



Brussels, 3 October 2018
(OR. en)

12762/18
CRS CRP 31

SUMMARY RECORD
PERMANENT REPRESENTATIVES COMMITTEE
17, 19 and 21 September 2018

I. Adoption of the agenda

12161/18 OJ CRP2 31 COMIX 495
12192/18 OJ CRP1 31 + ADD 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

COREPER (PART 2)

Justice and Home Affairs

2. Regulation amending the European Border and Coast Guard Regulation 12143/18 + ADD 1
Information from the Commission

The Commission presented its recent proposal.

3. Meeting of the Council (Justice and Home Affairs) on 11-12 October 2018: Agenda

The Committee took note of the main items on the agenda. The Commission requested the addition of an item on legal migration.

4. Directive on the protection of persons reporting on breaches of Union law 8713/18
Information from the Presidency

The Committee took note of the information provided by the Presidency.

General Affairs

5. Relations with the EP (September 2018)
Debriefing

The Presidency informed the Committee of the outcomes of the plenary session.

Economic and Financial Affairs

6. Meeting of the Council (Economic and Financial Affairs) on 2 October 2018: Preparation
Other items in connection with the Council meeting

Presidency provided further information regarding the Council meeting.

Foreign Affairs

7. ASEM 12 Summit (Brussels, 18-19 October 2018)
State of play

The Committee discussed the state of play of preparations for the Summit.

COREPER (PART 1)

WEDNESDAY 19 SEPTEMBER 2018

Environment

24. Meeting of the Council (Environment) on 9 October 2018: Agenda

The Committee agreed on the provisional agenda for the forthcoming Council meeting.

Competitiveness

25. Meeting of the Council (Competitiveness (Internal Market, Industry, Research and Space)) on 27 and 28 September 2018: Preparation

1. Competitiveness "check-up"
Presentation by the Commission
Exchange of views

The Committee prepared the item for the Council.

2. Rethinking European industry: Artificial intelligence and robotics
Presentation by the Commission and the Presidency
Policy debate 11972/18

The Committee prepared the item for the Council.

Transport

26. Directive on electronic road tolling and exchange of information
Preparation for the trilogue 12065/18

The Committee prepared a mandate for the forthcoming trilogue.

Competitiveness

25. (continuation) Meeting of the Council (Competitiveness (Internal Market, Industry, Research and Space)) on 27 and 28 September 2018: Preparation

- | | | |
|----|---|--------------------------------------|
| 3. | Horizon Europe Package: Framework Programme for Research and Innovation 2021–2027 | 12066/1/18 REV 1
12067/1/18 REV 1 |
| a) | Framework Programme and its rules for participation and dissemination | |
| b) | Specific programme implementing Horizon Europe | |
| | <i>Progress report</i> | |
| | <i>Policy debate</i> | |

The Committee prepared the item for the Council.

- | | | |
|----|--|----------|
| 4. | Strategic planning process in relation to the Horizon Europe Framework Programme for Research and Innovation 2021-2027 | 12071/18 |
| | <i>Policy debate</i> | |

The Committee prepared the item for the Council.

Transport

- | | | |
|-----|---|----------|
| 27. | Regulation on safeguarding competition in air transport | 12166/18 |
| | <i>Preparation for the trilogue</i> | |

The Committee prepared a mandate for the forthcoming trilogue.

Fisheries

- | | | |
|-----|-------------------------------------|------------------|
| 28. | Regulation on technical measures | 12016/1/18 REV 1 |
| | <i>Preparation for the trilogue</i> | |

The Committee prepared a mandate for the forthcoming trilogue.

IV. Any other business

COREPER (PART 2)

Convention on Nuclear Safety

The Committee took note of the information provided by the Presidency.

Terrorist content online

The Committee took note of the information provided by the Presidency.

EMA/EBA

The Committee took note of the information provided by the Presidency.

Trilogues

The Committee took note of the information provided by the Presidency.

COREPER (PART 1)

None.

