



Council of the
European Union

Brussels, 6 February 2023
(OR. en)

5240/23

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Special meeting of the European Council (9 and 10 February 2023)
– Draft conclusions

In accordance with Article 3(1) of the Rules of Procedure of the European Council, delegations will find attached the draft conclusions prepared by the President of the European Council.

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I. UKRAINE

1. The European Council reiterates its resolute condemnation of Russia's war of aggression against Ukraine, which constitutes a manifest violation of the UN Charter. Russia's brutal war, which has lasted almost a full year, has brought immense suffering and destruction upon Ukraine and its people. Russia must stop this atrocious war immediately. The European Union will stand by Ukraine with steadfast support for as long as it takes.
2. The European Union's support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders and its inherent right of self-defence against the Russian aggression remains unwavering. The European Union will maintain and seek to further increase, in consultation with international partners, collective pressure on Russia to end its war of aggression and to withdraw its troops and military equipment from Ukraine. To further raise the cost to Russia of its war of aggression, a price cap on petroleum products has been adopted. The European Union stands ready to continue to reinforce its restrictive measures in close coordination and cooperation with global partners. Anti-circumvention measures will be reinforced.
3. The European Council reiterates its strong commitment to accountability. Russia's continuing deadly, indiscriminate strikes against civilians and civilian infrastructure are international crimes and must stop. International humanitarian law, including on the treatment of prisoners of war, must be respected. Ukrainians who have been forcibly transferred to Russia, in particular children, must be immediately allowed to return safely.

4. The European Union is firmly committed to holding to account all commanders, perpetrators and accomplices of war crimes and the other most serious crimes committed in connection with Russia's war of aggression against Ukraine. The European Council fully supports Ukraine's and the international community's efforts in this respect, including the establishment of an appropriate mechanism for the prosecution of the crime of aggression, which is of interest to the international community as a whole. It underlines the European Union's support for the investigations by the Prosecutor of the International Criminal Court as well as for the creation, in The Hague, of an international centre for the prosecution of the crime of aggression against Ukraine. This centre will be linked to the existing Joint Investigation Team supported by Eurojust.
5. The European Council reiterates the European Union's readiness to support Ukraine's initiative for a just peace based on respect for Ukraine's sovereignty and territorial integrity. To date, Russia has not shown any genuine willingness regarding a fair and sustainable peace. The European Council expresses its support for the peace formula of President Zelenskyy and reaffirms the European Union's commitment to work actively with Ukraine on the 10-point peace plan. The European Union supports the idea of a Peace Formula Summit aiming at launching its implementation. The European Union will work together with Ukraine to ensure the widest possible international participation.
6. The European Council acknowledges the considerable efforts that Ukraine has demonstrated in recent months towards meeting the objectives underpinning its candidate status for EU membership. It welcomes Ukraine's reform efforts in such difficult times and encourages Ukraine to continue on this path and to fulfil the conditions specified in the Commission's opinion on its membership application in order to advance towards future EU membership. The European Union looks forward to working closely with Ukraine and supporting it in its efforts to fully meet all conditions. The European Council reiterates that Ukraine's future lies within the European Union.

7. As reaffirmed most recently in the joint statement following the EU-Ukraine Summit, the European Union will continue to provide strong political, economic, military, financial and humanitarian support to Ukraine and its people for as long as it takes. Overall assistance to Ukraine and its people by the European Union and its Member States so far amounts to at least EUR 67 billion.
8. The European Union has approved a seventh tranche of EUR 500 million in military support to Ukraine under the European Peace Facility, bringing the total military support from the European Union and its Member States to nearly EUR 12 billion. In view of the current situation, the European Council welcomes the speedy provision of military equipment to Ukraine by Member States.
9. The European Union remains committed to supporting the macro-financial stability of Ukraine. The European Council welcomes the work of the Commission and the European Investment Bank on projects to swiftly expand the use of the Solidarity Lanes to enhance trade options across sectors and export opportunities from Ukraine.
10. The European Union remains committed to supporting, along with partners, Ukraine's repair, recovery and reconstruction. In this context, the European Council welcomes the operationalisation of the Donor Coordination Platform. The European Union together with partners, is stepping up its work towards the use of Russia's frozen and immobilised assets to support Ukraine's reconstruction and for the purposes of reparation, in accordance with EU and international law.
11. The European Council also stresses the importance of psychological and psycho-social support and rehabilitation, as well as of the reintegration of war veterans into active social life. The European Union and its Member States will step up support for related programmes, including through specialised expertise.

