



Brussels, 16 March 2022
(OR. en)

7280/22
CRS CRP 8

SUMMARY RECORD
PERMANENT REPRESENTATIVES COMMITTEE
23 and 25 February 2022

I. Adoption of the agenda

6375/22 OJ CRP1 8
6397/4/22 REV 4 OJ CRP2 8 COMIX 85

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 1)

Health

2. 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) 6129/22
Preparation for adoption

The Committee prepared the item for adoption.

Statement by Poland

"W odniesieniu do wytycznych dotyczących negocjowania międzynarodowego porozumienia w sprawie zapobiegania, gotowości i reagowania na pandemię, zawartych w Aneksie do ww. decyzji, Polska uważa, że wszelkie odniesienia do zdrowia i praw seksualnych i reprodukcyjnych (SRHR) nie powinny być umieszczane w tekście wytycznych.

Kwestia SRHR nie jest kwestią kompetencji Unii, ale państw członkowskich, a takie odniesienie w wytycznych jest sprzeczne z art. 168 ust. 7 Traktatu o funkcjonowaniu Unii Europejskiej, który wyraźnie stanowi, że "Działania Unii są prowadzone w poszanowaniu obowiązków Państw Członkowskich w zakresie określania ich polityki dotyczącej zdrowia, jak również organizacji i świadczenia usług zdrowotnych i opieki medycznej.

Ponadto odniesienie do SRHR w wytycznych nie jest zgodne z motywami 6 i 7 samej decyzji, w których podkreślono pełne poszanowanie kompetencji państw członkowskich i jedynie pomocniczą rolę Unii.

Z tego powodu uważamy, że odniesienie do SRHR w wytycznych negocjacyjnych dla Komisji jest nieuzasadnione."

Courtesy translation

"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."

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, the Presidency and the Council Legal Service 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."

Statements by the Commission

"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."

"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."

Employment and Social Policy

3. Directive on adequate minimum wages in the European Union
Presidency debriefing on the outcome of the trilogue

The Presidency debriefed on the trilogue which took place on 17 February 2022.

Employment, Social Policy, Health and Consumer Affairs

4. Council meeting (Employment, Social Policy, Health and Consumer Affairs) on
14 March 2022: Agenda

The Presidency presented the main items on the agenda. The Committee decided to take all the points that are on the agenda at this stage, with the exception of the adoption of the agenda and the approval of non-legislative A items, in public.

Telecommunications

5. Directive on measures for a high common level of cybersecurity across the Union

Presidency debriefing on the outcome of the trilogue

The Presidency debriefed on the trilogue which took place on 17 February 2022.

Environment

6. Council meeting (Environment) on 17 March 2022: Agenda

The Presidency presented the main items on the agenda. The Committee decided to take the exchange of views on the greening of the European Semester and the non-legislative AOB in public.

COREPER (PART 2)

WEDNESDAY 23 FEBRUARY 2022

General Affairs

13. Extension of the temporary derogation from the Council's Rules of Procedure 6271/22
Approval
Decision to use the written procedure for the adoption

The Committee confirmed its agreement on the text of the Council Decision further extending the temporary derogation from the Council's Rules of Procedure until 30 June 2022 and agreed to submit it to the Council for adoption.

Foreign Affairs

14. Strategic Compass 13638/2/21 REV 2
Exchange of views

The Committee held an exchange of views and agreed to revert on this issue at one of its next meetings.

15. Defence package 6315/22
Exchange of views 6316/22 + COR 1
6417/22 + COR 1

The Committee held an exchange of views and agreed to revert on this issue at one of its next meetings.

54. European security situation 6459/22
Approval 6496/22
Decision to use the written procedure for the adoption 6497/22
6456/22
6458/22
6478/22
6486/22
6489/22
6493/22
6480/22
6482/22 + COR 1
6484/22

The Committee reached agreement on the sanctions package and agreed to use the written procedure for its adoption.

Economic and Financial Affairs

16. Council meeting (Economic and Financial Affairs) on 15 March 2022: agenda

The Committee took note of the main items on the agenda.

17. Council Recommendation on the discharge to be given to the Commission in respect of the implementation of the general budget for the financial year 2020 6001/22 + ADD 1
Adoption

The Committee agreed to send the Recommendation to the EP and submit it to the Council for adoption.

