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Meeting: 1514th meeting (December 2024) (DH)

Communication from the authorities (15/10/2024) concerning the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514e réunion (décembre 2024) (DH)

Communication des autorités (15/10/2024) relative à l'affaire Selahattin Demirtas c. Türkiye (n° 2) (requête n° 14305/17) ***[anglais uniquement]***.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

October, 2024



**Updated Information on Individual Measures**
***Demirtaş (No.2) v. Türkiye* (Appl. No. 14305/17)**
Judgment of and final on 22 December 2020
***Yüksekdağ Şenoğlu and Others v. Türkiye* (Appl. No. 14332/17)**
Judgment of 8 November 2022 and final on 3 April 2023

1. The present cases were lastly examined at the 1507th DH meeting on 17-19 September 2024, and the Committee of Ministers (CM) decided to resume consideration of the individual measures at their 1514th (December 2024) (DH) meeting.

2. In this regard, the authorities would like to provide the following information on individual measures to update the Committee of Ministers.

3. Firstly, the Turkish authorities would like to note that the CM's latest decisions adopted at their last CM-DH meeting have been translated and circulated to the relevant authorities, including the Constitutional Court.

## A. Just Satisfaction

4. The authorities would like to indicate that the amounts of just satisfaction awarded by the European Court of Human Rights ("Court", "European Court" or ECtHR), in the present cases have been paid to the applicants within the deadline set forth by the Court.

## B. Other Measures

5. The authorities would like to note that the applicants' -*Selahattin Demirtaş, Figen Yüksekdağ Şenoğlu and Ayhan Bilgen*- case was pending before the Ankara 22nd Assize Court ("the trial court"). The last hearing before the Ankara 22nd Assize Court was held on 16 May 2024. At the end of this final hearing, the 22nd Assize Court pronounced its short decision and decided to convict the applicants *Demirtaş* and *Yüksekdağ*. The applicants are no longer in pre-trial detention by virtue of their convictions. According to the Court's established case-law, this new development must be taken into account, as the applicants now have the status of convicted persons. Accordingly;

- **Selahattin Demirtaş (No.2)**

6. As noted in the Court's judgment (§ 78), with the indictment of the Diyarbakır Chief Public Prosecutor's Office dated 11 January 2017, *Selahattin Demirtaş* was charged with the following offences, and the applicant was requested to be sentenced to from 43 years' up to 142 years' imprisonment:

- establishing or leading a terrorist organisation (Article 314 § 1 of the Turkish Criminal Code),

- disseminating propaganda in favour of a terrorist organisation (fifteen times - Article 7(2) of the Anti-Terror Law),

- incitement to commit offences (Article 214 § 1 of the Turkish Criminal Code),

- praising the offence and the offender (four times – Article 215 § 1 of the Turkish Criminal Code),

- inciting the public to hatred and hostility (two times - Article 216 § 1 of the Turkish Criminal Code),

- incitement not to respect for the laws (Article 217 § 1 of the Turkish Criminal Code),

- organising and participating in illegal meetings and demonstration marches (three times – Article 28(1) of the Law no. 2911 on Meetings and Demonstration Marches)

- failing to obey the orders of security forces to disperse illegal demonstration (Article 32(1) of the Law no. 2911)

7. The Ankara 22nd Assize Court handled the relevant indictment and other joined files and made separate assessments for each offence, and ruled the following:

8. Assessments were made in respect of a total of 47 offences including the joined files in respect of the applicant, and acquittal decisions were issued in respect of 31 of them. With respect to 3 remaining offences (praising the offence and offender, disseminating propaganda in favour of a terrorist organisation (two times)), it was ruled that there was no ground to impose a sentence since they remained within the scope of legislative non-liability *(yasama sorumsuzluğu)*.

9. Although a criminal case was filed in respect of the offences of "establishing or leading an armed terrorist organisation" and "forcibly dispersing the meeting and march, inciting the public to perform an illegal meeting and demonstration march", it was ruled that there was no ground to impose a sentence in this regard, since the offence of "undermining the unity of the state and territorial integrity" encompassed the two mentioned offences.

10. One of the offences (disseminating propaganda in favour of a terrorist organisation) was dismissed since a criminal case had been priorly initiated in respect of an offence.