"I" items approved**COREPER (PART 2)****Judicial Affairs**

- | | | |
|----|--|-----------------|
| 8. | Case C-461/18 P, Appeal by Changmao Biochemical Engineering Co., Ltd. against judgment in T-431/12
<i>Information note for the Permanent Representatives Committee (Part 2)</i> | 12017/18
JUR |
|----|--|-----------------|

Institutional Affairs

- | | | |
|----|---|--|
| 9. | Minutes of Council meetings
<i>Approval</i> | |
|----|---|--|

FAC/Trade/DEV 22.05.2018	9145/18 + ADD 1 + ADD 1 COR 1
--------------------------	-------------------------------------

Appointments

- | | | |
|-----|--|-----------------------------|
| 10. | A member (DE) of the European Economic and Social Committee
<i>Adoption</i> | 11925/18
11924/18
CES |
| 11. | Two members and four alternate members (AT) of the Committee of the Regions
<i>Adoption</i> | 11966/18
11965/18
CDR |

Economic and Financial Affairs

- | | | |
|-----|--|-------------------------|
| 12. | New Irish Commemorative Coin | 12015/18 + COR 1
UEM |
| 13. | ECA SR No 22/2018 on mobility under Erasmus+
<i>Designation of a Working Party</i> | 11941/18
FIN |
| 14. | OLAF's 2017 report: Outcome of proceedings
<i>Endorsement</i> | 11994/18
GAF |
| 15. | OLAF Supervisory Committee's 2017 activity report: Outcome of proceedings
<i>Endorsement</i> | 11995/18
GAF |
| 16. | Interinstitutional exchange of views (Art. 16 OLAF Regulation)
- Mandate for the meeting on 24 September 2018
<i>Endorsement</i> | 12096/18
GAF |

Justice and Home Affairs

- | | | |
|-----|--|----------------------------------|
| 17. | Council Decision on Cooperation Agreement Eurojust/Albania
<i>Adoption</i> | 11960/18
EUROJUST |
| 18. | Council Implementing Decision on subjecting the new
psychoactive substances cyclopropylfentanyl and
methoxyacetylfentanyl to control measures
<i>Adoption</i> | 11961/18
9420/18
CORDROGUE |
| 19. | Lines to take on ICT developments under UN
<i>Approval</i> | 12094/18
CYBER |
| 20. | Lines to take on cybercrime developments under UN
<i>Approval</i> | 12095/18
CYBER |
| 21. | EPPO: Declaration on the appointment of the European Chief
Prosecutor
<i>Approval</i> | 12101/18
EPPO |

Foreign Affairs

- | | | |
|-----|--|---|
| 22. | Venezuela restrictive measures: pre-notification
<i>Adoption</i> | 12090/18
CORLX |
| 23. | Libya restrictive measures - UN transposition - Implementing
Decision and Regulation
<i>Adoption</i> | 12092/18
12081/18 + ADD 1
12084/18 + ADD 1
CORLX |

COREPER (PART 1)

Institutional Affairs

Written questions

29. Replies to questions for written answer submitted to the Council by Members of the European Parliament
Adoption by silence procedure 12127/18
PE-QE
- a) Udo Voigt (NI) 11345/18
'Alleged poisoning of double agent Skripal'
- b) Dominique Bilde (ENF) 11346/18
'Skripal investigation into the origin of the Novichok nerve agent'

Appointments

30. One member (NL) and two alternate members (PL, AT) in the Advisory Committee on Safety and Health at Work
Adoption 10314/18
9242/18
8530/18
SOC
31. Two alternate members (AT, PL) in the Governing Board of the European Agency for Safety and Health at Work
Adoption 10076/18
12021/18
SOC
32. One member (PT) and one alternate member (IE) in the Governing Board of the European Foundation for the Improvement of Living and Working Conditions
Adoption 8399/18
10869/18
SOC
33. **Minutes of Council meetings**
Approval
- a) EYCS 22-23.05.2018 9126/1/18 REV 1
+ ADD 1
- b) COMPET 28-29.05.2018 9609/18
+ ADD 1 REV 1
+ ADD 1 REV 1
COR 1

