

Brussels, 8 July 2019
(OR. en)

11052/19
CRS CRP 23

SUMMARY RECORD

PERMANENT REPRESENTATIVES COMMITTEE (Part 1)

19 June 2019

I. Adoption of the agenda

10266/19 OJ CRP1 23 + ADD 1 + COR 1

The Committee adopted the agenda.

II. Approval of the "I" items

The Committee approved the "I" items as set out in the Annex.

III. Discussion items

Employment, Social Policy and Health

2. Meeting of the Council (Employment, Social Policy, Health and Consumer Affairs) on 8 July 2019: Agenda

The incoming Presidency presented the main points on the agenda.

Agriculture and Fisheries

31. Meeting of the Council (Agriculture and Fisheries) on 15 July 2019
(For the items in the remit of the Permanent Representatives Committee)

1. Agenda

The incoming Presidency presented the main points on the agenda.

2. Preparation

Work programme of the Presidency
Presentation by the Presidency

The Committee prepared this item for the Council.

Fisheries

- | | | |
|-----|--|----------------------|
| 17. | Regulation amending Regulation (EU) 2019/124 as regards
certain fishing opportunities | 10244/19
10082/19 |
| | <i>Adoption</i> | PECHE |

The Committee approved the text of the draft Regulation and agreed to forward it to the Council for adoption.

IV. Any other business

None.

"I" items approved

Institutional Affairs

Written questions

- | | | |
|----|--|-------------------|
| 3. | Replies to questions for written answer submitted to the Council by Members of the European Parliament
<i>Adoption by silence procedure</i> | 10294/19
PE-QE |
| a) | João Pimenta Lopes (GUE/NGL)
'Future of the Intermediate-Range Nuclear Forces Treaty and its impact' | 10184/19 |
| b) | João Pimenta Lopes (GUE/NGL)
'Activation of Title III of the anti-Cuban Helms-Burton Act and extraterritorial effects of that decision' | 10185/19 |
| c) | Lefteris Christoforou (PPE) and Theodoros Zagorakis (PPE)
'Protection of the religious and cultural heritage in Cyprus' | 9553/19 |
| d) | Francisco José Millán Mon (PPE)
'Fisheries protocol between the EU and Guinea-Bissau' | 9683/19 |

Appointments

- | | | |
|----|--|-------------------------------------|
| 4. | Two members (LU, SI) and three alternate members (LU, LT, SI) in the Management Board of the European Foundation for the Improvement of Living and Working Conditions
<i>Adoption</i> | 10087/1/19 REV 1
10086/19
SOC |
| 5. | One member (MT) in the Management Board of the European Foundation for the Improvement of Living and Working Conditions
<i>Adoption</i> | 10149/19
SOC |
| 6. | A member (IT) of the Committee of the Regions
<i>Adoption</i> | 10127/19
10125/19
CDR |
| 7. | An alternate member (IT) of the Committee of the Regions
<i>Adoption</i> | 10124/19
10115/19
CDR |
| 8. | An alternate member (ES) of the Committee of the Regions
<i>Adoption</i> | 10152/19
10150/19
CDR |

Other

- | | | |
|-----|--|--------------------|
| 9. | Appointment of the Deputy Executive Director of the European Union Intellectual Property Office (EUIPO)
<i>Approval of letters</i> | 10257/19
PI |
| 10. | List of Working Parties which will be officially organised in Finland under the Finnish Presidency
<i>Information note for the Permanent Representatives Committee (Part 1)</i> | 10107/19
POLGEN |
| 11. | Chairing of certain Working Parties by other delegations, at the request of the Finnish Presidency
<i>Approval</i> | 10111/19
POLGEN |

EU positions for international negotiations

- | | | |
|-----|---|---------------------------------------|
| 12. | Council Decision on the EU position to be taken in the International Partnership for Energy Efficiency Cooperation (IPEEC)
<i>Adoption</i> | 10240/19
9718/19
ENER |
| 13. | Council Decision on the EU position to be taken in the World Customs Organization in relation to the Harmonised System
<i>Adoption</i> | 10273/19
10232/19
9873/19
UD |
| 14. | Council Decision on the EU position in ESA-EU EPA Committee regarding amendments of certain provisions of Protocol 1
<i>Adoption</i> | 10190/19
8230/19
ACP |
| 15. | 10th EU-Montenegro Stabilisation and Association Council
- Draft EU common position
<i>Adoption</i> | 10327/19
ME |

Transport

- | | | |
|-----|--|-----------------------------|
| 16. | Council Decision on the conclusion of the Common Aviation Area Agreement with Georgia
<i>Request for the consent of the European Parliament</i> | 9237/19
9556/19
TRANS |
|-----|--|-----------------------------|