11. Finally, the applicant was sentenced to a total of 37 years and 60 months' imprisonment for 11 offences. These offences are "Undermining the unity and territorial

integrity of the State (20 years)", "Incitement to commit offences (once- 4 years and 6 months)", "Disseminating propaganda in favour of a terrorist organisation (four times -2 years and 6 months; 2 years and 30 months; 1 year and 2 years)", "Inciting to the public not to obey the laws (once-1 year and 6 months)", "Encouraging and inciting to illegal meetings or demonstration marches (two times-3 years and 1 year and 6 months)" and "Praising the offence and offender (once-1 year and 6 months)".

12. The reasoned decision has not yet been pronounced. The judgment of the Ankara 22nd Assize Court will be reviewed by the regional court of appeal *ex officio* or upon objection of the parties according to the types of offences. The applicant also appealed against this judgment.

13. At this point, the authorities would like to recall that the applicant has also lodged an application with the European Court complaining about his current detention. The Court, by a letter dated 19 January 2021, that is to say about forty days after the Grand Chamber's judgment, invited the Turkish authorities to submit their observations on the applicant's detention starting from 20 September 2019. It should be underlined that the fact that the Court asks questions, in the communication letter, about the applicant's detention starting from 20 September 2019 itself suggests that the applicant's current detention falls out of the scope of the Grand Chamber's judgment. The authorities submitted their observations on this application on 14 July 2021 and reiterated that the applicant's detention of 20 September 2019 was a new detention based on different facts, charges and new evidence. The authorities would furthermore like to note that information on the full content of the above mentioned new evidence was submitted to the Court within the context of the applicant's pending application before it concerning his current detention. This application is still pending before the Court, and thus conclusions of the Court in this application should be awaited.

14. Moreover, it should be recalled that the applicant lodged an individual application before the Constitutional Court with respect to his current detention starting from 20 September 2019. The individual application in question is pending before the Constitutional Court. The General Assembly of the Constitutional Court took the application into its agenda on 25 July 2023, but decided to postpone it for further detailed examination. The outcome of the examination of the Constitutional Court in this application is of crucial importance. In this respect, its conclusion has to be awaited.

15. The Government would further like to state that the trial court ordered his detention with his conviction *("hükmen tutuklu")*. The trial court authorised to assess the applicant's

current situation rendered its judgment and made a separate assessment in respect of each act and offence. This judgment will also be examined by the higher courts. Furthermore, there are pending applications before the ECtHR and the Constitutional Court. In view of the extensive scope of the case, it would be more appropriate to await the reasoned judgment of the court and then wait for the exhaustion of domestic remedies if the applicant considers that the judgment is unjustified.

- **Figen Yüksekdağ Şenoğlu**

16. The applicant was arrested and detained on 4 November 2016 at the request of the Diyarbakır Chief Public Prosecutor's Office on charges of incitement to commit crime and membership of a terrorist organisation.

17. The Diyarbakır Prosecutor's Office issued a bill of indictment before the Diyarbakır Assize Court on 15 January 2017. The applicant was charged for the offences of founding or managing of a terrorist organisation (Article 314 § 1 of the Criminal Code), disseminating propaganda in favour of a terrorist organisation (on seven occasions - Article 7 § 2 of the Prevention of Terrorism Act), public incitement to commit an offence (Article 214 § 1 of the Criminal Code), public incitement to hatred and hostility (twice - Article 216 § 1 of the Criminal Code), persisting in not complying with orders to disperse given by security forces (Article 32 § 1 of Law no. 2911 the Meetings and Demonstrations Act.

18. However, on 22 November 2022, the 22nd Ankara Assize Court decided the applicant's release concerning the detention order of 4 November 2016 which was the subject matter of the Court's judgment.

19. Meanwhile, in the framework of another criminal investigation (no. 2014/146757) launched particularly in relation to 6-8 October events, the Ankara public prosecutor requested the applicant to be placed in pre-trial detention on 20 September 2019 for undermining the unity and territorial integrity of the State; incitement to commit murder, to commit robbery, to deprive another person of his liberty, to attempted murder.

