ADDENDUM to DRAFT MINUTES ¹

Subject: 2574th meeting of the Council of the European Union (JUSTICE AND HOME AFFAIRS) held in Brussels on 30 March 2004

¹ The information from the minutes which is contained in this document is not confidential and may therefore be released to the public.
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"A" items (list: 7763/04 PTS A 15 + ADD 1)

When finally adopting the "A" items relating to legislative acts, the Council agreed to enter the following in these minutes:

10. VAT
   – Council Decision authorising Germany to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes
     6881/04 FISC 43 OC 181
     + COR 1 (fr)
     + REV 1 (de)

   The Council adopted the above Decision. (Legal basis: Article 27(1) of the sixth Directive 77/388/EEC).

   6735/04 ENV 113

   The Council adopted the above Decision. (Legal basis: Article 2(3) of the Treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, and Article 55 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded).
28. **Council Regulation on the management of fishing fleets registered in the outermost regions**

7529/04 PECHE 98 POSEIDOM 8 POSEIMA 4 POSEICAN 4 OC 234

The Council adopted the above Regulation, with the Portuguese delegation voting against it. (Legal basis: Articles 37 and 299(2) of the Treaty establishing the European Community).

**Commission statements**

1. "The Commission takes the view that Article 299(2) of the EC Treaty is not applicable as a legal basis in this case as the provisions of the Regulation do not derogate from the EC Treaty. However, so that the proposal for a Regulation on the management of fishing fleets registered in the outermost regions may be adopted, the Commission will not obstruct the Council's agreement by qualified majority on the compromise text."

2. "The Commission will proceed with diligence in adopting the implementing rules foreseen in Articles 1 and 4 of the Council Regulation on the management of fishing fleets in the outermost regions so as to avoid any delay that could compromise the implementation of the measures foreseen in these regions.

For the Canary Islands' fleet, for which no specific segmentation had been fixed under Multi-Annual Guidance Programmes for the fishing fleets (MAGP), the Commission is ready to:

- analyse the most appropriate segmentation for the Canary Islands' fleet in relation to types of fishing and to the state of targeted stocks;
- submit the most recent scientific analysis, including the last evaluation presented by the Spanish marine research body (IEO), of stocks targeted by the Canary Islands' fleet, to the Scientific, Technical and Economic Committee for Fisheries (STECF), for assessment;
- ensure a similar treatment of fleets from all Member States operating on the same fisheries;
- examine fishing possibilities that result from private or Community fisheries agreements provided that all information is made available to the Commission in time;
- accept the possibility for vessels from the Spanish mainland fleet to register in the Canary Islands, provided that a sufficient margin is available in the levels of reference fixed for the Canary Islands."
PE-CONS 3646/04 TELECOM 69 CODEC 447  
The Council approved the European Parliament's amendments to the common position. The above Decision is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: first paragraph of Article 156 of the Treaty establishing the European Community).

30. Decision of the European Parliament and of the Council establishing a Community action programme to promote bodies active at European level in the field of youth  
PE-CONS 3648/04 JEUN 28 EDUC 75 SOC 149 CODEC 453  
The Council approved the European Parliament's amendments to the common position. The above Decision is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Article 149(4) of the Treaty establishing the European Community).

31. Decision of the European Parliament and of the Council establishing a Community action programme to promote bodies active at European level and support specific activities in the field of education and training  
PE-CONS 3649/04 EDUC 76 SOC 150 CODEC 454  
The Council approved the European Parliament's amendments to the common position. The above Decision is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Articles 149(4) and 150(4) of the Treaty establishing the European Community).
32. **Decision of the European Parliament and of the Council establishing a Community action programme to promote bodies active at European level in the field of culture**

PE-CONS 3650/04 CULT 32 CODEC 455

The Council approved the European Parliament's amendments to the common position. The above Decision is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Article 151(5) of the Treaty establishing the European Community).

