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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	11913/2/16 REV 2
Subject:	Horizontal Working Group on Cyber Issues - Establishment and adoption of its Terms of Reference

1. In order to enhance the internal coordination and to help develop a comprehensive and coherent EU approach on cyber issues, the Friends of the Presidency Group on Cyber Issues ("the Group") was established in 2012¹ for an initial period of one year with the possibility of extending its mandate after the expiry of that period upon review of its efficiency and effectiveness.
2. Such review was undertaken in the second half of 2013. Delegations acknowledged the significant added value of having a recognised single horizontal forum within the Council for discussion and exchange of information on the various cyber issues as well as for the establishment and/or coordination of a coherent EU cyber policy that takes due account of the existing interlinkages and interdependencies.

¹ doc. 15686/12.

3. As a result of the positive assessment the mandate was extended with three more years to fully anchor the Group in the Council's working landscape by providing it with a longer work span while maintaining its horizontal, strategic and cross-cutting scope.
4. In view of the approaching expiry of the Group's mandate in November this year the Presidency launched a reflection process on the Group's functioning till now taking due account of the constantly growing number and evolving in terms of complexity and diversity cyber-related challenges, which require and would require even more in the future a coordination of the EU approach to ensure the coherence and comprehensiveness of EU policy and regulatory framework in that regard.
5. A specially dedicated for the purpose questionnaire² was prepared and presented to the Group at its meeting of 27 May seeking to measure its performance and delegations' satisfaction thereof as well as to examine the ways to streamline and improve where possible the current working methods and practices. In their comments and written replies delegations expressed wish and readiness for introducing some changes in the Group's format and mode of operation to provide a better adapted work setting.
6. On that basis the Presidency put for discussion a number of proposals³ at the meeting of 22 July addressing mainly **the form** under which the Group should continue its existence given the positive evaluation and support for its continuation by Member States (FOP vs. permanent Working Party) and the **mode of operation** (two levels - capital/cyber attaches - format vs. single level format) together with some others aiming at improving the **general functioning** of the Group by achieve synergies and avoiding overlaps.

² doc. DS 1265/16.

³ doc. DS 1375/16.

7. Those proposals were further streamlined in the direction of the discussion outcome, namely to preserve the horizontal, strategic and cross-cutting nature scope of the Group given need for a proper forum to look at all of the different cyberspace elements in their entirety and of a long-term commitment corresponding to the general understanding that cyber issues would continue to be present on the political agenda.
8. These proposals were reflected in an updated version of the Terms of Reference and concerned mainly a change of the Group's status, i.e. replacing the Friends of the Presidency by a permanent working party with a streamlined scope and enhanced functionality stipulating a role also in the legislative-making process.
9. The updated version of the Terms of Reference was positively received during the initial discussion at the Group's meeting of 16 September. Some adaptations were made in the text in view of the discussion outcome and the subsequent written comments, and it was broadly supported during the examination at the Group meeting of 7 October.
10. A final fine-tuned version to account for the majority of Member States preferences expressed at the meeting of 7 October and some subsequent written contributions received by 14 October was prepared by the Presidency as set out in the Annex with a view to the Terms of Reference submission for a formal adoption by COREPER.
11. Against this background, COREPER is invited to:
 - establish a Horizontal Working Party on Cyber Issues;
 - endorse the Working Party Terms of Reference as set out in Annex I.

Terms of Reference

1. A Horizontal Working Party on Cyber issues (hereinafter "the Working Party") is hereby established.
2. The Working Party will ensure the strategic and horizontal coordination of cyber issues in the Council and can be involved in both legislative and non-legislative activities. It will bring issues to the attention of COREPER and Council in order for the latter to ensure coherence.
3. The activities of the Working Party will be without prejudice to the work carried out in other Working Parties, which shall remain responsible for the specific legislative and non-legislative files.
4. The objectives of the Working Party will be to:
 - ensure a cross-cutting working platform to support a comprehensive and coherent approach on cyber policy issues by providing a horizontal overview of the cross-cutting, transversal issues, and thus avoiding fragmented policy developments and decision-and/or legislation-making;
 - speed up the process in the cyber domain, where there is an evident need to guarantee the application of coherent policy approach while keeping pace with rising threats and allowing citizens to reap the opportunities offered by cyberspace;
 - identify and further exploit synergies, including with other Council preparatory bodies and any other relevant entities;
 - enhance the exchange and information sharing between the various strands of work, both among Member States as well as between the EU and the national level;

- assist in setting EU cyber priorities and strategic objectives as part of a comprehensive policy framework;
 - support effective external representation of the EU in conformity with strategic EU cyber policy objectives.
5. In view of the implementation of the Cyber Security Strategy of the European Union: An open, Safe and Secure Cyberspace or any other relevant policy and legislative instruments, such as the Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union, the various aspects of cyber policy, which are related, *inter alia*, to cybersecurity, cybercrime, cyber defence and cyber diplomacy should be addressed by the Working Party in a comprehensive manner.
 6. In this context, the Working Party will examine any relevant horizontal issues, without prejudice to the existing mandate of other Working Parties, and should focus, *inter alia*, on policies to improve EU-wide cyber resilience, cyber dimension of industrial, R&D and trade development issues, security and foreign policy dimension of internet governance issues, cyber capacity building, human rights online, cybercrime, cybersecurity, cyber defence and criminal justice in cyberspace. It could also be used as a forum to coordinate the EU cyber diplomacy and other cyber policy initiatives relating to third countries or international organisations, and to develop EU positions for international cyber fora without prejudice to the final determination of such positions by the Council.
 7. The Working Party will be chaired by the rotating Presidency of the Council. It will meet according to the need in order to take stock of the state of play in the field, to identify the key challenges and priorities as well as to discuss respective solutions and ways to achieve them.

8. The rotating Presidency may dedicate a meeting(s) of the Working Party, if deemed necessary, to senior officials and/or call meetings at cyber attaches level. This should be without prejudice to the autonomy of Member States to define the composition of their delegation taking into account the diverse nature of the horizontal and cross-cutting cyber issues dealt with by the Working Party. Member States should allow sufficient flexibility and fair involvement of the relevant competent national authorities according to the needed expertise and to the national distribution of competences and mechanisms for coordination.
9. The work of the Working Party will be planned on the basis of an overall Trio Presidencies programme comprising the various strands of on-going work taking into account future needs and priorities.
10. These terms of reference may be subject to review, if deemed necessary.
