



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

**PV(2021) 2399 final**

*- English translation of the French version which is authentic -*

Strasbourg, 18 January 2022

# TEXTE EN

## MINUTES

**of the 2399<sup>th</sup> meeting of the Commission**

**held in Brussels**

**(Berlaymont)**

**Wednesday 1 December 2021**

**(morning)**

—

**PV(2021) 2399 final**

*- English translation of the French version which is authentic -*

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**Single sitting: Wednesday 1 December 2021 (morning)**

The sitting opened at 9.08 with Ms von der LEYEN, President, in the chair.

**Present:**

|                  |                          |                        |
|------------------|--------------------------|------------------------|
| Ms von der LEYEN | President                |                        |
| Ms VESTAGER      | Executive Vice-President |                        |
| Mr DOMBROVSKIS   | Executive Vice-President |                        |
| Mr ŠEFČOVIČ      | Vice-President           |                        |
| Ms JOUROVÁ       | Vice-President           |                        |
| Ms ŠUICA         | Vice-President           |                        |
| Mr SCHINAS       | Vice-President           |                        |
| Mr HAHN          | Member                   | Items 1 to 9           |
| Ms GABRIEL       | Member                   |                        |
| Mr SCHMIT        | Member                   |                        |
| Mr GENTILONI     | Member                   |                        |
| Mr WOJCIECHOWSKI | Member                   |                        |
| Mr BRETON        | Member                   |                        |
| Ms FERREIRA      | Member                   |                        |
| Ms KYRIAKIDES    | Member                   |                        |
| Mr REYNDEERS     | Member                   |                        |
| Ms DALLI         | Member                   |                        |
| Ms JOHANSSON     | Member                   |                        |
| Mr LENARČIČ      | Member                   | Items 1 to 9 (in part) |
| Ms URPILAINEN    | Member                   |                        |
| Ms SIMSON        | Member                   |                        |
| Mr SINKEVIČIUS   | Member                   |                        |
| Ms McGUINNESS    | Member                   |                        |

Absent:

|                        |                                         |
|------------------------|-----------------------------------------|
| Mr TIMMERMANS          | Executive Vice-President                |
| Mr BORRELL i FONTELLES | High Representative /<br>Vice-President |
| Ms VĂLEAN              | Member                                  |
| Mr VÁRHELYI            | Member                                  |

The following sat in to represent absent Members of the Commission:

|             |                                     |                         |
|-------------|-------------------------------------|-------------------------|
| Mr MAGGI    | Member of Mr TIMMERMANS's staff     |                         |
| Mr SERRANO  | Chef de cabinet to Mr BORRELL       |                         |
| MR SOURD    | Expert in Mr LENARČIČ's Office      | Items 9 (in part) to 14 |
| MR NEGREANU | Deputy Chef de cabinet to Ms VĂLEAN |                         |
| MR HORVÁTH  | Expert in Mr VÁRHELYI's Office      |                         |

The following also sat in:

|                       |                                                                                |         |
|-----------------------|--------------------------------------------------------------------------------|---------|
| Mr SEIBERT            | Chef de cabinet to the PRESIDENT                                               |         |
| Mr CALLEJA CRESPO     | Director-General, Legal Service                                                |         |
| Ms AHRENKILDE HANSEN  | Director-General, DG Communication                                             |         |
| Mr MAMER              | Head of the Spokesperson's Service and Chief<br>Spokesperson of the Commission |         |
| Ms PETKOVA            | Director of Coordination and Administration in the<br>PRESIDENT's Office       |         |
| Mr ANDRESEN GUIMARÃES | Adviser in the PRESIDENT's Office                                              | Item 9  |
| Ms HILI               | Adviser in the PRESIDENT's Office                                              | Item 14 |
| Ms SCHULTZ            | Policy Coordinator in the PRESIDENT's Office                                   |         |
| Ms LODRANT            | Policy Coordinator in the PRESIDENT's Office                                   | Item 9  |
| Ms BUKA               | Secretariat-General                                                            |         |

Secretary: Ms JUHANSONE, Secretary-General, assisted by Ms ALLOUIS-LE LOSTEC, Head of Unit in the Secretariat-General.

**1. AGENDAS**

**(OJ(2021) 2399/FINAL; SEC(2021) 2399/FINAL)**

The Commission took note of that day's agenda and of the tentative agendas for forthcoming meetings.

**2. WEEKLY MEETING OF CHEFS DE CABINET**

**(RCC(2021) 2399)**

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 29 and Tuesday 30 November 2021.

