining, out-of-commerce works and contract law for performers.
2. At the same time, the German Federal Government regrets that it was not possible to agree on a concept for the copyright responsibility of upload platforms that could be broadly supported by all parties. There is widespread consensus that creatives should participate in the exploitation of their content through upload platforms. However, in particular the obligation provided for in Article 17 of the Directive to ensure the permanent 'stay down' of protected content and the algorithm-based solutions ('upload filters') likely to be used in this context have met with serious reservations and widespread criticism from the German public. The vote in the European Parliament on 26 March 2019 also revealed the huge gulf between supporters and critics.
3. The focus of our efforts is on performers, authors and ultimately all creatives who naturally make use of the new tools that digitisation and connectivity provide for creative work. The German Federal Government is of course not questioning the need to protect creative work on the internet, and to ensure creatives receive appropriate remuneration for such work.
4. Under Article 17(10), the European Commission is required to conduct a dialogue with all interest groups concerned in order to develop guidelines for the application of Article 17. The provision explicitly calls for a balance to be maintained between fundamental rights and the possibility of using protected content on upload platforms within the framework of legal authorisations. The German Federal Government therefore assumes that this dialogue is based on a spirit of guaranteeing appropriate remuneration for creatives, preventing 'upload filters' wherever possible, ensuring freedom of expression and safeguarding user rights. The German Federal Government assumes that uniform implementation throughout the Union will be agreed on in this dialogue, because fragmentary implementation with 27 national variants would not be compatible with the principles of a European Digital Single Market. On the basis of this declaration, the German Federal Government will participate in this dialogue.
5. Where technical solutions are used at all in that connection, the data protection requirements of the General Data Protection Regulation must be adhered to and the EU should encourage the development of open-source technologies with open interfaces (APIs). Open-source software guarantees transparency, while open interfaces ensure interoperability and standardisation. This can prevent market-dominant platforms from further consolidating their market power by means of their established filtering technology. At the same time, the EU must develop concepts that counteract a de facto copyright register in the hands of dominant platforms by means of public, transparent notification procedures.

6. First of all, the requirements laid down in Article 2(6) of the Directive must be addressed and clarified, since the rules are aimed solely at those market-dominant platforms which make large quantities of copyright-protected uploads accessible and which base their commercial business model on such a practice, i.e. services such as YouTube or Facebook. At the same time, we will make it clear that services such as Wikipedia, university repositories, blogs and forums, software platforms such as Github, special-interest offers without any connection to the creative industry, messenger services such as WhatsApp, sales portals or cloud services are not platforms within the meaning of Article 17. In addition, we will ensure an exemption for start-ups.
7. Furthermore, it is clear that upload platforms should continue to be available as free, uncensored communication channels for civil society in the future. Article 17 (7) and (8) stipulate in that connection that protective measures for upload platforms must not impede the permitted use of protected content. We are particularly committed to this because upload platforms are also a springboard for creatives, enabling them to reach a worldwide audience without a publisher or a label.
8. The aim must be to make the ‘uploadfilter’ instrument largely superfluous. Each permanent ‘stay down’ mechanism (‘uploadfilter’) must comply with the principle of proportionality. Procedural guarantees, in particular, could be considered, for example when users notify that they are lawfully uploading content from third parties. In these cases the deletion could not be performed automatically, but only after a check by a person. At the same time, the proprietorship of any content that has to be removed should be sufficiently proven, unless the information comes from a ‘trusted flagger’. In all events the platforms must guarantee easy access to a complaint mechanism for solving contentious cases effectively and as rapidly as possible.
9. In addition, the use of protected content on upload platforms for criticism or reviews, for caricatures, parodies or pastiches, or even in the context of the ‘quotation barrier’, is permitted and free of charge. In such cases the rightholder does not suffer any economic loss anyway. For all other uses platforms should acquire licences, if available relatively easily and for a fair tariff. We will examine how the fair participation of creatives in this licence revenue can be guaranteed through direct payment claims, including in those cases where the label, publisher or producer have the exclusive rights. It is also necessary to guarantee an appropriate remuneration for any new content created on upload platforms and used for commercial purposes. Above all, the proceeds from uses on upload platforms that are desired for political reasons must also reach the creatives themselves.

