EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2022) 2430 final

- English translation of the French version which is authentic -

Brussels, 12 October 2022

TEXTE EN

<u>MINUTES</u>

of the 2430th meeting of the Commission

held in Brussels

(Berlaymont)

on Sunday 18 September 2022

(morning)

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<u>Single sitting</u>: Sunday 18 September 2022 (morning)

The sitting opened at 8.36 with Ms von der LEYEN, President, in the chair.

<u>Present</u>:

Ms von der LEYEN	President
Ms VESTAGER	Executive Vice-President
Mr ŠEFČOVIČ	Vice-President
Ms JOUROVÁ	Vice-President
Mr SCHINAS	Vice-President
Mr HAHN	Member
Mr SCHMIT	Member
Mr BRETON	Member
Ms FERREIRA	Member
Ms KYRIAKIDES	Member
Mr REYNDERS	Member
Ms JOHANSSON	Member
Mr LENARČIČ	Member
Mr VÁRHELYI	Member
Ms URPILAINEN	Member
Ms McGUINNESS	Member

<u>Absent</u>:

Mr TIMMERMANS	Executive Vice-President
Mr DOMBROVSKIS	Executive Vice-President
Mr BORRELL i FONTELLES	High Representative / Vice-President
Ms ŠUICA	Vice-President
Ms GABRIEL	Member
Mr GENTILONI	Member
Mr WOJCIECHOWSKI	Member

Ms DALLI	Member
Ms VĂLEAN	Member
Ms SIMSON	Member
Mr SINKEVIČIUS	Member

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

Mr MAGGI	Expert in Mr TIMMERMANS’s Office
Ms RUEDA CATRY	Expert in Mr DOMBROVSKIS’s Office
Mr BRIENS	Deputy Chef de cabinet to Mr BORRELL
Ms SRSEN	Deputy Chef de cabinet to Ms ŠUICA
Ms ROUCH	Chef de cabinet to Ms GABRIEL
Mr GOLUBIEWSKI	Chef de cabinet to Mr WOJCIECHOWSKI
Mr KERR	A member of Ms DALLI’s staff
Mr FABREGAS-MARTINEZ	A member of Ms VĂLEAN’s staff
Mr GRASSI	Chef de cabinet to Ms SIMSON
Ms PREISING	Deputy Chef de cabinet to Mr SINKEVIČIUS

The following also sat in:

Mr SEIBERT	Chef de cabinet to the PRESIDENT	
Mr CALLEJA CRESPO	Director-General, Legal Service	Items 1 to 7
Mr LADENBURGER	Deputy Director-General, Legal Service	Item 8 (in part)
Ms AHRENKILDE HANSEN	Director-General, DG Communication	
Mr KOOPMAN	Director-General, DG Budget	Items 1 to 7
Mr MAMER	Head of the Spokesperson’s Service and Chief Spokesperson of the Commission	
Ms RISO	Deputy Chef de cabinet to the PRESIDENT	
Ms PETKOVA	Director of Coordination and Administration in the PRESIDENT’s Office	

Mr MUELLER	Chef de cabinet to Mr HAHN	Item 7
Mr VALERO	Secretariat-General	
Ms ALLOUIS-LE LOSTEC	Head of Unit in the Secretariat-General	

Secretary: Ms JUHANSONE, Secretary-General, assisted by Ms DEPREZ, Director in the Secretariat-General.

1. AGENDAS
(OJ(2022) 2430/FINAL; SEC(2022) 2430/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(2022) 2430)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Friday 16 September 2022.

3. APPROVAL OF THE MINUTES

The Commission held over approval of the minutes of its 2428th and 2429th meetings of 7 and 13 September 2022 for a later date.

4. INTERINSTITUTIONAL RELATIONS
(RCC(2022) 164)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held by videoconference on Thursday 15 September 2022 (RCC(2022) 164).

The Commission approved the line proposed for the following points:

– **Amendment of Council Regulation (EEC) No 95/93 as regards temporary relief from the slot utilisation rules at EU airports due to the COVID-19 pandemic (Regulation) – RIQUET report – 2022/0214 (COD)**

Line set out in SI(2022) 307.

– **Resolution of the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU) – Responsible private funding of litigation – VOSS report – 2020/2130 (INL)**

Line set out in SP(2022) 491.

The Commission approved the line proposed for the following point, for transmission to the European Parliament:

– **Commission replies to the non-legislative resolutions adopted by the European Parliament at its part-session of July 2022**

Line set out in SP(2022) 519.