II. ECONOMY

12. In the face of the new geopolitical reality, the European Union will act decisively to ensure its long-term competitiveness, prosperity and role on the global stage. The European Union will strengthen its strategic sovereignty and make its economic, industrial and technological base fit for the green and digital transitions. It will deepen the Single Market and ensure a level playing field both internally and globally.
13. Building on the Commission Communication on a Green Deal Industrial Plan for the Net-Zero Age, work needs to be urgently taken forward on the following strands of action:
 - a) State aid policy: procedures need to be made simpler, faster and more predictable, and allow for targeted, temporary and proportionate support to be deployed speedily, including via tax credits, in those sectors that are strategic for the green transition and are adversely impacted by foreign subsidies or high energy prices. A strong focus should also be given to preserving the competitiveness of SMEs. The integrity of and the level playing field in the Single Market must be maintained. The European Council further calls for EU instruments, such as the Important Projects of Common European Interest (IPCEIs), to be efficiently implemented by increasing transparency and streamlining procedures, notably by accelerating the design and assessment phases. The European Council invites the Commission to regularly report to the Council on the impact of this State aid policy on the Single Market as well as on the EU's global competitiveness;

- b) EU-level funding: at the same time, to facilitate the green transition across the Union and to avoid fragmenting the Single Market, a fully effective EU policy response requires even access to financial means. To that end, existing EU funds should be deployed in a more flexible manner, and options to facilitate access to finance should be explored. The European Council invites the Commission and the Council to ensure full mobilisation of available funding and existing financial instruments, so as to provide timely and targeted support in strategic sectors. In addition, the full potential of the European Investment Bank should be exploited;
- c) Regulatory environment: simple, predictable and clear framework conditions for investment in the European Union are essential. Administrative and permitting procedures should be simplified and fast-tracked, including to ensure manufacturing capacity for products that are key to meet the EU's climate neutrality goals, taking into account the whole supply and value chain across borders. Access to relevant critical raw materials should be ensured, including by diversifying sourcing and by recycling raw materials to promote circular economy principles. The upcoming reform of the electricity market design should help improve the EU's competitiveness. Public procurement rules should be modernised to help foster greener industry and European standards promoted to facilitate the fast roll-out of key technologies;
- d) Skills: bolder, more ambitious action should be taken to further develop the skills that are required for the green and digital transitions through education, training, upskilling and reskilling to meet the challenges of labour shortages and the transformation of jobs;
- e) Investment: both private and public investment are needed to close investment gaps that undermine growth. The European Council takes note of the Commission's intention to propose a European Sovereignty Fund before summer 2023 to support investment in strategic sectors.

III. MIGRATION

17. The European Council discussed the migration situation, which is a European challenge that requires a European response.

The European Council assessed the implementation of its past conclusions, aiming to develop a comprehensive approach to migration which combines increased external action, more effective control of EU external borders, and internal aspects, in compliance with EU principles and values. Building on the Commission's recent letter, the European Council calls for immediate operational measures to be strengthened and accelerated.

The European Council calls on the Council to closely monitor the implementation of its conclusions, and will revert to the matter on a regular basis.

14. The Capital Markets Union is crucial for Europe to remain a continent of production and innovation. The European Council calls on the co-legislators to accelerate the implementation of the Capital Markets Union Action Plan by advancing and finalising work on the legislative proposals in this area.
15. Pursuing an ambitious, robust, open and sustainable trade agenda and supporting the WTO and a multilateral rules-based system will be key to strengthening Europe's sovereignty and prosperity. To this end, fair and transparent free trade and investment agreements should ensure a true level playing field, and should allow resilient and reliable supply chains to develop and the European Union to access new markets. Efforts to diversify supply chains should be stepped up, notably for critical raw materials. The European Union must also safeguard its interests when facing unfair practices, making use of trade defence instruments.
16. In parallel, it is essential for the European Union to enhance its long-term competitiveness and productivity. A comprehensive strategy should further harness the full potential of the Single Market, which has underpinned Europe's prosperity since its creation 30 years ago. Recalling its December 2022 conclusions, notably its invitation to the Commission to present a strategy at EU level to boost competitiveness and productivity, the European Council will revert to these matters at its upcoming meeting.

Increased external action

18. The European Union will step up its action to prevent irregular departures and loss of life, to reduce pressure on EU borders and on reception capacities, to fight against smugglers and to increase returns. This will be done by intensifying cooperation with countries of origin and transit through mutually beneficial partnerships. All migratory routes should be covered.

Existing action plans for the Western Balkans and the Central Mediterranean should be implemented, actions for the Atlantic and for the Western and Eastern Mediterranean should be reinforced and further action plans presented by the Commission as soon as possible, with a view to quickly alleviating the pressure on the Member States most affected. EU and Member States' engagement with countries of origin and transit will be intensified in a coordinated manner, including through high-level contacts, with the objective of strengthening their capacity for border management, preventing irregular flows, breaking the business model of smugglers and increasing returns. To this end, the best possible use should be made of consultations in cooperation forums, as well as of funding under NDICI Global Europe and under other relevant instruments. The European Union will continue to support partners in addressing root causes of irregular migration and regarding safe, regular and orderly migration. Cooperation with international organisations, notably IOM and UNHCR, is to be further strengthened.