33. **Decision of the European Parliament and of the Council adopting a programme of Community action (2004-2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the DAPHNE II programme)**

PE-CONS 3647/04 SOC 148 JEUN 27 SAN 55 JAI 98 CODEC 448

The Council approved the European Parliament's amendments to the common position. The above Decision is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Article 152 of the Treaty establishing the European Community).

34. **Regulation of the European Parliament and of the Council establishing a European Centre for Disease Prevention and Control**

PE-CONS 3624/04 SAN 38 CODEC 255 OC 180

+ REV 1 (fr)
+ REV 2 (sv)
+ REV 2 COR 1(sv)

The Council approved the amendments contained in the European Parliament's opinion and decided to adopt the act as amended. (Legal basis: Article 152(4) of the Treaty establishing the European Community).
3. **Statement by Germany and the United Kingdom on the legal basis**

"Whilst supportive of the establishment of the European Centre for Disease Prevention and Control, Germany and the United Kingdom have doubts about the omission of Article 308 of the Treaty from the legal base of the regulation. While Article 152 paragraph 4 of the Treaty establishing the European Community - excluding harmonisation of the legal and administrative provisions of the Member States - allows for the adoption of support measures to attain a high level of health protection, this would not per se seem to constitute an appropriate legal base for authorising the establishment of a health institution on the European level.

Germany and the United Kingdom consider that the establishment of the Centre for Disease Prevention and Control cannot be construed as a precedent for the establishment of further EU institutions in the health field".

4. **Statement by the Commission on Article 14**

"The Commission recalls that, according to its December 2002 Communication on a framework for European regulatory agencies, its proposal for a Regulation establishing the European Centre for Disease Prevention and Control provided for a Management Board composed of six members designated by the Commission, six by the Council and three representing the stakeholders. The Commission believes, also in accordance with the European Parliament resolution on the above-mentioned Communication adopted on 13 January 2004, that a Board of limited size with members appointed by the Community's executives would ensure a better functioning of the Centre in an enlarged EU. In this respect, the Commission looks forward to receiving the Council's response to its Communication on a framework for regulatory agencies. The Commission confirms its intention to present, when appropriate, a proposal on a framework for European agencies, which will also cover the composition of the Management Board.

Given the urgent need for establishing the Centre, the Commission does not however oppose the agreement between the Council and the European Parliament for a first reading adoption of the Regulation.

The Commission notes that the review foreseen in Article 31 of the Regulation will be based, inter alia, on an evaluation of the working practices of the Centre. The Commission considers that this includes the composition of the Management Board".
5. Statement by the German and Austrian delegations on financial provisions

"The Germany and Austria delegations would stress that the financing of the European Centre for Disease Prevention and Control must be ensured within the framework of the applicable financial perspective. The annual appropriations are approved by the budget authority within the limits set by the financial perspective. Given the constraints imposed by heading 3 of the Community budget, adherence to the applicable financial perspective must be ensured having regard to existing programmes and programmes still to be decided on and a safety margin below the ceiling of heading 3."

6. Statement by the German and French delegations on Article 29

- "The German delegation states that, although it supports the proposal for a Regulation of the European Parliament and of the Council establishing a European Centre for Disease Prevention and Control, the Federal Republic of Germany reconfirms its view that, for the staff of institutions such as the above Centre, provision should be made for applying exemption with progression to income exempt from tax in the host state and for taxing pensions and similar benefits.

Germany would therefore once again draw attention to the proposal by the Belgian Presidency at the 1931st meeting of Coreper, Part 2, on 13 September 2001 that there should be a general debate on the granting of privileges and immunities in the EU.

More recently Germany returned to the question of such a debate at the 1990th meeting of Coreper, Part 2, on 18 December 2002 and at the 2000th meeting of Coreper, Part 1, on 12 and 13 December 2003. Until such critical scrutiny of the granting of privileges and immunities has taken place, Germany will continue to work to ensure that privileges and immunities (especially tax privileges and exemptions from national taxation) are granted only insofar as is absolutely necessary for the continuing integration of Member States into the EU."

