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DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Economic and Financial Affairs)
14 June 2019

CONTENTS

Page

1.	Adoption of the agenda.....	3
2.	Approval of "A" items	
	a) Non-legislative list	3
	b) Legislative list	3

Legislative deliberations

3.	Banking Union.....	6
4.	Council Directive implementing enhanced cooperation in the area of financial transaction tax.....	6

Non-legislative activities

5.	Follow-up to the G20 meeting in Fukuoka.....	6
6.	European Semester 2019 - Horizontal note on economic and financial policy aspects of Country Specific Recommendations	6
7.	Council decision on the implementation of the Stability and Growth Pact.....	6
8.	Clean Planet for all: Strategic long-term vision for a climate neutral economy - ECOFIN aspects.....	6
9.	Any other business.....	6
	Action Plan to tackle non-performing loans in Europe	
	ANNEX - Statements for the Council minutes	7

1. **Adoption of the agenda**

The Council adopted the agenda set out in 10122/19.

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

a) **Non-legislative list**

9832/19

The Council adopted the "A" items listed in 9832/19 including COR and REV documents presented for adoption.

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

9833/19

Economic and Financial Affairs

1. **Cross-Border Distribution of Funds Directive**



9392/19

Adoption of the legislative act

PE-CONS 53/19

approved by Coreper, Part 2, on 05.06.2019

EF

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) TFEU).

2. **Cross-Border Distribution of Funds Regulation**



9394/19

Adoption of the legislative act

PE-CONS 54/19

approved by Coreper, Part 2, on 05.06.2019

+ COR 1 (it)

EF

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU).

3. **Regulation on a Pan-European Pension Product (PEPP)**



9315/19 + ADD 1

Adoption of the legislative act

PE-CONS 24/19

approved by Coreper, Part 2, on 05.06.2019


EF

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Netherlands voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU).

Statements related to this item are set out in the Annex.

General Affairs

4. **RPS Adaptation - General Omnibus**
Adoption of the legislative act
approved by Coreper, Part 2, on 05.06.2019

 9424/1/19 REV 1
9424/19 ADD 1
+ ADD 3
PE-CONS 65/19
INST

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 33, Article 43(2), Article 53(1), Article 62, Article 64(2), Article 91, Article 100(2), Article 114, Article 153(2)(b), Article 168(4)(a), Article 168(4)(b), Article 172, Article 192(1), Article 207, Article 214(3), and Article 338(1) TFEU). Statements related to this item are set out in the Annex.


Justice and Home Affairs

5. **Regulation on the creation of a European network of immigration liaison officers (recast)**
Adoption of the legislative act
approved by Coreper, Part 2, on 05.06.2019

 9421/19 + ADD 1
PE-CONS 50/19
JAI

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, Denmark and the United Kingdom did not participate in the vote. (Legal basis: Article 74 and Article 79(2) TFEU). Statements related to this item are set out in the Annex.

6. **Directive on law enforcement access to financial information**
Adoption of the legislative act
approved by Coreper, Part 2, on 05.06.2019

 9313/1/19 REV 1
9313/19 ADD 1
REV 2
+ ADD 2 + ADD 3
PE-CONS 64/19
ENFOPOL

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Germany abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote. (Legal basis: Article 87(2) TFEU). Statements related to this item are set out in the Annex.

7. Regulation on platforms-to-business relations

Adoption of the legislative act

approved by Coreper, Part 1, on 05.06.2019



9430/19

+ ADD 1 REV 1

PE-CONS 56/19

MI

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

8. Regulation on market surveillance and compliance

Adoption of the legislative act

approved by Coreper, Part 1, on 05.06.2019



9429/1/19 REV 1

9429/19 ADD 1

PE-CONS 45/19

ENT

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Slovakia and United Kingdom voting against and Bulgaria and Luxembourg abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 33, 114 and 207 TFEU). Statements related to this item are set out in the Annex.

9. Regulation on explosives precursors

Adoption of the legislative act

approved by Coreper, Part 1, on 05.06.2019



9397/19 + ADD 1

PE-CONS 46/19

COMPET

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU). Statements related 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. **Banking Union** 9729/19 + ADD 1
Progress report
- The Council took note of the Presidency Progress Report on Banking Union as set out in document 9729/19 + ADD1.
4. **Council Directive implementing enhanced cooperation in the area of financial transaction tax** **[S][C]** 10097/19 + COR 1
Progress report
- The Council was updated on the state of play regarding negotiations on this dossier. The German delegation made a presentation based on document 10097/19 + COR 1.