**3. APPROVAL OF THE MINUTES**

**(PV(2021) 2396; PV(2021) 2396, 2<sup>ND</sup> PART)**

The Commission approved the minutes of its 2396<sup>th</sup> meeting of 10 November 2021 and decided to hold over approval of the minutes of its 2397<sup>th</sup> and 2398<sup>th</sup> meetings of 17 and 23 November 2021 until a later meeting.

**4. INTERINSTITUTIONAL RELATIONS**

**(RCC(2021) 211)**

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held by videoconference on Friday 26 November 2021 (RCC(2021) 211).

The Commission approved the lines proposed for the following points:

- **European data governance (Data Governance Act) (Regulation) – NIEBLER report – 2020/0340 (COD)**

Line set out in SI(2021) 352/2.

- **General Union Environment Action Programme to 2030 (Decision) – O’SULLIVAN report – 2020/0300 (COD)**

Line set out in SI(2021) 353/2.

- **European Year of Youth 2022 (Decision) – VERHEYEN report – 2021/0328 (COD)**

Line set out in SI(2021) 354/2.

- **Accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Council Decision) – 2021/0208 (NLE)**

Line set out in SI(2021) 357.

- **Framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level (Council Regulation) – 2021/0294 (NLE)**

Line set out in SI(2021) 360/2.

The Commission approved the lines set out for the following points, for transmission to Parliament:

- **Commission replies to the non-legislative resolutions adopted by Parliament at its part-session of October I 2021 (Part I)**

Line set out in SP(2021) 735/2.

- **Commission replies to the legislative resolutions (and list of non-legislative resolutions without formal reply) adopted by Parliament at its November I 2021 part session**

Line set out in SP(2021) 747.

The Commission took note of the following points:

- **Strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (Directive) – RAFAELA & PETER-HANSEN report – 2021/0050 (COD)**

Information set out in SI(2021) 355.

- **Results of Parliament’s November II 2021 part-session**

Information set out in SP(2021) 717.

The Commission approved the line set out for the following point, for transmission to the Committee of the Regions:

- **Follow-up to opinions of the Committee of the Regions – Plenary session of June/July 2021**

Line set out in SR(2021) 25/2.

## **5. COORDINATION OF EXTERNAL ACTION (RCC(2021) 48)**

The Commission took note of the operational conclusions in RCC(2021) 48 of the meeting of the Group for External Coordination (EXCO) held on Wednesday 24 November 2021.

## **6. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS**

### **6.1. WRITTEN PROCEDURES APPROVED**

**(SEC(2021) 397 ET SEQ.)**

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 22 and 28 November 2021.

### **6.2. EMPOWERMENT**

**(SEC(2021) 398 ET SEQ.)**

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 22 and 28 November 2021.

### **6.3. DELEGATION / SUBDELEGATION OF POWERS**

**(SEC(2021) 399 ET SEQ.)**

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedures between 22 and 28 November 2021 archived in Decide.

### **6.4. SIGNIFICANT WRITTEN PROCEDURES**

**(SEC(2021) 400 AND /2)**

The Commission took note of the significant written procedures for which the time limit expired between 29 November and 3 December 2021, and of the finalisation written procedure initiated following the weekly meeting of Chefs de cabinet on Monday 29 November 2021.

### **6.5. GRANTING OF AN EMPOWERMENT RELATING TO THE ADOPTION OF DECISIONS UPDATING CERTAIN DATA RELEVANT FOR THE CALCULATION OF LUMP SUM AND PENALTY PAYMENTS IN**

***ACCORDANCE WITH THE COMMISSION'S POLICY ON THE  
APPLICATION OF ARTICLE 260 TFEU  
(C(2021) 8796)***

The Commission decided to grant an empowerment to the PRESIDENT to adopt, on behalf of the Commission and under its responsibility, decisions updating certain data relevant for the calculation of lump sum and penalty payments in accordance with the Commission's policy on the application of Article 260 TFEU, subject to the conditions in Articles 2 to 5 of the Decision.

The Commission adopted the Decision in C(2021) 8796.

***6.6. GRANTING OF EMPOWERMENTS RELATING TO REGULATION  
(EU) 2021/947 OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ESTABLISHING THE NEIGHBOURHOOD,  
DEVELOPMENT AND INTERNATIONAL COOPERATION  
INSTRUMENT – GLOBAL EUROPE  
(C(2021) 8658)***

The Commission decided to grant an empowerment to the High Representative of the Union for Foreign Affairs and Security Policy in his capacity of Vice-President of the Commission to adopt, on behalf of the Commission and under its responsibility, measures relating to Regulation (EU) 2021/947 of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, if based on programming documents, subject to the conditions laid down in Articles 4 to 10 of the Decision.