The Commission took note of the following point:

– **Fisheries measures:**

  - **Conservation and management measures applicable in the Western and Central Pacific Fisheries Convention Area and amendment of Council Regulation (EC) No 520/2007 (Regulation) – CARVALHAIS report – 2021/0103 (COD)**

Compromise text in SP(2022) 528, further to note SI(2022) 208, which the Commission had already approved on 14 June 2022 by written procedure.

5. COORDINATION OF EXTERNAL ACTION (RCC(2022) 33)

The Commission took note of the operational conclusions in RCC(2022) 33 of the meeting of the Group for External Coordination (EXCO) held on Wednesday 14 September 2022.

6. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

6.1. WRITTEN PROCEDURES APPROVED (SEC(2022) 325 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 12 and 18 September 2022.

6.2. EMPOWERMENT (SEC(2022) 326 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 12 and 18 September 2022.

6.3. DELEGATION/SUBDELEGATION OF POWERS (SEC(2022) 327 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedures between 12 and 18 September 2022 archived in D*e*cide.

6.4. SIGNIFICANT WRITTEN PROCEDURES (SEC(2022) 328)

The Commission took note of the significant written procedures for which the time limit expired between 19 and 23 September 2022.

7. PROPOSAL FOR A COUNCIL IMPLEMENTING DECISION ON MEASURES FOR THE PROTECTION OF THE UNION BUDGET AGAINST BREACHES OF THE PRINCIPLES OF THE RULE OF LAW IN HUNGARY (COM(2022) 485 TO /3; RCC(2022) 178)

The PRESIDENT introduced the College's discussion on the proposal for a Council Implementing Decision put forward that day under the general regime of conditionality for the protection of the Union budget.

She pointed out that the Conditionality Regulation was intended to apply a zero-tolerance policy to the misuse of EU taxpayers' money. It was also a new instrument, which, since its adoption in December 2020, had been challenged – unsuccessfully – in the courts.

The PRESIDENT stressed that the proceedings initiated against Hungary and the proposal for a Decision therefore set a precedent. Accordingly, it was imperative that the procedure laid down by the Regulation be followed to the letter, in order to guarantee the sound legal basis of the decision proposed that day.

She also emphasised that the Conditionality Regulation set very tight deadlines that had to be strictly observed. The Regulation did not provide for negotiations, which, following one or more rounds of talks, could lead to a solution; instead progress was achieved on the basis of established facts.

She underlined that, over the summer, the Commission's departments had closely examined the commitments made by Hungary, especially those regarding public procurement, the fight against corruption, and public prosecutions.

The PRESIDENT pointed out that Hungary had to respond to all of the concerns raised by the Commission under the procedure laid down by the Conditionality Regulation. At this stage, the Commission had concluded that the proposed remedial measures were, in principle, capable of resolving the issues that it had raised, provided that they were transposed into legislation and consequently implemented.

Pending such implementation, the Commission considered that, at this stage, there was still a risk to the budget. It was for this reason that remedial measures to be taken by the Council were being proposed that day.

The PRESIDENT then invited Mr HAHN, as well as Ms JOUROVÁ, Mr REYNDERS and Ms JOHANSSON, to provide more detail on the proposed Decision in relation to the different aspects under their responsibility.

Mr HAHN began by emphasising that the matter referred to the College that day was the next stage of the ongoing procedure under the Conditionality Regulation and the decision as to whether the Commission would propose measures to the Council to protect the Union budget against breaches of the principles of the rule of law in Hungary.

He pointed out that the Commission had sent Hungary a written notification under Article 6(1) of the Conditionality Regulation on 27 April 2022 and that Hungary had replied, in accordance with the rules in force, on 27 June 2022. In its notification, the Commission had raised concerns regarding:

– systemic irregularities, deficiencies and weaknesses in public procurement procedures;

– the high share of single bids in tender procedures related to EU financing and the low level of competition in procurement procedures;

– the use of framework agreements;

– the detection, prevention and correction of conflicts of interest;

– the use of public interest trusts;

– investigations and prosecutions, and the anti-corruption framework.

The Commission had also informed Hungary of its concerns regarding the independence of the judiciary, which could later result in additional questions to protect the financial interests of the Union, were a sufficiently direct link to the budget established.

Mr HAHN reported that, as Hungary's response had been insufficient, on 20 July 2022 the Commission had informed Hungary of the measures that it intended to propose to the Council.

Hungary had replied by the deadline, i.e. 22 August 2022, submitting its observations on the Commission's findings, the procedure and the proportionality of the measures set out in the intention letter. While contesting the Commission's findings, Hungary had still proposed seventeen remedial measures that it considered fully addressed the Commission's concerns.