- "France agrees to withdraw its reservation on the privileges and immunities of the Centre in order not to stand in the way of the establishment of this agency whose tasks are of great importance. However, France wishes there to be a general discussion of the privileges and immunities of the European agencies, being of the view that it is essential to address the issue logically, fairly and in a manner which is legally safe."

The Council approved the amendments contained in the European Parliament's opinion and decided to adopt the act as amended. (Legal basis: Article 95 of the Treaty establishing the European Community).


The Council adopted the above Directive, with the Irish, German and Austrian delegations voting against it. (Legal basis: Article 175(1) of the Treaty establishing the European Community).

7. Statement by the Commission on Article 14(2)

"The Commission takes note of article 14(2). In accordance with this article, the Commission will present a report, six years after the entry into force of the Directive, covering, inter alia, the availability at reasonable costs and conditions of insurance and other types of financial security. The report will in particular take into account the development by the market forces of appropriate financial security products in relation to the aspects referred to.

It will also consider a gradual approach according to the type of damage and the nature of the risks. In the light of the report, the Commission will, if appropriate, submit as soon as possible proposals. The Commission will carry out an impact assessment, extended to the economic, social and environmental aspects, in accordance with the relevant existing rules and in particular the inter-institutional agreement on Better Law-Making and its Communication on Impact Assessment [COM(2002) 276 final]."
   PE-CONS 3616/04 AVIATION 28 CODEC 144
   + COR 1 (fi)

   The Council adopted the above Directive. (Legal basis: Article 80(2) of the Treaty establishing the European Community).

38. Regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community
   PE-CONS 3644/04 AVIATION 81 CODEC 441

   The Council approved the European Parliament's amendment to the common position. The above Regulation is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Article 80(2) of the Treaty establishing the European Community).

39. Regulation of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators
   PE-CONS 3645/04 AVIATION 82 ECOFIN 105 CODEC 442

   The Council approved the European Parliament's amendment to the common position. The above Regulation is therefore deemed to have been adopted in the form of the common position thus amended (Legal basis: Article 80(2) of the Treaty establishing the European Community).

   PE-CONS 3607/04 DRS 1 CODEC 73 OC 34
   + COR 1 (en)
   + COR 2 (fi)
   + COR 4 (es)

   The Council approved the amendments contained in the European Parliament's opinion and decided to adopt the act as amended. (Legal basis: Article 44(1) of the Treaty establishing the European Community).
8. **Statement by the Council and the Commission on Article 5(1)**

"The Council and the Commission agree that national law may provide that when control has been obtained following a voluntary bid made in accordance with this Directive addressed to all holders of securities for at least 60% of their holdings, the obligation to launch a bid laid down in Article 5(1) of the Directive shall not apply on condition that the offer has been approved by the majority of shareholders with voting rights, excluding from the calculation securities that are held by the offeror and by any shareholder, who alone or in concert hold more than 10% of the voting rights."

9. **Statement by the Commission**

"Following the rejection by the European Parliament of the compromise proposal on 4 July 2001, the Commission endeavoured to respond, in particular to the wishes of the European Parliament, by bringing forward a new and more ambitious proposal in 2003. The Commission notes with regret that the directive as finally adopted is in fact below the level of ambition of the compromise text on the table in 2001.

Crucial parts of the directive have now become optional. Member States can decide to opt out of Article 9, which contains the important principle that it is for the shareholders to decide whether or not to adopt defensive measures once a bid has been made. Member States can also opt out of Article 11 which should make it possible for a successful bidder to break through any pre-bid defensive measures. Furthermore, the optional arrangements in Article 12 are made reversible leading to uncertainty in the market about the behaviour of companies in terms of defensive measures. This is clearly not a satisfactory situation and will not contribute to achieving the goals of the Lisbon agenda.

The Commission intends to monitor the application of the directive and evolution of the situation in the Internal Market closely and come forward with further proposals where necessary."