The Commission adopted the Decision in C(2021) 8658.

**7. ADMINISTRATIVE AND BUDGETARY MATTERS**

**(SEC(2021) 401/2 AND /3)**

**ADMINISTRATIVE MATTERS**

**(PERS(2021) 113 AND /2)**

**7.1. EUROPEAN HEALTH EMERGENCY PREPAREDNESS AND  
RESPONSE AUTHORITY – APPOINTMENT OF AN AD15/16  
DIRECTOR-GENERAL**

**(PERS(2021) 79 TO /4)**

The Commission had before it the list of applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director-General of the European Health Emergency Preparedness and Response Authority (HERA) (PERS(2021) 79 and /2).

It took note of the opinions of the Consultative Committee on Appointments of 15 and 26 November 2021 (PERS(2021) 79/3 and /4).

The Commission then examined the applicants' qualifications for the post. On a proposal from Mr HAHN, in agreement with the PRESIDENT and after consulting Ms KYRIAKIDES, it then decided to appoint Mr Pierre DELSAUX to the post.

This decision would take effect on a date to be determined.

**7.2. SECRETARIAT-GENERAL – AMENDMENT OF THE ORGANISATION  
CHART**

**(SEC(2021) 416 AND /2)**

The Commission took note of the information in point 1 of PERS(2021) 113 and, on a proposal from Mr HAHN, in agreement with the PRESIDENT and Mr BORRELL, decided to approve the transfer of resources dedicated to the relations with the European Economic Area (Norway, Iceland and

Liechtenstein), including contacts with the Secretariat of the European Free Trade Association (EFTA), Switzerland, Andorra, Monaco and Saint-Martin, from the European External Action Service to the European Commission.

On a proposal from Mr HAHN, in agreement with the PRESIDENT, the Commission also decided:

- to amend the organisation chart of the Secretariat-General and change the name of the current Directorate SG.UKS ‘Service for the EU-UK Agreements’ to Directorate SG.H ‘Western European Partners’;
- to create within that Directorate a new unit SG.H.3, called ‘EEA, Switzerland and Microstates’;
- to change the name of the Principal Adviser ‘EU-UK Agreements’ to Principal Adviser ‘Western European Partners’;
- to create a new post of principal adviser ‘Commission Representative to COREPER I’;
- to approve the new organisation chart of the Secretariat-General set out in SEC(2021) 416/2.

Unless indicated otherwise, these decisions would take effect on 1 January 2022.

**8. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, AND THE COMMITTEE OF THE REGIONS – ADDRESSING TOGETHER CURRENT AND NEW COVID-19 CHALLENGES  
(COM(2021) 764 TO /3; RCC(2021) 221)**

The PRESIDENT introduced the presentation of the Communication entitled ‘Addressing together current and new COVID-19 challenges’, the drafting of which had been complex due to the rapidly evolving epidemiological situation and, in particular, the recent and worrying appearance of the new Omicron variant.

She said that, to date, the COVID-19 virus had led to 150 million infections and caused almost 5 million deaths worldwide.

She commended South Africa for having identified this new variant and for its transparency in this regard, even if its announcements had, within a few hours, unfortunately resulted in decisions to restrict travel from that country.

She noted that every day counted in the fight against the pandemic and expressed satisfaction that the instruments put in place by the EU for this purpose had worked well.

She stressed the need to adapt existing vaccines to the Omicron variant, given it was spreading rapidly and we did not yet know how dangerous it was. It was also necessary to step up vaccination and booster campaigns to achieve a high level of coverage, given that vaccines were currently the best protection against the virus. She pointed out the importance of also wearing masks and complying with physical distancing rules.

The PRESIDENT then invited Mr SCHINAS and Ms KYRIAKIDES to present the main points of that day’s Communication.

Mr SCHINAS began by highlighting the key message of the Communication, namely, that the EU remained highly vigilant and determined.

The Communication set out three areas of work, namely, (i) vaccination and the administration of booster doses, (ii) management of variants and, particularly, the establishment of the European Health Emergency Preparedness and Response Authority (HERA) and the work on free movement and (iii) the global dimension

and the EU's efforts, which needed to be intensified, to provide vaccines to third countries where large sections of the population were still not vaccinated.

Ms KYRIAKIDES reported that the Omicron variant was a cause for concern, and that it was important to gain time over the next two weeks to allow scientists to better understand it.

She added that it was vital to continue vaccination efforts and to combat vaccine hesitancy.

Moreover, the EU Civil Protection Mechanism played a key role in the delivery of vaccines to countries that needed them.

Public health measures such as the use of masks and compliance with physical distancing rules were delivering results and, from the toolbox put in place by the EU, contact tracing and the EU Digital COVID Certificate were playing an important role in containing the pandemic.

