



Brussels, 15 February 2023  
(OR. en)

6179/23  
CRS CRP 3

**SUMMARY RECORD**  
PERMANENT REPRESENTATIVES COMMITTEE  
25 and 27 January 2023

**I. Adoption of the agenda**

5543/23 OJ CRP1 3  
5596/1/23 REV 1 COR 1 OJ CRP2 3

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)**

**Internal Market and Industry**

2. Regulation on machinery products 5424/1/23 REV 1  
*Analysis of the final compromise text with a view to agreement*

The Committee endorsed the text of the final compromise and mandated the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading in accordance with this compromise (subject to revision by the legal linguists), the Council would approve the European Parliament's position and the act shall be adopted.

## COREPER (PART 2)

WEDNESDAY 25 JANUARY 2023

### General Affairs

13. Meeting of the Council (General Affairs) on 6 February 2023:  
Preparation

- a) Priorities of the Swedish Presidency  
*Presentation by the Presidency*  
*Exchange of views*

The Committee prepared this item for the Council meeting.

- b) Preparation of the special European Council on 9-10 February 2023: Conclusions 5237/23  
*Exchange of views*

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

- c) Other items in connection with the Council meeting

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

14. IPCR working methods under the Swedish Presidency 5241/23  
*Information from the Presidency*

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

15. Relations with the EP – January 2023  
*Debriefing*

The above-mentioned item was withdrawn.

## **Foreign Affairs**

16. Meeting of the Council (Foreign Affairs) on 23 January 2023:  
Follow-up

The Committee took note of the main outcomes of the Council meeting.

17. Accountability for international crimes in Ukraine  
*State of play*

The Committee took note of the information provided by the Presidency, Commission and EEAS and held an exchange of views. The Committee remains seized and will revert at one of its forthcoming meetings.

18. Use of frozen assets to support Ukraine's reconstruction  
*State of play*

The Committee took note of the information provided by the Presidency, Commission and EEAS and held an exchange of views. The Committee will revert at one of its next meetings.

## **Economic and Financial Affairs**

19. Meeting of the Council (Economic and Financial Affairs) on  
14 February 2023: Agenda

The Presidency presented the main items on the agenda.

## **Justice and Home Affairs**

20. E-evidence 5448/23  
a) Regulation on European Production and Preservation 5449/23  
Orders for e-evidence  
b) Directive on appointment of legal representatives for  
gathering evidence  
*Analysis of the final compromise text with a view to agreement*

The Committee analysed and confirmed agreement on the final compromise text. The Committee also authorised the Chair to send a letter to inform the European Parliament with a view to an agreement.

### **Statement by Finland**

Finland recognizes the changing nature of criminality and the growing importance of cross-border cooperation to obtain electronic evidence in criminal proceedings swiftly and effectively.

During the negotiations, Finland has consistently underlined the necessity to find the right balance between effective law enforcement and criminal investigation and the protection of fundamental rights. From this perspective, the notification mechanism and its scope as well as the grounds for refusal are of particular importance. While the text has improved during the negotiations, we consider the mechanism still inadequate. We believe that in relation to

production orders for the most sensitive data, judicial assessment should also be done by the competent authorities in the enforcing State.

Furthermore, Finland regrets that the grounds for refusal do not include a ground that would allow the enforcing authority to refuse a production order for traffic and content data in cases where the use of such measure is restricted under the law of the enforcing State to certain offences or to offences punishable by a certain minimum threshold.

