Council of the
European Union

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SUMMARY RECORD

PERMANENT REPRESENTATIVES COMMITTEE

24, 26 and 29 January 2024

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (19.03.2024)

COREPER (PART 1)

Statement to the "II" item set out in doc. 5506/2/24 REV 2

Internal Market and Industry

13. Regulation on prohibiting products made with forced labour on the Union market ❶C 5627/24 + COR 1
Mandate for negotiations with the European Parliament

Statement by Austria

"Österreich begrüßt den vierten Kompromisstext (5627/24 in der Fassung von 5627/24 COR 1) und unterstützt diesen.

Aus österreichischer Sicht bedarf es einer Lösung hinsichtlich des Umgangs mit einem komplexen Endprodukt (z. B. Maschinen), welches in einer äußerst untergeordneten oder marginalen Dimension Komponenten aus Zwangsarbeit enthält. In solchen Fällen wäre eine gänzliche Zerstörung oder Verbot des Produktes zu weitreichend und auch nicht im Sinne eines nachhaltigen Umgangs mit Ressourcen.

In diesem Zusammenhang möchten wir auf Artikel 4 Absatz 2 des ersten Kompromisstextes (15455/23) verweisen, in dem ausdrücklich definiert ist, dass die zuständigen Behörden *"den Anteil des Bestandteils am Endprodukt"* berücksichtigen sollten, sofern sie die Einleitung einer Voruntersuchung erwägen."

Courtesy translation

"Austria welcomes and supports the fourth compromise text (5627/24 as amended by 5627/24 COR 1).

From an Austrian point of view, a solution is necessary regarding the handling of a complex final product (e.g. machines), which contains components from forced labour in an extremely subordinate or marginal dimension. In such cases, the complete destruction or ban of the product would be excessive and would not be in the interests of sustainable resource management.
In this context, we would also like to refer to Article 4 paragraph 2 of the first compromise text (15455/23), which expressly stated that the competent authorities shall take into account *"the share of the component in the final product"* when considering whether to initiate a preliminary investigation."

Statements to the "I" items set out in doc. 5506/2/24 REV 2

Fisheries

28.	Regulation laying down conservation, management and control measures applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries *Mandate for negotiations with the European Parliament*	❶ C	5357/24 13513/3/23 REV 3 13513/23 ADD 1 REV 1 PECHE

Statement by the Commission
DELETED

Foreign Affairs

32. EU-ASEAN joint ministerial statement — 5467/24
Approval of a non-binding instrument — COASI

Statement by Lithuania

"Having regard to EU-ASEAN Ministerial meeting statement, Lithuania will not assess any of the provisions enshrined in the EU-ASEAN Ministerial meeting statement as restricting or otherwise affecting the European Union sanctions policy, including the implementation of restrictive measures adopted by the EU. We also maintain the view, that any formulas to be agreed upon in the EU-ASEAN Ministerial meeting statement (5826/24) concerning the global flow of agricultural goods and inputs (including the ones indicated as a possible compromise in paragraph 4 document ST 5467/24), will not set a precedent for the drafting of any future statements or other documents in EU-ASEAN or any other forums, given the changing situation in the Black Sea and on the global market."

COREPER (PART 2)

Statements to the "I" items set out in doc. 5659/24

Economic and Financial Affairs

61. Solvency II — ❶C — 5479/24
Confirmation of the final compromise text with a view to agreement — 5481/24
EF

Statement by Italy

"Italy highlights the importance of the mandate agreed in the final political trilogue of 13 December 2023 on Article 31, paragraph 3, of Directive 2002/87/EC regarding the report to be presented by the European Commission by 31 December 2027. Italy expects that this report will give adequate consideration to the issue of the prudential treatment of insurance undertakings' participations in banks, in terms of a level playing field between sectors, also for financial non-conglomerates."

Statement by Portugal

"Portugal welcomes many of the elements of the global agreement reached on the revision of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

This review will incentivize insurers to invest in long-term capital while strengthening the resilience and stability of the insurance sector and reinforcing consumer protection. Portugal regrets however, that one if its national specificities concerning "Atuários Responsáveis" which does not harm the functioning of the internal market and does not raise level playing field concerns could not be properly addressed during this review. The solution (which was ultimately agreed) might, regrettably, lead to legal uncertainty and affect a practice which has been considered beneficial by all national market participants."