Fisheries

- | | | |
|-----|---|---|
| 18. | Regulation concerning the allocation of fishing opportunities under the Protocol to the SFPA between the EU and the Republic of the Gambia
<i>Adoption</i> | 9714/19 + ADD 1
8975/19
PECHE |
| 19. | Council Decision on the conclusion of a SFPA between the EU and the Republic of the Gambia and of the Implementation Protocol thereto
<i>Agreement in principle</i>
<i>Request for the consent of the European Parliament</i> | 9714/19 + ADD 1
8974/19
8984/19
9949/19
PECHE |

Statement by the Commission

"By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)(a)(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

In relation to the decisions on the signing and provisional application as well as on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of The Gambia and the Implementation Protocol thereto, the Commission regrets the Council's amendment replacing the substantive legal basis of Article 43(2) TFEU with Article 43 (without mentioning the paragraph), and therefore maintains its initial proposal."

- | | | |
|-----|--|-------------------------------------|
| 20. | Council Decision on the signing and provisional application of a SFPA between the EU and the Republic of the Gambia and the Implementation Protocol thereto
<i>Adoption</i> | 9714/19 + ADD 1
8970/19
PECHE |
|-----|--|-------------------------------------|

Statement by the Commission

"By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)(a)(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

In relation to the decisions on the signing and provisional application as well as on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of The Gambia and the Implementation Protocol thereto, the Commission regrets the Council's amendment replacing the substantive legal basis of Article 43(2) TFEU with Article 43 (without mentioning the paragraph), and therefore maintains its initial proposal."

Transparency

- | | | |
|-----|---|-----------------------|
| 21. | Public access to documents
Confirmatory application No 14/c/01/19
<i>Adoption</i> | 9496/19
INF
API |
|-----|---|-----------------------|

General Affairs

- | | | |
|-----|--|------------------|
| 22. | Common Provisions Regulation 2021-2027 - Annexes
<i>Partial mandate for negotiations with the European Parliament</i> | 10291/19
FSTR |
| 23. | European Regional Development Fund and Cohesion Fund
Regulation - Annexes
<i>Partial mandate for negotiations with the European Parliament</i> | 10285/19
FSTR |

Foreign Affairs

- | | | |
|-----|---|-----------------------------|
| 24. | Council Decision regarding EDF contributions, second instalment 2019
<i>Adoption</i> | 10196/19
10195/19
ACP |
|-----|---|-----------------------------|

- | | |
|---|--|
| 25. Council Decision on the signing of the Investment Protection Agreement between the European Union and its Member States and the Socialist Republic of Viet Nam
<i>Adoption</i> | 5929/19 + ADD 1-2
5930/19
5932/19 + ADD 1
FDI |
|---|--|

Statement by Belgium

"Belgium welcomes the signing of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part.

Belgium reaffirms its commitment to the ongoing reform of investment dispute resolution. It constitutes a step towards the establishment of a multilateral investment court which shall become the responsible legal institution to resolve conflicts between investors and states. Belgium continues to support the Commission's ongoing efforts in this regard.

Belgium believes that the opinion of the Court of Justice of the EU on the compatibility of ICS with EU treaties (Opinion 1/17) has contributed to further clarify the legal framework in which an ICS can be established and paves the way for further work.

Belgium underlines that, as confirmed by the ECJ in its Opinion 1/17, the Investment Protection Agreement with Vietnam reaffirms the parties' right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity. The mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under the Agreement. Furthermore the jurisdiction of the envisaged tribunals to declare infringements of the obligations foreseen in the Agreement cannot be interpreted in such a way as to prevent a Party from adopting and applying measures necessary to protect public security or public morals or to maintain public order or to protect human, animal or plant life or health, subject only to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade between the Parties. Moreover, the discretionary powers of the ICS Tribunal and Appellate Tribunal do not extend to permitting them to call into question the level of protection of public interest determined by the Union following a democratic process.

Belgium welcomes the Statement by the Commission on the investment protection and the Investment Court System ("ICS") within the framework of the EU-Viet Nam Investment Protection Agreement. Belgium is of the view that this statement is relevant to the interpretation of the Investment Protection Agreement with Vietnam in the light of the rules on treaty interpretation contained in Articles 31 and 32 of the Vienna Convention of the Law of Treaties.

Belgium insists on the importance of the ongoing multilateral discussion on the respect of human rights and international obligations by multinational companies, organized by the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. It remains an advocate for greater European engagement in the negotiation process. It also pleads for a more inclusive and **consensual negotiation method.**"

Statement by Portugal

"On the basis of the respect of the competences allocated between the European Union and its Member States, as defined by the Treaties, the provisional application of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part, shall not affect the autonomy of decision of Portugal on the issues of its national competence, whose decision to be bound by the Agreement depends on the conclusion of the internal ratification procedures and on the entry into force of the Agreement in the international legal system, in accordance with the Constitutional principles and rules."

