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10636/24
ADD 1
LIMITE
CRS CRP 19

SUMMARY RECORD

PERMANENT REPRESENTATIVES COMMITTEE

22 and 24 May 2024

COREPER (PART 2)

Statements to the “I” items set out in doc. 10108/24

Justice and Home Affairs

55. Council Decision authorising the Commission to participate in negotiations on an additional protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism - Addition of a legal basis
Approval

9995/24
JAI

Statement by the Commission

“The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard.”

57. Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
Adoption of the legislative act



10047/24
PE-CONS 14/24
DROIPEN

Statement by Italy

"The Italian Republic agrees with the importance of updating Directive 2011/36/EU in order to take account of new forms of trafficking in human beings at international level which have been updated, in particular in recent years.

In particular, the Italian Republic welcomes the inclusion in the Directive, among the offences covered by the concept of trafficking in human beings, of the exploitation of surrogacy, understood according to the sixth recital as coercing or deceiving of a woman into acting as a surrogate mother.

At the same time, the Italian Republic would like to recall above all the character of 'minimum standards' attributed to the relevant European standards, in accordance with the provisions of Article 83(1) of the Treaty on the Functioning of the European Union, therefore the possibility for Member States to provide for more stringent forms of sanctions than those provided for as a minimum level at European level remains unaffected.

Furthermore, with specific regard to the sixth recital of the Directive, according to which "those rules are also without prejudice to the national rules on surrogacy, including criminal law or family law", the Italian Republic observes that such wording categorically excludes any a contrario interpretation of the European rule requiring the criminalization of the exploitation of surrogacy.

Therefore, this European provision does not prevent Member States from criminalizing forms of surrogacy which do not involve forms of exploitation covered by the concept of human trafficking, and therefore also forms of voluntary surrogacy, based on contractual agreements, whether in return for payment or free of charge, or based on donations, irrespective of the methods and forms in which surrogacy takes place.

Similarly, the provisions of this Directive do not affect the competence of Member States to define the principles of criminal jurisdiction over offences committed by their nationals in respect of surrogacy practices carried out outside national territory, irrespective of the country and in whatever form or manner they are committed. Moreover, this provision does not in any way affect the competence of Member States to determine whether, in the event of a birth resulting from surrogacy, in return for payment or free of charge, the foreign recognition of parenthood is contrary to international public policy. Indeed, the Italian Constitutional Court has repeatedly held that surrogacy 'impairs in an intolerable manner the dignity of women and deeply jeopardizes human relations' (Constitutional Court, No 79/2022; Court of Justice, No 33/2021; Court of Justice, No 272/2017). This is without distinction as to whether surrogacy is voluntary, paid or free of charge.

Moreover, the Italian Supreme Court has also stated on several occasions that the assessment of the legal system does not change even ‘where the practice of surrogacy is the result of a woman’s free and conscious choice , independent of economic consideration and revocable until the birth of the child’ (see, most recently, Cass. civ, SS.UU., No 38162/2022).

It is, for the Italian Republic, about the necessary application of the supreme principles of its constitutional order.”



First reading



Item based on a Commission proposal