#### Statement by Germany

1. Die deutsche Bundesregierung stimmt dem Verordnungsvorschlag über Europäische Herausgabe- und Sicherungsanordnungen für elektronische Beweismittel in Strafsachen (im Folgenden: Verordnung) in der Fassung des Trilog-Kompromisses vom 20. Januar 2023 zu, weil damit ein dringend benötigtes Instrumentarium zur effektiveren Bekämpfung von Kriminalität unter Nutzung digitaler Medien geschaffen wird.
2. Die Bundesregierung bedauert zugleich, dass die Erwägungsgründe mit Blick auf die Handhabung der Zurückweisungsgründe die erforderliche Klarheit vermissen lassen. Aus dem Rechtsstaatsprinzip ergeben sich für die notifizierte Behörde zweierlei Pflichten: Sie muss die ihr übermittelten Herausgabeanordnungen zum einen einer Prüfung unterziehen und zum anderen die in Artikel 10a genannten individualrechtsschützenden Zurückweisungsgründe geltend machen, wenn der jeweilige Tatbestand erfüllt ist. Insbesondere dann, wenn die Voraussetzungen des nach wie vor sehr engen grundrechtlichen Zurückweisungsgrundes vorliegen, sollte für eine Ermessensentscheidung kein Raum mehr sein. Hier wären klarere Formulierungen in den Erwägungsgründen 42b ff. angebracht gewesen.
3. Weiter ist es unter rechtsstaatlichen Gesichtspunkten unerlässlich, dass Rechtsschutz nicht nur gegen Herausgabeanordnungen und im Anordnungsstaat besteht, sondern ebenso gegen Sicherungsanordnungen und im Vollstreckungsstaat. Die Bundesregierung bedauert, dass Artikel 17 nur die beiden erstgenannten Rechtsschutzaspekte explizit regelt, betrachtet jedoch die Möglichkeit umfassenden Rechtsschutzes als vom Wortlaut abgedeckt.
4. Schließlich halten wir die in Erwägungsgrund 35e (Auslegung des Wohnsitzkriteriums) gewählte Formulierung zur Absicht, sich in einem bestimmten Mitgliedstaat niederzulassen, für zu vage. Die Beschränkung auf eine konturenlose „Manifestation“ der Intention lässt zu breite Interpretationsspielräume und dehnt damit den Anwendungsbereich des Wohnsitzkriteriums über Gebühr aus. Hierdurch kann es in der Praxis zu weniger Notifizierungen kommen, als nach der ratio der Verordnung angezeigt wäre.

### Courtesy translation

1. The German Federal Government approves the version of the proposed Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (hereinafter "Regulation") agreed on 20 January 2023 following trilogue negotiations. The Regulation provides an urgently needed set of tools for more effectively combating crimes that are committed using digital media.
2. At the same time, the Federal Government finds it regrettable that the recitals lack the necessary clarity on how grounds for refusal are to be handled in practice. Under the rule of law, there are two obligations incumbent upon notified authorities: they must assess Production Orders transmitted to them, and they must also invoke all grounds for refusal relating to the protection of the rights of individuals that are specified in Article 10a whenever the relevant conditions are met. There should be no scope for discretion, in particular in cases in which the narrowly defined ground for refusal on the basis of fundamental rights is met. Clearer wording on these points in Recitals 42b et seqq. would have been useful.
3. In respect of the rule of law, it is also essential that legal remedies be available not only against Production Orders and in the issuing State, but also against Preservation Orders and in the enforcing State. In the Federal Government's view, it is regrettable that Article 17 only explicitly provides for the first two options. However, the Federal Government considers that the wording encompasses the possibility of comprehensive legal protection.
4. Lastly, the Federal Government regards the wording "the intention to settle" in a particular Member State, as used in Recital 35e (interpretation of the notion of residence), as too vague. An undefined "manifestation" of an intention to settle leaves too much room for interpretation, unduly broadening the scope of the residency criterion. In practice, this could result in fewer notifications than ought actually to be issued in the light of the rationale behind the Regulation.

21. The external dimension of migration: MOCADDEM action file and implementation reports  
*Exchange of views*

The Committee held an exchange of views.

## FRIDAY 27 JANUARY 2023

### Foreign Affairs

22. Russian aggression against Ukraine  
*Exchange of views*

5268/23  
5270/23  
5246/23  
5248/23 + ADD 1

The Committee held an exchange of views and agreed to revert at its next meeting.

IV. Any other business

**COREPER (PART 1)**

None.

**COREPER (PART 2)**

European Political Community

The Committee took note of the information provided by the cabinet of the President of the European Council.

PEC visit to Kyiv

The Committee took note of the information provided by the cabinet of the President of the European Council.

Oil price cap

The Committee took note of the information provided by several delegations.

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**"I" items approved**

**COREPER (PART 1)**

**Institutional Affairs**

**3. Minutes of Council meetings**

*Approval*

- |                                  |                                      |
|----------------------------------|--------------------------------------|
| a) AGRIFISH 21.11.2022           | 15000/22 + COR 1<br>+ ADD 1          |
| b) Extra TTE (Energy) 24.11.2022 | 15350/22<br>+ ADD 1                  |
| c) COMPET 1-2.12.2022            | 15905/2/22 REV 2<br>+ 15905/22 ADD 1 |

**Other**

- |   |                   |
|---|-------------------|
| 4. Attendance of a third party at the Youth Working Party on 30 January 2023<br><i>Approval</i>                                       | 5207/23<br>YOUTH  |
| 5. Attendance of a third party at the Working Party on Competitiveness and Growth (High Level) on 16 February 2023<br><i>Approval</i> | 5405/23<br>COMPET |
| 6. Attendance of a third party at the Working Party on Energy on 31 January 2023<br><i>Approval</i>                                   | 5546/23<br>ENER   |

