



Council of the
European Union

Brussels, 19 January 2015
(OR. en)

16415/14
ADD 1

PV/CONS 64
TRANS 574
TELECOM 229
ENER 497

DRAFT MINUTES

Subject: **3352nd** meeting of the Council of the European Union (**TRANSPORT, TELECOMMUNICATIONS AND ENERGY**) held in Brussels on 3 December 2014

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¹ 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).

NON-LEGISLATIVE ACTIVITIES - PUBLIC DEBATES

(Public debate in accordance with Article 8(2) of the Council's Rules of Procedure)

INTERMODAL QUESTIONS AND NETWORKS

2. Europe 2020 strategy review

Draft Council conclusions on transport infrastructure and the Trans European Network

– Adoption

15737/14 TRANS 537 ECOFIN 1062 ENV 915 RECH 446

The Council held an exchange of views and adopted the Council Conclusions on the above proposal, as set out in the outcome of proceedings (doc. 16363/14).

LEGISLATIVE DELIBERATIONS

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

AVIATION

3. SES II+ [First reading]

(Legal basis proposed by the Commission: Article 100(2) TFEU)

(a) Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (SES II+) (recast)

Interinstitutional file: 2013/0186 (COD)

(b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 216/2008 in the field of aerodromes, air traffic management and air navigation services (SES II+), EASA Regulation

Interinstitutional file: 2013/0187 (COD)

– General approach ¹

11501/13 AVIATION 91 CODEC 1588

+ REV 1 (el)

11496/13 AVIATION 90 CODEC 1586

15732/14 AVIATION 217 CODEC 2290

+ COR 1

15733/14 AVIATION 218 CODEC 2291

The Council adopted a general approach ² on the above proposals, as set out in the outcome of proceedings in doc. 16430/14 and its COR1 as well as in doc. 15733/14 and agreed to enter in these minutes statements by Spain and the United Kingdom as well as a statement by the Commission, as set out hereafter.

¹ When adopting a General approach after the European Parliament has adopted its position at first reading, the Council is not acting within the meaning of Article 294(4) and (5) TFEU.

² As regards the SES II+ proposal, the general approach is to be understood as partial to the extent that at this point there is no agreement on Article 1 paragraph 5.

Statement by Spain

"Spain recalls that Article 355(3) of the Treaty on the Functioning of the European Union does not apply to Gibraltar airport, since it is situated on the isthmus which is not part of the territory ceded to the United Kingdom by the 1713 Treaty of Utrecht but is illegally occupied by the United Kingdom. The Court of Justice of the European Union has itself acknowledged (C-298/89 of 29 June 1993) that there is a dispute between two Member States (Spain and United Kingdom) concerning sovereignty over the isthmus.

In order not to prejudge this issue, any instrument concerning civil aviation requires an agreement between Spain and the United Kingdom on the competent authorities and other procedures for the application of that instrument to Gibraltar airport or, failing that, a clause suspending application of that provision to the airport until such an agreement is reached. Such a suspensive clause simply reflects reality and has been used for a long time to approve aviation legislation with the agreement of all, including the UK. For this reason, Spain has accepted that the following reference be made in the text accepted by the Council on 3 December 2014: *"The question on how to reflect the Gibraltar issue in the text is awaiting the outcome of discussions between Spain and the United Kingdom"*.

Spain has not spared and will not spare any effort in the search for a negotiated solution with the United Kingdom in a constructive spirit allowing for the approval of important European legislation on this question."

Statement by the United Kingdom

"The United Kingdom does not accept that the Council has agreed a General Approach on this file. It is not possible to reach a General Approach where key elements of the legal text are subject to disagreement between member states as evidenced by the continued existence of a footnote and the square brackets around the text. The position of the United Kingdom is that only a partial General Approach could have been reached in these circumstances. The United Kingdom strongly objects to this dossier proceeding to trilogue on the basis of a partial General Approach that includes any footnote saying that its application to Gibraltar is subject to the outcome of discussions between the United Kingdom and Spain or otherwise open to question. The United Kingdom notes that Article 355(3) of the Treaty on the Functioning of the European Union provides that "The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible", and that such territories include Gibraltar. The United Kingdom reserves its position on the lawfulness of any suspension, and on its response, including the possibility of legal proceedings."

Statement by the Commission on the applicability of Regulation (EC) No 216/2008 to the airport of Gibraltar

"During the Coreper I session on Friday 21 November 2014, on the Agenda point relating to the Commission proposal for amending Regulation (EC) No 216/2008, the Spanish delegate posed a question to Commission concerning whether this proposal establishes an obligation for a public authority that is responsible for activities taking place in or over the airport of Gibraltar.

In reply to this question the Commission wishes to stress that the Council text current amendments to Regulation 216/2008 would not alter the scope of application of Regulation (EC) No 216/2008 in as far as the airport of Gibraltar is concerned. It therefore would not establish any new obligation for a public authority that is responsible for activities taking place in or over that airport.

The Commission also recalls its neutrality in the dispute between the UK and Spain over the sovereignty issue on the territory on which the Gibraltar airport is situated and regrets that this issue delays progress on various aviation files in the Council."

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5. **Fourth Railway Package [First reading]**

(Legal basis proposed by the Commission: Article 91(1) TFEU)

(a) Proposal to amend Directive 2012/34 establishing a Single European Railway Area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure

Interinstitutional file: 2013/0029 (COD)

(b) Proposal to amend Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (PSO – Public service obligation)

Interinstitutional file: 2013/0028 (COD)

– Progress report

5985/13 TRANS 36 CODEC 216

5960/14 TRANS 35 CODEC 209

+ COR 1

15489/14 TRANS 528 CODEC 2240

The Council took note of a progress report as set out in doc. 15489/14.

(c) Proposal to repeal Regulation 1192/69 on common rules for the normalisation of the accounts of railway undertakings

Interinstitutional file: 2013/0013 (COD)

– General approach¹

6015/13 TRANS 41 CODEC 228

15790/14 TRANS 545 CODEC 2307

The Council adopted a general approach as set out in doc. 15790/14.

¹ When adopting a General approach after the European Parliament has adopted its position at first reading, the Council is not acting within the meaning of Article 294(4) and (5) TFEU.