



Brussels, 19 March 2020
(OR. en)

6934/20

LIMITE

POLGEN 27
INST 54
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NOTE

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| From: | General Secretariat of the Council |
| To: | Delegations |
| Subject: | Exceptional measures on the continuation of decision making in the Council |

1. With a view to ensuring continuity of the Council decision-making in the current exceptional circumstances caused by the COVID-19 pandemic, Coreper is invited to examine the three options below, to choose one of them and to approve the relevant documents related to the option that it will have chosen.

Option A

2. This option consists in allowing formal meetings of the Council to take place, in accordance with its Rules of Procedure (RoP), by temporarily derogating from the quorum requirement set out in the first sentence of Article 11(4) RoP, while all other provisions of the Council's Rules of Procedure will continue to apply. Council members who cannot physically attend a meeting, but participate through videoconferencing means, could be counted as part of the quorum. This would allow notably to continue using the system of A items for adoption of items without discussion, as provided for in Article 3(6) RoP. To ensure the quality and legality of decisions and deliberations, the President of the Council must be present at the seat of the Council, assisted by the General Secretariat and the Council Legal Service. The Commission will be invited to take part in accordance with Article 5(2) RoP.

3. The relevant documents in relation to this option are in Annex 1¹ (draft Council Decision on a temporary derogation) and Annex 2 (Conditions and practical arrangements for videoconferencing at Council meetings).

Option B

4. This option consists in facilitating the decision to use the ordinary written procedure for adopting Council acts by temporarily derogating from the requirement of unanimity set out in the first subparagraph of Article 12(1) RoP in cases where Coreper decides to use the written procedure.
5. The relevant document in relation to this option is in Annex 3 (draft Council Decision on a temporary derogation).

Option C

6. This option consists in combining both Options A and B above into a single text of Council Decision derogating from its Rules of Procedure, the scope of Option B being extended to include also cases where the Council or its President decide to use written procedure.
7. The relevant documents in relation to this option are in Annex 4 (draft Council Decision on a temporary derogation) and Annex 2 (Conditions and practical arrangements for videoconferencing at Council meetings).

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¹ Annex I is the same text as Annex I to doc. 6873/20 as revised, in the meantime, by the jurists-linguists.

8. If option B is chosen, or where the conditions to hold a formal Council meeting cannot be fulfilled under options A or C, a videoconference may take place, but will not be considered as a Council meeting and the Council's rules of Procedure will not apply. In such a case, efforts should be made so as to provide for a meeting environment that is as close as possible to that of a Council meeting, in particular the role of Coreper.
9. Where no Council meeting takes place and formal decisions have to be adopted, Council acts will be adopted by written procedure in accordance with Article 12(1) of the Council's Rules of Procedure.
10. It has to be noted that the General Secretariat of the Council has the capacity to organise one videoconference at a time, prioritisation may therefore be needed.
11. In view of the urgency of the matter, Coreper is invited to decide to use the written procedure to adopt the Council Decision temporarily derogating from the Council's Rules of Procedure under the option it will have chosen.

COUNCIL DECISION (EU) 2020/...**of ...****on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the COVID-19 pandemic in the Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 240(3) thereof,

Whereas:

- (1) Since the outbreak of the epidemiological crisis caused by the coronavirus SARS-CoV-2, the disease associated with it, COVID-19, has been spreading fast across the world, reaching also the Union's territory. Due to the rapid increase in the number of cases, on 11 March 2020 the Director-General of the World Health Organization (WHO) characterised COVID-19 as a pandemic. On 12 March 2020, in view of the rapid escalation in the WHO European Region, with more than 20 000 confirmed cases and almost 1000 deaths, the WHO Regional Director for Europe indicated that Europe had become the epicentre of this pandemic.

- (2) As a consequence, Member States have taken a number of extraordinary preventive and containment measures such as quarantine, closures of non-essential shops, schools and universities, implementation of remote working policies as well as movement and travel restrictions or bans. Those measures make it impossible or very difficult for certain Council members to travel with a view to being physically present at Council meetings held at the Council's seat. This in turn makes it difficult to reach the quorum required by Article 11(4) of the Council's Rules of Procedure².
- (3) In view of these exceptional circumstances, the number of meetings of the Council has been substantially reduced so that only essential meetings are maintained. However, even for those essential meetings of the Council, it is difficult for certain members to physically attend. Therefore, with a view to ensuring institutional continuity in the decision-making of the Council, it is necessary to temporarily derogate from Article 11(4) of the Council's Rules of Procedure on the minimum number of Council members who should be physically present in the meeting by allowing to count in this minimum number those Council members who, due to the exceptional circumstances caused by the COVID-19 pandemic, cannot physically attend a Council meeting and instead participate by means of videoconferencing. This derogation should apply for a duration of one month, renewable.
- (4) In such cases, a physical meeting in the Council seat should always take place, at which at least the President of the Council, or his/her replacement in accordance with Article 20(2) of the Council's Rules of Procedure, is to be present, assisted by the General Secretariat of the Council and the Council Legal Service, in accordance with Article 23(3) and Article 22 of the Council's Rules of Procedure, and to which the Commission is invited to take part in accordance with Article 5(2) of the Council's Rules of Procedure.
- (5) All Member States should be represented in the Council meeting room.

² Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 36).

- (6) Where the Council deliberates and votes on a draft legislative act, all possible steps should be taken, in accordance with the technological means available, to ensure publicity in accordance with the Treaties and with Article 5(1) and Article 7 of the Council's Rules of Procedure.
- (7) In advance of the meeting, the names and functions of the Council members who will participate by means of videoconferencing should be notified to the General Secretariat of the Council. **The Secretariat should inform all delegations thereof.**
- (8) A Council member participating by means of videoconferencing should take measures to ensure respect of the rules on professional secrecy in accordance with Article 6(1) of the Council's Rules of Procedure. Where the technological means to protect EU classified information in compliance with the security rules for protecting classified information³ as set out in Council Decision 2013/488/EU cannot be ensured, such matters should not be discussed,

HAS ADOPTED THIS DECISION:

Article 1

By derogation from the first sentence of Article 11(4) of the Council's Rules of Procedure, a Council member prevented from being physically present at a meeting of the Council due to the exceptional circumstances caused by the COVID-19 pandemic may participate in that meeting by means of videoconferencing.

Such participation shall count as presence within the meaning of the first sentence of Article 11(4) of the Council's Rules of Procedure and therefore count as part of the quorum.

³ Council Decision (2013/488/EU) of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274 of 15.10.13, p. 1).

Article 2

This Decision shall apply for a period of one month from the date of its adoption.

If justified by continued exceptional circumstances, the Council may renew it.

Article 3

This Decision shall take effect on the date of its adoption.

It shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President

Conditions and practical arrangements for videoconferencing at Council meetings

1. A Council meeting can only take place at its seat, as defined by Protocol No 6 to the Treaties, i.e. in Brussels and Luxembourg (during the months of April, June and October). A formal Council meeting therefore cannot take place with all participants participating through videoconferencing.
2. Given the current exceptional circumstances caused by the COVID-19 pandemic, and **following contacts with** ~~as proposed by~~ the Luxembourg delegation as regards meetings foreseen in Luxembourg in April, Coreper will be invited to unanimously agree, in accordance with the second subparagraph of Article 1(3) RoP, that the Council meetings during April should instead take place in Brussels.
3. In these current exceptional circumstances, videoconferencing will be used for those Council members prevented from physically attending the Council meeting.
4. At the Council meeting in the seat, the President of the Council (or his/her replacement in accordance with Article 20(2) RoP) must be present in the Council meeting room, together with the Commission. The President must be assisted in the room by the General Secretariat of the Council (Directorate-General in charge and the Council Legal Service).
5. Where the Council member is present in the Council meeting room, the format of his/her delegation in the meeting room is 1 + 1 + 1.
6. Where the Council member is not present in the meeting room, the format in the meeting room will be limited to 1+1. All Member States should be represented in the Council meeting room.

7. Delegations must notify, in advance, the name and function of the Council member participating in the meeting (either in person or by video link). **The Secretariat should inform all delegations thereof.**
8. In the preparatory process, it must be made clear that the video link is not a secure link. Classified or sensitive discussions cannot take place in such cases.
9. As concerns those Council members participating by videoconferencing, for all non-public agenda items, the obligation of professional secrecy is to be respected (Article 6(1) RoP).
10. Publicity on the public part of the Council agenda, in particular the "legislative deliberations" part, will be ensured.
11. Interpretation will be provided in the meeting room in Brussels. Interpretation for Council members participating by videoconference cannot be provided by the GSC. Interpreting may be provided locally.
12. As for the practical arrangements of handling the meeting, the following should be followed:
 - a) When a member of the Council connecting via a video link wishes to take the floor, he or she needs to contact the member of the delegation present in the meeting room. The member of the delegation requests the floor. The member of the Council takes the floor after being invited to do so by the President of the Council.
 - b) Members of the Council connecting by video link should mute their microphones during the meeting and switch their microphone on only when given the floor.
 - c) At the end of the intervention, the microphone must be switched off.
 - d) As videoconferencing microphones are very sensitive, rustling noises (e.g. moving paper or objects on the desk, whispering with colleagues/neighbours) should be avoided.

- e) The President will allow a few seconds between speakers, and make sure they have finished their intervention before taking/giving the floor again.
- f) Council Members connecting by video link should look into the camera when speaking and fill out the camera frame as much as possible. Some clear visual identity in the background (e.g. a flag) would be desirable.
- g) Once the President indicates that the meeting is over, participants should disconnect. The President should be the last one to disconnect.