Judicial Affairs

- | | |
|--|-----------------|
| 34. Case T-330/18 (Carvalho and Others v Parliament and Council)
<i>Information note for the Permanent Representatives Committee
(Part 1)</i> | 12079/18
JUR |
|--|-----------------|

EU positions for international negotiations

- | | |
|---|---------------------------------------|
| 35. Council Decision on the EU position regarding the International Carriage of Dangerous Goods by Road (ADR) and by Inland Waterways (ADN)
<i>Adoption</i> | 11799/18
11722/18 + ADD 1
TRANS |
| 36. IMO - Union submission to the 100th session of the Maritime Safety Committee (MSC 100) of the IMO
(London, 3 - 7 December 2018) concerning clarification of the requirement for accelerated weathering tests of retro-reflective materials on life-saving appliances
<i>Endorsement</i> | 12035/18
MAR
OMI |

Statement by the Commission

"The Commission considers that the above mentioned "Union submission" to be submitted to the IMO is covered by EU exclusive competence. Submission of proposals to the IMO on issues of EU competence is an act of external representation and should be made by the Commission on behalf of the EU to IMO and should therefore be sent to the IMO by the Commission.

In the view of the Commission, the procedural arguments against presenting submissions to the IMO by the Commission on behalf of the EU are not convincing as there is no evidence to suggest that the IMO, as a specialized agency of the United Nations, would be in a position to reject such a submission.

The Commission thus maintains its position that the Treaty provisions on external representation of the Union should be applied and, consequently, that the only legally correct way forward is to present the submission in question to the IMO by the European Commission on behalf of the European Union. The Commission reserves all its rights in this regard."

- | | |
|---|-------------------------------------|
| 37. Council Decision on the EU position at the CETA Committee on Trade and Sustainable Development
<i>Adoption</i> | 11538/18
11539/18 + ADD 1
WTO |
|---|-------------------------------------|

Research

- | | | |
|-----|---|------------------------------|
| 38. | Regulation on establishing the European High Performance Computing Joint Undertaking
<i>Adoption</i> | 11800/18
10594/18
RECH |
|-----|---|------------------------------|

Fisheries

- | | | |
|-----|---|-------------------------------|
| 39. | Regulation amending Regulation (EU) 2018/120 as regards fishing opportunities for European seabass
<i>Adoption</i> | 11922/18
11852/18
PECHE |
|-----|---|-------------------------------|

Foreign Affairs

- | | | |
|-----|--|---|
| 40. | Council Decision on Libya restrictive measures - spoilers review
<i>Adoption</i> | 12068/18
12053/18
CORLX |
| 41. | Council Decision on the signing of the Framework Agreement on Partnership and Cooperation between the EU and Malaysia
<i>Adoption</i> | 12102/18
10798/18
10799/18
COASI |

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 Decision of the Council on the signing, on behalf of the European Union, and provisional application of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the government of Malaysia, 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 Commission welcomes the adoption of the Council Decision on the signing and provisional application of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Government of Malaysia, of the other part (PCA).

However, the Commission maintains its view that the text introduced by the Council in Article 3(1) of the Council Decision is legally incorrect, in particular where it is premised on the understanding that the Articles to which it refers, cover areas of shared competence, and for that reason these Articles should be provisionally applied only to the extent that such shared competence has been exercised internally.

The PCA does not cover areas of shared but rather exclusive (for the trade part) and parallel competence. Its legal bases are Article 207 on trade, Article 209 TFEU on development cooperation, and Article 37 TEU on CFSP. The Council interpretation would produce an effect already declared in breach of the Treaties by the Court, by construing the agreement to "be based on another provision as well as on the provision relating to that policy whenever the agreement touches on a specific matter[; this] would in practice amount to rendering devoid of substance the competence and procedure [...]" under Article 209 TFEU. (see Case C-377/12 Commission v Council (Philippines agreement), ECLI:EU:C:2014:1903, para 38 and case law cited). Moreover, the Council reconstructs the scope of the PCA in the context of provisional application by implying the existence of a multitude of underlying legal bases.

