



Brussels, 1 March 2024
(OR. en)

6412/24
ADD 1
LIMITE
CRS CRP 5



SUMMARY RECORD
PERMANENT REPRESENTATIVES COMMITTEE
7, 8 and 9 February 2024

COREPER (PART 1)

Statements to the “II” items set out in doc. 6129/1/ REV 1 + REV 1 COR 1 OJ CRP1 5

Internal Market and Industry

8. Regulation amending Regulation (EU) 2019/1009 as regards the  6025/24
digital labelling of EU fertilising products
Analysis of the final compromise text with a view to agreement

Statement by Slovakia

“Slovenská republika vidí v umožnení digitálneho označovania hnojív príležitosti zlepšenia v oznamovaní informácií na etikete. Ide o technologický pokrok, ako aj príspevok k zníženiu nákladov pre výrobcov hnojív a pre celý dodávateľský reťazec. Z tohto dôvodu nás mrzí, že výsledná dohoda spoluzákodarcov nevedla k ambicióznejšiemu návrhu, ktorý by viedol k výraznejšiemu zníženiu nákladov pre hospodárske subjekty, racionalizácii označovania a obmedzeniu vzniku odpadu z obalov, a v konečnom dôsledku k lepšiemu využívaniu digitálneho označovania subjektmi, čo by malo výraznejšie vplyvy na ekonomiku ako aj životné prostredie.“

Courtesy translation

“According to the Slovak Republic, the introduction of the digital labelling of fertilizers brings opportunities to improve the reporting of information on the label. It brings technological progress, as well as contributes to reducing costs for fertilizer producers and the entire supply chain. For this reason, we regret that the final agreement of the co-legislators did not result in a more ambitious proposal that would lead to a more significant reduction of costs for economic operators, rationalization of labelling, reduction of packaging waste, and ultimately to a better use of digital labelling by operators. That would bring more benefits to the economics and environment.”

Statement by the Commission

“The Commission expresses concern with the wording of the last sentence of recital 12 (‘It is recalled that it is also essential that the end-user has the necessary information referred to in Regulation 2023/988 to be able to identify and contact the responsible person for products placed on the Union market.’).

The Commission considers that Article 16 of Regulation 2023/988 [on general product safety], which lays down the obligation of establishment of a ‘responsible person’ for products placed on the Union market, does not apply to products subject to Regulation (EU) 2019/1009.”

Environment

13. Regulation introducing new environmental economic accounts modules  5938/1/24 REV 1
Analysis of the final compromise text with a view to agreement

Statement by Croatia

“The Republic of Croatia acknowledges the importance of evidence based policymaking and importance of quality official statistics on European environmental economic accounts for the European Green Deal. In that sense, development, production and dissemination of European statistics as defined in the Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics is fully supported.

The Republic of Croatia calls for a framework which will ensure quality prerequisites for full implementation of the production of new statistics regardless of Member States’ different starting positions and national circumstances. Having said that, Croatia has serious concerns that the timeframe for the development and production of the new module on ecosystem accounts, defined by this Regulation, would not ensure enough time for adapting the national statistical system, even considering possible derogations, having in mind that the first reference year corresponds with the year of the adoption of this Regulation.

Croatia believes that the proposed production timeframe for the module on ecosystem accounts would cause disproportionate administrative burden for the national statistical system and its respondents, and therefore cannot support the final compromise text for the Regulation of the European Parliament and of the Council amending Regulation (EU) No 691/2011 as regards introducing new environmental economic accounts modules.”

Environment

7. Regulation amending Regulation (EU) 2019/1242 on CO₂ emission performance standards for heavy-duty vehicles  5996/24
Analysis of the final compromise text with a view to agreement

Statement by Slovakia

“The Slovak Republic is aware of the need to decarbonize road transport in the European Union and its Member States. However, the final agreement reached between the Council and Parliament on the proposed Regulation remains too ambitious when it comes to proposed targets and deadlines for their fulfillment.

We consider important to draw attention to the following points that, from our point of view, are omitted in the final agreement:

Firstly, the principle of technological neutrality has not been fully taken into account in the Regulation. Relying exclusively on electric and hydrogen heavy-duty vehicles, which are not approachable at scale, could become a double-edged weapon because of a reasonable concern about the biggest appropriateness of these technologies. The mentioned problem emphasized by the scarcity of recharging points for the heavy-duty segment seems to be a solid obstacle, nowadays and in the near future, and other practical implications are still questionable as well.