20. The Ankara 22nd Assize Court also addressed the said indictments and the other joined files and made a separate assessment for each offence and on 16 May 2024 it, in sum, rendered the following judgment in respect of the applicant.

21. An assessment was made in respect of the applicant for 35 separate offences in total together with the joined files, acquittal was ordered in respect of 16 of these offences. In 8 of the remaining offences (disseminating propaganda in favour of a terrorist organisation), it was ruled that there was no ground to impose a sentence since they remained within the scope of

legislative non-liability ("*yasama sorumsuzluğu*").

22. It was decided to dismiss the case on the ground that there was a criminal case brought before within the scope of two offences (Disseminating propaganda in favour of a terrorist organisation successively and disseminating propaganda in favour of a terrorist organisation).

23. While a criminal case was brought for the offences of "Establishing or Leading an Armed Terrorist Organisation" and "Membership of an Armed Terrorist Organisation", it was noted that these offences fell within the scope of the offence of "Disrupting the Unity and Territorial Integrity of the State" and it was decided that there was no need to impose a sentence for this offence.

24. Lastly, the applicant was sentenced to 30 years and 33 months' imprisonment in total for 8 offences. These offences are "Undermining the unity and territorial integrity of the State (19 years)", "Disseminating Propaganda in Favour of a Terrorist Organisation (4 counts- 1 year and 6 months; 2 years and 6 months; 1 year and 6 months; 1 year and 6 months)", "Incitement to Commit an Offence (4 years and 6 months)", "Encouraging or Inciting Unlawful Meetings and Demonstration Marches (2 years)" and "Violation of the Prohibition of Delivering a Speech, One of the Electoral Prohibitions laid down in the Law no. 298 on Basic Provisions Concerning Elections and on Registers of Voters (3 months)".

25. The reasoned decision has not yet been pronounced. The judgment of the Ankara 22nd Assize Court will be reviewed by the regional court of appeal *ex officio* or upon objection of the parties according to the types of offences. The applicant also appealed against this judgment.

26. The Government would further like to state that the trial court ordered her detention with her conviction *("hükmen tutuklu"*). The court authorised to assess the applicant's current situation rendered its judgment and made a separate assessment in respect of each act and offence. This judgment will also be examined by the higher courts. Furthermore, the applicant lodged an application pending before the Constitutional Court. In view of the extensive scope of the file, it would be more appropriate to wait for the reasoned judgment of the court and then wait for the exhaustion of domestic remedies if the applicant considers that the judgment is unjustified.

- **Ayhan Bilgen**

27. In the proceedings before the Ankara 22nd Assize Court, in addition to the applicants mentioned above, *Ayhan Bilgen*, one of the applicants in the Court's judgment of

*Yüksekdağ Şenoğlu and others*, is also included in this file as an accused. As notified to the Committee of Ministers before, the applicant was released.

28. By the decision dated 16 May 2024, the applicant *Ayhan Bilgen*, who was tried without detention in the same case, was acquitted all of the offences he was charged with.

29. The reasoned decision has not yet been pronounced. The judgment of the Ankara 22nd Assize Court will be reviewed by the regional court of appeal *ex officio* or upon objection of the parties according to the types of offences.

- **Remaining Applicants in the Yüksekdağ Şenoğlu Case**

30. The authorities note that remaining applicants in the present *Yüksekdağ Şenoğlu* case have been released and currently they are not in prison.

### C. Assessments of the Constitutional Court in other/similar applications

31. The Government would like to bring the Committee's attention to the recent judgments, dated 21 November 2023, of the Turkish Constitutional Court delivered in respect of three separate individual applications. These are *Ayla Akat Ata (3)* (no. 2020/35149)[1], *Berfin Özgü Köse* (no. 2020/35082)[2] and *Nazmi Gür* (no. 2020/35079)[3] which are also relevant in terms of the present cases. These judgments contain a number of important findings in relation to the new evidence underlined by the trial court in deciding continued pre-trial detention of the *Ayla Akat Ata*, *Berfin Özgü Köse* and *Nazmi Gür* (the complainants).