Non-legislative activities

5. Follow-up to the G20 meeting in Fukuoka
Information from the Presidency and Commission
6. European Semester 2019 - Horizontal note on economic and financial policy aspects of Country Specific Recommendations
Policy debate 9956/19 + COR 1
7. Council decision on the implementation of the Stability and Growth Pact
Adoption 10001/19
8. Clean Planet for all: Strategic long-term vision for a climate neutral economy - ECOFIN aspects
Exchange of views 15011/18
9721/19
9. Any other business
Action Plan to tackle non-performing loans in Europe
State of play 9730/19

[S] Special legislative procedure

[C] Item based on a Commission proposal

Statements to the legislative "A" items set out in 9833/19**Ad "A" item 3** **Regulation on a Pan-European Pension Product (PEPP)**
*Adoption of the legislative act***STATEMENT BY THE CZECH REPUBLIC**

"The Czech Republic understands the objectives of the proposal for Regulation on a Pan-European Pension Product (PEPP), in particular the effort to create an effective market for third pillar products in those Member States where these products are not sufficiently developed. However, since the proposal is based on the existing sectoral EU regulation for financial institutions, it does not allow for non-harmonised national third pillar systems to participate. In this respect, the Czech Republic considers it important to point out also the potential negative impact of the regulation on existing national third pillar schemes. There is a potential risk that the functioning of well-established existing national systems of third pillar products with high participants' coverage might be impaired and already accumulated assets transferred without reasonable effect."

STATEMENT BY THE NETHERLANDS

"The Netherlands notes that certain important changes have been made to the initial proposal of the European Commission. The Netherlands notes that the agreement respects the prerogative of the Member States on taxation and that Member States decide themselves whether their Institutions for Occupational Retirement Provision (IORP's) are allowed to provide PEPP. However, we remain of the opinion that this agreement contains too many delegated acts and confers too much authority to EIOPA and the Commission. Therefore, the Netherlands will vote against the PEPP-regulation during Coreper and the Council."

Ad "A" item 4 **RPS Adaptation - General Omnibus**
*Adoption of the legislative act***JOINT STATEMENT BY THE PARLIAMENT, THE COUNCIL AND THE COMMISSION**

"In point 27 of the Interinstitutional Agreement on Better Law-Making the three institutions acknowledged the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. Following the proposal of the Commission to that end, this Regulation responds to that need by providing for the alignment of the regulatory procedure with scrutiny in a significant number of acts included in that proposal. The three institutions will continue to work on the alignment of the remaining acts of that proposal."

STATEMENT BY THE COMMISSION

"The Commission notes the choice of the legislators to provide for a limited duration for all the empowerments in which the regulatory procedure with scrutiny is aligned through this Regulation, coupled with a reporting obligation and tacit renewal of the empowerment. In particular in view of the high number of reports which would become due at regular intervals of time and the fact that easily available information about the use of the empowerments is available through the Register of Delegated Acts, the Commission underlines that it has discretion about the way in which it will comply with the reporting obligation. Where appropriate, the Commission may therefore group reports due under several basic acts in one single document."

Ad "A" item 5 **Regulation on the creation of a European network of immigration liaison officers (recast)**
Adoption of the legislative act

STATEMENT BY ITALY

"While supporting the agreement reached with the European Parliament, Italy wishes to express its concern about the future implementation of the provision allowing access by the European Parliament to the e-platform for the exchange of information among the members of the ILO network.

This platform, although it does not contain personal data, includes a range of information (volume of migratory flows, routes used, age groups of migrants, gender, unaccompanied minors, modus operandi of human traffickers) that can be used not only for the reporting activities of the Steering Board, but also to initiate or reinforce possible investigation and anti-trafficking and anti-smuggling activities by Member States. Access to such data may adversely affect police activities.

It may also be the case that information of a strategic nature is uploaded onto the platform, the dissemination of which may negatively affect the international relations of a Member State with the third countries concerned.