Secondly, the assessment of the measures supported by the Slovak Republic, in particular the potential and role of renewable CO₂ neutral fuels, introduction of carbon correction factor, the assessment of the full lifecycle CO₂ emissions of new heavy-duty vehicles, only in the review clause seems to us to be insufficient. From our point of view, dealing with all of mentioned elements at later stage creates disadvantage for other alternative fuels with the decarbonization potential in the road transport sector.

For the above mentioned reasons the Slovak Republic cannot support the final text of the Regulation agreed between the co-legislators.”

Statements to the “I” items set out in doc. 6129/1/ REV 1 + REV 1 COR 1 OJ CRP1 5

EU positions for international negotiations

22. Council Decision on the EU position to be adopted at the CMS  5896/24
COP 14 to amend the Appendices to the Convention 5640/24
Adoption ENV
Decision to use the written procedure

Statement by the Commission

Statement 1

“Should the Conference of the Parties to the Convention on Migratory Species, in its 14th meeting from 12 to 17 February 2024, agree to add the sand tiger shark (*Carcharias taurus*) to Appendix I of the Convention, the Commission will make every effort to initiate swiftly the necessary steps for implementing that decision in EU law with the aim of according the sand tiger shark a level of protection under EU law equivalent to the listing under Appendix I of the CMS”

Statement 2

“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.”

Agriculture

24. Revision of phytosanitary legislation
Mandate for negotiations with the European Parliament

 5835/24 + COR 1
AGRI

Statement by the Czech Republic

“The Czech Republic agrees with the aims of the revision of the so-called Plant Health Regulation, especially regarding the simplification of the current processes. Nevertheless, we have some essential comments on the content of the proposed Council mandate.

We consider the proposal in Article 2 to postpone the entry into force of point 11 in Article 1 by 36 months to be unjustified. The substantive amendment is to Article 71 of the current Plant Health Regulation, which provides for the obligation of the third countries to specify in the phytosanitary certificate the fulfilment of specific phytosanitary requirements for regulated non-quarantine pests (hereinafter RNQP) for imports into the EU. The proposal of the Commission included a postponement of the entry into force of this point only 6 months after the entry into force of the entire revision.

The requirements for protection against introduction of RNQP for both third countries and the EU operators have been established by legislation since the entry into force of the current Plant Health Regulation in December 2019, and the operators concerned have been obliged to comply with them since then. Therefore, the Czech Republic does not see any need for such an extensive postponement for this obligation for third countries. The period of six months, as originally proposed by the Commission, is much more reasonable.

The Czech Republic also regrets that the proposed amendment of the Article 94 of the original Plant Health Regulation was not incorporated to the text of the Council mandate. It concerns the removal of unnecessary bureaucracy caused by the issuance of certified copies of phytosanitary certificates by the responsible authorities for practically all consignments of plants for planting imported from the third countries. Imported consignments of plants and the results of their official import phytosanitary inspection are recorded in an electronic EU database (IMSOC/TRACES), the responsible authorities of the EU Member States have access to this database and can thus verify the health status of the consignment. The Czech Republic regrets that the opportunity to simplify this procedure has not been incorporated in the text in the context of this revision of the Plant Health Regulation.

Bearing in mind above stated, the Czech Republic understands that the revision of the Plant Health Regulation is necessary and seeks to address some of the shortcomings identified during the implementation of the current Regulation. Therefore, in the spirit of compromise and not to jeopardize the negotiation process, the Czech Republic supports the proposed Council mandate regarding the Plant Health Regulation. However, the Czech Republic calls for consideration of these concerns during the upcoming negotiation with the European Parliament.”

Statement by Poland

“Polska postrzega rozwiązania zawarte w proponowanym rozporządzeniu jako uzasadnione i mające oczekiwaną wartość dodaną. Z tego powodu Polska, w duchu kompromisu, popiera przyjęcie projektowanego rozporządzenia.

Jednakże, w ocenie Polski, zakres projektowanego rozporządzenia powinien być szerszy, tak aby w pełni rozwiązywało ono problemy zidentyfikowane podczas stosowania dotychczasowych przepisów rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/2031 z dnia 26 października 2016 r. w sprawie środków ochronnych przeciwko agrofagom roślin [...]. W ocenie Polski możliwe jest bowiem dalsze ograniczenie obciążeń dla administracji i podmiotów, bez zwiększania ryzyka fitosanitarnego.

