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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Working Party on Information 19 May 2016

1. Adoption of the agenda

The agenda was adopted as set out in document CM 02716/2016.

2. Confirmatory applications

- Information from the General Secretariat of the Council

The Chair informed delegations about the four confirmatory applications submitted to the Council. The WPI will soon be consulted on the replies to these applications and, if needed, the replies will be discussed at next meeting of the WPI.

- a) Confirmatory application no. 08/c/03/16

Doc. 7380/16 INF 51 API 37

The Legal Service recalled that this confirmatory application relates to documents containing or referring to a legal opinion from the Council on the compatibility of investor-state dispute settlement (ISDS) and Investment Court System (ICS) in EU trade agreements with the EU Treaties. The draft reply will be issued as document 7381/16.

- b) Confirmatory application no. 09/c/03/16

Doc. 7509/16 INF 54 API 40

The Chair recalled that the confirmatory application set out in document 7509/16 concerns documents relating to the work of the Code of Conduct Group.

Delegations will be consulted by e-mail next week on the draft reply to be issued as document 7510/16. Following the written consultation, the draft reply will be submitted to Coreper and to Council for final adoption on 1 and 6 June 2016 respectively.

- c) Confirmatory application no. 10/c/01/16

Doc. 8159/16 INF 64 API 45

The Chair informed delegations that this confirmatory application relates to documents containing Member States comments on two proposals for Regulation on veterinary medicinal products package and on the manufacture, placing on the market and use of medicated feed respectively as well as on a document containing the draft Council conclusions on the next steps under a One Health approach to combat Antimicrobial Resistance.

The draft reply to this confirmatory application will be issued shortly as document 8161/16.

- d) Confirmatory application no. 11/c/01/16

Doc. 8164/16 INF 67 API 48

The Chair recalled that this confirmatory application concerns document 6341/16 regarding the new design of the Spanish 2 euro commemorative coin to be issued in 2017.

Delegations will be consulted by e-mail next week on the draft reply to be issued as document 8166/16. Following the written consultation, the draft reply will be submitted to Coreper and to Council for final adoption on 1 and 6 June 2016 respectively.

3. Evaluation of the impact of the Court ruling in case C-280/11 P (Council v. Access Info Europe)

- Information from the General Secretariat of the Council

Doc. 8863/16 INF 77 API 52

The Presidency thanked the GSC for the information note on the evaluation of the impact of the Court ruling and noted that the Coreper decision to continue to record Member State's names where it is deemed appropriate did not result in a change in drafting practices or an adjustment of the working methods in the Council. Thus, although there are no real benchmarks, there are no clear indications that there is a decrease of the number of recorded Member States names either.

Regarding the criteria used to continue to record Member State's names where it is deemed appropriate, the Presidency wondered whether these criteria are specific enough and workable. It asked the GSC to clarify how such decisions are made in practice, illustrated with concrete examples. The Presidency also requested an overview of the number of requests for Council documents related to ongoing negotiations where Member State positions were made public.

The Presidency pointed out that the Rules of Procedure of the Council, specifically Article 11 of Annex II regarding public access to Council documents, are not fully in line with recent case-law. Although in practice the Council seems to comply fully with the Access Info Europe ruling, the Presidency takes the view that the implementing provisions laid down in Article 11 of Annex II to the Rules of Procedure ought to be adapted to the recent case-law of the EU Courts.

The Presidency concluded that the evaluation shows that the decision taken by Coreper is workable, has not caused any practical difficulties or required a change of the existing drafting practices. Therefore, the Presidency welcomed the continuation of the working method.

In reply to questions from the Presidency and two other delegations, the GSC explained that the drafting criteria have to be generic, to reflect the reality of work, while taking into account the purpose of issuing the document. The evaluation had been based on a qualitative assessment of drafting practices within the different policy departments. The policy departments confirmed the continuation of the existing GSC working practices.

The GSC explained that while names of delegations are continuously recorded in documents related to legislative files, the GSC does currently not have an overview of the number of Council documents relating to on-going negotiations, where Member States positions were made public.

4. Rules governing the handling and conditions for release of LIMITE documents to the public

- Information from the General Secretariat of the Council

Doc. 8864/16 INF 78 API 53

The Presidency thanked the GSC for the information note on the handling and conditions for release of LIMITE documents to the public and underlined the great importance it attaches to transparency with a specific focus on LIMITE documents.

The Presidency raised the issue of when and why Council documents are marked LIMITE, as well as when this marking is lifted. While documents are made public after the adoption of the legal act to which they relate and upon request, the Presidency wondered whether the GSC carries out a periodic review of the status of LIMITE documents relating to an on-going legislative procedure, i.e. before the procedure is completed.

In order to ensure that LIMITE documents are made available to the public as soon as possible, the Presidency has drawn up specific guidelines for the chairs of Council working parties. These guidelines will also be circulated to delegations in the WPI.

The Presidency gave some examples of documents marked LIMITE that were made public, while the discussions on the file were still on-going. It noted that in these cases, the publication of the documents had not caused any problems. The Presidency concluded that the marking LIMITE had not been necessary.

In reply to questions from the Presidency and two other delegations, the GSC indicated that it does not carry out a periodic review of releasing documents relating to an ongoing legislative procedure. The "publication process" is user-driven and it takes place gradually, if and when interested members of the public ask for access to the relevant documents. After adoption of the legislative proposal, documents are made available to the public pursuant to Article 11 (6) of Annex II to the Council's Rules of Procedure.

The GSC pointed out that the fact that a LIMITE document had been put into the public domain by illicit means (i.e. had been leaked) is without prejudice to the GSC's assessment whether or not a document may be released to the public.

5. Fourteenth annual report of the Council on the implementation of Regulation (EU) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

- Presentation by the General Secretariat of the Council

The General Secretariat presented the draft annual report on access to documents for 2015. The annual report for 2015 will have a new format, which combines a shorter text with publication of information on requests for access as open data. The draft report also briefly summarises case-law and decisions taken by the European Ombudsman regarding the implementation of the access to documents rules by the Council.

The Chair informed delegations that document 8942/16 containing the draft annual report would soon be available in all language versions.

After a consultation procedure of the WPI, the draft report would be submitted to Coreper/Council (General Affairs) for final adoption in June 2016.

6. European Ombudsman enquiries - decision of the Ombudsman closing case 1011/2015/TN

- Information from the General Secretariat of the Council

Doc. 8 918/16 JUR 219 API 54 OMBUDS 8

The Legal Service drew the attention of delegations to the information note on the Ombudsman decision to close case 1011/2015/TN.

7. AOB

- a) Transparency International survey
- Information from the Presidency

The Presidency briefly addressed the survey of Transparency International and underlined that it is for each delegation to decide on its approach. However, since the survey also concerns the Council and its organisation, and since the promotion of transparency and access to documents merits attention, the Presidency invited delegations to indicate if some guidance would be useful.
