



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 April 2014  
(OR. en)**

**7749/14  
ADD 1**

**PV CONS 16  
TRANS 153  
TELECOM 84  
ENER 123**

**DRAFT MINUTES**

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Subject: **3303rd** meeting of the Council of the European Union (**TRANSPORT,**  
**TELECOMMUNICATIONS AND ENERGY**) held in Brussels on  
14 March 2014

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## PUBLIC DELIBERATION ITEMS<sup>1</sup>

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<sup>1</sup> Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

## **LEGISLATIVE DELIBERATIONS**

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

### **"A" ITEMS**

- 1. Regulation of the European Parliament and of the Council on the reporting, analysis and follow-up of occurrences in civil aviation amending, Regulation (EU) No 996/2010 and repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007 [First reading] (LA+S)  
PE-CONS 138/13 AVIATION 257 CODEC 3018**

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) of the TFEU).

#### **Commission Statement on the 'no-opinion' clause**

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 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."

- 2. Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (Text with EEA relevance) [First reading] (LA+S)  
PE-CONS 143/13 SAN 548 MI 1193 COMPET 941 FISC 265 CODEC 3077**

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the Polish delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 53(1), 62 and 114 of the TFEU).

### **Statement by the Commission**

"As regards Articles 10 and 16, the Commission understands that these provisions are intended to address specific needs of the Member States. The Commission recalls that the application of these provisions has to take account of the high level of health protection already achieved by this Directive and has to comply with the Treaty."

### **Statement by the Commission**

"When revising the text warnings in ANNEX I, the Commission will take into account established and available scientific findings accordingly, including as regards the risks of second hand smoke."

### **Statement by the Commission**

#### **on the procedure of adoption of implementing acts**

"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."

### **Statement by the Commission**

"The Commission will undertake to request the appropriate scientific committee to examine the issue of Polonium 210 in tobacco products, in particular regarding its carcinogenic effects, on the basis of available scientific and other relevant data."

### **Statement by Hungary**

"Hungary expresses its concerns that the provisions on e-cigarettes, especially those related to nicotine content and refill containers, may lead to serious public health risks. Hungary is of the view that e-cigarettes with a 20 mg/ml nicotine concentration could put the health of their users at risk, as a 2 ml cartridge or tank can contain as much as 40 mg nicotine which may cause serious, even potentially lethal poisoning in cases where this amount of nicotine is inhaled by a child or an adolescent. There is statistical evidence that young people who never smoked tobacco have already consumed nicotine containing e-cigarettes. Consequently, we have every reason to consider electronic cigarettes as a tool of reformulating smoking behaviours. Therefore, Hungary is going to take all measures possible under the Directive to protect public health in this regard. Furthermore, Hungary is going to make full use of the provisions included in Article 20, paragraph 1, second subparagraph of the Directive."

### **Statement by Sweden**

"Sweden strongly supports obligatory health warnings on tobacco packages, but the proposed increase in size of these warnings may pose great difficulties in terms of compatibility with the Swedish constitution.

The transposal of a directive with health warnings covering more than the size of the warnings stipulated in the current directive (2001/37/EC) might be incompatible with the Swedish constitution.

Consequently, in respect of the provisions relating to the size of health warnings (articles 9 and 10, in conjunction with article 8.6, of the proposed directive), it is not certain if or how Sweden can implement the Directive. In any case, Sweden will require additional time for the implementation of the directive. Currently, Swedish constitutional rules concerning freedom of the press and freedom of expression are being examined regarding text warnings, contents declarations and similar product information.

Furthermore, the transposal of the provisions on e-cigarettes that do not fall under the scope of the Directives 2001/83/EC and 93/42/EEC might be incompatible with the Swedish constitution. Consequently, it is not certain if or how Sweden fully can implement article 20. In any case, Sweden will in this respect require additional time for the implementation of the directive."

### **3. Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters [First reading] (LA+S)**

PE-CONS 122/13 COPEN 230 EUROJUST 137 EJM 75 CODEC 2838  
+ REV 1 (es)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the United Kingdom delegation 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, the Danish and the Irish delegations did not participate in the vote. (Legal basis: Article 82(1)(a) of the TFEU)

**Statement by Austria, Belgium, Bulgaria, Croatia, Estonia, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden and Slovenia**

"The Austrian, Belgian, Bulgarian, Croatian, Dutch, Estonian, French, German, Italian, Luxembourg, Spanish, Swedish and Slovenian delegations welcome the adoption of the Directive on the European Investigation Order. This directive provides a response to the call of the European Council within the Stockholm Programme to set up a comprehensive system for obtaining evidence within the EU, based on the principle of mutual recognition, and to replace all the existing legal instruments in this area, including Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant. However, due to various interpretations of the legal basis of the Directive, Article 34(2) only provides that this Framework Decision is replaced for the Member States bound by the Directive. The Austrian, Belgian, Bulgarian, Croatian, Dutch, Estonian, French, German, Italian, Luxembourg, Spanish, Swedish and Slovenian delegations urge the Commission and the Presidency to consider possibilities to ensure legal clarity on the repealing of the Framework Decision 2008/978/JHA for all Member States."