She noted that HERA, whose Director-General had been appointed by the Commission's decision that day (see point 7.1 of these minutes), had already proved its worth.

In conclusion, Ms KYRIAKIDES called for the current developments to be addressed calmly and for the EU and the Member States to demonstrate their capacity to tackle them.

In the course of the discussion that followed, the Commission raised the following points:

- the broad support for the Communication, which was seen as an important and timely contribution in light of the current stage of evolution of the COVID-19 pandemic;
- the importance of stepping up vaccination both within the EU and globally;

- the need to speed up vaccine donations to third countries;
- the advisability of waiting for a clear scientific position on the nature of the Omicron variant;
- the recognition of a shortage of medical syringes outside the EU in general, and in Africa in particular;
- the need to hold a debate on the issue of vaccination of children, who seemed to play an important role in the transmission of the virus, as demonstrated by the recent sharp increase in infections in European schools.

Following the discussion, the PRESIDENT said that Pfizer-BioNTech had accelerated work on the effectiveness of its vaccine for children, and should be in a position to present the results of its analysis by 19 December at the latest.

She also pointed out that the EU had provided just over 1 billion vaccine doses to the Member States and had exported some 1.4 billion to more than 150 countries. Of the doses exported, 300 million had been sent to low- and middle-income countries, including around 165 million delivered to Africa. More than 140 million doses had been exported under the COVAX Facility.

In terms of donations, the EU had committed to providing 700 million doses and had delivered 100 million doses to date. In comparison, the United States and China had provided 270 million and 80 million doses respectively.

The PRESIDENT wound up the discussion by thanking Mr SCHINAS and Ms KYRIAKIDES for this important Communication.

Following these presentations, the Commission approved the Communication in COM(2021) 764/3 for transmission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and, for information, to the national parliaments.

**9. JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS AND THE EUROPEAN INVESTMENT BANK – EUROPEAN STRATEGY OF GLOBAL GATEWAY PARTNERSHIPS**

**(JOIN(2021) 30 TO /3; RCC(2021) 207; RCC(2021) 223)**

The PRESIDENT introduced the presentation of the new European ‘Global Gateway’ strategy, which aimed to develop smart, clean and secure links in the digital, energy and transport fields and to strengthen health, education and research systems worldwide. The strategy aimed to mobilise investment of up to EUR 300 billion between 2021 and 2027 to support a sustainable global recovery and address the most pressing global challenges, while taking into account the needs of partners and the EU’s own interests. She explained that it was now a question of translating into a strategic global approach the internal work that had been done over the past two years to prepare for and embark on the EU’s green and digital transition. She invited Ms URPILAINEN to present the various aspects of this strategy.

Ms URPILAINEN first stressed that that day’s proposal was the result of teamwork. She thanked the PRESIDENT, who had initiated the ambitious project, Mr BORRELL, who had steered it, and all the other Members of the Commission for their contribution to the development of the strategy.

She then pointed out that the Global Gateway strategy sought to promote coherence between the EU’s internal and external policies while mobilising investment in both hard and soft infrastructure in third countries. This mobilisation was in line with the EU’s policy priorities – digitalisation, climate protection, energy, transport, health and education and research – and respected the fundamental principles of democratic values, good governance, transparency and the highest social policy, labour, environmental and taxation standards. The strategy also aimed to stimulate

private sector investment by creating a favourable environment for European businesses.

Ms URPILAINEN explained that health was a clear priority area for future flagship projects owing to the pandemic, but that education was also recognised as a key area that would create strong and lasting links between the EU and other regions of the world and build a new future for young people. The strategy would facilitate student mobility and promote the establishment of networks around the entire world. She said that the Commission had selected some of these flagship projects, which should be developed in close cooperation with the Member States.

She stressed that, in view of the scale of investments required to implement the strategy, it was crucial to be able to rely on credible funding. For that reason, it was essential to ensure the participation of the Member States, their development finance institutions, the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB), in accordance with the Team Europe approach.

She noted that, of the total allocation of EUR 79 billion from the Neighbourhood, Development and International Cooperation Instrument (NDICI), around EUR 18 billion in grant funding would go to the priority areas of the Global Gateway strategy. That instrument also had a financial arm, the European Fund for Sustainable Development Plus (EFSD+), which could guarantee investment operations in cooperation with European and national development finance institutions. That fund would provide guarantees to development banks so that they could lend to private companies. This would make it possible to mobilise up to EUR 135 billion of investment in the priority areas of the strategy. Finally, the Member States' development finance institutions should make a contribution to the implementation of the strategy with additional investment that, according to Commission estimates, could be up to EUR 145 billion.