Statement by the Commission

"The EU-Viet Nam Investment Protection Agreement is a further step on the path of the reformed approach to investment protection policy and dispute settlement established in the EU-Canada Comprehensive and Economic Trade Agreement together with the Joint Interpretative Instrument and Statement no 36 made at the time of signature of that Agreement.

As such it contains all of the improvements included in CETA and set out in those additional instruments, which, as recognised by the Court of Justice of the European Union are designed to ensure that the right to regulate of the European Union and its Member States can continue to be effectively exercised. In particular, the EU-Viet Nam Investment Protection Agreement contains the guarantees which the Court of Justice in Opinion 1/17 considered were necessary to ensure that the tribunals established by the Agreement cannot call into question the choices democratically made within a Party, relating to, inter alia, the level of protection of public order or public safety, the protection of public morals, the protection of health and life of humans and animals, the preservation of food safety, protection of plants and the environment, welfare at work, product safety, consumer protection or, equally, fundamental rights.¹

It also includes, like CETA, the Investment Court System and foresees the transition to a Multilateral Investment Court. It contains provisions ensuring the full transparency of proceedings (including submissions and hearings) and that allow interested parties to make submissions to the tribunal (*amicus curiae*).

It marks, like CETA and the EU-Singapore Investment Protection Agreement an important stage in the transformation of international investment policy, through the replacement of the Member States' Bilateral Investment Treaties with the reformed EU approach and the prospect of the establishment of a Multilateral Investment Court.

The EU-Viet Nam Investment Protection Agreement, like CETA and the EU-Singapore Investment Protection Agreement, is built on the EU core values and incorporates them. The IPA reaffirms the commitments in the UN Charter and the Universal Declaration of Human Rights. It also reaffirms the commitments on sustainable development and transparency, as agreed in the EU-Viet Nam FTA. This includes promotion of multilateral environmental and labour agreements and standards in domestic policies and laws. The IPA provides protection only for investments that are made in compliance with the domestic legislation, including the obligations related to the protection of the environment and labour as well as the respect of human rights.

¹ Opinion 1/17 of the Court of Justice of 30 April 2019, paras 147 to 161.

The IPA also reaffirms the commitments to promote responsible business conduct through instruments such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD MNE Guidelines), the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. These commitments are accompanied by concrete engagement of the EU on the ground, such as the project on ***Responsible Supply Chains in Asia***, which is an EU-ILO-OECD joint initiative whose main objective is to enhance respect for human rights, labour and environmental standards by businesses with supply chains in Asia, aligning their practices to international standards. The project involves six Asian countries, including Viet Nam.

Further, the Commission notes the discussions about responsible business conduct and investor obligations taking place in different international fora, including the United Nations and the OECD. The European Union has taken a leading role in ensuring responsible business conduct and respect for human rights on an international level. The Commission will continue to promote a leading role for the European Union, whilst examining how to react and shape the ongoing discussions."

- | | |
|--|--|
| 26. Council Decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States and the Socialist Republic of Viet Nam
<i>Request for the consent of the European Parliament</i> | 5929/19 + ADD 1-2
5931/19
5932/19 + ADD 1
FDI |
|--|--|

Statement by the Commission

"The EU-Viet Nam Investment Protection Agreement is a further step on the path of the reformed approach to investment protection policy and dispute settlement established in the EU-Canada Comprehensive and Economic Trade Agreement together with the Joint Interpretative Instrument and Statement no 36 made at the time of signature of that Agreement.

As such it contains all of the improvements included in CETA and set out in those additional instruments, which, as recognised by the Court of Justice of the European Union are designed to ensure that the right to regulate of the European Union and its Member States can continue to be effectively exercised. In particular, the EU-Viet Nam Investment Protection Agreement contains the guarantees which the Court of Justice in Opinion 1/17 considered were necessary to ensure that the tribunals established by the Agreement cannot call into question the choices democratically made within a Party, relating to, inter alia, the level of protection of public order or public safety, the protection of public morals, the protection of health and life of humans and animals, the preservation of food safety, protection of plants and the environment, welfare at work, product safety, consumer protection or, equally, fundamental rights.¹

It also includes, like CETA, the Investment Court System and foresees the transition to a Multilateral Investment Court. It contains provisions ensuring the full transparency of proceedings (including submissions and hearings) and that allow interested parties to make submissions to the tribunal (*amicus curiae*).