18. Council conclusions on the budget guidelines for 2023 6000/22 + ADD 1
Approval

The Committee agreed to submit the conclusions to the Council for approval.

Justice and Home Affairs

19. Council meeting (Justice and Home Affairs) on 3 and 4 March 2022: preparation

Political governance of the Schengen area 6222/1/22 REV 1
(a) Regulation amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders
Policy debate

The Committee prepared this item for the Council meeting.

- (b) Council declaration on Interpol's red notices 6217/22
Approval

The Committee prepared this item for the Council meeting.

- (c) Conclusions on civil protection work in view of climate change 6313/22
Approval

The Committee prepared this item for the Council meeting.

- (d) Electronic evidence 6322/22 + COR 1
(i) Regulation on European Production and Preservation Orders for electronic evidence
(ii) Directive on legal representatives for gathering evidence
Progress report

The Committee prepared this item for the Council meeting.

- (e) Issues related to access to a lawyer 6319/22
Exchange of views

The Committee prepared this item for the Council meeting.

- (f) Fundamental rights 6226/22
(i) Exchange of views with the Director of the European Union Agency for Fundamental Rights (FRA)
(ii) Conclusions on combating racism and antisemitism
Approval

The Committee prepared this item for the Council meeting and agreed to the participation of the FRA Director.

- (g) Council Decision on hate speech and hate crimes 6236/22
General approach/policy debate

The Committee prepared this item for the Council meeting.

Statement by the Commission

"On 9 December 2021, the Commission adopted a Communication to the European Parliament and the Council, 'A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime' (COM(2021) 777 final). The Communication was accompanied by a draft Council decision on adding hate speech and hate crime to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union ('TFEU').

The Council considers that the legal basis of the Council decision, namely 83(1), third subparagraph, TFEU, requires a proposal from the Commission or an initiative of a quarter of the Member States pursuant to Article 76 TFEU.

Recalling the urgency of addressing hate speech and hate crime across the EU, the Commission does not object to the Council considering the draft Council decision annexed to the Commission Communication as "a proposal from the Commission" within the meaning of Article 76 TFEU."

(h) Other items in connection with the Council meeting

The Committee took note of the information provided by the Presidency and agreed to the participation of Europol, Frontex and eu-Lisa in the agenda item on the overall state of the Schengen area; Europol and EMCDDA at the informal lunch with CLASI states, Schengen Associated States, Frontex and the EUAA in the asylum/migration agenda item, and Eurojust at the informal lunch on the justice day.

Foreign Affairs

22. Council meeting (Foreign Affairs) on 21 February 2022:
follow-up

The Committee took note of the intended follow-up.

23. European security situation
Exchange of views

The Committee held an exchange of views.

FRIDAY 25 FEBRUARY 2022

General Affairs

55. Special European Council meeting on 24 February 2022:
follow-up

The above-mentioned item was discussed in a restricted format.

Foreign Affairs

56. European security situation 6603/22
6604/22
6553/22
6561/22
6557/22
6559/22
6565/22
6567/22

The Committee agreed on the sanctions package and agreed to submit it to the Council for adoption.

57. Extraordinary meeting of the Foreign Affairs Council on 25
February 2022: agenda and preparation

The Committee took note of the agenda and prepared the meeting.

Justice and Home Affairs

19. Council meeting (Justice and Home Affairs) on 3 and
4 March 2022: preparation

Political governance of the Schengen area

- (i) Overall state of the Schengen area
(i) Situation report 6234/22
(ii) Political governance of Schengen
Exchange of views

The Committee prepared this item for the Council meeting.

- (j) Council Regulation on the Schengen evaluation and 6279/22
monitoring mechanism
General approach

The Committee did not reach agreement and agreed to revert.

Other Home Affairs issues

- (k) Asylum/migration: review of progress achieved 6264/22
Progress report

The Committee prepared this item for the Council meeting.

- (l) Other items in connection with the Council meeting

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

24. Electronic evidence 6323/22 + COR 1
(a) Regulation on European Production and Preservation 6487/22
Orders for electronic evidence
(b) Directive on legal representatives for gathering evidence
Preparation for the trilogue

The Committee prepared the forthcoming trilogue.