She said that a total of up to EUR 300 billion should be mobilised by 2027, about half of which would be mobilised through the EU budget and the other half through the funding instruments of the Member States.

For the next steps in the process, Ms URPIILAINEN said that the Commission would maintain a constant dialogue with all interested parties. Within the Council, the Member States would be invited to develop the Global Gateway flagship initiatives with the Commission. That work would be carried on with the EU's partner countries with a central role for the EU delegations. She also suggested integrating the strategy into the multiple upcoming international and multilateral dialogues, starting with the African Union-European Union summit in February 2022 and the discussions in the G7.

In conclusion, she said that the implementation of the Global Gateway strategy would put into practice the ambition of a geopolitical Commission.

In the course of the discussion that followed, the Commission raised the following main points:

- the geopolitical value of the Global Gateway strategy, symbolically presented on that day, which was the second anniversary of the current Commission;
- the importance of diplomacy in the areas of technologies, infrastructures and critical raw materials;
- the welcome importance attached by the strategy to Africa and the EU's neighbourhood;
- the difference in the approach chosen by the EU compared to that of other global players, which illustrated the concept of 'trusted connectivity';
- the advantage of focusing on tangible, lasting and visible results, both for partner countries and for European companies engaging in business there, which should contribute to strengthening the political loyalty of these countries

vis-à-vis the EU;

- the mention of ways of raising awareness of the benefits of European subsidies and investments abroad, for example by inviting political leaders in partner countries to an official presentation of the initiative in Brussels;
- the proposal to set up a ‘clearing house’ within the Commission to better coordinate the travel of its members to third countries;
- the need to strengthen the ‘Team Europe’ approach in coordinating the actions carried out on the ground by the various European players – businesses, development banks, Member States and European institutions – in order to make the best use of the resources and initiatives provided for in the strategy.

The PRESIDENT concluded by stressing the important role that the Member States, development banks and private companies would have to play in the strategy, not only through their financial capital but also through their political and technological capital and their know-how. Global Gateway would be implemented with the help of a strategic committee on which the Member States would sit, an advisory group for businesses, dialogue with civil society and strong involvement of EU delegations in order to maintain direct contacts with partner countries.

She noted, finally, that the approach followed in the strategy was clearly geopolitical, in accordance with the values and specificities of the EU, which did not preclude EU cooperation with other international actors to map the global strategic projects in which it could be involved.

Following this presentation, the Commission approved the Communication in JOIN(2021) 30/3 for transmission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, and, for information, to the national parliaments.

- 10. PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE DIGITALISATION OF JUDICIAL COOPERATION AND ACCESS TO JUSTICE IN CROSS-BORDER CIVIL, COMMERCIAL AND CRIMINAL MATTERS, AND AMENDING CERTAIN ACTS IN THE FIELD OF JUDICIAL COOPERATION**  
(COM(2021) 759 AND /2; SWD(2021) 392; SWD(2021) 393; SEC(2021) 580; RCC(2021) 220)
- 11. PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 2003/8/EC, COUNCIL FRAMEWORK DECISIONS 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA AND 2009/948/JHA, AND DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AS REGARDS DIGITALISATION OF JUDICIAL COOPERATION**  
(COM(2021) 760 TO /3; SWD(2021) 392; SWD(2021) 393; SEC(2021) 580; RCC(2021) 220)
- 12. PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2018/1727 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL AND COUNCIL DECISION 2005/671/JHA, AS REGARDS THE DIGITAL INFORMATION EXCHANGE IN TERRORISM CASES**  
(COM(2021) 757 TO /3; SWD(2021) 391; RCC(2021) 220)
- 13. PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A COLLABORATION PLATFORM TO SUPPORT THE FUNCTIONING OF JOINT INVESTIGATION TEAMS AND AMENDING REGULATION (EU) 2018/1726**  
(COM(2021) 756 AND /2; SWD(2021) 390 AND /2; RCC(2021) 220)

At the invitation of the PRESIDENT, Ms JOUROVÁ presented the package of initiatives on the digitalisation of justice presented that day, consisting of legislative proposals on the digitalisation of judicial cooperation, the exchange of digital information in terrorism cases and the creation of a collaboration platform for joint investigation teams.

As a general point, she underlined the fact that the EU's judicial systems were currently facing efficiency problems, as shown in the Commission's Rule of Law Report and Justice Scoreboard, and that justice was much slower than it should be. This situation had been aggravated by the COVID-19 pandemic, which had disrupted the administration of justice in many Member States.

