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Non-legislative activities

3. **Current affairs**

The Council addressed China, EU-CELAC (Community of Latin America and Caribbean States) relations, Armenia and Azerbaijan, the Middle East Peace Process, and Tunisia.

4. **Russian aggression against Ukraine**

Exchange of views

The Council held an exchange of views on the EU's response in the context of Russia's aggression against Ukraine.

5. **Türkiye**

Exchange of views



The Council held an exchange of views on Türkiye.

6. **Foreign policy dimension of economic security**

Exchange of views

The Council held an exchange of views on the foreign policy dimension of the European economic security strategy.

7. **Any other business**

The Council took note of the information provided by Romania on its candidature for a judge at the International Court of Justice (document 11830/23), by Austria, the Czech Republic and Slovakia on their visit to North-Macedonia on 13 July (document 11844/23), and by Germany and Denmark on climate diplomacy (document 11995/23).



Restricted item

Statements to the non-legislative "A" items set out in doc. 11816/23

Ad "A" item 7: **Council Decision on signing and provisional application of the EU
OACPS Partnership ("post-Cotonou") Agreement**
Adoption

STATEMENT BY AUSTRIA

"Austria is willing to endorse the proposed approach, but must point out that, for constitutional reasons, the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, can apply provisionally under international law only from the date on which it notified the General Secretariat of the Council of the European Union, as the depositary of the Agreement, of the completion of its internal procedures governing the entry into force of the Agreement."

STATEMENT BY THE COMMISSION

"1. The Commission takes note of the intention of the Council to adopt a decision amending the Commission's proposal on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part (COM (2021)312 final), to change the nature of the Partnership Agreement from an EU-only agreement to a mixed agreement.

2. The Commission recognises the political need to see the Partnership Agreement signed as swiftly as possible.

3. However, the Commission maintains its legal assessment on the EU-only nature of the Partnership Agreement, against which no legal arguments have been raised.

4. Therefore, the Commission does not accept that the provisions of the Agreement listed in the new Article 4 are excluded from provisional application due to them allegedly not falling under Union competence. More fundamentally, the Commission considers that the Council does not have the power to amend in substance the text of an agreement as annexed to a proposal for the adoption of a decision to sign the agreement. The negotiator has the sole prerogative to negotiate the text of the agreement and propose its signature to the Council.

5. The Commission reserves its right to make use, if necessary, of all the legal means at its disposal to ensure the respect of the provisions of the Treaties."

STATEMENT BY HUNGARY

“The adoption of the Programme of Action of the International Conference on Population and Development (ICPD) and the Beijing Platform for Action of the Fourth World Conference on Women marked a remarkable consensus. They placed the enjoyment of human rights at the heart of development and important gains in the fields of health, equality between men and women and education have been achieved since their adoption. These fields are at the core of the 2030 Agenda for Sustainable Development incorporating the founding principles of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination.

Hungary remains dedicated to its human rights commitments, including the protection and promotion of women’s rights and equality between men and women, in accordance with the Fundamental Law of Hungary, and the primary law, principles and values of the European Union, as well as commitments and principles stemming from the international law. Furthermore, equality between women and men is enshrined as a fundamental value in the Treaties of the European Union, in particular in Article 2 of the TEU and Article 8 of the TFEU. In line with these and its national legislation, Hungary interprets the concept of “gender” as reference to “sex” and the concept of “gender equality” as reference to the “equality between men and women”.

Hungary is deeply committed to the implementation of the ICPD Programme of Action and Beijing Platform for Action as well as the 2030 Agenda and its Sustainable Development Goals, serving also as basic references in the fields of sexual and reproductive health and reproductive rights. Hungary notes, that the term of “sexual and reproductive health and rights (SRHR)” and related issues, like „comprehensive sexual and reproductive health information and education” are lacking consensual legal definition at international level, including within the European Union. Moreover the topic concerns legal definitions that fall under the exclusive competences of the Member States. Therefore these issues are interpreted and promoted by Hungary in the context of the 2030 Agenda, the ICPD Programme of Action and the Beijing Declaration and Platform for Action and in line with its national legislation. Hungary notes in this regard that the UNESCO international technical guidance on sexuality education, as referred to in the Agreement, has not been adopted or approved by the EU or all of its Member States, and thus may not be regarded as part of the EU acquis in any way. Hungary agrees to the signing and provisional application of the Agreement with the understanding that the mere reference in the Agreement to that UNESCO international technical guidance does not change the legal situation in this respect, does not create a precedent with regard to future references in other international agreements or EU documents and does not make in any way the technical guidance binding to the Parties. Moreover, also in a general context, Hungary deems that no legal precedent could stem from the adoption of this document regarding the interpretation of SRHR.