32. First of all, the Government would like to provide some brief information about the complainants in these judgments. *Ayla Akat Ata* was a member of the Peoples' Democratic Party ("HDP") and she was a member of parliament ("MP") in 2014; *Berfin Özgü Köse* was a member of the HDP Central Executive Board in 2014; *Nazmi Gür* was an MP and also served as a member of HDP's Central Executive Board in 2014.

33. In these judgments, cited above, the complainants complained before the Constitutional Court, *inter alia*, that the pre-trial detention measures imposed on them had been unlawful and that their right to personal liberty and security had been violated. The Government would like to emphasise that the complainants in these judgments are also being tried within the context of the pending criminal proceedings before the Ankara 22nd Assize Court, together with *Demirtaş* and *Yüksekdağ Şenoğlu*.

[1] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/35149
[2] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/35082
[3] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/35079

34. Considering that the Committee of Ministers does not have a mandate to make an assessment of the nature of the evidence –relied on when deciding the applicants' continued pre-trial detention- in the proceedings before Ankara Assize Court, the findings of the Constitutional Court whereby the trial court's decisions were thoroughly examined are of paramount importance. The Committee of Ministers has itself also emphasised in its decisions that it attaches particular importance to the outcome of individual applications of *Demirtaş* and *Yüksekdağ Şenoğlu* before the Constitutional Court and underlined the importance of the conclusion of these applications.

35. In this context, the Constitutional Court's above-mentioned judgments are noteworthy in that the Constitutional Court has also addressed the new evidence, which has also been repeatedly emphasised by the Government, on which the continued detention of *Demirtaş* and *Yüksekdağ Şenoğlu* is based.

36. The Government would like to refer to the following findings of the Constitutional Court in these judgments.

37. Firstly, the Government would like to emphasise, in particular, the findings of the Constitutional Court in the case of *Ayla Akat Ata (3)*. The domestic criminal proceedings in this case are similar to those of the *Demirtaş* and *Yüksekdağ Şenoğlu* cases. Namely, as was in the *Demirtaş* and *Yüksekdağ Şenoğlu* cases, *Ayla Akat Ata* was first subjected to an investigation in Diyarbakır and then a separate investigation was initiated by the Ankara Chief Public Prosecutor's Office into the incidents of 6-8 October. Subsequently, these two sets of proceedings were joined before the Ankara 22nd Assize Court. In *Ayla Akat Ata (3),* the Constitutional Court made important assessments on the different nature of these two investigations, particularly in the context of the concept of Serhildan (uprising), and reached the following conclusions on the complainant's role in these events::

> *"117. As can be seen, in the first investigation against the applicant, initiated by the Diyarbakır Chief Public Prosecutor's Office, the applicant was not charged with any offence in connection with the incidents of 6-8 October. The detention measure imposed on the applicant on 30 October 2016 within the scope of this investigation did not rely on the statements of the witnesses/suspects/accused, the applicant's social media post-dated 6 October 2014, inquiry/fact-finding reports, or the other information and documents regarding offences such as intentional killing and robbery committed during the incidents of 6-8 October. The second investigation against the applicant, initiated by the Ankara Chief Public Prosecutor's Office, was based on the allegation that the*

*applicant had acted in accordance with the instructions of the PKK/KCK terrorist organisation and thus was responsible for the incidents of 6-8 October; therefore, the applicant was charged with the offence of disrupting the unity and territorial integrity of the State and the offence of instigating different offences committed during the incidents of 6-8 October. In the detention measure imposed on 2 October 2020 within the scope of the second investigation and subject to the instant case - unlike the detention measure imposed on 30 October 2016 - the statements of the persons under investigation/prosecution for the offences allegedly committed during the incidents of 6-8 October, the statements of the complainants and other witnesses, the applicant's social media post-dated 6 October 2014, the inquiry/fact-finding reports and other information/documents were relied upon. It can be said that the statements of anonymous witness Mahir, taken on 4 December 2019, and witness K.G., taken on 7 January 2020, also confirmed the facts on which the detention order was based."*

38. The Government would also like to refer to the findings of the Constitutional Court in relation to the new evidence obtained against the complainants in the context of these cases.