60. Extraordinary meeting of the Justice and Home Affairs Council
on 27 February 2022: agenda and preparation

The Committee took note of the agenda and prepared the meeting.

Foreign Affairs

25. Regulation on the public procurement reciprocity instrument
Preparation for the trilogue

The Committee prepared the forthcoming trilogue.

IV. Any other business

COREPER (PART 1)

None.

COREPER (PART 2)

Ministerial Forum on cooperation in the Indo-Pacific

The Committee took note of the information provided by the Presidency on the outcome of the Ministerial Forum.

"I" items approved**COREPER (PART 1)****Institutional affairs****Other**

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| 7. | Attendance of third parties at the meeting of the Working Party on International Food and Agricultural Questions (Codex Alimentarius) during the first half of 2022
<i>Approval</i> | 6270/22
CODEX |
| 8. | Attendance of a third party at the informal videoconference of the Working Party on Research on 28 February 2022
<i>Approval</i> | 6253/22
RECH |

EU position for international negotiations

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| 9. | Council Decision on the position to be taken on behalf of the European Union at UNECE (March 2022)
<i>Adoption</i> | 5996/22
5998/22
MI |
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Research

- | | | |
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| 10. | Joint Conclusions in the framework of scientific and technological cooperation between the EU and China
<i>Authorisation to negotiate an NBI</i> | 6263/22
RECH |
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Transport

- | | | |
|-----|--|----------------------------------|
| 11. | EU coordination for the meeting of the EU-Western Balkans Transport Community's Regional Steering Committee (Belgrade, 15 March 2022)
<i>Approval</i> | 6219/22
TRANS |
| 12. | Regulation amending Regulation (EU) 2020/1429 on the levying of charges for the use of railway infrastructure
<i>Adoption of the legislative act</i> | 6065/22
PE-CONS 3/22
TRANS |

COREPER (PART 2)

WEDNESDAY 23 FEBRUARY 2022

Judicial Affairs

- | | | |
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| 26. | Case C-7/22 P: RQ v Council of the European Union and European Commission
<i>Information note for the Permanent Representatives Committee (Part 2)</i> | 6339/22
JUR |
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Institutional affairs

Other

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| 28. | Attendance of a third party at an informal meeting of the Working Party on Human Rights on 2 March 2022
<i>Approval</i> | 5498/22
COHOM |
| 29. | Attendance of a third party at the informal video conference of the members of the COMAR Working Party on 24 February 2022
<i>Approval</i> | 6305/22
COMAR |
| 30. | Attendance of a third party at the informal video conference of the WPIEI (Desertification) on 23 February 2022
<i>Approval</i> | 6311/22
WPIEI |
| 31. | Attendance of third parties at the meetings of the Working Party on Development Cooperation and International Partnerships on 24 February and 3 March 2022
<i>Approval</i> | 6155/22
DEVGEN |
| 32. | Attendance of third parties at the Working Party on Humanitarian Aid and Food Aid on 8 and 9 March 2022
<i>Approval</i> | 6344/22
COHAFA |
| 33. | Attendance of third parties at the joint meeting of the COHAFA and COTER Working Parties on 9 March 2022
<i>Approval</i> | 6346/22
COHAFA
COTER |

- | | | |
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| 34. | Attendance of an EDA representative at the meeting of the EUMC on 23 February 2022
<i>Approval</i> | 5309/22
EUMC |
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Economic and Financial Affairs

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| 35. | Council recommendations on the discharge to be given to the bodies set up under the TFEU and the Euratom Treaty in respect of the implementation of the budget for the financial year 2020
<i>Adoption</i> | 6003/22 + ADD 1
FIN |
| 36. | Council recommendations on the discharge to be given to the executive agencies in respect of the implementation of the budget for the financial year 2020
<i>Adoption</i> | 6004/22 + ADD 1
FIN |
| 37. | Council recommendations on the discharge to be given to the joint undertakings in respect of the implementation of the budget for the financial year 2020
<i>Adoption</i> | 6005/22 + ADD 1
FIN |
| 38. | Decision on the mobilisation of the EGF (EGF/2021/007 FR/Selecta)
<i>Approval</i> | 6207/22
6208/22
FIN |
| 39. | Transfer No DEC 04/2022 (Section III – Commission)
<i>Approval</i> | 6209/22
6017/22
FIN |
| 40. | Transfer No DEC 05/2022 (Section III – Commission)
<i>Approval</i> | 6210/22
6061/22
FIN |