Taking into account that illegal migratory flows are closely related to various forms of organized crime, which pose a threat to all countries and require a comprehensive approach in addressing migratory flows, Hungary maintains that the references in the Agreement to migration management is to be understood as curbing mixed migration flows in the context of Article 79(1) TFEU, i.e. only in full respect of the objective, enshrined thereof, for the prevention of, and enhanced measures to combat illegal immigration, as well as the right of Member States as set out in Article 79(5) TFEU, according to which the Member States right to determine volumes of admission of third-country nationals shall not be affected. This is without prejudice to the general policy of Hungary aimed at stemming illegal migration instead of managing the phenomenon.

As regards references in the Agreement to safe, orderly and regular migration and the Global Compact for Safe, Orderly and Regular Migration (GCM) Hungary notes that the GCM has not been adopted or approved by the EU or all of its Member States, and thus may not be regarded as part of the EU acquis in any way. Hungary agrees to the signing and provisional application of the Agreement with the understanding that the above references in the Agreement do not change the legal situation in this respect, do not create a precedent with regard to future references in other international agreements or EU documents and do not make in any way the GCM binding to the Parties.”

STATEMENT BY IRELAND

“Ireland recalls that, if the Parties decided, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which were to be concluded by the EU pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of such future specific agreements would not bind Ireland unless the EU, simultaneously with Ireland as regards its previous bilateral relations, notifies the Organisation of African, Caribbean and Pacific States that Ireland has become bound by such future specific agreements as part of the EU in accordance with Protocol No 21 on the position of Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

Likewise, any subsequent EU internal measures which were to be adopted pursuant to the aforementioned Title to implement this Agreement would not bind Ireland unless it has notified its wish to take part in or accept such measures in accordance with Protocol No 21.”

STATEMENT BY POLAND

“The draft post-Cotonou agreement is incompatible with the Treaty on European Union, the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights to the extent that it replaces the principle of "equality between women and men" expressed in the Treaties with a non-treaty expression "gender equality". Where the agreement refers to "gender equality", Poland will interpret this principle as the principle of equality between women and men, in accordance with art. 2 and 3 TEU and art. 23 of the Charter of Fundamental Rights. In addition, Poland understands the wording "gender" contained in this agreement, and absent in the Treaties, as "sex", in accordance with art. 10, art. 19 sec. 1 and art. 157 sec. 2 and 4 of the TFEU.

Poland understands reproductive rights and others derived, synonymous or similar to it, solely actions that can aim to directly support and save health and human life, and therefore opposes deriving abortion and the use of contraception from it as forms of promoting health, family planning or guaranteeing human rights. Abortion is not a human right, but is instead a form of deprivation of the right to life.

With regard to so-called "sexuality education," Poland understands it to mean age- and content-appropriate education in accordance with the appropriate Polish law and curricula based on it.”

STATEMENT BY PORTUGAL

“In the respect of the principle of division of competences between the European Union and its Member States, as defined by the Treaties, the Council Decision authorizing the signature and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, does not affect the autonomy of the Portuguese Republic decision-making on international matters of its exclusive competence, which commitments depend on the completion of internal approval procedures, in accordance with constitutional principles and rules.”

Ad "A" item 8: **Council Conclusions on EU priorities at the UN during UNGA78**
Approval

STATEMENT BY HUNGARY

“Hungary recognizes and promotes equality between women and men in accordance with the Fundamental Law of Hungary, and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Furthermore, equality between women and men is enshrined as a fundamental value in the Treaties of the European Union, in particular in Article 2 of the TEU and Article 8 of the TFEU. In line with these and its national legislation, Hungary interprets the concept of “gender” as reference to “sex” and the concept of “gender equality” as reference to the “equality between women and men”

STATEMENT BY POLAND

“Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the Polish national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union.