39. In this respect, in *Ayla Akat Ata (3)* the Constitutional Court made the following assessments with regard to the evidence concerning the complainant's detention in the context of the case file:

*"98. The investigating authorities also relied on the statements of persons who had taken part in the incidents of 6-8 October and were under investigation/prosecution for different offences allegedly committed during those incidents, as well as witness statements to the effect that the incidents were of a nature of an uprising, and argued that the call of the HDP Central Executive Board and other remarks made by HDP officials, including the applicant, had led to the outbreak of the incidents with the participation of the masses, and thus to the commission of criminal acts. In the aforementioned statements, it was indicated that they had been involved in the incidents upon the call of the HDP Central Executive Board and the remarks of the Party officials, as well as telephone calls and written messages received from the Party officials. Some of the people whose statements were taken said that they had participated in the incidents due to pressure from the PKK/KCK terrorist organisation. Furthermore, it was mentioned in the witness statements that it had been known by persons affiliated with the terrorist organisation and by HDP officials that the calls for "Serhildan" (Uprising) did not aim at staging a normal protest/demonstration march, but in fact*

*violent acts. In this connection,*

*- In his statement dated 4 December 2019, anonymous witness Mahir submitted that members of the terrorist organisation had also participated in the Meeting of the Central Executive Board of the HDP dated 6 October 2014 in which the call made by the HDP had been decided upon prior to the beginning of the incidents. He submitted that the decision to make the call amounting to "serhildan" had been taken upon the instructions of those persons. He further submitted that it was known to the HDP officials as well as the persons affiliated with the terrorist organisation that such calls were aimed not at holding an ordinary protest/demonstration but at committing acts involving violence. He also stated that the youth structure which had led the acts of violence during the incidents of 6-8 October had been established by Duran Kalkan, an executive of the organisation, within the scope of the self-governance-autonomy plan envisaged to be declared by the organisation.*

*- In his statement dated 7 January 2020, having provided general information about the acts of uprising called "serhildan", witness K.G. stated that the incidents of 6-8 October also constituted a "serhildan", that they had been planned by the senior executives of the organisation, in particular, the organisation executive Duran Kalkan and that within the scope of the plan in question, the organisation sought to establish de facto dominance in a region of Türkiye by making sure that the clashes in Ayn-al Arab and Syria were extended to Türkiye (see § 52). Witness K.G. stated -similarly to the submissions of anonymous witness Mahir- that it was known to the HDP officials as well as the persons affiliated with the terrorist organisation that such calls were aimed not at holding an ordinary protest/demonstration but at committing acts involving violence. He also stated that a high number of persons had joined the terrorist organisation on account of the statements/calls made during the process by the HDP and its officials including the applicant and that the intense and wide scale acts of violence and deaths in the incidents of 6-8 October would perhaps not have occurred if the statements/calls in question had not been made.*

*- In his statement dated 3 November 2020, witness İ.B. submitted that he was an MP for the HDP at the time of the incidents and that the incidents of 6-8 October had been planned by the PKK/KCK in pursuit of the aim of declaring autonomy.*

*- Anonymous witness Ulaş, whose statement was taken within the scope of the investigation no. 2020/5580 of the Chief Public Prosecutor's Office, submitted that the*

*applicant (Ayla Akat Ata) was one of the high-level members of the organisation called "the crew" (kadro), that she had travelled to Qandil and attended the meetings held by the organisation and that she had been assigned to the PKK/KCK women's branch as a responsible person." (The Constitutional Court made similar assessments in its judgments of Berfin Özgü Köse (§ 73) and Nazmi Gür (§ 73)).*

40. Taking into account the aforementioned pieces of evidence, the Constitutional Court reached important conclusions as to the nature of the tweet published by the HDP, the complainants' responsibility for this social media post in view of their positions in the HDP and further, their role in the uprising. In this connection, the assessments of the Constitutional Court in its judgments of *Berfin Özgü Köse* (§§ 74-76) and *Nazmi Gür* §§ 74-76) are noteworthy.