That day's proposal was the product of intense and constructive discussions held with the Commission's departments in July and August, conducted in a spirit of good cooperation with Hungary. The talks had been led by the Directorate-General for Budget in line with a pre-defined mandate and had involved all the relevant departments throughout the process. Mr HAHN thanked the members of the College and the departments concerned, adding that defining the remedial measures needed had been a real team effort, involving, among others, procurement, anti-corruption and judicial experts.

He welcomed the fact that Hungary had undertaken to implement virtually all of the requests made on the basis of the issues raised in the Commission's notification. It had been possible to iron out the last few problems following the meeting held between certain Commissioners and the Hungarian Justice Minister the previous week.

Mr HAHN then listed the main examples of the remedial measures proposed: the establishment of an independent integrity authority and an anti-corruption task force where ministers and specialist NGOs carried the same weight; revision of the asset declaration system; revision of the Code of Criminal Procedure, so that prosecutors who closed cases could be challenged; an undertaking to apply the Commission's data mining tool *Arachne*, including retroactively; better cooperation with the European Anti-Fraud Office (OLAF); and an undertaking to reduce the share of single bids in tender procedures.

He stated that these unilateral commitments made by Hungary are public and permanent, regardless of the Council's decision on the current proposal, adding that the implementation of Hungary's promises would be duly verified.

He pointed out that the Conditionality Regulation gave the Commission one month to assess Hungary's reply and the remedial measures it undertook to carry out. The Commission therefore had two choices: it could either conclude that it was fully satisfied with Hungary's reply and its commitments and close the case, or it could take the next step of proposing measures to the Council.

To prepare for this decision, he had worked with the other Commissioners concerned to assess the observations and the package of remedial measures. In order for a remedial measure to be deemed 'adequate', the Commission had to be able to conclude that the said measure would put an end to the risks to the specified EU funds.

Mr HAHN considered that Hungary had made significant commitments that were heading in the right direction. This was welcome. In addition, the proposed remedial measures, taken together, could in principle address the problems raised in the notification.

However, these commitments still had to be translated into detailed implementing legislation, which meant that, as things stood, the Commission could not be certain that the EU budget would be properly protected. Hence the vital need to see details of the specific measures to be included in the Hungarian legislation and to monitor the implementation of crucial elements on the ground before drawing any final conclusions.

The conclusion of the assessment was therefore that there was still a risk to the budget and, for that reason, it was proposed that the Commission move ahead and put forward budget protection measures to the Council under the Conditionality Regulation.

Mr HAHN added that potential budget protection measures had been set out in the intention letter sent by the Commission to Hungary in July 2022 and that the list of measures remained almost the same, thus creating the framework for the decision put forward that day.

With regard to the programmes under shared management, the estimation of the remaining level of risk and the suspension of commitments of the three operational programmes identified in July 2022 should be reduced to 65%. As for the programmes under direct and indirect management, there should be no change to the Commission's intentions set out in July 2022, i.e. banning legal commitments with any public interest trust or related entity.

If the Commission adopted the proposal, the Council would have one month to take a decision by qualified majority. In exceptional circumstances this period could be extended by two months. The text of the proposal invited the Council to consider extending the decision-making period to three months, which would allow the Commission to monitor Hungary's implementation of its commitments and assess in full the risks to the Union budget.

He pointed out that the key delivery date for Hungary was 19 November. The Commission would keep in close contact with the Council to apprise it of any relevant aspect likely to have an impact on the current assessment.

Regarding the Commission's monitoring of the implementation of the remedial measures announced, several of these measures required changes to the legal framework. Hungary had undertaken to consult the Commission on the draft legislation that it intended to adopt to this end. In addition, Hungary had undertaken to inform the Commission in full about the implementation of these measures by mid-November, when the Commission would have to reassess the situation.

He emphasised that the decision proposed that day did not therefore put an end to the process; rather it brought the process into the public domain and demonstrated the Commission's determination to use this new tool and protect the EU budget.

Mr HAHN concluded his presentation by stating that the decision clearly showed that the Commission was determined to protect the EU budget and use all available tools to achieve this objective.

Ms JOUROVÁ then took the floor and said that she fully supported the proposal, which implemented the procedures set out in the Conditionality Regulation.

The more funds the EU allocated, the more taxpayers should be able to trust the balance of powers underpinning the rule of law to protect the EU budget effectively.

The aim of the Conditionality Regulation was not to block payments to Member States, but to solve existing budgetary problems. She was satisfied with the remedial measures proposed by Hungary and welcomed the constructive approach to the work during the summer.

