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DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
3 and 4 March 2022

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HOME AFFAIRS

Non-legislative activities

3. European response to the situation in Ukraine 6719/22

a) Decision implementing the temporary protection provided for in Council Directive 2001/55/EC of 20 July 2001

Agreement in principle on activation

The Council reached a political agreement on the activation of the Temporary protection Directive and the text of the Council Implementing Decision.

b) Other issues related to the situation in Ukraine

Ministers also exchanged views via VTC with the Ukrainian Interior Minister.

OTHER HOME AFFAIRS ISSUES

4. Asylum/migration: review of progress achieved¹ 6264/22

Progress report

The Council exchanged views on the state of play provided by the Presidency regarding the gradual approach to migration and asylum.

POLITICAL GOVERNANCE OF THE SCHENGEN AREA ('SCHENGEN COUNCIL')

6. Overall state of the Schengen area²

(a) Political governance of Schengen

(b) Situation report

6234/22 + COR 1

Exchange of views

6408/22

Following the discussion at the meeting of the Mixed Committee at Ministerial level (document 6964/22), the Council agreed to proceed on the basis of the Presidency's proposal and to organise the next Schengen Council in June.

¹ Exceptionally, in the presence of the Schengen Associated States.

The European agencies EUAA and Frontex are invited for this item.

² The European agencies Frontex, Europol and eu-LISA are invited for this item.

7. Council Regulation on the Schengen evaluation and monitoring mechanism

 6685/22

General approach

Following the discussion at the meeting of the Mixed Committee at Ministerial level (document 6964/22), the Council agreed on a general approach for the Council Regulation on the Schengen evaluation and monitoring mechanism.

OTHER HOME AFFAIRS ISSUES

8. Conclusions on civil protection work in view of climate change

6528/22

Approval

The Council approved the conclusions on civil protection work in view of climate change as set out in document 6528/22.

9. Council statement on Interpol red notices

6217/22

Approval

The Council approved the statement on Interpol's red notices.

10. Any other business


No items were raised under this heading.

FRIDAY 4 MARCH 2022 (10.15)

JUSTICE

Non-legislative activities

13. Council Decision on hate speech and hate crimes

 6523/22

Policy debate

The Council held a policy debate on the proposed Decision, which aims to extend the list of areas of crime referred to in Article 83(1) TFEU to "hate crime and hate speech".

14. Fundamental rights

(a) Exchange of views with the Director of the European Union Agency for Fundamental Rights (FRA)

(b) Conclusions on combating racism and antisemitism 6406/22
Approval

a) The Council took note of a presentation by the Director of the European Union Agency for Fundamental Rights (FRA) on the work done by the Agency as regards the fight against racism and antisemitism.

b) The Council approved a set of conclusions on combating racism and antisemitism. The text of the conclusions is set out in document 6877/22.

15. Issues related to access to a lawyer

6319/22

Exchange of views

The Council had an exchange of views on access to a lawyer and its importance in an effective justice system.

16. Any other business

(a) Allegations of trading in influence

(b) Allegations of violence against demonstrators during protests against COVID-19 restrictions

(c) Prosecution of a Polish judge in Belarus

Information from the Polish delegation

The Council was informed by the Polish delegation about these three points. The Commission and various delegations also contributed to the information provided to the Council.

Statements to the non-legislative "A" items set out in doc. 6544/22

Ad "A" item 1: **Council Decision on the partial suspension of the application of the Agreement with Vanuatu on the short-stay visa waiver**
Adoption

STATEMENT BY MALTA

“Malta acknowledges that on the basis of the findings of the European Commission it would appear that there are security issues in how the citizenship-by-investment processes are being conducted in Vanuatu and that the suspension of the short-stay visa waiver as proposed by the European Commission is justified on such grounds. This is particularly in view of the lack of rigorous due diligence processes, which should be an essential feature of any citizenship-by-investment scheme. Malta nevertheless recalls the sovereignty of the State on citizenship matters.”

Ad "A" item 17: **Council Decision concerning the position to be taken on behalf of the EU in the North Pacific Fisheries Commission**
Adoption

STATEMENT BY THE COMMISSION

“The Commission considers that the Council Decision should be addressed to the Commission, and therefore considers the changes to Article 4 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.”

Ad "A" item 20:

Council Decision authorising the opening of negotiations on behalf of the European Union for the conclusion of an international agreement on pandemic prevention, preparedness and response as well as for the negotiations of complementary amendments to the International Health Regulations (2005)

Adoption

STATEMENT BY THE COMMISSION 1

“The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard.”