For these reasons, the expression "gender equality" will be interpreted by Poland as referring to the equality between women and men, in accordance with Article 2 and 3 of the Treaty on European Union and Article 8, 153 and 157 para. 3 of the Treaty on the Functioning of the European Union.

Poland joins consensus on the Council Conclusions on EU Priorities for UNGA 78 on the exceptional basis and only in the view of the coming 78 session of the UN General Assembly. We do not consider its specific elements mentioned above as an agreed language and basis for any future negotiations.“

Ad "A" item 21:

Council Decision and Regulation concerning restrictive measures in view of Iran's military support of Russia's war of aggression against Ukraine
Adoption

STATEMENTS BY THE COMMISSION

“1. Implementing powers

The Commission notes that the Council has reserved implementing powers for itself on the restrictive measures in view of Iran's military support of Russia's war of aggression against Ukraine in order to ensure consistency with the process for amending and reviewing the Annex to Decision (CFSP) 2023/XX. With reference to Article 291(2) of the Treaty, the Commission maintains its view that it would have been more appropriate to confer implementing powers upon the Commission. In Case C-440/14 P, National Iranian Oil Company ('NIOC') v Council and Commission, the Court of Justice confirmed that implementing powers may be attributed to the Council in "duly justified specific cases." The Commission considers, therefore, that the 'NIOC' case cannot be considered a precedent for all arrangements on implementing powers in respect of Council regulations imposing restrictive measures. Further, given that the concept of 'implementation' comprises the application of rules to specific cases by means of acts of individual application, it is imperative that the implementing authority is able to guarantee compliance with all the procedural safeguards such individuals are entitled to.

2. Humanitarian exemption

The Commission notes that the Council has failed to agree on the adoption of an appropriate humanitarian exemption for the humanitarian situation in Iran. Recalling the broader UN Security Council Resolution 2664 (2022) exemption in Iran WMD and in view of the risk of overcompliance, the Commission considers that it would be preferable to have consistent exemptions across the various restrictive measures concerning Iran. By acting as it does, the Council supports a fragmented system of derogations/exemptions applicable across the different sanctions regimes affecting Iran or Iranian operators that would render humanitarian assistance difficult.

3. Reporting obligations, exchange of information and penalties for breaches of restrictive measures

The Commission notes that in view of Iran's military support of Russia's war of aggression against Ukraine, the Council has failed to introduce fully the provisions concerning reporting obligations, exchange of information and criminal penalties where appropriate for breaches of restrictive measures as proposed jointly by the Commission and the High Representative. The Commission considers that the provisions should be included in Council regulations imposing restrictive measures to enable the Commission to exercise its Treaty role of ensuring the implementation of Union law and to ensure the uniform implementation and adequate enforcement of EU restrictive measures by the Member States.

4. Travel ban

The Commission notes that the Council has failed to introduce provisions prohibiting the entry into or transit through the territory of the Member States of the EU in the Council Regulation transposing into EU Law the Council Decision. By so doing, the Council fails to properly respect the competences of the Union under the Treaty on the Functioning of the EU in the field of the visa, border control and legal migration policies and to ensure the uniform application of EU restrictive measures by the Member States.”

STATEMENT BY BELGIUM, FINLAND, GERMANY, THE NETHERLANDS, ROMANIA

“We, the cosignatories, welcome the adoption of the Council Decision and Regulation concerning restrictive measures in view of Iran’s military support to Russia’s war of aggression against Ukraine.

However, we regret the fact that the Council Decision contains a provision (article 4) that adds the need of unanimity to establish and amend the sanction lists, instead of qualified majority voting. This requirement will hamper the impact and effectiveness of the sanctions regime and the objectives it is pursuing.

We hereby refer to Article 31 (2) of the TEU which states that "when adopting any decision implementing a decision defining a Union action or position, the Council shall act by qualified majority". This means that decisions to establish and amend a sanctions list are to be taken with qualified majority voting.

We wish to reaffirm that our agreement to the Council Decision today does in no way signal a change in our general position regarding qualified majority voting and should not be seen as a precedent.

In that regard, we propose for the Council to revert to this topic and hold an open, horizontal discussion on this issue under appropriate conditions, not linked to any specific proposal at hand.“