**Transparency**

- |  |         |
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| 7. Public access to documents: request 22/2733<br><i>Decision to make the statements entered in the Council minutes public</i> | 5494/23 |
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**Health**

- |  |                  |
|--|------------------|
| 8. Regulation amending Regulations (EU) 2017/745 and (EU) 2017/746 as regards transitional provisions for certain medical devices (MDR) and in vitro diagnostic medical devices (IVDR)<br><i>Mandate for negotiations with the European Parliament</i> | 5369/23<br>PHARM |
|--|------------------|



## Employment and Social Policy

9. Council Recommendation on the economic policy of the euro area 2023 (EAR) 5278/23  
*Approval* SOC

## Fisheries

10. Council Regulation fixing for 2023 the fishing opportunities for certain fish stocks and groups of fish stocks in the Mediterranean and Black Seas 5373/23  
*Adoption* + ADD 1 REV 1  
16125/22  
PECHE

### Statement by Spain on the Mediterranean Regulation

“Spain would like to state that there are two provisions on the regulation, related to the maximum limit of catches for blue and red shrimps and the fishing effort for longliners, against which the Kingdom of Spain has filed a lawsuit before the European Court of Justice that are pending of sentence yet.”

### Statement on Spain’s negative vote on the Regulation on fishing opportunities for 2023 in the Mediterranean and the Black Sea

“Spain regrets having to vote against the Presidency’s final compromise proposal regarding the Regulation on fishing opportunities for 2023 in the Mediterranean and the Black Sea at the Agriculture and Fisheries Council of 11-12 December for the second year in a row.

Although the previous proposal has been improved upon, which we appreciate, these improvements were not sufficient to enable Spain to vote in favour, despite the efforts made and proposals put forward by Spain, which have not ultimately been accepted.

The European Commission and the Kingdom of Spain clearly have two different approaches to the implementation of the multiannual plan for demersal resources in the Western Mediterranean and to achieving that plan’s objective of attaining the maximum sustainable yield for the various fishing stocks.

While the European Commission considers that it is still necessary to continue reducing the number of fishing days for towed gear in the Mediterranean, Spain, on the basis of the scientific reports available, both from the STECF and from other scientific bodies, continues to take the view that increasing the selectivity of towed gear is, from a socioeconomic perspective, the most appropriate and balanced way to make further progress in improving the biological status of the various stocks, which are already showing positive overall signs of recovery and reduced fishing mortality. In fact, there are STECF prediction scenarios that indicate that for red shrimp stocks in Spanish waters, if this selectivity measure were applied to half of the fleet, with no further reduction in fishing days in 2023, the maximum sustainable yield target would be reached in 2025.

However, in Spain's view, the final compromise proposal does not provide sufficient incentive for improving the selectivity of towed gear to operators in the fishing sector, who need this incentive in order to cope, in the short and medium term, with the loss of income that implementing this measure would entail due to the reduction in catch weight it would cause. Under the final compromise proposal, the fishing sector would see its fishing days reduced once again in 2023 – a reduction in fishing activity of almost three months net per vessel on average since the plan was first implemented in 2020, which means that Spanish fishing vessels will spend more days berthed in ports than fishing next year. This is seriously jeopardising the social and economic viability of these vessels and their fishing businesses, most of which are family-run, as well as the sustainability of the ports, markets and coastal communities of the Spanish Mediterranean which depend on this activity.

In any event, Spain will continue to work with the European Commission and the other Member States concerned by the multiannual plan and in achieving its objectives.”

- |     |  |                                   |
|-----|--|-----------------------------------|
| 11. | Council Regulation fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks<br><i>Political agreement</i><br><i>Adoption</i> | 5370/23<br>5280/23<br>PECHE<br>UK |
|-----|--|-----------------------------------|

## Delegated or Implementing Acts

### **Internal Market and Industry**

12. Commission Delegated Regulation (EU) .../... of 18.11.2022 amending Regulation (EU) 2019/1009 of the European Parliament and of the Council as regards the minimum content of calcium oxide in straight solid inorganic macronutrient fertilisers  
*Delegated act - Intention not to raise objections*
- 5441/23  
15399/22  
ENT

#### Joint statement by Spain and Slovakia

“The Slovak Republic and Spain welcome the opportunity of incorporating calcium chelates to Annex I of Regulation (EU) 2019/1009. In fact, as it happens with micronutrients, the use of chelating and complexing agents for Calcium and Magnesium is very useful as they help for a better application of these nutrients. However, we do not agree with the current wording of this delegated act.