STATEMENT BY THE COMMISSION 2

“The Commission considers that the Council may revise and further develop the negotiating directives laid down in the Addendum to the Council Decision authorising the opening of negotiations, as appropriate and necessary in the course of such negotiations, only on the basis of a prior new recommendation by the Commission, in compliance with the Commission’s right of initiative under Article 218 (3) and (4) TFEU.

The Commission reserves all its rights in this regard.”

STATEMENT BY BULGARIA

“The Republic of Bulgaria supports the efforts towards international cooperation in different sectors for improving global and national pandemic preparedness and response as part of the global health architecture.

Bulgaria considers that the French Presidency has improved substantially the initial text of the proposal for a Council Decision and the Directives for negotiations laid down in the Addendum to the Decision, and we are thus able to support the overall spirit of the Council Decision.

However, when it comes to the clear distinction between matters falling under national and Union competences, the text remains partially unclear, showing signs of fragility and ambiguity. While we understand that the scope of the Decision is to mandate the Commission to negotiate on matters falling within Union competence, we note with concern the unclear provisions in sensitive areas, thus leaving room for legal interpretation and potential difficulties for Member States at the stage of negotiations. For the avoidance of any doubt, we therefore consider it essential to highlight at the outset of this process several aspects, which have been thoroughly discussed and confirmed but are not explicitly reflected in the draft document:

Firstly, there should be a clear distinction in the negotiation process between matters that fall under national and under Union competences. When it comes to healthcare, in line with EU primary law, the division of competences between the Union and its Member States as defined by the substantive legal basis should be fully respected throughout the negotiation process. Therefore, we are grateful for the confirmation by the Commission and the Presidency that Member States reserve their right to negotiate on their own, based on their national positions on matters falling under exclusive national competences. This, according to Art. 168 (7) TFEU will cover all issues related to the organisation and delivery of health services and medical care and its financing, especially on matters that are likely to trigger financial obligations for Member States in the future.

Having in mind the persistent uncertainty with regard to the substance and content of the future international instrument on pandemic prevention, preparedness and response, the coordination mechanisms and in particular the reference to the International Health Regulations (2005), we consider such a clarification an indispensable safeguard for Member States and a confirmation of key principles such as subsidiarity, conferral of powers as well as good inter-institutional cooperation.

Secondly, we call for more caution when referring to a “legally binding instrument” and full respect of the text of the Decision adopted during the Special Session of the World Health Assembly. The hypothesis of a “legally binding instrument” presupposes Member States’ obligations and will be the subject of the negotiating process, and in this context, the Member States should remain free to make their final decisions. In its national capacity, Bulgaria considers that the development of new international treaties and partnerships needs a careful approach, with a clear added value to the already existing agreements, mechanisms and initiatives, e.g. International Health Regulations (2005), avoiding duplication of activities.

Last, but not least we consider that all references to financial commitments in the draft Decision concern only matters falling under EU competence. Commitments that concern national budgets are not covered by this Decision, as they are a matter of exclusive national competence. Given the lack of clarity on the possible content of a new international instrument and the resulting obligations for Member States, including of a financial nature, it is necessary to take into account the capacity of the health sector in-country to bear additional burden implementing a possible new international agreement.

In that context, taking into account in particular Art. 168 (7) of the Treaty on the Functioning of the EU, and since the leading role of the Member States is understandable but is not explicitly stated in the text of the Decision mandating the Commission to negotiate on matters falling within Union competence, Bulgaria will implement the Recommendation for a Council Decision within the Union competences as laid down in the primary law of the European Union. Our understanding is that it would in no way affect national competences in the field of health policy, including the positions Bulgaria may take within its national competences in the negotiation process on a future international instrument on pandemic prevention, preparedness and response.

We request for the inclusion of this statement in the minutes of the Coreper meeting and the Council adopting the proposed decision.”

STATEMENT BY POLAND

“Regarding the directives for the negotiation of an international agreement on pandemic prevention, preparedness and response contained in the Addendum to the aforementioned Decision Poland believes that any references to sexual and reproductive health and rights (SRHR) should not be included in the text of the directives.

The issue of SRHR is not the matter of the Union competence, but Member States’, and such reference in the directives is contradictory to Article 168 (7) of the Treaty on the Functioning of the European Union, which clearly states that “Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care”.

Furthermore, having the reference to SRHR in the directives is not in line with recital 6 and 7 of the decision itself, where full respect for Member States’ competences and only auxiliary role of the Union is underlined.

For this reason we believe that having the reference to SRHR in the negotiating guidelines for the Commission is unjustified.”