Ms JOUROVÁ also expressed her support for reducing the suspension of commitments to 65% for the three operational programmes identified by the Commission in its July 2022 notification, since the remedial measures had not yet been implemented.

The Commission would be in constant touch with the Hungarian authorities regarding implementation of the measures announced and would keep the Council informed. It was now for the Council to decide on the next steps to be taken based on the Commission proposal, within the deadline set by the Conditionality Regulation, i.e. three months.

Lastly, Ms JOUROVÁ felt that, in addition to the need to protect the EU budget, it was also necessary to redouble efforts to protect the rule of law in Hungary. Hungary's recovery and resilience plan therefore also needed to include targets on judicial independence, as in some other Member States.

Mr REYNDERS reported that he had recently raised before the European Parliament the ongoing procedure with Hungary under Article 7 of the Treaty on European Union. He referred in particular to the related report adopted by Parliament on 15 September 2022, in which it condemned action by the Hungarian government that undermined European values.

He also noted that the budgetary pressure exerted by the Conditionality Regulation made it a very effective instrument, stressing that it had produced tangible results since August 2022.

He had met the Hungarian Minister for Justice and had been impressed by the long list of remedial measures proposed by Hungary, which had committed to implement them fully.

Mr REYNDERS also explained that the two parties had held in-depth discussions on judicial independence in Hungary and had been able to agree on the possibility of challenging prosecutors who closed cases without justification. However, no progress had been made in the discussions on Hungary possibly joining the European Public Prosecutor’s Office.

He concluded by pointing out that Hungary had also agreed to start a dialogue on the implementation of the recommendations made in that year’s rule of law report.

Ms JOHANSSON began by noting that her trip to Sweden during the summer had given her the opportunity to talk to citizens of her country – a net contributor to the EU budget – and that one of the issues most frequently raised related to the EU’s use of the available budget.

She therefore welcomed the process underlying the proposal, which she considered to be complex and difficult, but which had nevertheless led to a constructive outcome.

She stressed that, in terms of responsibilities, establishing the integrity authority and the anti-corruption task force was essential, as was the work carried out on the asset declaration.

She concluded by stating that Hungary's commitments were a step in the right direction, but that it was crucial they were implemented in practice.

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

- broad support for the proposal, which was described as essential and timely;
- an assessment of the conditionality mechanism as effective, despite its tight deadlines and strict legal scope, which had to be complied with;
- recognition of the significant number of remedial measures proposed by Hungary and of the constructive approach to the work, in particular regarding the establishment of the integrity authority and the anti-corruption task force;
- the belief that implementation of the Conditionality Regulation was the right way to protect the EU budget effectively;
- the need therefore to monitor implementation of the proposed measures on the ground;
- moreover, the close link between protecting the EU budget and safeguarding the rule of law, especially in respect of independence of the judiciary and of prosecutions;
- at the same time, the importance of ensuring equal treatment among Member States, and the need in future to apply the same approach in similar cases;
- the particular difficulty linked to programmes under shared management, with the risk that the 2022 payment, as well as a quarter of the 2021 payment, would be lost if the existing problems were not resolved quickly;

- a question about the reduced percentage for the proposed suspension of budgetary commitments;
- the recent alignment of Hungarian legislation on asset declarations with the European Parliament system.

In response to some of the comments made during the discussion, Mr HAHN stressed the key role given to the rule of law and noted that the nature and purpose of the Conditionality Regulation were different from those of the national recovery and resilience plan.

Reducing the suspension of budgetary commitments to 65% took account of Hungary's commitment to implement concrete and detailed remedial measures.

Lastly, Mr HAHN noted that the ongoing dialogue between the Commission and the Hungarian authorities in recent months had to be continued and would help to strengthen the new instrument, which could serve as a model for the future.

The PRESIDENT stressed that the process set out in the Conditionality Regulation was one rule of law instrument among others, such as the Commission's rule of law report, the Article 7 procedure and infringement procedures.

The recovery and resilience plans drawn up under NextGenerationEU were not instruments for defending the rule of law as such, but the country-specific recommendations on these issues had to be taken into account.

In that regard, she had instructed Mr HAHN, Ms JOUROVÁ, Mr REYNDERS and Ms JOHANSSON to jointly monitor the alignment of the various existing instruments, where necessary with the help of other Commissioners.

The PRESIDENT concluded by stating that any amendments made to the proposed Decision during inter-institutional discussions had to be followed up properly, also to allow the Commission to communicate effectively with the media.

Following these presentations, the Commission adopted the proposal for a Council Implementing Decision in COM(2022) 485/3, for transmission to the Council.