The access envisaged for the European Parliament (with no specific indication of who will have access) will be regulated by the Steering Board of the ILO network. It is desirable that the task of defining the limits of the content - i.e. which sections of the platform, and consequently what kinds of information and data contained therein, the European Parliament is allowed to access - be carried out in the future so as not to jeopardise law enforcement and police functions, without prejudice to the European Parliament's prerogative to be always and fully informed of all ILO secondments and to obtain programme documents adopted by the Steering Board.

Therefore, Italy wishes to clarify that the access granted to the European Parliament by this Regulation should not constitute a precedent for any future attempts to provide the parliamentary body with powers of inspection and control over law enforcement and police functions."

STATEMENT BY ITALY

"Italy shares the goal of the draft Directive as regards the use of financial information, not only for the purposes of preventing money laundering and the financing of terrorism, but also in relation to other serious crimes.

Despite the fact that the final text has taken on board some of our comments and refers, in the recitals, to the need to take into account the nature, tasks and prerogatives established under national law during the implementation stages of the act, Italy repeats its concerns regarding the provision of specific obligations for the Member States.

Throughout the negotiations Italy has expressed its preference for a greater degree of flexibility in the implementation of the Directive's provisions."

STATEMENT BY GERMANY

"Germany broadly supports the aim of the draft Directive to improve access to information by Financial Intelligence Units (FIUs) and public authorities responsible for detection, investigation or prosecution, to intensify cooperation between the respective competent bodies and, more generally, to strengthen financial investigation. However, Germany has significant reservations about individual provisions in the compromise text, in particular the definition of 'law enforcement information' in Article 2(6) and the provisions in Articles 9 and 10 and recital 22, which were not part of the Council's mandate for the negotiation in the trilogue, as agreed on 21 November 2018. The present compromise text has, in our view, introduced significant changes for the worse compared to the mandate given to the Council, and partly also compared to the proposal from the Commission.

A particular concern for Germany is that there must be no possibility for individual bodies to circumvent the requirements with respect to data collection. This, however, is now a risk, as the definition of 'law enforcement information' in Article 2(6)(ii) includes data and information that the requested authority would first need to collect. However, the wording of the draft Directive is such that no importance is attached to whether the requesting authority would itself be allowed to collect such data directly.

Article 9 contains a provision concerning the Union-wide exchange of information between FIUs which is not consistent with the Anti-Money Laundering Directive [Directive (EU) 2015/849], and in particular Articles 32 and 53 thereof. The Council Legal Service had already expressed concerns regarding contradictions between Article 9 and the Anti-Money Laundering Directive in a written opinion on the Commission proposal (opinion dated 12 October 2018, ST 13100/18).

The current rule in Article 9 does not address those contradictions. It establishes specific requirements for an exchange of information between the FIUs which goes beyond the scope of their tasks as defined in Union law and therefore interferes with the freedom of the Member States to organise their respective national FIUs in accordance with their own legal system. Moreover, the rule sets out some specific requirements regarding the exchange of information in relation to terrorism or organised crime, despite the fact that Union law, be it through the Anti-Money Laundering Directive or through this draft Directive, does not give any clear definition of these notions, provide any justification for giving the FIUs competence to combat such crimes, or make any distinction between this exchange of information and other instruments involved in police and judicial information exchange.

Article 10 provides for the exchange of data between the competent authorities of different Member States, which are, according to Article 3(2), designated by the respective Member State. In doing so, Article 3(2) grants the Member States broad discretion with regard to the designation of these authorities, which may even be designated at a decentralised regional level and may have very diverse tasks, whilst requiring the Member States to provide notification of their authorities within four months following the expiry of the transition period. In contrast, Article 10 requires the Member States to make provision, already before the end of the transposition period, for a Union-wide exchange between these yet to be designated authorities. The Member States would thus have to implement, in a legally binding way, an exchange of information in the sensitive area of financial information, but in the process leave important decisions to the (future) exercise of discretion by other Member States.

By referring specifically to an 'EU FIU' as an example of a 'coordination and support mechanism', recital 22 departs from the assessment task that is described in Article 65 Anti-Money- Laundering Directive and that has not yet been performed.

Moreover, the specific data protection provisions contained in the compromise text do not seem systematically coherent, since Directive (EU) 2016/679 is to be applicable as well as Directive (EU) 2016/680.

The above-mentioned shortcomings make it much more difficult for Member States to ensure a complete, correct and legally certain transposition of the Directive's requirements. Germany therefore enters reservations and cannot give its agreement to the current compromise text of the draft Directive."