It was in this context that the Commission had adopted a Communication on the digitalisation of justice in December 2020, since it considered that bringing justice into the digital age would be an important milestone in the EU's transition. This ambition was also of major interest to Member States, as the national plans under the Recovery and Resilience Facility were required to allocate 20% of funding to the digital transition and many Member States had chosen projects in the field of justice.

Ms JOUROVÁ felt that that day's proposals were well in line with the priorities set out in the 2020 Communication. They aimed to close the current gaps in the EU regulatory framework in order to facilitate the digital transition of justice at European level and, where necessary, build new structures to make national justice systems more accessible, secure, efficient and resilient.

The legislative proposals on the digitalisation of cross-border judicial cooperation aimed to regulate the use of digital communication between individuals and judicial authorities and between the authorities themselves, in order to ensure secure, accessible and efficient channels of communication.

She also explained that the proposal for a Regulation on digital information exchange in cross-border terrorism cases sought to improve cooperation and

investigations conducted in several Member States by making it possible for Eurojust to make full use of the European Counter-Terrorism Register.

Finally, referring to the initiative to establish a collaboration platform for joint investigation teams, Ms JOUROVÁ said that its purpose was to facilitate and secure the exchange of data, thereby making these teams more efficient.

Mr REYNDERS began by turning to the first group of initiatives presented that day, consisting of a proposal for a Regulation and a proposal for a Directive, which concerned the digitalisation of cross-border judicial cooperation and the digitalisation of access to justice in cross-border cases, both for civil law and for commercial and criminal law.

He stressed that, at present, EU law made no provision, or made only insufficient provision, for cooperation in these areas to take place digitally. Other shortcomings had also been identified, such as the lack of secure and reliable digital communication channels or the non-recognition of electronic documents, signatures and seals. He further noted that the pandemic had seriously disrupted the functioning of courts and revealed that the use of digital technologies was very limited in some Member States.

He emphasised that the Commission's proposals therefore provided for a set of horizontal rules applicable to cross-border cases, which would allow, for example, electronic communications by natural and legal persons with the judicial authorities or the use of video-conferencing, and would ensure that documents could not be refused or denied legal effect solely on the grounds of their electronic form.

On the second part of the package, he referred to the proposal for a Regulation on the exchange of digital information in cross-border terrorism cases. He explained that the Eurojust Regulation did not take into account the European Judicial Counter-Terrorism Register and the functions it performed. He also pointed out that the current case management system and IT environment did not allow Eurojust to play a more proactive role in digitalised judicial cooperation.

The Commission's proposal therefore sought to give Eurojust the means to identify more effectively the links between cross-border investigations and prosecutions conducted in parallel by several courts in the context of terrorist offences, and to provide feedback to the Member States. The proposal defined precisely the cases in which Member States were required to provide information on criminal investigations and judicial proceedings relating to terrorist offences. It would thus enable Eurojust to fully exercise its role of coordination and of providing support to national prosecutors in their criminal investigations, with secure data that Eurojust would be able to receive through a new system resistant to cybercrime attacks.

Lastly, with regard to the third part of the package, which provided for the creation of a new collaboration platform to support the functioning of joint investigation teams, Mr REYNDERS pointed out that these teams were a very effective tool for cross-border investigations and prosecutions in the EU, but that they were currently facing a number of technical difficulties, in particular as regards the secure electronic exchange of information and evidence and the joint day-to-day management of these teams.

The proposal introduced a new digital collaboration platform, with both centralised and decentralised components, which would be accessible to all actors involved in the procedures. He added that this platform would ensure the confidentiality of exchanges through the use of robust end-to-end encryption algorithms.

In conclusion, he noted that the main functionalities of this platform would guarantee easy, secure and untraceable electronic communication, as well as an efficient exchange of information and evidence, including large amounts of data.

In the course of the brief discussion that followed, the Commission raised the following main points:

- full support for that day's proposals, which would bring real European added value on a daily basis, for the benefit of all Europeans;

- the major challenge for Member States posed by the need to modernise their judicial systems;
- the need to develop interoperability between judicial and law enforcement systems;
- European citizens' trust in their national courts, and thus in the rule of law; the digitalisation of justice, as proposed that day, could help to preserve and strengthen that trust.