This is again not in line with the case law of the Court (Philippines agreement, para 34 and case law cited).

Furthermore, the text introduced by the Council in Article 3(1) of the Council Decision concerns the division of powers between the Union and its Member States, which is governed by rules of EU law. Externalising that assessment of EU law is liable to interfere with that division of powers (see Opinion 2/13 (Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms), paras 221, 224-225).

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 the Council Legal Service

"The Council Legal Service does not agree with the statement of the Commission on the provisional application of the Partnership and Cooperation Agreement with Malaysia. In particular, it notes that:

- Under Article 218(5) TFEU it is fully within the discretion of the Council to decide whether, and to what extent, an agreement is to be provisionally applied by the Union.
- It is open to the Council to define this by reference to those matters for which the Union has, as matter of fact, already exercised its competence internally.
- This does not as the Commission claims imply "the existence of a multitude of underlying legal bases" and the elements cited from judgment C-377/12 are not relevant."

Internal Market and Industry

42. Regulation on the Single Digital Gateway
Adoption of the legislative act 11793/18 + ADD 1
PE-CONS 41/18
MI

Statement by Belgium

"Belgium firmly supports the improvement of e-government, and therefore endorses the objectives of the proposal of a Single Digital Gateway in order to improve the functioning of the single market.

Nevertheless, Belgium wishes to formulate a reservation concerning the language requirements of the current proposal, that are not in accordance with the basic principles of Belgian language rules applicable to administrative matters.

The Belgian language regulations are of constitutional nature and express the fundamental commitments and agreements regarding the functioning of the public authority, the relation between citizens and the public authority, and the functioning of the federal structure of Belgium characterized by three official languages and four separate linguistic areas.

Belgium considers that the Member States' autonomy regarding the use of languages in the public legal sphere must be guaranteed."

Energy

43. Regulation on the notification of investment projects in energy
infrastructure 11548/18
Adoption of the legislative act PE-CONS 46/18
ENER

Youth

44. Regulation on the European Solidarity Corps 11549/18 + ADD 1
Adoption of the legislative act + ADD 2
PE-CONS 47/18
JEUN

Delegated or Implementing Acts

Internal Market and Industry

45. Commission Regulation (EU) .../... of XXX amending Directive 2007/46/ EC, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) 2017/1151 for the purpose of improving the emission type approval tests and procedures for light passenger and commercial vehicles, including those for in-service conformity and real-driving emissions and introducing devices for monitoring the consumption of fuel and electric energy
Decision not to oppose adoption
- 11935/1/18 REV 1
11057/18 + ADD1
ENT

Environment

46. Commission Decision of XXX amending Decisions 2012/481/EU, 2014/391/EU, 2014/763/EU and 2014/893/EU as regards the period of validity of the ecological criteria for the award of the EU Ecolabel for certain products, and of the related assessment and verification requirements
Decision not to oppose adoption
- 11823/18
10954/18
ENV
47. Commission Decision (EU) .../... on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the car manufacturing sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)
Decision not to oppose adoption
- 11997/18
11274/18 + ADD 1
ENV
48. Commission Decision (EU) .../... on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the electric and electronic manufacturing sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)
Decision not to oppose adoption
- 11998/18
11285/18 + ADD 1
ENV

- | | | |
|-----|---|-------------------------------------|
| 49. | Commission Decision of XXX establishing the EU Ecolabel criteria for lubricants
<i>Decision not to oppose adoption</i> | 12003/18
11286/18 + ADD 1
ENV |
| 50. | Commission Regulation (EU) .../... of XXX amending Annexes IV and V to Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants
<i>Decision not to oppose adoption</i> | 11996/18
10980/18 + ADD 1
ENV |

Justice and Home Affairs

- | | | |
|-----|---|-----------------------|
| 51. | Common EU Position on the Global Call to Action on the World Drug Problem
<i>Endorsement</i> | 12296/18
CORDROGUE |
|-----|---|-----------------------|
-