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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Implementation of the Interinstitutional Agreement on Better Law-Making
- Improving transparency

The Interinstitutional Agreement on Better Law-Making highlights the Institutions' commitment to ensuring greater transparency of the legislative process and contains a number of provisions that can contribute to achieving this goal.

In view of the **General Affairs Council** on 24 June 2016, delegations find attached a note from the Presidency concerning the implementation of the Interinstitutional Agreement as regards transparency.

The Permanent Representatives Committee is invited to recommend that the Council endorse the approach suggested in the above mentioned note.

NOTE FROM THE PRESIDENCY

Improving transparency

The Interinstitutional Agreement on Better Law-Making (IIA) highlights the Institutions' commitment to ensuring greater transparency of the legislative process and contains a number of provisions that can contribute to achieving this goal.

The legislative process can be made more transparent and understandable by communicating more actively on steps in the process and its outcomes. The traceability of the legislative process enables a better understanding by citizens or groups of citizens. Joint announcements of successful outcomes of legislative negotiations can be a further step in order to communicate more actively. These are all key elements that deserve being considered seriously.

The IIA offers at least three possible ways to achieve tangible improvements:

- A joint database on the state of play of legislative files;
- A joint register on delegated acts;
- Greater transparency of the trilogue process (to be pursued without hampering their effectiveness).

The Presidency proposes that the Council seizes this opportunity and takes the following approach, also with a view to future discussions with the other two institutions.

1. Joint database on the state of play of legislative files

Paragraph 39: "In order to facilitate traceability of the various steps in the legislative process, the three Institutions undertake to identify, by 31 December 2016, ways of further developing platforms and tools to that end, with a view to establishing a dedicated joint database on the state of play of legislative files."

The first step towards establishing a joint database is a technical assessment of existing tools. The relevant services of the three Institutions have already started working on this. Although mostly of a technical nature, such an assessment requires a clear vision of what the end goal should be. The provision contained in the IIA is rather generic on this aspect. The Council should therefore provide political guidance to steer the work in order to ensure that the goal of improved transparency is truly fulfilled. This is all the more important since the database was a Council request in the IIA negotiation, with emphasis put on the traceability aspect and the requirement of user-friendliness.

Work should therefore start according to the following guidelines:

- the database of legislative files should aim at providing clarity on the process and indicate the effective state of play, as opposed to containing a mere list of documents that would leave the user with the arduous task of attributing them to the various steps of the process (without prejudice of each institutions' rules or policies on publication of documents);
- to that end, the steps to be traced should not be limited to the formal ones indicated by Article 294 TFEU. They should rather reflect the legislative process in practice (e.g., for the Ordinary Legislative Procedure, obtaining mandates in the Parliament and Council or the trilogue phase);
- The overall presentation of files should be user-friendly, visually appealing and allow easy navigation, particularly for the users who are less knowledgeable of the EU and its Ordinary Legislative Procedure.

2. Joint register of delegated acts

Paragraph 29: The three institutions commit to set up at the latest by the end of 2017 in close cooperation a joint functional register of delegated acts, providing information in a well-structured and user friendly way in order to enhance transparency, to facilitate planning and to enable traceability of all the different stages in the lifecycle of a delegated act.

As an additional transparency requirement, the *Common Understanding on Delegated Acts*¹ provides that the register would supersede the functional mailboxes used for the transmission and reception of all documents relating to delegated acts. Within the Council, internal technical preparations started before the adoption of the IIA, and technical discussions between the Council General Secretariat, the Parliament and Commission services are ongoing.

The register will have a dual function - enhancing transparency of delegated acts, as well as serving as a practical tool for communication between Institutions. It will thus cover the entirety of the lifecycle of a given delegated act, i.e. from the planning to the entry into force, and allow for a timeline view of all the documents related to it. Moreover, for the sake of traceability, users should be provided with the possibility to identify all the delegated acts (either adopted or in the making) relating to a same basic act.

Although maximal transparency to the public should be sought, for this integrated approach to work in practice it might be necessary to explore the possibility of distinguishing between a public and a restricted area. However, such a restricted area should be limited to the operative needs of the Institutions.

¹ Annex to the IIA, pt. II.12.

3. Greater Transparency of the trilogue process

Paragraph 38: The three Institutions will ensure the transparency of legislative procedures, on the basis of relevant legislation and case-law, including an appropriate handling of trilateral negotiations.

The European Parliament and the Council are primarily responsible for the practical arrangements under which trilogues operate. The trilogue process has proven its efficiency as a tool for handling complex inter-institutional negotiations in a relatively limited timeframe. Where the proposed legislation affects rights of citizens, businesses or organizations, trilogues have generated great interest from the public. In order to meet the legitimate expectations from the public to be better informed about the process without adversely affecting its "vitality and flexibility" (as acknowledged in the Joint Declaration on practical arrangements for the codecision procedure²), two paths should be explored. The first would consist of increasing the transparency of (Council) negotiation mandates. The second would pursue better and more pro-active communication of the results of trilogue negotiations.

Council negotiating mandates

For the Council, communication in the area of the Ordinary Legislative Procedure presents a particular challenge, insofar as the interest from the public and media arises more from the intermediate stages of the negotiation (adoption of mandates and successful trilogues, where the Presidency often feels duty-bound to discretion) than from the stage of formal adoption. Conversely, the European Parliament constantly communicates to the media during all intermediate stages of the legislative process, as well as after the conclusion of trilogues.

² OJ C 145, 30.06.2007, p. 5 (pt. 7).

Today communication lines are blurred between the institutional channels and social media that increasingly outpace the former to provide information to the public. For the sake of greater transparency, it would be in the Council's interest to communicate better to the public successful outcomes reached during the intermediate stages, e.g. when adopting a negotiation mandate, which the Council should strive to make public, or when the Presidency reaches a deal with the European Parliament, or when Coreper approves the outcome of the trilogue negotiations. This would also further facilitate traceability of a given file.

Active communication on the outcome of trilogues

Paragraph 38: The three Institutions will improve communication to the public during the whole legislative cycle and in particular will announce jointly the successful outcome of the legislative process in the ordinary legislative procedure once they have reached agreement, namely through joint press conferences or any other means considered appropriate.

The joint announcement of the successful outcome of the legislative process was enshrined in the previous IIA on better law-making and further reiterated in the Joint Declaration on practical arrangements for the codecision procedure³. Despite this, joint press releases or conferences are not common, but could be explored.

The Council should seek an understanding with the European Parliament that at least some factual communication of the results of the trilogue should take place more consistently and immediately after final trilogues. Such joint and hence coherent communication would provide the public with a more balanced picture of the progress in negotiations.

³ pt. 45.