Justice and Home Affairs

66. Directive on liability for defective products | ❶C | 5551/24 5553/24 JUSTCIV
Confirmation of the final compromise text with a view to agreement

Statement by Estonia

"Estonia supports the aim of the Directive and can agree with most of its solutions. However, the Directive regulates procedural law in a way that leads to fundamental concerns of the basic principles of a Member State law.

Namely, the Directive has a maximum harmonisation clause, thus regulating exhaustively also the disclosure of evidence in matters of liability for defective products. Maximum harmonization leads to a worrisome special regime in our law where different rules apply. More specifically, it would be more difficult for a plaintiff to request the court's assistance in gathering evidence in cases of liability for defective products than in other legal proceedings, both in those where inequality of the parties is assumed and in those where equality of the parties is assumed.

Estonia has throughout the negotiations explained that the content of procedural actions should not be unreasonably different based on the specific content of the dispute. This would lead to fragmentation of law, lack of legal clarity and, most importantly, different treatment of the parties to the proceedings. That could lead to a problem with our Constitution. We have drawn the attention to the fact that the procedural law of a Member State is a unified system where different parts of procedural law are connected and balanced with other parts of procedural law. Thus, in order to ensure legal clarity and equal treatment of parties to the proceedings, we should consider changing the general rules for disclosure of evidence in our domestic civil procedural law to what it is in the Directive. However, we do not consider it possible as such an interference with national law should not be the purpose of the EU law.

Additionally, the legal basis for regulating civil court proceedings in the European Union is Article 81 of the TFEU, which regulates cross-border judicial cooperation. In the case of this legal basis, it is always very carefully monitored that the created rules would not interfere with national procedural law of the Member States. The legal basis of the Directive at hand is Article 114 of the TFEU, which regulates the establishment and functioning of the internal market. We believe the same careful considerations should be given, when applying this legal basis and at the same time regulating procedural law of the Member States. For example, one existing Directive with an internal market legal basis, which deals with civil court proceedings and contains the clause of disclosure of evidence as well, has only a minimum harmonizing effect (Representative Actions Directive). That allows Member States to base their rules on national law and their legal traditions.

Lastly, Union law may not go beyond what is necessary to achieve the objective. However, the wording of the rules on disclosure of evidence (in the operative part and the recital) indicate that the aim is to intervene in the procedural law of the Member State, while creating a special regime for gathering evidence only in the specific area of matters of liability for defective products. It has remained incomprehensible how the maximum harmonization in this case would be justified (including how is it justified to regulate it differently than in other fields where inequality of parties is also assumed). Furthermore, the actual impact of such maximum harmonization to national procedural law and legal systems of the Member States have not been assessed. In our view, it is not proportionate to achieve the objective at hand with the above-explained solution.

To sum up, Estonia believes the chosen approach on the disclosure of evidence in this Directive is not appropriate and we will carefully follow other proposals that such an approach would not be repeated."

<u>EU positions for international negotiations</u>

76.	Council Decision on the EU position in the Joint Committee established under the Comprehensive Economic and Trade Agreement (CETA) as regards the adoption of a decision on the interpretation of certain articles of CETA *Adoption*	C	15638/1/23 REV 1 + REV 1 COR 1 15639/23 + ADD 1 POLCOM

<u>Statement by the Commission</u>

"The Commission considers that the Council Decision should be addressed to the Commission, and therefore considers the changes to Article 3 to be inappropriate.

The expression of the Union position in a body set up by an agreement is an act of external representation of the Union which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Commission reserves all its rights in this regard."

77.	Council Decision on the EU position in the WTO's 13th Ministerial Conference as regards the incorporation of the Agreement on Investment Facilitation for Development *Adoption*	C	5361/24 + COR 1 5362/24 POLCOM

<u>Statement by the Commission</u>

"The Commission considers that the Council Decision should be addressed to the Commission, and therefore considers the changes to Article 2 to be inappropriate.

The expression of the Union position in a body set up by an agreement is an act of external representation of the Union which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Commission reserves all its rights in this regard."

78. Council Decision on the EU position at the third session of the Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products
Adoption

C 5089/24
17027/23 + ADD 1
UD

Statement by the Commission

"The Commission considers that the Council Decision should be addressed to the Commission, and therefore considers the changes to Article 3 to be inappropriate.

The expression of the Union position in a body set up by an agreement is an act of external representation of the Union which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Commission reserves all its rights in this regard."

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❶ First reading

C Item based on a Commission proposal