



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 21 October 2013
(OR. en)**

14875/13

**INF 174
API 89**

INFORMATION NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Adoption of the draft replies to confirmatory applications by the Council
- The practical modalities

One of the tasks of the Working Party on Information is the examination of documents for which a confirmatory application has been made, and the examination and finalisation of the Council's draft replies to such applications.

However, since the timetable of the meetings of the Working Party on Information, Coreper and the Council does not always allow the Institution to meet the strict time-limits, which Regulation (EC) 1049/2001 imposes for the handling of confirmatory applications, *three scenarios* are possible for the adoption of draft replies to such applications:

- Consultation of delegations in a WPI meeting, followed by formal approval of the draft reply by Coreper and Council;
- Informal written email consultation of delegations, followed by formal approval of the draft reply by Coreper and Council; or
- Consultation of delegations in a WPI meeting or informal written email consultation of delegations, followed by a formal approval by delegations by ordinary written procedure.

Delegations will find a summary of these three scenarios in the Annex.

In the third scenario, the approval by the Council of the draft replies to confirmatory applications is done using the ordinary written procedure when the timetable of Council meetings does not otherwise allow the Council to meet the legal deadline.

According to Article 12(1) of the Council's Rules of Procedure (CRP), the ordinary written procedure can be used to adopt acts of the Council on an urgent matter, where the Council or Coreper unanimously decides to use that procedure. This Article also stipulates that all members of the Council have to agree to the use of ordinary written procedure, either at the level of Coreper or Council. In practice, there are two possible options:

- Coreper unanimously decides to use the ordinary written procedure. The ordinary written procedure is launched and delegations are asked to indicate their position regarding the adoption of the act in question but not to indicate whether they can agree to the use of the ordinary written procedure, since this question has already been settled at Coreper level.
- The ordinary written procedure is launched without involving Coreper and delegations are asked to indicate both their agreement to the ordinary written procedure and their position regarding the adoption of the act in question.

In many cases relating to the adoption of the draft replies to confirmatory applications, the legal deadline does not allow for the point to be submitted to a Coreper meeting, meaning that for the ordinary written procedure the General Secretariat has to follow the second scenario indicated above.

In order not to render the already relatively heavy ordinary written procedure even more cumbersome for delegations, the General Secretariat has decided to simplify the Communications which it issues with the aim of obtaining the Council's approval of draft replies to confirmatory applications by ordinary written procedure. These Communications will from now on contain the following three questions:

"In accordance with the provisions of Article 12 of the Council's Rules of Procedure, please state whether you agree to:

1. *the use of the written procedure?*

This question is asked to check whether or not all members of the Council agree using the ordinary written procedure for the adoption of the draft reply. As indicated above, all members of the Council have to agree, otherwise the written procedure cannot be used.

2. *the adoption by the Council of the reply to confirmatory application xx/c/xx/xx, as set out in document XXXXX/XX?*

This question is asked to check whether the members of the Council can agree to the adoption of the draft reply. The reference document indicates the situation following the WPI meeting or written e-mail consultation. This document also mentions the indicative votes given at the WPI meeting or during the written e-mail consultation, as well as statements made.

The Council's decision of approval is taken by simple majority (cf. Article 1(5) of the CRP).

3. *the publication of the outcome of this written procedure, including the names of the Member States voting NO to the second question or abstaining, as well as possible unilateral statements?"*

This question is asked to check whether the members of the Council can agree to the publication of the delegations' positions with regard to the draft reply, i.e. the replies to question 2, as well as possible statements which were made. According to Article 9(2)(b) of the CRP, the Council (or Coreper) can decide to publish the votes and the statements at the request of one of its members. A decision to that effect is taken by simple majority (cf. Article 1(5) of the CRP).