10. Article 17 aims to monetise the use of protected content on upload platforms and to ensure appropriate and fair remuneration for authors and performers. The German Federal Government shares this goal. In the European compromise, licensing is the method chosen to achieve this. Article 17(4) provides that, in order to fulfil their responsibilities, upload platforms must have 'made best efforts' to obtain licences. This will be crucial in the implementation of this provision. Workable solutions for obtaining licences must be found. Although requirements which are unreasonable in practice cannot be imposed on platforms, it is necessary to ensure that efforts to obtain licences are combined with fair offers of remuneration.
11. In order to resolve this issue – of how licences can, as far as possible, be concluded for all content on upload platforms – copyright law provides for many other mechanisms besides 'traditional' individual licensing (e.g. exceptions and limitations, possibly combined with remuneration rights; the option of converting exclusive rights into remuneration rights; the obligation to conclude contracts on reasonable terms; and the involvement of associations of creative artists such as collecting societies).
12. The Federal Government will examine all of these models. Should it appear that the implementation has led to a restriction of freedom of expression or should the guidelines set out above encounter obstacles in EU law, the Federal Government will work to ensure that the shortcomings identified in EU copyright law are corrected."

Ad "A" item 4: **Directive on SatCab**
 Adoption of the legislative act

STATEMENT BY THE COMMISSION

"The Commission takes note that the text adopted by the European Parliament and the Council of the Directive laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes and amending Council Directive 93/83/EEC replaces the legal basis retained in its proposal (Article 114 of the Treaty on the Functioning of the European Union, TFEU) with the combined legal basis of Articles 53(1) and 62 TFEU.

The Commission considers that Articles 53(1) and 62 TFEU provide a specific legal basis, and can thus be considered 'lex specialis', for directives concerning access to activities of self-employed persons. Legislation exceeding that scope should more properly be based on the general legal basis related to the achievement of the internal market (Article 114 TFEU). The two legal bases (Article 114, and Articles 53(1) and 62 TFEU) could also have been used in conjunction, if necessary.

In a spirit of compromise and with a view to the immediate adoption of the proposal by the Union, the Commission supports the final text. However, it regrets the removal of Article 114 TFEU as the legal basis of the Directive and reaffirms that that provision of the TFEU shall be used in future internal market legislation concerning issues other than access to activities of self-employed persons."

- Ad "A" item 5:** **Directive on Digital Content (DCD)**
 Adoption of the legislative act
- Ad "A" item 6:** **Directive on Contracts for the Sales of Goods**
 Adoption of the legislative act

STATEMENT BY THE UNITED KINGDOM

"We support the principle of harmonisation of remedies under the Sale of Goods and Digital Content Directives. However, the United Kingdom would like to clarify and state its interpretation of the Sale of Goods Directive regarding the regulation of remedies that are not specific to consumer law.

Consumers in the UK have access to non-statutory remedies (judge-made case law and 'equitable' remedies) that are not specific to consumer law, in addition to the statutory remedies that were introduced as a result of the Sales of Consumer Goods and Associated Guarantees Directive (1999/44/EC). UK non-statutory remedies pre-date the statutory remedies resulting from the current Directive. They serve an important function in complementing statutory remedies.

We acknowledge that there has been an active attempt to accommodate this within the text of the directive, particularly in reference to Recital 14 of the Sale of Goods Directive. These provisions indicate that there will be aspects of national law that Member States are free to regulate.

It is the view of the United Kingdom that non-statutory remedies that are aspects of national law, not specific to consumer law, when made available in addition to the statutory remedies required under this Directive, are compatible with the aims of the Directive. We would therefore like to reserve our position regarding the regulation of non-statutory remedies that are not specific to consumer law."