General Affairs

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| 41. | EP Resolutions and Decisions (February 2022) | 6162/22
PE-RE |
| 42. | Council conclusions on Special Report No 27/2021 by the European Court of Auditors on EU support to tourism
<i>Approval</i> | 6105/22
6107/22
COH |

Foreign Affairs

- | | | |
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| 43. | Ukraine: Joint Statement of Participants in the International
Crimea Platform
<i>Approval of a non-binding instrument</i> | 6242/1/22 REV 1
COEST |
| 44. | Council recommendations on the discharge in respect of the
EDF – financial year 2020
<i>Adoption</i> | 5711/22
5553/22
5554/22
5555/22
5557/22
ACP |
| 51. | Council Decision and Implementing Regulation concerning
restrictive measures directed against certain persons, entities and
bodies in view of the situation in Ukraine
<i>Adoption</i> | 6186/22
6183/22
6185/22
CORLX |
| 52. | Restrictive measures in respect of actions undermining or
threatening the territorial integrity, sovereignty and
independence of Ukraine – pre-notifications
<i>Approval</i> | 6312/22
CORLX |
| 53. | Restrictive measures in respect of actions undermining or
threatening the territorial integrity, sovereignty and
independence of Ukraine – pre-notification
<i>Approval</i>
<i>Decision to use the written procedure for the adoption</i> | 6498/22
CORLX |

EU positions for international negotiations

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|-----|---|---------------------------------|
| 45. | Council Decision on the EU position to be taken at the
65th Session of the Commission on Narcotic Drugs on
international scheduling of new psychoactive substances
<i>Adoption</i> | 6131/22
5629/22
CORDROGUE |
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Statement by the Commission

"The Commission will not oppose the adoption of the revised text of the Union position for the scheduling of new psychoactive substances at the next meeting of the United Nations Commission on Narcotic Drugs (CND), but wishes to make the following statement:

The Commission reiterates its position that the decisions concerned by this proposal are adopted by qualified majority and are a matter of exclusive Union competence because Union law, in this case in the area of drug control, will be directly and automatically affected by the scheduling decisions of the United Nations Commission on Narcotic Drugs. The Commission underlines that this position refers to international scheduling decisions under the 1961 UN Convention on Narcotic Drugs and the 1971 UN Convention on Psychotropic Substances and not to drugs policy in general."

FRIDAY 25 FEBRUARY 2022

Institutional affairs

Other

58. Attendance of third parties at the Working Party on Maritime Issues (EU Maritime Security Strategy) on 2 March 2022
Approval 5963/22
POLMAR

Justice and Home Affairs

47. Council Decision on the partial suspension of the application of the Agreement with Vanuatu on the short-stay visa waiver
Adoption 6254/22
6190/22 + COR 1
VISA

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. "

48. Declaration of the European Union and the Latin American Committee on Internal Security (CLASI)
Approval of a non-binding instrument 6274/22
6314/22
JAIEX
49. Council Regulation on the Schengen evaluation and monitoring mechanism – Decision to extend a deadline for consultation of the European Parliament
Approval of a letter 6338/22
SCH-EVAL
61. Council Decision on the partial suspension of the application of the visa facilitation agreement with the Russian Federation
Adoption 6628/22
6622/22
VISA

Foreign Affairs

59. Restrictive measures in view of the situation in Somalia – UN transposition
Decision to use the written procedure for the adoption 6504/22
6411/22 + ADD 1
+ ADD 1 COR 1
6413/22 + ADD 1
+ ADD 1 COR 1
CORLX

EU positions for international negotiations

50. **Item transferred from meeting on Wednesday** 5911/22
Council Decision on the position to be adopted, on behalf of the 5913/22
European Union, within the EEA Joint Committee, in respect of AELE
an amendment to Annex IV (Energy) to the EEA Agreement
(Energy Performance of Buildings Directive)
Adoption
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