8. PROPOSAL FOR A COUNCIL RECOMMENDATION ON STRENGTHENING PREVENTION THROUGH EARLY DETECTION – A NEW EU APPROACH ON CANCER SCREENING REPLACING COUNCIL RECOMMENDATION 2003/878/EC (COM(2022) 474 AND /2; SWD(2022) 296)

The PRESIDENT invited Ms KYRIAKIDES to present the proposal for a Council Recommendation concerning a new EU approach on cancer screening.

Ms KYRIAKIDES explained that, a year earlier, in the PRESIDENT's letter of intent accompanying her State of the Union address, the Commission had stated its intention to put forward a proposal to update the 2003 Council Recommendation on cancer screening. One of the aims was to consider extending cancer screening programmes beyond breast, cervical and colorectal cancer.

According to the letter of intent, this proposal was to be put forward in the last quarter of 2022, and she was pleased that this aim was being fulfilled that day.

Ms KYRIAKIDES pointed out that, in 2020, an estimated 2.7 million people in the EU were diagnosed with cancer and that 1.3 million people lost their lives to it. Cancer was currently the second cause of death in the EU, and it would become the leading cause by 2035 if these trends were not reversed. This was why improving prevention and early detection was a key priority of Europe's Beating Cancer Plan, in order to reduce cancer deaths and improve quality of life.

At EU level, screening was recommended for breast, cervical and colorectal cancer when offered as part of an organised programme with adequate resources. These organised programmes were recommended in the EU because they ensured the quality of services provided, which included checking that guidelines in this area were followed.

Ms KYRIAKIDES emphasised the importance of quality control in national screening programmes, as it was essential for patients to have reliable results based on a high level of expertise.

She recalled the adoption of the Cancer Screening Recommendation in 2003, which had been a watershed moment. Today, within the framework of Europe's Beating Cancer Plan, the Commission was proposing a new approach on cancer screening in the EU.

In this context, she welcomed the incredible advances made by medicine and technology in the last 20 years and the fact that EU rules had been able to keep up. With COVID-19 as a backdrop, the EU's actions had become even more urgent, given that an estimated 100 million cancer screening tests were not performed in Europe during the pandemic.

Ms KYRIAKIDES went on to explain that the proposal put forward that day was aimed at:

i) delivering on the EU's ambitious commitment under the Beating Cancer Plan to improve access to screening and ensure that 90% of people in the EU who qualified for cancer screening for the three types of cancer covered by the current recommendation (breast, cervical and colorectal) were offered such screening by 2025. This would mean updating the target population and the tests to be used;

ii) extending screenings to include lung, prostate, and gastric cancers, which were not currently part of the 2003 Recommendation and for which the EU now had evidence that screening made it possible to reduce the occurrence of cancer, ensure earlier diagnosis, reduce cancer deaths and improve patients' quality of life.

Ms KYRIAKIDES explained that, with these updates, EU rules would cover six cancer types that together accounted for almost 55% of all new cancers diagnosed in the EU every year and which caused over 50% of deaths.

The results analysing the state of implementation of the EU population screening programmes in 2008 had shown that Member States were making progress in their screening programmes but falling short of targets.

Ms KYRIAKIDES felt that the proposal presented that day was ambitious but feasible, as the EU could now provide Member States with financial support to achieve these targets. Around €100 million from the EU4Health and Horizon programmes had already been earmarked to support screening technology, guidelines and new approaches. The Commission would propose another €40 million under EU4Health for next year, making a total of around €140 million.

For the first time in its history, the EU had an ambitious plan along the lines of the Cancer Moonshot initiative, which was one of the priorities of the US President. Thanks to the funding available, Europe's Beating Cancer Plan would allow decisive action to be taken to improve the daily life of cancer patients, their families and our societies.

In conclusion, Ms KYRIAKIDES emphasised that the proposal put forward that day was one of the Plan’s flagship initiatives. She thanked Mr SCHINAS and all the members of the cabinets and departments concerned for their involvement in preparing this initiative.

Bringing the discussion to a close, the PRESIDENT said it had been scientifically proven that the types of cancer newly included in the proposal could be cured, if they were detected at an early stage. To this end, screening was crucial, but resources and expertise differed between the Member States, which was why it was necessary to put forward this new Recommendation at EU level.

Following these presentations, the Commission agreed, on the proposal of the PRESIDENT, that the proposal for a Recommendation currently set out in COM(2022) 474/2 would be formally adopted by the finalisation written procedure, the deadline for which was set at Tuesday 20 September 2022 at 12.00 (PE/2022/6790).

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The meeting ended at 9.50.