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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
On: 4 February 2026  
To: Delegations  
Subject: Outcome of Proceedings of the JHA Counsellors (All)

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### 1. Adoption of the agenda

The agenda was adopted as set out in CM 1392/26.

### 2. Commission's intention to enter into discussions on behalf of the EU in the preparation of the Political Declaration on migration issues by the Council of Europe

The meeting discussed the Commission's note sent on 13 January 2026 for the attention of the Council Secretariat-General regarding Commission's intention to enter into discussions on behalf of the EU in the preparation of the Political Declaration on migration issues by the Council of Europe (CoE) (ST 5283/26). The Presidency invited the Commission to explain its involvement and role in the process.

## On process

The Commission outlined its involvement in the CoE. While the European Union (EU) is not a member, it has a longstanding partnership with the Council and holds observer status, allowing it to attend meetings, engage in discussions, and participate in the Steering Committee for Human Rights (CDDH committee) tasked with drafting elements of the political declaration. The Commission emphasised that it participates, on behalf of the EU, to CDDH works and while it can provide input, it cannot vote, and decision-making remains the prerogative of Council of Europe members.

The Commission stated that its intention is to provide legal clarity, coherence, and consistency with the EU *acquis*. It emphasised that it is not seeking a mandate at this stage and views the process as following the non-binding instruments (NBI) procedure. The Commission clarified that its role is purely supportive and does not aim to replace (or contradict) Member States' positions. The Commission also indicated that it would assess at a later stage whether the EU should endorse the political declaration (step 2 of NBI procedure). Should that be the case, it would seek an authorisation from the Council to do so on behalf of the EU in accordance with the NBI procedure.

The Council Legal Service (CLS) stated that, while the EU holds observer status in the Council of Europe (CoE), the issues at hand touch on EU competences. When the Commission participates in CoE discussions, it does so on behalf of the EU under Article 220 of the TFEU. The CLS further clarified the distinction between ensuring consistency with the *existing* *acquis* and influencing *future* EU legislation. The CLS stressed that any active role for the Commission beyond providing technical support would require a mandate from the Council and must respect the Council's policy-making functions in line with Article 16(1) TEU. As underlined by several Member States, where the legal interpretation of the current *acquis* could lead to a potential contradiction between the Commission and Member States, the Commission should refrain from intervening at the CoE discussions. This approach is consistent with the principle of sincere cooperation set out in Article 4 of the TEU, which requires both the Union and Member States to act in a manner that respects each other's prerogatives and avoids undermining each other's positions.

## On substance

The Commission further provided an overview of the substance discussed so far, including the topics that have been identified as possible elements of the political declaration, namely: (i) expulsions of foreign nationals convicted of serious crimes, (ii) mass arrivals of migrants, (iii) instrumentalisation, (iv) decision-making in migration cases, (v) and innovative solutions. A preliminary discussion took place during the first drafting session in mid-January, focusing on the structure of the declaration and potential elements to include. The CDDH will not draft the declaration itself but will propose elements to the Committee of Ministers. CDDH members stressed that the declaration should align with the European Convention on Human Rights and the independence of the Court, and should only seek guidance and orientation without prescribing specific actions.

The next drafting session will take place from 23-25 February in Strasbourg. A third session is scheduled for 10-12 March, after which the Committee will finalise its work by 22 March. The final work will then be submitted to the Committee of Ministers, with adoption scheduled for 14-15 May in Chisinau.

## Presidency conclusions

After hearing from Member States, the Presidency concluded that there is **broad consensus that no EU position is required at this stage**. The Presidency also reaffirmed that, while the observer status allows the Commission to provide technical advice on the EU *acquis*, **it cannot represent the EU's position without prior Council authorisation and must avoid contradicting Member States' positions**. Member States expressed concern about the risk to the credibility and legitimacy of the EU if the Commission's statements in Strasbourg contradicted national positions. There was strong agreement that the Commission must refrain from making comments that conflict with Member States positions, particularly regarding third countries that are also members of the CoE.

The Commission's role is solely to ensure **clarity, coherence, and consistency with the EU acquis**, but it should refrain from addressing issues outside this scope, such as EU policy or future legislation. The Commission must also be **mindful of Member States' positions and stay within the confines of its observer role**.

The Presidency will later assess whether additional meetings on this topic in Council preparatory bodies are necessary.

### **3. AOB**

N/A

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