*"74. It is indubitable that the HDP made a call from its social media account on behalf of the Central Executive Board to have the people take to the streets and join the resistance and that the applicant participated in the meeting in which the relevant call was decided upon...")*

*"75. The call on behalf of the Central Executive Board of the HDP was made at a time when the civil war in Syria came to such a point that would pose a threat to the national security of Türkiye and it was made upon the clashes in Ayn-al Arab between the PYD -which is the extension of the PKK in Syria- and the DAESH. Furthermore, it should be emphasised that the call in question was made on the day after a leader of the PKK terrorist organisation made a call for occupying the metropolises of Türkiye under the pretext of the incidents taking place in Ayn-al Arab. On the day the relevant call was made, an announcement was also made on a news portal website said to operate under the guidance of the PKK. The announcement in question made a call for maximum expansion of the uprising by using discriminatory statements, pointing a political party as a target and using the expression "give no chance to live...").*

*76. In view of his/her status, the applicant was at a position to be able to foresee that the civil war experienced in Syria posed a threat to the national security of Türkiye and that in particular, the call for uprising made under the pretext of the clashes in Ayn-al Arab -between two terrorist organisations- on behalf of one of those organisations could lead to widespread acts of violence and disrupt the public order in Türkiye. Moreover, the call in question was made from the HDP's official social media account on behalf of the Central Executive Board, which is the Party's executive organ, and such a call would undeniably be highly influential on the masses in the region. Indeed, the*

*acts of violence began on the day the relevant call was made and they kept becoming widespread. They aggravated to such a degree that caused several persons to die and get injured, and the public order was disrupted.*

*The persons, who participated in the incidents of 6-8 October and in whose respect investigations/proceedings were conducted in relation to different offences allegedly committed by them in the course of the incidents, as well as the other witnesses - anonymous witness Mahir and witnesses K.G., and İ.B. - gave statements to the same effect. Therefore, it can be said that the investigating authorities' establishment of a link between the call made on behalf of the Central Executive Board of the HDP and the calls made by the PKK as well as between the calls in question and the acts of violence was based on factual and legal grounds. In conclusion, acceptance of all the aforementioned points as a strong indication of commission of an offence in implementing the measure of placement in detention cannot be said to have been ungrounded and arbitrary" (for similar assessments, see also Ayla Akat Ata (3), §§ 99-102).*

41. As seen, in the cases of *Ayla Akat Ata (3), Berfin Özgü Köse* and *Nazmi Gür*, the Constitutional Court thoroughly examined the evidence, which was involved in the proceedings before the Ankara 22nd Assize Court in which *Demirtaş* and *Yüksekdağ Şenoğlu* also stood trial, in connection with the complainants' detention. Within the scope of the said examination, the Constitutional Court noted in its judgment of *Ayla Akat Ata (3)* that as in the cases of *Demirtaş* and *Yüksekdağ Şenoğlu*, initially an investigation had been conducted in Diyarbakır against the complainant, the Ankara Chief Public Prosecutor's Office had subsequently initiated a separate investigation into the incidents of 6-8 October and later on, the relevant proceedings had been joined before the Ankara 22nd Assize Court. The Constitutional Court then made important assessments in connection with the different nature of the two investigations in question and in particular, the concept of "serhildan" and it made important findings as to the complainant's role in the uprising. In addition, attaching particular importance to the statements of anonymous witnesses Mahir and Ulaş and witnesses K.G. and İ.B. - which have been submitted to the Committee by the Government - and having regard to the above-mentioned pieces of evidence, the Constitutional Court reached important conclusions in all three cases as regards the complainants' responsibility for the relevant social media post in view of their positions in the HDP and further, their role in the uprising. In conclusion, the Constitutional Court held that the complainants' individual applications were manifestly ill-founded.

42. In the light of the foregoing explanations, while the Government is aware that each individual application must be assessed in the light of its particular circumstances, it reiterates that the conclusions of the criminal proceedings and the individual applications before the Constitutional Court relating to *Demirtaş* and *Yüksekdağ Şenoğlu* should be awaited. This is because the proceedings which constitute the subject-matter of the above-mentioned judgments of the Constitutional Court and the criminal proceedings against *Demirtaş* and *Yüksekdağ Şenoğlu* are related to the same criminal case file and are also related to the similar facts based on the incidents of 6-8 October.

## D. Conclusion

43. The Turkish authorities would kindly ask that the updated information will be taken into account in respect of the upcoming DH meeting. The Government will continue submitting further information on the individual and general measures taken or envisaged to be taken in due time.