The technical issues for our discrepancy are detailed below:

1. It implies lowering the quality of all calcium fertiliser products when, apparently, this change of concentration is aimed to allow fertiliser products based on chelated calcium.
2. The approach taken differs from the one used in the Regulation with micronutrient chelates, where there is a requirement for a minimum percentage of the chelated nutrient.
3. Thus, this delegated act is not coherent neither with the requirements for fertiliser products based on chelated micronutrients, nor with the function of a chelating agent itself. As pointed out by our experts, as far as the chelating agent is present, there is no need for the Calcium to be chelated.
4. The wording does not reflect either the provisions taken in Commission Regulation (EU) 2020/1666, where the 9% applied to “Chemically obtained product containing calcium chelate of iminodisuccinic acid as essential ingredient, without addition of organic nutrients of animal or vegetable origin” and it was asked that this 9 % CaO Calcium expressed as CaO was chelated by iminodisuccinic acid (IDHA) water-soluble.
5. While Commission says that the amendment aims only to Calcium chelates, the truth is that, if there is any Mg chelating agent fulfilling CMC 1 requirements and complying with the minimum concentration set on PFC 1(C)(I)(a)(i), there is nothing to prevent it for being used, with the very same problems already expressed for calcium chelates.
6. Besides, we do not see any provision on the labelling, tolerances, etc. creating legal uncertainty.

Thus, while we would like to facilitate the marketing of fertiliser products based on Calcium and Magnesium chelates, we believe that the previous technical issues have not been addressed in the present Delegated Act and we cannot endorse it.”

## **COREPER (PART 2)**

**WEDNESDAY 25 JANUARY 2023**

### **Judicial Affairs**

- |     |  |                |
|-----|--|----------------|
| 23. | Case C-623/22<br><i>Information note</i>   | 5395/23<br>JUR |
| 24. | Case T-738/22 (Igor Arkadyevich Rotenberg v. Council of the European Union)<br><i>Information note</i>                                 | 5458/23<br>JUR |
| 25. | Case T-741/22 (Pavel Ezubov v. Council of the European Union)<br><i>Information note</i>   | 5459/23<br>JUR |
| 26. | Case T-744/22 (Maya Tokareva v. Council of the European Union)<br><i>Information note</i>  | 5349/23<br>JUR |
| 27. | Case T-763/22 (Igor Albertovich Kesaev v. Council of the European Union)<br><i>Information note</i>                                    | 5418/23<br>JUR |
| 28. | Case T-797/22 (Ordre néerlandais des avocats du barreau de Bruxelles e.a. v. Council of the European Union)<br><i>Information note</i> | 5433/23<br>JUR |
| 29. | Case T-798/22 (Ordre des avocats de Paris et Couturier v. Council of the European Union)<br><i>Information note</i>                    | 5455/23<br>JUR |

### **Institutional Affairs**

#### **Appointments**

- |     |   |                           |
|-----|---|---------------------------|
| 30. | Three members and two alternate members (SE) of the Committee of the Regions<br><i>Adoption</i> | 5147/23<br>5145/23<br>CDR |
| 31. | A member and an alternate member (ES) of the Committee of the Regions<br><i>Adoption</i>        | 5143/23<br>5142/23<br>CDR |

## **Other**

32. Attendance of a third party at the Working Party Structural Measures and Outermost Regions on 30 January 2023  
*Approval* 5378/23  
COH
33. Attendance of third parties at the Working Party on the 2030 Agenda for Sustainable Development on 1 February 2023  
*Approval* 5419/1/23 REV 1  
SUSTDEV
34. Attendance of third parties at the Council Security Committee meeting on 1-2 February 2023  
*Approval* 5407/23  
CSC
35. Attendance of a third party at the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Person on 6 February 2023  
*Approval* 5275/23  
JAI  
FREMP

## **Transparency**

36. Public access to documents: request 23/0047  
*Decision to make the statements entered in the Council minutes public* 5503/23  
API

## **Economic and Financial Affairs**

37. Council Implementing Decision authorising Romania to extend a VAT derogation  
*Adoption* 5341/23  
5082/23  
FISC
38. Council Regulation as regards administrative cooperation in the field of excise  
*Adoption* 5342/23  
5083/23  
FISC
39. New Luxembourg commemorative coin  
*Information note* 5028/23  
UEM
40. New Maltese commemorative coins  
*Information note* 5030/23  
UEM
41. Council Decision approving the external auditors of the Oesterreichische Nationalbank  
*Adoption* 5113/23  
5045/23  
UEM