Projektowane rozporządzenie nie usunęło w pełni problemu niemożliwych do zrealizowania rekomendacji wydanych dla Polski (DG(SANTE) 2021-7273), dotyczących notyfikowania wyników kontroli opakowań drewnianych wykorzystywanych do transportu towarów niepodlegających granicznej kontroli fitosanitarnej, przeprowadzonych poza punktami fitosanitarnej kontroli granicznej, w systemie TRACES. Takie notyfikacje nie są możliwe ze względu na funkcjonalność systemu TRACES. Polska oczekuje zatem, iż Komisja Europejska pilnie rozwiąże ten problem działaniami pozalegisłacyjnymi.

Polska oczekuje również, że Komisja Europejska w trybie pilnym wystąpi z inicjatywą legislacyjną wypełniającą delegację do określenia odstępstw od obowiązku wydawania paszportów roślin dla określonych towarów w przypadku sprzedaży poprzez umowy zawierane na odległość.”

Courtest translation

“Poland perceives the solutions contained in the proposed regulation as justified and having an expected added value. For this reason, Poland, in a spirit of compromise, supports the adoption of the draft regulation.

However, in Poland's view, the scope of the proposed regulation should be broader, so that it would fully address the problems identified during the application of the existing provisions of the Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants [...]. In Poland's view, it is possible to further reduce the burden on administration and operators without increasing the phytosanitary risk.

The proposed regulation has not fully removed the problem of the unfeasible recommendations issued for Poland (DG(SANTE) 2021-7273) to notify the results of inspections of wood packaging materials used for the transport of goods not subject to border phytosanitary controls, conducted outside phytosanitary border inspection posts, in the TRACES system. Such notifications are not possible due to the functionality of the TRACES system. Poland therefore expects the European Commission to urgently solve this problem by non-legislative measures.

Poland also expects the European Commission to urgently put forward a legislative initiative fulfilling the delegation to define derogations from the obligation to issue plant passports for certain goods in the case of sales through distance contracts”

COREPER (part 2)

Statements to the “II” item set out in doc. 6176/24 OJ CRP2 5

General Affairs

30. Regulation on establishing the Ukraine Facility 
Presidency debriefing on the outcome of the trilogue

Statement by the Commission on its institutional prerogatives in relation to budget implementation within the framework of the Ukraine Facility

“The Commission recalls that, under Article 17 TEU and Article 317 TFEU, the implementation of the budget remains its own responsibility and is part of its institutional prerogatives under the Treaties. It considers that the decisions related to payments to Ukraine under the Ukraine Facility belong to such budget implementation.

The Commission regrets that the text agreed by the co-legislator provides for Council implementing decisions under Article 291 TFEU for the adoption of these measures. It considers that the solution agreed by the co-legislators could be exceptionally justified in light of the very specific circumstances of the Ukraine Facility – a medium-term single instrument of high geopolitical importance adapted to the uncertainty and unprecedented challenge of supporting a country at war with direct implications for the security of the Union.

This solution should not be considered as a precedent for any other Union spending programme.”

Justice and Home Affairs

36. Pact on Migration and Asylum 
a) Screening Regulation 6047/24 + COR 1
b) Regulation establishing a return border procedure 6054/24
c) Asylum and Migration Management Regulation 6059/24
d) Asylum Procedure Regulation 6055/24 + COR 1
e) Regulation on crisis situations in the field of migration and asylum 6057/24
f) Eurodac Regulation 6060/24
g) Reception Conditions Directive 6056/24
h) Qualification Regulation 6061/24 + COR 1
i) Resettlement Framework Regulation 6058/24 + COR 1
j) Screening Regulation – consequential amendments 6048/24
Analysis of the final compromise text with a view to agreement

Statement by Bulgaria

“Bulgaria thanks the Spanish and Belgian Presidencies for the hard work during the negotiations with the European Parliament that resulted in finalisation of the asylum reform.

We welcome the political agreement achieved between the co-legislators. The new asylum system will provide for fully-fledged and structured common European response while ensuring a balance between solidarity and responsibility. Being a front line Member State permanently exposed to risk of migratory crisis and with increased commitments for guaranteeing the proper functioning of the Schengen area Bulgaria will rely, in a spirit of solidarity, on fair shared responsibility and support provided by the Union funds for the implementation of the new rules.

In 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe's Convention on Preventing and Combatting Violence against Women and Domestic Violence promotes legal concepts related to the notion of gender that are incompatible with main principles enshrined in the Bulgarian Constitution and intends to differentiate between "sex" as a biological (women and men) category and "gender" as a social construct.