**4. Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union [First reading] (LA+S)**

PE-CONS 121/13 DROIPEN 156 COPEN 229 CODEC 2833  
+ REV 1 (hu)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the Polish delegation voting against, 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, the Danish and the United Kingdom delegations did not participate in the vote. (Legal basis: Articles 82(2) and 83(1) of the TFEU)

**Statement by the European Parliament and the Council on an analysis to be carried out by the Commission**

"The European Parliament and the Council call on the Commission to analyse, at the earliest possible opportunity and taking into account the differences between the legal traditions and the systems of the Member States, the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, also in the absence of a conviction of a specific person or persons for these activities."

## **Statement by the European Parliament and the Council on mutual recognition**

"An effective system of freezing and confiscation in the EU is inherently linked to well functioning mutual recognition of freezing and confiscation orders. Considering the need of putting in place a comprehensive system for freezing and confiscation of proceeds and instrumentalities of crime in the EU, the European Parliament and the Council call on the Commission to present a legislative proposal on mutual recognition of freezing and confiscation orders at the earliest possible opportunity, in relation to which the concept of freezing should be further examined.

The Commission is also called on to address the possible difficulties in the implementation of the instruments on mutual recognition of freezing and confiscation orders, which may arise from the replacement of certain provisions of Framework decision 2005/212/JHA by the corresponding provisions of the Directive on the freezing and confiscation of proceeds of crime in the European Union."

### **5. Regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [First reading] (LA+S)**

PE-CONS 36/14 VISA 43 COMIX 98 CODEC 397

The Council approved the European Parliament's position at first reading and adopted the proposed act, 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, the Irish and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 77(2)(a) of the TFEU)

## **Statement by the Commission**

"The Commission commits to continue supporting the Moldovan Government in the decision the latter has already taken to start replacing the 3<sup>rd</sup> generation passports of its citizens by 4<sup>th</sup> generation biometric passports, which will include fully integrated chip booklets, by mid-2015. The Commission will closely monitor this process in the framework of the existing Partnership and Cooperation structures and dialogues and it will report regularly to the Council and the European Parliament on the state of implementation of this decision, including through the post visa liberalisation monitoring reports."

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## "B" ITEMS

### 4. **Fourth railway package**

#### **Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 [First reading]**

Interinstitutional file: 2013/0014 (COD)

- General approach
  - 6012/13 TRANS 38 CODEC 225
    - + ADD 1
    - + ADD 2
  - 7321/14 TRANS 118 CODEC 655

The Council adopted a general approach on the above proposal, as set out in doc. 7872/14 and agreed to enter in these minutes a statement by Germany.

#### **Statement by Germany**

"With regard to Article 65(2) of the proposal for a regulation, Germany recalls paragraph 8 of the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies, according to which the host State should commit itself to [continue to] respond to the agency's needs and provide the necessary conditions for the smooth operation of the agency, [also after the latter has been set up]. Germany considers itself bound by this, so that its agreement to the current wording should not be seen as a precedent for the future foundation of (new) agencies, and it requests the Commission to take this into account in the future when preparing comparable proposals.

Furthermore, Germany regrets very much that it has not received sufficient support for a term of office of the Executive Director of five plus four years."

### 7. **Any other business**

#### **(a) Current legislative files**

##### **(i) Airport package: Proposal for a Regulation of the European Parliament and of the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC of the European Parliament and of the Council [First reading]**

Interinstitutional file: 2011/0398 (COD)

- Information from the Presidency
  - 7307/14 AVIATION 62 ENV 231 CODEC 653

The Council took note of the information provided by the Presidency on the above issue (doc. 7307/14).

**(ii) Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport [First reading]**

Interinstitutional file: 2013/0303 (COD)

- Information from the Presidency  
7516/14 TRANS 136 MAR 48 CODEC 739

The Council took note of the information provided by the Presidency on the above issue (doc. 7516/14).

**(iii) Proposal for a Directive of the European Parliament and of the Council on the deployment of alternative fuels infrastructure (Clean Power) [First reading]**

Interinstitutional file: 2013/0012 (COD)

- Information from the Presidency  
7374/14 TRANS 123 AVIATION 66 MAR 42 ENER 109 ENV 237 IND 92  
RECH 112 CAB 8 CODEC 671

The Council took note of the information provided by the Presidency on the above issue (doc. 7374/14)

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