COUNCIL DECISION (EU) 2020/...**of ...****on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the COVID-19 pandemic in the Union**

THE COUNCIL OF THE EUROPEAN UNION,

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- (2) As a consequence, Member States have taken a number of extraordinary preventive and containment measures such as quarantine, closures of non-essential shops, schools and universities, implementation of remote working policies as well as movement and travel restrictions or bans. Those measures make it impossible or very difficult for certain Council members to travel with a view to being physically present at Council meetings held at the Council's seat. This in turn makes it difficult to reach the quorum required by Article 11(4) of the Council's Rules of Procedure⁴ and therefore makes it difficult for the Council to hold formal meetings.
- (3) In view of these exceptional circumstances and with a view to ensuring institutional continuity in the decision-making of the Council, it is necessary to temporarily derogate from the first subparagraph of Article 12(1) as concerns decisions to use the ordinary written procedure. During the period of application of this Decision, and only during this period, a decision to use the ordinary written procedure taken by Coreper should be taken in accordance with the voting rule applicable for the adoption of the Council act. This derogation should apply for a duration of one month, renewable.

HAS ADOPTED THIS DECISION:

Article 1

By derogation from the first subparagraph of Article 12(1) of the Council's Rules of Procedure, the decision to use the written procedure, when taken by Coreper, shall be taken in accordance with the voting rule applicable for the adoption of the Council act.

⁴ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 36).

Article 2

This Decision shall apply for a period of one month from the date of its adoption.

If justified by continued exceptional circumstances, the Council may renew it.

Article 3

This Decision shall take effect on the date of its adoption.

It shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President

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- (3) In view of these exceptional circumstances, the number of meetings of the Council has been substantially reduced so that only essential meetings are maintained. However, even for those essential meetings of the Council, it is difficult for certain members to physically attend. Therefore, with a view to ensuring institutional continuity in the decision-making of the Council, it is necessary to temporarily derogate from Article 11(4) of the Council's Rules of Procedure on the minimum number of Council members who should be physically present in the meeting by allowing to count in this minimum number those Council members who, due to the exceptional circumstances caused by the COVID-19 pandemic, cannot physically attend a Council meeting and instead participate by means of videoconferencing. This derogation should apply for a duration of one month, renewable.
- (4) In such cases, a physical meeting in the Council seat should always take place, at which at least the President of the Council, or his/her replacement in accordance with Article 20(2) of the Council's Rules of Procedure, is to be present, assisted by the General Secretariat of the Council and the Council Legal Service, in accordance with Article 23(3) and Article 22 of the Council's Rules of Procedure, and to which the Commission is invited to take part in accordance with Article 5(2) of the Council's Rules of Procedure.
- (5) All Member States should be represented in the Council meeting room.

⁵ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 36).

- (6) Where the Council deliberates and votes on a draft legislative act, all possible steps should be taken, in accordance with the technological means available, to ensure publicity in accordance with the Treaties and with Article 5(1) and Article 7 of the Council's Rules of Procedure.
- (7) In advance of the meeting, the names and functions of the Council members who will participate by means of videoconferencing should be notified to the General Secretariat of the Council. **The Secretariat should inform all delegations thereof.**
- (8) A Council member participating by means of videoconferencing should take measures to ensure respect of the rules on professional secrecy in accordance with Article 6(1) of the Council's Rules of Procedure. Where the technological means to protect EU classified information in compliance with the security rules for protecting classified information⁶ as set out in Council Decision 2013/488/EU cannot be ensured, such matters should not be discussed,
- (9) **In view of the above exceptional circumstances and for the same reasons related to ensuring institutional continuity, it is also necessary to temporarily derogate from the first subparagraph of Article 12(1) as concerns decisions to use the ordinary written procedure. During the period of application of this Decision, and only during this period, a decision to use the ordinary written procedure should be taken in accordance with the voting rule applicable for the adoption of the Council act.**

⁶ Council Decision (2013/488/EU) of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274 of 15.10.13, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

By derogation from the first sentence of Article 11(4) of the Council's Rules of Procedure, a Council member prevented from being physically present at a meeting of the Council due to the exceptional circumstances caused by the COVID-19 pandemic may participate in that meeting by means of videoconferencing.

Such participation shall count as presence within the meaning of the first sentence of Article 11(4) of the Council's Rules of Procedure and therefore count as part of the quorum.

Article 2

By derogation from the first subparagraph of Article 12(1) of the Council's Rules of Procedure, the decision to use written procedure, whether taken by the Council or Coreper or where proposed by the President, shall be taken in accordance with the voting rule applicable for the adoption of the Council act.

Article ~~3~~ 2

This Decision shall apply for a period of one month from the date of its adoption.

If justified by continued exceptional circumstances, the Council may renew it.

Article 4 ~~3~~

This Decision shall take effect on the date of its adoption.

It shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President