Therefore, Bulgaria is grateful for the efforts made to address the national concerns linked to the use of gender related terms in some acts part of the asylum package given the decision of the Constitutional court of the Republic of Bulgaria.

Bulgaria does not oppose the agreement on the Pact on Migration and Asylum, but wishes to stress that we will interpret the gender-related terminology used in some acts part of the asylum package within the meaning of a biological (women and men) category."

Statement by Hungary

"Hungary remains firmly convinced of the need to develop a Common European Asylum System which aims at tackling the root causes of illegal migration, minimises and ultimately eliminates the incentives for illegal migration and discourages persons who wish to abuse the asylum system from entering the European Union, and includes the examination of asylum applications in third countries on the basis of the principle of extraterritoriality. To be able to achieve these goals we need to, first and foremost, acknowledge that global migration challenges cannot be solved on the territory of Europe, therefore we should not import unsolvable problems, but take the help where it is needed.

To be able to develop an effective Common European Asylum System, it is essential to strike a balance between responsibility and solidarity, but we believe that this balance has not been achieved by the proposed regulations. This lack of balance is clearly proven by the fact that Hungary is not a frontline Member State, however, we are a Member State with significant external borders, who remains responsible for stopping the migratory pressure on the European Union. In addition to this responsibility, the APR Regulation would oblige Hungary to ensure a much higher level of capacity for carrying out border procedures than other Member States, which is unfair and unrealistic given our geographical location.

Since 2015, Hungary has been committed to the protection of the external borders of the European Union, without EU support, in line with its obligations under the Schengen acquis. Our efforts should also be recognised as a form of solidarity. On the contrary, the proposed new legal framework does not consider resources from national budgets spent on the protection of external borders of the European Union as solidarity, but instead imposes additional obligations both in terms of providing solidarity to other Member States and responsibility for stopping illegal migration.

In line with our consistent position, Hungary cannot support the establishment of a solidarity mechanism based on the mandatory distribution of migrants, and therefore does not agree with the introduction of responsibility offsets as a mandatory element of the solidarity framework. The council decisions adopted in 2015 have already proved that a solidarity mechanism based on the mandatory distribution of migrants will not relieve the burden on our asylum systems, on the contrary, it increases the number of arrivals.

Hungary is convinced that the compromise proposal on the Crisis Regulation would not represent a viable solution for dealing with migratory crisis or instrumentalization, inter alia as it aims to solve the crisis situations primarily through solidarity and allows de facto and de jure mandatory relocation, while doing so would only lead to an exponential increase in the migratory flows, which consequently will deepen the crises and increase the solidarity needs.

Furthermore, Hungary recognises and promotes 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 international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the term 'gender' as a reference to 'sex' in the relevant legal acts.

Finally, and in line with the repeated call of the European Council, Hungary remains firm on the need to find consensus on an effective migration and asylum policy without creating new pull factors.

Taking into account the aforementioned reasons, Hungary is not in a position to accept the political agreement on the Regulation addressing situations of crisis and force majeure in the field of migration and asylum (Crisis Regulation), the Asylum and migration management Regulation (AMMR), on the Asylum procedure Regulation (APR), on the Screening Regulation, on the Screening consequential amendments Regulation, on the Regulation establishing a return border procedure and on the Eurodac Regulation. Furthermore, Hungary is also not in a position to accept the political agreement on the Reception conditions Directive, on the Regulation establishing an EU framework for resettlement and on the Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, as these proposals are inseparable elements of a fundamentally flawed system."

Statement by Ireland

“Ireland welcomes and supports the agreement on the various measures that collectively make up the Migration and Asylum Pact.

The measures that make up the Pact are adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union and that, apart from Schengen measures, Protocol No. 21 to the TEU and the TFEU applies. Pursuant to Protocol 21, Ireland has an entitlement to opt-in to proposed measures within three months of their presentation to the Council, or at any time after the adoption of the measures.

Ireland did not exercise the entitlement to join the proposals upon presentation but has been actively engaged with the negotiations. In particular, Ireland has sought to address issues around variable geometry and references in the proposals to measures in which Ireland does not participate.

Ireland thanks the Belgian Presidency and earlier Presidencies for their efforts on this issue and welcomes changes to the texts.

Ireland recalls previous statements on variable geometry and references in the proposals to measures in which Ireland does not participate and would like to take this opportunity to confirm again that:

Such references cannot create a positive obligation on Ireland to implement measures in which Ireland does not participate.”