19. Visa policy alignment by neighbouring countries is of urgent and crucial importance for migration management as well as for the overall good functioning and sustainability of visa-free regimes where relevant. In this regard, the European Council emphasises that the monitoring of neighbouring countries' visa policies should be strengthened. The European Council welcomes the progress made in EU visa policy alignment by the Western Balkans partners and calls on them to swiftly take further steps. The European Union is ready to deepen cooperation on migration, asylum, border management and returns with the region, maximising the use of existing frameworks and available channels.

Enhancing cooperation on returns and readmission

20. The European Council recalls the importance of a unified, comprehensive and effective EU policy on return and readmission as well as of an integrated approach to reintegration. Swift action is needed to ensure effective returns, from the European Union and from third countries along the routes, to countries of origin, using as leverage all relevant EU policies, instruments and tools, including diplomacy, development, trade and visas, as well as legal migration. In this regard, a ‘whole-of-government’ approach is needed both within Member States and within EU institutions. The European Council invites the Commission and the Council to make full use of the mechanism provided for by Article 25a of the Visa Code, including the possibility of introducing restrictive visa measures in relation to third countries that do not cooperate on returns. To speed up return procedures, the European Council also invites Member States to recognise each other’s return decisions. It calls on the Asylum Agency to provide guidance to increase the use of safe third countries and safe countries of origin concepts. All Member States should make use of this guidance, with a view to achieving a more coordinated approach, hence paving the way towards a common EU list.

Control of EU external borders

21. The European Union remains determined to ensure effective control of its external land and sea borders. The European Council welcomes the efforts by Member States in this respect and:
- a) affirms its full support for the European Border and Coast Guard Agency (Frontex) in delivering on its core task, which is to support Member States in protecting the external borders, fighting cross-border crime and stepping up returns;

- b) reiterates the importance of the Entry/Exit System and the European Travel Information and Authorisation System rapidly becoming operational;
- c) calls for the rapid conclusion of negotiations on new and revised Status Agreements between the European Union and third countries on the deployment of Frontex as part of the efforts to strengthen cooperation on border management and migration;
- d) calls for the mobilisation of EU funds and means to support Member States in reinforcing border control capabilities and infrastructure, means of surveillance, including aerial surveillance, and equipment. In this context, the European Council invites the Commission to quickly finalise the European Integrated Border Management Strategy;
- e) underlines the need for reinforced cooperation regarding Search and Rescue activities and, in that context, takes note of the relaunch of the European Contact Group on Search and Rescue.

Fighting instrumentalisation, trafficking and smuggling

- 22. The European Council condemns attempts to instrumentalise migrants for political purposes, particularly when used as leverage or as part of hybrid destabilising actions. It calls on the Commission and the Council to take forward the work on relevant tools, including possible measures against transport operators that engage in or facilitate trafficking in persons or smuggling of migrants.
- 23. Through strong cooperation between Member States and with Europol, Frontex and Eurojust, as well as with key partners, the fight against human trafficking and smuggling of migrants will be further reinforced.

Data on migratory flows and situational awareness

24. The European Council calls on the Council and the Commission, with the support of relevant EU agencies, to develop a common situational awareness, to improve monitoring of data on migratory flows and detect new migratory trends more quickly, both into and within the European Union. It encourages Member State authorities to request the support of EU agencies – including the Asylum Agency and Frontex – to ensure that all migrants entering the European Union are properly registered.

Pact on Migration and Asylum and related files

25. While the existing EU legislation remains in force, the European Council, in view of the progress achieved in 2022, calls on the co-legislators to complete work on the Pact on Migration and Asylum as well as on the revised Schengen Borders Code and the Return Directive.

IV. OTHER ITEMS

Belgrade-Pristina Dialogue

26. The European Council in the light of recent tensions in north Kosovo* underlines the urgent need for progress in the normalisation of relations between Kosovo* and Serbia through the EU-facilitated dialogue, led by the High Representative.
27. The European Council welcomes the European proposal for putting the relationship between both parties on a new and sustainable basis as a historic chance that should be seized by both parties also with a view to realising their European perspective.

* *This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence*

28. The European Council urges both parties to implement, fully and without conditions, the obligations they committed to in the framework of the dialogue, including the agreements from the years 2013 and 2015 to create an Association/Community of Serb Majority Municipalities.

[p.m.: Earthquake in Türkiye and Syria]