- Ad "A" item 8:** **Decision implementing Horizon Europe - Specific Programme**
 Partial general approach

STATEMENT BY AUSTRIA, BELGIUM, CZECH REPUBLIC, GERMANY, SPAIN, FRANCE, CROATIA, ITALY, LUXEMBOURG, MALTA, POLAND, PORTUGAL, SLOVENIA AND SLOVAKIA **on the future management of the clusters in Horizon Europe**

"Austria, Belgium, Czech Republic, Germany, Spain, France, Croatia, Italy, Luxembourg, Malta, Poland, Portugal, Slovenia and Slovakia welcome the agreement on the Horizon Europe Framework Programme Regulation as well as on the Specific Programme Decision. The final compromise reached includes a programme structure with very broad clusters across several thematic areas, such as the clusters "Climate, Energy and Mobility" or "Digital, Industry and Space". The advantages of this structure, which encourages interdisciplinary and intersectorial research and innovation, are obvious, however, it also poses challenges with regard to the implementation of the programme and the involvement of Member States.

The agreement includes the following statement with regard to the Programme Committee Configurations: *“Ad-hoc meetings could be organised within the clusters and/or with different Programme Committee configurations and/or with Committees established by other acts on horizontal and/or cross-cutting issues, such as space and mobility”*

The undersigned delegations therefore call on the Commission to inform the Member States in writing on which measures the Commission intends to take with regard to the above statement, in order to implement all programme clusters effectively, taking into account the specificities of the areas involved, in particular the areas of “Space” and “Mobility”, thus enabling full involvement of Member States, including their representation at appropriate expert level.”

STATEMENT BY AUSTRIA, BELGIUM, CYPRUS, GERMANY, DENMARK, SPAIN, IRELAND, MALTA, THE NETHERLANDS AND SWEDEN

"The issue of programme duration – including for the specific programme implementing Horizon Europe in the second paragraph of Article 1 – should be resolved horizontally within the MFF negotiations".

STATEMENT BY HUNGARY

"Hungary notes with concern that the legal basis of the decision on establishing the Specific Programme implementing Horizon Europe has not been resolved, as the exchange of views based on point 25 of the Interinstitutional Agreement on Better Law-Making of 13 April 2016 has not been concluded yet. Consequently, unanimity is required to adopt the decision of the Council on the Horizon Europe Specific Programme.

Hungary acknowledges the progress made in the negotiations on Horizon Europe legislative package, however is of the opinion that the improvements made on widening are not enough to trigger structural change and close the participation gap. As a result, we are not able to endorse - and therefore there is no unanimity on - the Partial General Approach on the Horizon Europe Specific Program decision."

EXPLANATORY NOTE TO THE VOTE FROM SWEDEN

"Within Horizon Europe, funding shall be distributed based on excellence in research and innovation. The proposals of the highest quality shall receive funding. Activities for widening the participation are well designed and will be funded in a dedicated part of the programme. Also in that part of the programme, funding shall be distributed based on excellence. These conditions must be reflected and emphasized in the operational objectives of the specific programme."

STATEMENT BY THE COMMISSION

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 (4) recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the legislator, but must be interpreted in a restrictive manner and thus must be justified. While the Commission notes the agreement reached by the European Parliament and the Council on the recourse to this provision, it regrets that such justification is not reflected in a recital."

Ad "A" item 9: **Council Decision amending the Protocol on the Statute of the European Investment Bank**
Adoption

STATEMENT BY POLAND

"Following the statement of 9 April 2019 by the Board of Directors of the EIB that Member States confirmed their commitment to timely implement the package of decisions taken in July and December 2018, which were adopted later unanimously by the Board of Governors, Poland supports the Decision amending the Protocol on the Statute of the EIB as the first of two step approach that Member States agreed to. As a second step, the Statute of the EIB will be amended to implement asymmetric increase of the EIB's capital, namely an increase of the capital in the EIB subscribed by Poland and Romania and corresponding amendment of the Statute. This procedure shall be finalised as swiftly as possible, including the adoption of a Decision by the Council after obtaining opinions from the European Parliament and the European Commission. Both amendments to the Statute of the EIB shall be adopted and await for their entry into force upon the withdrawal of the UK from the UE."