Statement by Lithuania (Regulation on crisis situations in the field of migration and asylum)

“In the negotiations on the Pact on Migration and Asylum and Schengen Borders Code, Lithuania has always been emphasizing the importance of ensuring firm and effective EU response measures to the instrumentalisation of migrants by hostile regimes at our external borders.

We welcome the respective measures included in the proposals of the Pact on Migration and Asylum, in particular in the Crisis regulation, although we believe that EU response could be even more ambitious and more determined.

Nevertheless, we note that the Council mandate on Crisis regulation was not defended in certain aspects, in particular as regards the provisions establishing 18 weeks maximum duration of border procedure in the cases of instrumentalisation instead of 20 weeks (as it was in the Council’s mandate). Emphasizing that this is not a technical issue, Lithuania is not in the position to fully support the agreement reached and therefore abstains.

We call on the EU to continue monitoring the phenomenon of instrumentalisation and developing further solutions to prevent and even more effectively respond to it at the EU external borders.”

Statement by Malta (Asylum and Migration Management Regulation and Asylum procedure Regulation)

“The reform of the Common European Asylum System remains of key importance to provide the right balance between the fair sharing of responsibility amongst all Member States and effective solidarity towards those Member States in need.

In this regard, while thanking the Spanish and Belgian Presidency, and the Commission, for the efforts made during negotiations with the European Parliament, Malta is of the view that the final compromise texts on the Asylum and Migration Management Regulation and on the Asylum Procedures Regulation still do not provide for the right balance.

As already stated in June 2023, Malta, as a small Island Member State with particular vulnerabilities, already faces significant burden through the current acquis. The elements set out in the reform will further increase responsibilities while the solidarity mechanism, even though permanent and mandatory, remains flexible and does not provide the necessary assurances that the needs identified will be fully met.

Malta is therefore abstaining on the final compromise text for an agreement on the Asylum and Migration Management Regulation and on the Asylum Procedures Regulation.”

Statement by Poland

1. “The Government of the Republic of Poland appreciates the efforts of the EU Council, the European Parliament and the European Commission to reach a compromise on a comprehensive and responsible response of the European Union to meet the challenges of current migration processes. At the same time, we emphasise that the Government did not have the real chance to participate in the negotiations on the Pact on Migration and Asylum.
2. The Government of the Republic of Poland notes a possibility to improve the management of some of the aspects of migration and asylum system. However further analysis of the legal acts within the Pact shows that they do not sufficiently address the specific situation of the Member States which border with Belarus and Russia and due to this fact have been under constant and high pressure resulted from artificially created migration routes. In this context, it is worth noting that the European Council repeatedly, including its conclusions from 14 and 15 December 2023, has stressed the negative consequences of the phenomenon of instrumentalisation of migration and condemned the instrumental use of migrants by third countries for political purposes.
3. The Government of the Republic of Poland takes the position that the Pact on Migration and Asylum does not assure the right balance between responsibility and solidarity and could potentially be a room for future disputes between EU institutions and Member States.
4. In view of the above, the Government of the Republic of Poland has decided to vote against the all the legal acts falling within the scope of the Pact.”

Statement by Slovakia

“The Slovak Republic recognises the need to reform the Common European Asylum System. We greatly appreciate the efforts of all participating Presidencies. At the same time, we are aware that reaching the compromise was not an easy task.

It is however essential, that we do not retreat from the positions that we have held and declared for a long time.

We appreciate that the Pact focuses on solving the causes of migration in the countries of origin, which can help alleviate the pressure on the external borders of the EU.

We believe that the priority of a successful European migration policy should be the consistent protection of EU external borders, as well as an effective return policy.

It is desirable to take all measures to prevent illegal migration and, at the same time, help those in need of international protection.

While we acknowledge that the concept of mandatory relocation quotas has largely been abandoned, we are not convinced that the presented proposals strike the right balance between solidarity and responsibility.

Solidarity is an important principle in managing migration, but we believe the choice of the form must always be entirely in the hands of the Member State. Unfortunately, the proposals do not meet this requirement since financial contributions are mandatory if a certain number of asylum seekers are not relocated. At the same time, if certain conditions are met, Dublin responsibility offsets also become mandatory. These elements constitute strong pull factors and provide incentives for secondary migration.

Considering the above, the Slovak Republic votes against the submitted proposals in the area of solidarity – the Asylum and Migration Management Regulation (AMMR) as well as the Regulation addressing situations of crisis and force majeure in the field of migration and asylum.

In view of the interlinked nature of all submitted proposals, we abstain from voting on the other proposals.”