Following these presentations, the Commission:

- adopted the proposal for a Regulation and the proposal for a Directive in COM(2021) 759/2 and COM(2021) 760/3 respectively, for transmission to Parliament, the Council, the European Data Protection Supervisor and the national parliaments, together with the impact assessment, the summary thereof and the opinion of the Regulatory Scrutiny Board, distributed as SWD(2021) 392, SWD(2021) 393 and SEC(2021) 580, the contents of which were noted;
- adopted the proposal for a Regulation set out in COM(2021) 757/3 for transmission to Parliament, the Council, the European Data Protection Supervisor and the national parliaments, together with the staff working document distributed as SWD(2021) 391, the contents of which were noted.
- adopted the proposal for a Regulation set out in COM(2021) 756/2 for transmission to Parliament, the Council, the European Data Protection Supervisor and the national parliaments, together with the staff working document distributed as SWD(2021) 390/2, the contents of which were noted.

#### **14. PROPOSAL FOR A COUNCIL DECISION ON PROVISIONAL EMERGENCY MEASURES FOR THE BENEFIT OF LATVIA, LITHUANIA AND POLAND**

**(COM(2021) 752 TO /3; RCC(2021) 222)**

The PRESIDENT introduced the College's discussion on the proposal for a Council Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland, which the Commission was tabling that day against the backdrop of Belarus' hybrid attack on the EU.

Before the proposal was presented, she took the opportunity to explain that the Commission was continuing to support the work of the International Organization for Migration (IOM) to facilitate the return of migrants stuck at the EU-Belarus border. She also highlighted the excellent cooperation with the Iraqi government with regard to organising the return of its nationals. This coordinated action had already led to the repatriation of some 3 000 Iraqi migrants.

Mr SCHINAS said that that day's proposal for a Council Decision was the response to a request made by Heads of State or Government at the European Council meeting in October, when they had called on the Commission to make proposals to assist the three Member States affected by the weaponising of migrants orchestrated by the Belarusian regime.

This new form of hybrid attack was revealing, since it demonstrated that managing migration flows and protecting the EU's external borders were a joint responsibility that required greater solidarity. This was the second time since the 2015 migration crisis that the EU was using its powers under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), which allowed temporary measures to be adopted in an emergency situation involving a sudden inflow of third-country nationals.

As was the case for the measures adopted by the Commission on 23 November, the aim of the proposal for a Decision was to support Latvia, Lithuania and Poland by

giving them the flexibility and time required to manage in an orderly fashion the emergency situation created by this hybrid attack, acting in accordance with the EU's values and principles and applying EU law. The proposal was a reflection of the EU's common approach and had been the subject of close consultation with the United Nations High Commissioner for Refugees (UNHCR).

He called for a distinction to be made between this temporary, one-off measure and the upcoming review of the Schengen Borders Code, which was a longer-term initiative that would, amongst other things, incorporate the concept of 'weaponising' people and provide a legal definition of that concept, while offering the Member States a range of options to tackle the issue effectively.

Ms JOHANSSON explained that the management of migratory flows was a challenge faced by all EU Member States, but she stressed that this form of hybrid attack was something new and had led to especially intense migratory pressure at a specific location along the EU's external border. Although only three Member States were directly affected, other Member States were also feeling the effects of the situation, as migrants who had managed to cross the EU border were moving on to other locations.

She confirmed that work was ongoing to organise the return of the migrants, 6 000 of whom had already been returned to their countries of origin. Although the influx of migrants entering Belarus had now been stopped, the situation still required careful monitoring.

She felt that the migratory pressure had eased as a result of the EU's diplomatic efforts and the emergency measures proposed by the Commission. In her view, the current situation should encourage the Member States to support the adoption of the EU Pact on Migration and Asylum, which contained a wide range of new tools to manage migration flows, including during times of crisis. The proven effectiveness of the EU's diplomatic efforts with regard to the Belarus situation should also

encourage the EU to step up its cooperation with those third countries that were countries of origin and transit for migrants.

Ms JOHANSSON noted that although the three Member States directly affected by the weaponising of migrants at their borders had adopted significantly different approaches, they had all called on the EU to adopt emergency legal measures.

Therefore the Commission was that day proposing to trigger an emergency clause, Article 78(3) TFEU, which allowed the Council to propose provisional measures to help Member States that were dealing with a sudden inflow of migrants.

She stressed that the exceptional measure put to the Council that day was a response to the unprecedented situation; it would be activated for six months and would apply to all migrants arriving after it entered into force. The measure would also apply retrospectively to all those who had arrived since the crisis began and who now found themselves in an unclear legal situation.

The Commission's proposal had two strands.

The first was a proposal to give the three Member States an appropriate legal framework so that asylum and return procedures initiated at the border could be managed in a swift, controlled and effective manner for migrants entering their territory. In so doing, the Commission was ensuring that the fundamental rights enshrined in EU law were upheld and the EU's international obligations complied with. This would ensure that migrants would benefit from the assistance they were entitled to by law at all stages of the asylum and return process.

