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From: Presidency

To: Permanent Representatives Committee

Subject: 2014 Annual report on Impact Assessment within the Council

Delegations will find below the 2014 Annual report on Impact Assessment within the Council, prepared by the Hellenic Presidency with the assistance of the General Secretariat.

2014 ANNUAL REPORT ON IMPACT ASSESSMENT WITHIN THE COUNCIL

1. INTRODUCTION

This report follows on the Report on Impact Assessment within the Council, prepared by the MERTENS Group and endorsed by the Council (Competitiveness) on 29-30 May 2013 (doc. 8406/13, referred below as the "MERTENS Group report"). The MERTENS Group report recommended that the Presidency, with the assistance of the Council General Secretariat, monitor the implementation of the measures set out in the report and annually report back to COREPER, starting in June 2014. As recommended in the MERTENS Group report, this annual report integrates the follow-up in the context of the Information Note to the Council on the follow-up given by COREPER to the Council conclusions (doc. 10735/12) from May 2012, the operational recommendations of which were recalled in the MERTENS Group report. It also contains the final report on the three pilot projects organised by the current Trio Presidency following the MERTENS Group report to assess the effectiveness of the indicative checklist in ensuring the effective use of Commission Impact Assessments (IAs) within the Council.

2. PILOT PROJECTS

Following the MERTENS Group report, the current Trio undertook three pilot projects to assess the effectiveness of the indicative checklist for examining Commission IAs in the legislative work of the Council. The pilots were selected based on the criteria of the expected timing of publication by the Commission and a fair distribution of proposals across policy areas. The three pilots selected were:

1. Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC¹;

¹ doc. 12257/13

2. Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports²;
3. Proposal for a Regulation of the European Parliament and the Council on organic production and labelling of organic products, amending ...[Official controls Regulation] and repealing Council Regulation (EC) No 843/2007³.

The conduct and results of the first two pilots have been extensively reported by the Lithuanian Presidency (doc. 16628/13). This report confirms and complements the interim report following the completion of the third pilot project in May 2014.

In addition to the three pilots identified, the indicative checklist was also used in the examination of the proposal for a Regulation of the European Parliament and the Council on information provision and promotion measures for agricultural products on the internal market and in third countries⁴.

Conduct of pilots

A broadly similar preparatory process was followed for all pilots: the Presidency informed delegations on the pilot through the MERTENS Group as well as through a "meeting flash", prior to the Working Party (WP) meeting concerned, circulating also the indicative checklist. A preparatory session was organised by the GSC for each WP Chair, with active participation from the Commission. At the end of each project, the Presidency made a short oral presentation on the main findings at the MERTENS Group.

Regarding the WP meetings where the pilots were conducted, a number of similarities emerged. The Commission presented its IAs more extensively than is usually the case. This was followed, in all three cases, by a thorough discussion on the IA. In total, the presentation and examination of the IA took roughly double the time compared to proposals outside the pilot framework, and up to 1,5 meeting days. In the case of two pilots, the discussions have been extended to the next meeting of the WP to give more time both for delegations' preparations and the WP discussion itself. Overall, delegations welcomed the opportunity for a more comprehensive examination of the IA.

² doc. 10154/13

³ doc. 7956/14

⁴ doc. 16591/13

Roughly half of the delegations participated in the IA discussion. A few of them were very well prepared for detailed discussions and built their interventions around the questions of the checklist. Many others did not make explicit reference to the checklist and preferred to present their comments on the IA in a more general way. A few delegations explicitly referred to the checklist having been useful in their preparations whereas some others seemed to lack basic information on the exercise and the checklist.

As regards the content of the checklist, the attention devoted to different topics depended on the pilot. Policy options and the impact of the selected option were among the most discussed topics in all cases, delegations calling for more information, in particular, on the economic impacts of the proposed option, including on SMEs and individual Member States. Methodological questions relative to the IA were also raised, in particular in the context of the third pilot, concerning, *inter alia*, the design of public consultation questions and the representativeness of samples. There were few comments regarding questions 8 and 9 of the checklist, COM IA board opinion and monitoring/transposition, respectively. Delegations also raised issues with no direct indications in the checklist such as the relationship to other EU legislation. Some delegations pointed out that the checklist, if followed too rigidly, might lead to other important issues being ignored. Given the overlap between checklist questions and many delegations' preference for general comments, it also seemed that going through the questions one by one did not always bring added value and may risk moving the focus away from issues of most relevance to the IA concerned.