## **General Affairs**

42. EP Resolutions and Decisions (January 2023)  
*Information note* 5435/23  
PE-RE
43. Council Decision on the extension of the advantages conferred  
on the joint undertaking Hochtemperatur-Kernkraftwerk GmbH  
*Adoption* 5099/23  
5102/23  
ATO
44. Council Decision on the extension of the joint undertaking status  
of Hochtemperatur-Kernkraftwerk GmbH  
*Adoption* 5098/23  
5101/23  
ATO

## **Justice and Home Affairs**

45. Council Decision authorising Member States to ratify the second  
additional protocol to the Budapest Convention  
*Preparation for the adoption* 5426/23  
6438/22 + ADD 1  
14898/21  
JAI

## **Foreign Affairs**

47. Conclusions on EU priorities for cooperation with the Council  
of Europe 2023-2024  
*Approval* 5262/23 + ADD 1  
COSCE

### Statement by Hungary

Set out in doc. 5262/23 ADD 1.

## Statement by Poland

1. “Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the Polish national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union. For these reasons, the expression "gender equality" will be interpreted by Poland as referring to women and men, in accordance with Article 2 and 3 of the Treaty on European Union and Article 8 and 157 para. 3 of the Treaty on the Functioning of the European Union.
2. Poland underlines the importance of recognizing by the European Union all persons who belong to vulnerable groups or who face discrimination. Any list mentioning those individuals should most comprehensively cover various grounds of discrimination. Poland considers the list of persons and groups mentioned in paragraphs 22 and 25 not sufficient.
3. Poland underlines the importance of the procedures for adoption of any documents by the Council, which should always be observed and not circumvented via other mechanisms, especially if the consensus among Member States has not yet been reached. Therefore, Poland underlines that the legislative proposals under New Pact on Migration and Asylum have not been adopted yet – and unless that changes, Poland rejects any attempt to endorse, certify or otherwise positively assess it via other acts adopted by the Council.”

48.	EU-Latin America and Caribbean Digital Alliance <i>Authorisation to negotiate an NBI</i>	5451/23 COLAC
51.	UfM Ministerial Declaration on Sustainable Urban Development <i>Authorisation to negotiate an NBI</i>	15770/22 MED
52.	Council Decision and Implementing Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine <i>Decision to use the written procedure for the adoption</i>	5317/23 5314/23 5316/23 CORLX
53.	Council Decision concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine: review <i>Decision to use the written procedure for the adoption</i>	5390/23 5389/23 CORLX
54.	Council Decision and Implementing Regulation concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine <i>Adoption</i>	5233/23 5230/23 5232/23 CORLX

## **EU positions for international negotiations**

55. Council Decision on the EU position to be adopted within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (CEDEFOP)  
*Adoption* 16138/22  
16137/22 + ADD 1  
AELE
56. Council Decision on the EU position to be adopted within the EEA Joint Committee concerning an amendment to Annex XI and Protocol 37 to the EEA Agreement (Cybersecurity Act)  
*Adoption* 16144/22  
16143/22 + ADD 1  
AELE
57. Council Decision on the EU position to be adopted within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (Cybersecurity Centre)  
*Adoption* 16147/22  
16146/22 + ADD 1  
AELE
58. Council Decision on the EU position to be adopted within the EEA Joint Committee concerning an amendment to Annex IX to the EEA Agreement (Central Securities Depository - Liechtenstein)  
*Adoption* 15840/22  
15839/22 + ADD 1  
AELE
59. Council Decision on the EU position to be adopted within the EEA Joint Committee concerning an amendment to Annex XI and Protocol 37 to the EEA Agreement (NIS)  
*Adoption* 16141/22  
16140/22 + ADD 1  
AELE

## **FRIDAY 27 JANUARY 2023**

### **Institutional Affairs**

#### **Other**

60. Attendance of third parties at the Working Party on Latin America and the Caribbean on 1 February 2023  
*Approval* 5643/23  
COLAC



## **Justice and Home Affairs**

46. Transferred from Wednesday's meeting 5461/23  
Note verbale to the Council of Europe in relation to the note EPPO  
verbale of the Swiss Confederation concerning EPPO  
*Approval*

## **Foreign Affairs**

49. Transferred from Wednesday's meeting 5799/23 + COR 1  
EU-Moldova Association Council (Brussels, 7 February 2023) COEST  
*Establishment of the EU position*
50. Transferred from Wednesday's meeting 5485/23  
EU-Republic of Korea Green Partnership COASI  
*Authorisation to negotiate an NBI*
-