To help ensure that arrivals were managed in a more orderly fashion, it was proposed that the Latvian, Lithuanian and Polish authorities should be given a certain amount of flexibility with regard to the deadline for registering asylum applications, which would be temporarily increased from three or ten days to four weeks, and with regard to the designated locations for registering these applications, as set out in the current legislation. Furthermore, the Commission was proposing to

extend the deadline for examining asylum applications laid down in EU law from four weeks to sixteen weeks. The authorities would also be able to examine all asylum applications using a so-called ‘border procedure’, while guaranteeing that priority would be given to well-founded claims, and applications made by children and families.

Ms JOHANSSON stressed that all the general principles and guarantees laid down in the EU’s legislative acquis were still applicable, particularly with regard to the provision of legal assistance for asylum seekers and the right to an effective remedy.

Following assessment of each asylum application, every person had to be identified as either a refugee or an irregular migrant; if the latter, the person had to be repatriated to his or her country of origin. A simplified return procedure was to be implemented for those deemed to be irregular migrants, with full respect for the applicable principles and fundamental rights, including the principle of non-refoulement, the best interests of the child and postponement of removal in the event of serious illness.

The proposal for a Council Decision clearly set out the rules from which Latvia, Lithuania and Poland could temporarily derogate in order to apply EU law and ensure compliance with its international obligations within a clearly defined legal framework and whilst ensuring the fundamental rights of individuals.

Furthermore, international organisations – whether the UN High Commissioner for Refugees, the International Organization for Migration, or the International Committee of the Red Cross – needed access to the border in order to provide assistance to asylum seekers and to aid voluntary returns.

Ms JOHANSSON then turned to the second part of that day’s proposal, which concerned the establishment of a solidarity framework for the three Member States concerned. This framework made provision in particular for assistance from the European Border and Coast Guard Agency (Frontex), the European Asylum Support

Office (EASO) and Europol; this would be in addition to the financial assistance that the three Member States concerned had already received from the EU.

Ms JOHANSSON concluded her presentation by noting that the EU's response to the Belarusian State's strategy of exploiting migrants was already yielding results, and considered the proposal submitted to the College for approval to be an additional response to the request made by the European Council in October.

In the course of the discussion that followed, the Commission raised the following main points:

- the importance of showing the Belarusian regime that its attempts to blackmail the EU were destined to fail;
- the need for further consideration within the EU institutions in order to arrive at a more precise definition of the concept of a hybrid attack and to develop the instruments necessary to respond effectively and in accordance with the EU's values and principles;
- the need to preserve the EU's unity, which was precisely what these hybrid attacks sought to undermine;
- the need to restore a human dimension to the weaponised migrants, providing them with humanitarian aid suited to their requirements;
- the urgent need for the co-legislators to adopt the European Pact on Migration and Asylum in order to avoid future recourse to exceptional measures, even where these were temporary and respected fundamental rights;
- the expediency of explaining that the proposed Decision was aimed at enabling EU law in the field of migration and asylum to be applied in an emergency requiring targeted and temporary adaptations that did not undermine fundamental rights;

- the difficult balance of the Commission’s proposal and the exemplary nature of the EU’s solidarity towards Latvia, Lithuania and Poland within the framework of the measures proposed with a view to helping them manage this crisis and the geopolitical nature of the EU’s response.

Ms JOHANSSON highlighted the attention given by the Commission departments, in preparing this proposal for a Council Decision, to protecting fundamental rights and the EU’s legislative acquis regarding migration and asylum.

She also noted that the European Pact on Migration and Asylum already made provision for derogations similar to those set out in that day’s draft Decision, a fact which confirmed their worth and constituted an argument in favour of rapid adoption of the Pact.

Finally, she reminded the meeting that the primary objective of the Commission’s proposal was to thwart the Belarusian regime’s strategy whilst reaffirming the priority that the EU gave to safeguarding fundamental rights.

Mr SCHINAS explained that the EU could be confronted with other attempts to weaponise migrants in future, hence the importance of equipping it with adequate means of response. The EU had to be able to deploy exceptional measures adapted to exceptional circumstances. He also stressed the importance of rapid adoption of the Pact on Migration and Asylum.

The PRESIDENT concluded the discussion by asking the Members of the College to explain clearly the expected benefits of the flexibility temporarily granted to three Member States as part of the implementation of EU law on migration and asylum. She welcomed the fact that the EU could give practical expression to its solidarity with Latvia, Lithuania and Poland, demonstrating that attempts to undermine it only made it stronger.

Following these presentations, the Commission adopted the proposal for a Council Decision in COM(2021) 752/3 for transmission to Parliament and the Council and, for information, to the national parliaments.

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The meeting closed at 11.13.