¹ Opinion 1/17 of the Court of Justice of 30 April 2019, paras 147 to 161.

It marks, like CETA and the EU-Singapore Investment Protection Agreement an important stage in the transformation of international investment policy, through the replacement of the Member States' Bilateral Investment Treaties with the reformed EU approach and the prospect of the establishment of a Multilateral Investment Court.

The EU-Viet Nam Investment Protection Agreement, like CETA and the EU-Singapore Investment Protection Agreement, is built on the EU core values and incorporates them. The IPA reaffirms the commitments in the UN Charter and the Universal Declaration of Human Rights. It also reaffirms the commitments on sustainable development and transparency, as agreed in the EU-Viet Nam FTA. This includes promotion of multilateral environmental and labour agreements and standards in domestic policies and laws. The IPA provides protection only for investments that are made in compliance with the domestic legislation, including the obligations related to the protection of the environment and labour as well as the respect of human rights.

The IPA also reaffirms the commitments to promote responsible business conduct through instruments such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD MNE Guidelines), the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. These commitments are accompanied by concrete engagement of the EU on the ground, such as the project on ***Responsible Supply Chains in Asia***, which is an EU-ILO-OECD joint initiative whose main objective is to enhance respect for human rights, labour and environmental standards by businesses with supply chains in Asia, aligning their practices to international standards. The project involves six Asian countries, including Viet Nam.

Further, the Commission notes the discussions about responsible business conduct and investor obligations taking place in different international fora, including the United Nations and the OECD. The European Union has taken a leading role in ensuring responsible business conduct and respect for human rights on an international level. The Commission will continue to promote a leading role for the European Union, whilst examining how to react and shape the ongoing discussions."

- | | |
|--|--|
| 27. Council Decision on the signing of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam
<i>Adoption</i> | 6047/19
6048/19
6051/19
+ ADD 1-10
WTO |
|--|--|

Statement by Belgium and Spain

"Belgium and Spain welcome the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam and would like to reiterate the importance of the Trade and Sustainable Development chapter of the Agreement, including commitments on the fundamental principles and Conventions of the International Labour Organisation (ILO). It is indeed essential that trade agreements effectively contribute to sustainable development, uphold global standards and ensure a level playing field.

In this regard, Belgium and Spain welcome the passing of the resolution in the National Assembly of Viet Nam approving Viet Nam's accession to ILO Convention 98 on collective bargaining on 14 June 2019, as well as the debate on a new labour code. Following the signature of the agreement, Belgium and Spain will continue to monitor the implementation of the Trade and Development Chapter of the Agreement. Belgium and Spain trust that Viet Nam will sustain its commitment to ratify the remaining fundamental ILO conventions 87 and 105 and ensure their effective implementation."

- | | |
|---|--|
| 28. Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam
<i>Request for the consent of the European Parliament</i> | 6047/19
6050/19
6051/19
+ ADD 1-10
WTO |
|---|--|

Statement by Belgium and Spain

"Belgium and Spain welcome the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam and would like to reiterate the importance of the Trade and Sustainable Development chapter of the Agreement, including commitments on the fundamental principles and Conventions of the International Labour Organisation (ILO). It is indeed essential that trade agreements effectively contribute to sustainable development, uphold global standards and ensure a level playing field.

In this regard, Belgium and Spain welcome the passing of the resolution in the National Assembly of Viet Nam approving Viet Nam's accession to ILO Convention 98 on collective bargaining on 14 June 2019, as well as the debate on a new labour code. Following the signature of the agreement, Belgium and Spain will continue to monitor the implementation of the Trade and Development Chapter of the Agreement. Belgium and Spain trust that Viet Nam will sustain its commitment to ratify the remaining fundamental ILO conventions 87 and 105 and ensure their effective implementation."

Other items

- | | | |
|-----|--|----------------------------|
| 29. | Impact assessment within the Council: 2019 Annual report
<i>Endorsement</i> | 10013/19
10014/19
IA |
|-----|--|----------------------------|

Delegated or Implementing Acts

Agriculture

- | | | |
|-----|--|--|
| 30. | Commission Regulation (EU) .../...of XXX amending
Annexes II and III to Regulation (EC) No 396/2005 of the
European Parliament and of the Council as regards maximum
residue levels for chlormequat in cultivated fungi
<i>Decision not to oppose adoption</i> | 10009/19
9615/19 + ADD 1-2
AGRILEG |
|-----|--|--|

Foreign Affairs

- | | | |
|-----|---|-------------------|
| 32. | Conclusions on an EU position on strengthening the ban against
anti-personnel mines
<i>Adoption</i> | 10358/19
CONOP |
|-----|---|-------------------|
-