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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	9752/21 + ADD 1-2
Subject:	Council Decision on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States (OACPS), of the other part - Statements

STATEMENTS FOR THE MINUTES OF COREPER AND COUNCIL

Statement by the Commission

1. The Commission takes note of the intention of the Council to adopt a decision amending the Commission's proposal on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part (COM (2021)312 final), to change the nature of the Partnership Agreement from an EU-only agreement to a mixed agreement.

2. The Commission recognises the political need to see the Partnership Agreement signed as swiftly as possible.
3. However, the Commission maintains its legal assessment on the EU-only nature of the Partnership Agreement, against which no legal arguments have been raised.
4. Therefore, the Commission does not accept that the provisions of the Agreement listed in the new Article 4 are excluded from provisional application due to them allegedly not falling under Union competence. More fundamentally, the Commission considers that the Council does not have the power to amend in substance the text of an agreement as annexed to a proposal for the adoption of a decision to sign the agreement. The negotiator has the sole prerogative to negotiate the text of the agreement and propose its signature to the Council.
5. The Commission reserves its right to make use, if necessary, of all the legal means at its disposal to ensure the respect of the provisions of the Treaties.

Statement by Hungary

on Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part

The adoption of the Programme of Action of the International Conference on Population and Development (ICPD) and the Beijing Platform for Action of the Fourth World Conference on Women marked a remarkable consensus. They placed the enjoyment of human rights at the heart of development and important gains in the fields of health, equality between men and women and education have been achieved since their adoption. These fields are at the core of the 2030 Agenda for Sustainable Development incorporating the founding principles of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination.

Hungary remains dedicated to its human rights commitments, including the protection and promotion of women's rights and 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 the international law. Furthermore, equality between women and men is enshrined as a fundamental value in the Treaties of the European Union, in particular in Article 2 of the TEU and Article 8 of the TFEU. In line with these and its national legislation, Hungary interprets the concept of "gender" as reference to "sex" and the concept of "gender equality" as reference to the "equality between men and women".

Hungary is deeply committed to the implementation of the ICPD Programme of Action and Beijing Platform for Action as well as the 2030 Agenda and its Sustainable Development Goals, serving also as basic references in the fields of sexual and reproductive health and reproductive rights. Hungary notes, that the term of "sexual and reproductive health and rights (SRHR)" and related issues, like „comprehensive sexual and reproductive health information and education" are lacking consensual legal definition at international level, including within the European Union. Moreover the topic concerns legal definitions that fall under the exclusive competences of the Member States. Therefore these issues are interpreted and promoted by Hungary in the context of the 2030 Agenda, the ICPD Programme of Action and the Beijing Declaration and Platform for Action and in line with its national legislation. Hungary notes in this regard that the UNESCO international technical guidance on sexuality education, as referred to in the Agreement, has not been adopted or approved by the EU or all of its Member States, and thus may not be regarded as part of the EU acquis in any way. Hungary agrees to the signing and provisional application of the Agreement with the understanding that the mere reference in the Agreement to that UNESCO international technical guidance does not change the legal situation in this respect, does not create a precedent with regard to future references in other international agreements or EU documents and does not make in any way the technical guidance binding to the Parties. Moreover, also in a general context, Hungary deems that no legal precedent could stem from the adoption of this document regarding the interpretation of SRHR.

Taking into account that illegal migratory flows are closely related to various forms of organized crime, which pose a threat to all countries and require a comprehensive approach in addressing migratory flows, Hungary maintains that the references in the Agreement to migration management is to be understood as curbing mixed migration flows in the context of Article 79(1) TFEU, i.e. only in full respect of the objective, enshrined thereof, for the prevention of, and enhanced measures to combat illegal immigration, as well as the right of Member States as set out in Article 79(5) TFEU, according to which the Member States right to determine volumes of admission of third-country nationals shall not be affected. This is without prejudice to the general policy of Hungary aimed at stemming illegal migration instead of managing the phenomenon.

As regards references in the Agreement to safe, orderly and regular migration and the Global Compact for Safe, Orderly and Regular Migration (GCM) Hungary notes that the GCM has not been adopted or approved by the EU or all of its Member States, and thus may not be regarded as part of the EU acquis in any way. Hungary agrees to the signing and provisional application of the Agreement with the understanding that the above references in the Agreement do not change the legal situation in this respect, do not create a precedent with regard to future references in other international agreements or EU documents and do not make in any way the GCM binding to the Parties.

Statement by Ireland

Ireland recalls that, if the Parties decided, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which were to be concluded by the EU pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of such future specific agreements would not bind Ireland unless the EU, simultaneously with Ireland as regards its previous bilateral relations, notifies the Organisation of African, Caribbean and Pacific States that Ireland has become bound by such future specific agreements as part of the EU in accordance with Protocol No 21 on the position of Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

Likewise, any subsequent EU internal measures which were to be adopted pursuant to the aforementioned Title to implement this Agreement would not bind Ireland unless it has notified its wish to take part in or accept such measures in accordance with Protocol No 21.