Statement by the Czech Republic

“The Czech Republic acknowledges the need of the reform of the current rules governing the EU migration and asylum policy. Several challenges and notably the developments since the refugee crisis of 2015-2016 manifested the vulnerability of our system, which is no longer sustainable. Since only a common solution at the EU level could provide an adequate response to issues that the EU and Member States face both together and individually, we therefore appreciate the effort to address the major shortcomings.

Throughout the negotiations of the Pact on Migration and Asylum, the Czech Republic pursued particularly the objectives of enhanced protection of external borders with a view of a safer Schengen area as well as a functional balance between responsibility and solidarity.

The Czech Republic specifically welcomes the fact that the final compromise does not establish an obligation to relocate third country nationals from other Member States or third countries. At the same time and while appreciating other improvements to the current system, the Czech Republic notes that the outcome of the interinstitutional negotiations did not quite meet the ambition of the Council mandate and that the efficiency of some instruments had been compromised by additional administrative burden on the Member States, generating practical difficulties as well as increased costs.

With a view of the above and in line with the package approach, the Czech Republic decided to abstain from voting on the legislative instruments of the Pact. Yet, the Czech Republic appreciates the spirit of EU unity and views this milestone as a new opportunity to continue, with a reinforced effort, in reforming the EU migration and asylum policy further and with a specific focus on the external dimension and innovative ideas there.”

Statement by the Commission (Eurodac Regulation)

“The Commission will present a legislative initiative whereby it would propose to amend the EES Regulation to allow the direct access of the asylum authorities to the EES at a later stage.”

Statement to the “I” item set out in doc. 6176/24 OJ CRP2 5

Justice and Home Affairs

- | | | | |
|-----|---|---|-----------------------------|
| 49. | Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
<i>Confirmation of the final compromise text with a view to agreement</i> |  | 5910/24
5911/24
COPEN |
|-----|---|---|-----------------------------|

Statement by Italy

“The Italian Republic agrees with the importance of updating Directive 2011/36/EU in order to take account of new forms of trafficking in human beings at international level which have been updated, in particular in recent years.

In particular, the Italian Republic welcomes the inclusion in the Directive, among the offences covered by the concept of trafficking in human beings, of the exploitation of surrogacy, understood according to the fourth recital as coercing or deceiving of a woman into acting as a surrogate mother.

At the same time, the Italian Republic would like to recall above all the character of ‘minimum standards’ attributed to the relevant European standards, in accordance with the provisions of Article 83(1) of the Treaty on the Functioning of the European Union, therefore the possibility for Member States to provide for more stringent forms of sanctions than those provided for as a minimum level at European level remains unaffected.

Furthermore, with specific regard to the fourth recital of the Directive, according to which the approval of the Directive “is also without prejudice to the national rules on surrogacy, including in the context of criminal law as well as family law”, the Italian Republic observes that such wording categorically excludes any a contrario interpretation of the European rule requiring the criminalization of the exploitation of surrogacy.

Therefore, this European provision does not prevent Member States from criminalizing forms of surrogacy which do not involve forms of exploitation covered by the concept of human trafficking, and therefore also forms of voluntary surrogacy, based on contractual agreements, whether in return for payment or free of charge, or based on donations, irrespective of the methods and forms in which surrogacy takes place.

Similarly, the provisions of this Directive do not affect the competence of Member States to define the principles of criminal jurisdiction over offences committed by their nationals in respect of surrogacy practices carried out outside national territory, irrespective of the country and in whatever form or manner they are committed. Moreover, this provision does not in any way affect the competence of Member States to determine whether, in the event of a birth resulting from surrogacy, in return for payment or free of charge, the foreign recognition of parenthood is contrary to international public policy. Indeed, the Italian Constitutional Court has repeatedly held that surrogacy ‘impairs in an intolerable manner the dignity of women and deeply jeopardizes human relations’ (Constitutional Court, No 79/2022; Court of Justice, No 33/2021; Court of Justice, No 272/2017). This is without distinction as to whether surrogacy is voluntary, paid or free of charge.

Moreover, the Italian Supreme Court has also stated on several occasions that the assessment of the legal system does not change even ‘where the practice of surrogacy is the result of a woman’s free and conscious choice , independent of economic consideration and revocable until the birth of the child’ (see, most recently, Cass. civ, SS.UU., No 38162/2022).

It is, for the Italian Republic, about the necessary application of the supreme principles of its constitutional order.”



First reading



Procedural decision by Coreper (Article 19(3)&(7) of the Council's Rules of Procedure)



Item based on a Commission proposal