STATEMENT BY THE COMMISSION

"In relation to Article 9 of the Directive, the Commission regrets that, against its original proposal, the Directive does not include rules on precise deadlines and IT channels for the exchange of information between Financial Intelligence Units of different Member States. The Commission also regrets that the scope of application of this Article has been limited to cases of terrorism and organised crime associated with terrorism, and does not cover all types of serious criminal offences, as originally proposed. The Commission will further reflect on Financial Intelligence Unit to Financial Intelligence Unit cooperation, notably as part of its reports on the implementation of this Directive and of the Anti-Money Laundering Directive."

STATEMENT BY GERMANY AND AUSTRIA, SUPPORTED BY BELGIUM

"Germany and Austria assume that Member States will continue to be entitled to adopt further regulations in conformity with Union law to ensure media diversity. Germany and Austria also assume that national rules for the competition authorities to address abusive practices and national contract law remain applicable alongside the Regulation. We understand Article 3(3) of the Regulation to mean that the Regulation does not preclude further examination of terms and conditions under national law, to the extent that the relevant areas are not covered by the Regulation."

STATEMENT BY THE COMMISSION

"The Commission takes note of the text of Article 1(4) agreed by the European Parliament and the Council.

The Commission wishes in this context to note that the present Regulation does not preclude Member States' ability to prohibit or sanction unilateral conduct or unfair commercial practices under their national law, provided that the relevant provisions of national law are applied in conformity with other provisions of Union law and are compatible with the provisions of the present Regulation.

The principle that national law should be compatible with this Regulation however only applies to the extent that the specific issue in question is specifically regulated therein. The Commission notes in this regard that this Regulation does not regulate all aspects of the commercial relationships between providers of online intermediation services and their business users.

In particular, the Commission considers that where the provisions of this Regulation set out a specific level of transparency or specific information obligations, in relation to these matters, Member States cannot prescribe different levels of transparency or different information obligations. However, this Regulation does not preclude the application of national rules which prohibit or sanction unilateral conduct or unfair commercial practices and which concern other matters, not regulated by the provisions of this Regulation."

JOINT STATEMENT BY BULGARIA, LUXEMBOURG, SLOVAKIA AND THE UNITED KINGDOM

"Bulgaria, Luxembourg, Slovakia and the United Kingdom support the overarching aims of the Compliance and Enforcement proposal to strengthen market surveillance in order that products comply with Union legislation and the framework keeps pace with a modern economy with rapidly evolving technologies.

However, we believe that the impact of Article 4 (Tasks of economic operators regarding products subject to certain Union harmonisation legislation) has not been adequately assessed, that it is not sufficiently based on risk and will place an undue burden on small and medium businesses.

Whilst we, the signatories, agree with the principles of the proposal and are committed to a robust system of joined up market surveillance to protect consumers and ensure a level playing field for businesses, we are unable to give our full support to the proposal due to the significant risks of Article 4 that have not been adequately assessed."

STATEMENT BY THE COMMISSION

"The Commission takes note that the text agreed replaces the triple legal basis of the Commission proposal (Article 114 TFEU - internal market, Article 33 TFEU – customs cooperation, Article 207 – common commercial policy) by a double legal basis, through deletion of the common commercial policy legal basis. The Commission continues to consider that the triple legal basis is fully justified in relation to the provisions that regulate conditions for access to the EU market of products originating from third countries. Moreover, the common commercial policy legal basis is in line with the legal basis of Regulation (EC) 765/2008 of the European Parliament and of the Council of 9 July 2008 setting the requirements for accreditation and market surveillance relating to the marketing of products and repealing regulation (EEC) no 339/93. The Commission regrets the deletion of article 207 TFEU as legal basis of the Regulation."

STATEMENT BY THE COMMISSION

"In order to strengthen controls on products at customs, the Regulation empowers the Commission to adopt implementing acts to determine benchmarks and techniques for checks on the basis of common risk analysis on the Union level. The Commission intends to make use of this empowerment."

STATEMENT BY THE COMMISSION

"The Commission strongly regrets that the co-legislators' agreement does not include the possibility to restrict additional substances through delegated acts, depriving the Union of the appropriate procedure to respond swiftly to developments in the misuse of substances as explosives precursors. The Commission also regrets that the co-legislators' agreement has not made sufficiently clear that the current Regulation leaves Article 14 of the e-Commerce Directive unaffected."
