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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8108/22 + COR 1
Subject:	Practical arrangements for the participation of the Union and its Member States in the negotiation of an international agreement on pandemic prevention, preparedness and response, as well as of complementary amendments to the International Health Regulations (2005)

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The Permanent Representatives Committee on 27 April 2022 took note of the text of the practical arrangements for the participation of the Union and its Member States in the negotiation of an international agreement on pandemic prevention, preparedness, and response, as well as of complementary amendments to the International Health Regulations (2005), set out in document 8108/22 +COR 1.

For ease of reference, a consolidated version of the text of the practical arrangements is annexed to this note.

Practical arrangements for the participation of the Union and its Member States in the negotiation of an international agreement on pandemic prevention, preparedness and response, as well as of complementary amendments to the International Health Regulations (2005)

1. The Decision of the Council of the European Union of 3 March 2022, as set out in document ST 6133/22 (hereinafter “the Council decision”), has authorised the Commission to negotiate, on behalf of the Union, an international agreement on pandemic prevention, preparedness and response (‘Pandemic Agreement’), as well as complementary amendments to the International Health Regulations (‘IHR’) within the World Health Organisation. As stated in recital 9, in accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including through regular contacts with the Member states’ technical experts and representatives in Geneva. Recital 10 of such Decision calls for the establishment of practical arrangements to be applied during the conduct of the negotiations of these instruments. Such arrangements must be consistent with and will be interpreted and applied in conformity with relevant provisions of the Treaties and case-law.
2. The Commission, will negotiate on behalf of the Union, as Union negotiator (as per Article 218(3) TFEU and Article 17(1) TEU), and express Union positions in any meeting, body or forum related to the negotiation of the Pandemic Agreement and the IHR amendments on matters falling within Union competence, in accordance with the relevant Treaty provisions.
3. Where a coordinated position is reached, the rotating Presidency of the Council (hereinafter “the Presidency”) will express Member States positions, in any meeting, body or forum related to the negotiation of the Pandemic Agreement and the IHR amendments on matters falling within the competence of the Member States, in accordance with paragraph 15 and 16.

4. The Union Chief Negotiator<sup>1</sup> and his/her negotiating team (hereinafter collectively referred to as “the Union Negotiator”) and the Presidency intend to follow the informal practical arrangements set out herein, which are without prejudice to relevant provisions of the Treaties and case-law as well as the Council decision and the negotiating directives annexed to it.
5. These arrangements are exclusively intended for the purposes of the negotiations of the Pandemic Agreement and the IHR amendments and do not constitute a precedent for any other negotiations. They do not affect the distribution of competences under the Treaties.

#### *Union positions*

##### *- Consultation of the special committee:*

6. The Union Negotiator will regularly consult with the special committee designated by the Council (i.e. the Working Party on Public Health) in accordance with Article 218(4) of the TFEU and Article 2 of the Council decision in order to fully enable the special committee to fulfil its advisory role to the Union Negotiator. In this regard, the Union Negotiator, in accordance with the principle of sincere cooperation, will consult the special committee and keep it regularly informed throughout the negotiations of how these are progressing, and allow its members reasonable time to formulate opinions and advice relating to the negotiations. Indicatively and taking into account the technical coordination meetings in Geneva, the Union negotiator will report to the special committee at least every quarter.
7. The Union Negotiator will provide the special committee with all the information necessary for it to assess whether the negotiating directives should be revised or further developed and to monitor the progress of the negotiations, such as, in particular, the general aims announced, and the positions taken by the other WHO Member States throughout the negotiations, as well as any major problem that may arise during the negotiations.

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<sup>1</sup> The Director-General for Health and Food Safety.

*- Cooperation between the Union Negotiator and the Member States:*

8. Pursuant to recital 9 of the Decision, the Union Negotiator will also keep regular contacts with the Member States' technical experts and representatives in Geneva. To this effect technical coordination meetings in Geneva co-chaired by the Union Negotiator and the Presidency will be convened, with the support of the EU Delegation in Geneva<sup>2</sup>. They may be held before, during and after negotiating sessions, as appropriate, with a view to consulting and obtaining technical advice and support from Member State' representatives. Such coordination meetings will be held in person, in hybrid format, or virtually, as appropriate. With a view to rapid circulation, the Union Negotiator and the Presidency, with the support of the EU Delegation in Geneva, will disseminate documentation relevant to the negotiation by means of the relevant platform managed by the EU Delegation in Geneva. In particular, formal statements will be disseminated in advance of the relevant meeting.
9. After consulting Member States, the Union Negotiator may invite technical experts from the Member States to provide assistance, on an ad hoc basis, in the preparation of and during the negotiations, where their specific expertise is deemed useful. An opinion presented by an expert in this context should not be considered as a position of the Member State of his/her origin.

***Coordinated positions of the Member States***

10. As regards matters falling within the exclusive competence of the Member States, coordinated positions of Member States will be established or updated by consensus. The Presidency and the Member States will exhaust all necessary means to prepare and agree on such coordinated positions.
11. The Presidency may use the coordination meetings referred to above to this effect. Where appropriate, the Presidency may also consult the representatives of the Member States meeting within the special committee on matters falling within the exclusive competence of the Member States with a view to coordinate Member States' positions.

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<sup>2</sup> In addition, if deemed appropriate, the Union Negotiator and the Presidency may convene inclusive sub- coordination groups to work on specific issues.

### *Common positions of the Union and its Member States*

12. The coordination meetings will also be used to promote coordination between the Union Negotiator, the Presidency and the representatives of the Member States.
13. Where Union and national competences are inextricably linked, the Union Negotiator and Member States will seek to agree by consensus on common positions of the Union and its Member States. Without prejudice to the role of the special committee, the Union Negotiator and the Presidency may use the coordination meetings referred to above to this effect.

### *Speaking*

14. Formal statements referring to matters falling within the competence of the Union will be expressed by the Union Negotiator “on behalf of the European Union”. In agreement with the Union Negotiator, while respecting the principle of sincere cooperation and, where possible, after informing the Member States, one or more Member States may take the floor during the negotiations in so far as such interventions are deemed useful to advance the Union’s objectives in the negotiation.
15. Formal statements referring to issues relating to matters falling within the exclusive competences and responsibilities of the Member States and for which coordinated positions are agreed by consensus will be expressed by the Presidency “on behalf of the Member States of the European Union”. After due coordination, Member States may express their individual position when they deem appropriate in the course of negotiations if (i) they wish to support or to add details to the coordinated position, within their national capacity, (ii) their national position does not contradict the coordinated positions expressed by the Presidency or (iii) they failed to agree on a coordinated position in coordination meetings or in the special committee.

16. Pursuant to the principle of unity of representation, formal statements expressing a common position of the Union and its Member States referred to in paragraph 13 will be expressed “on behalf of the European Union and its Member States”. The Union Negotiator and the Presidency will agree on which of them will be delivering those statements. The Union Negotiator will deliver formal statements when the preponderance of the matter concerned lies within the competence of the Union, and the Presidency will deliver formal statements when the preponderance of the matter concerned lies within the competences and responsibilities of the Member States. If no common position has been agreed pursuant to paragraph 13, after due coordination and in accordance with the principle of sincere cooperation, Member States retain their freedom to express their individual position on matters falling within national competence.

#### *Disagreements*

17. Should a problem arise in the application of these arrangements, including as regards the division of competences between the Union and its Member States, that cannot be solved through the coordination meetings referred to above, the Union Negotiator or the Presidency will consult the special committee.