Delegations did not use the IA discussion to present their own information on the impact of the proposal at national level.

Conclusions

The checklist was seen as a useful practical tool for a WP Chair to prepare, structure and moderate the discussion as well as for the Commission and delegations to devote more attention to the examination of the IA and prepare their inputs. It seems that the extensive discussion on the IA helped delegations to better understand the reasoning behind the Commission proposal. This could facilitate the subsequent examination of the proposal within the Council. A systematic use of the checklist might also reveal areas, such as economic impacts differentiated by Member State, where delegations typically request additional information from the Commission and thus help the Commission to better prepare for the examination of the proposal.

To maximise the benefits from using the checklist, delegations need to be informed well in advance of its purpose, provided with the checklist, and given sufficient time to study the IA. The indicative character of the checklist has to be stressed further, so that it be used as a flexible reference tool for structuring IA discussions as well as related preparations. It seems preferable to moderate the WP discussion by grouping checklist questions and not excluding possible other relevant issues.

Regarding the content of the checklist, the focus of discussion depends on the IA concerned but it seems that, overall, not all questions are of equal importance. Simplification and shortening of the list might be advisable as could be a stronger focus on the analysis of the selected option or a better alignment of the checklist with the structure of the Commission IA. However, for a possible revision of the checklist, it seems preferable to collect more experiences on its use and revert to the issue on that basis. When considering possible revision needs, the indicative nature of the checklist and its use as a flexible reference tool should also be kept in mind.

It would be useful for the IA examination to also draw on relevant information from Member States on impact at national level. This would need further encouragement from the Chair in good time before the meeting when the IA is to be examined.

3. IMPLEMENTATION OF OTHER RECOMMENDATIONS

Besides the pilot projects, the MERTENS Group report identified recommendations in four main areas to take forward IAs within the Council, i.e. improving the use of Commission IA within the Council (at WP level), using IAs from the national level, a more active role for COREPER as well as IA on Council's substantive amendments. The state of play regarding the implementation of those recommendations is described below, based on the assessment of the GSC conducted in May 2014.

Improve the use of the Commission Impact Assessment within the Council

As regards the WP level, as a general rule, the IA is presented by the Commission, at an early stage of the debate, together with the legislative proposal itself. During subsequent negotiations on the proposal, delegations may refer to it. However, only occasionally and when relevant for the negotiations, the IA is further discussed among delegations. Finally, since the publication of the MERTENS report, as we were in the last phase of the legislative cycle, there were some policy areas where there were no new Commission proposals accompanied by impact assessments. In few cases, an IA was available but it was not presented.

For COREPER/Council, a short reference to the IA discussion at WP was normally made in the report prepared by the General Secretariat. IA issues were not elaborated in these reports unless the IA discussion at WP level brought problems to light.

As regards proposals based on Article 114 TFEU, the number of new legislative proposals was limited. While the added value of "competitiveness-proofing" is acknowledged, there was no case where a preparatory body of the Competitiveness Council would have been invited to conduct an additional discussion on the IA.

Impact assessment at national level

As regards IAs at national level, there are very few cases of delegations presenting their IAs as such in Council preparatory bodies. However, occasionally, during negotiations on a proposal, some delegations back their arguments with national IAs. As these were presented at different stages of negotiations and as a justification of a political standpoint, they were in most cases not reflected in the supporting documents for Council work, nor summarised by the Presidency/GSC as Member States' IA input.

The role of COREPER in improving the use of Impact Assessment within the Council

As regards IAs at COREPER level, there were no cases of the Commission presenting its IA on a major legislative proposal directly at COREPER. As regards the analysis and assessment of the impacts of economic and public finances in an IA, there were no cases of COREPER inviting the Economic and Financial Committee or the Economic Policy Committee to work on these, nor were other relevant working parties invited by COREPER to conduct a deeper analysis of specific elements of an IA. However, in the case of the proposals for the Research Framework Programme Horizon 2020, COREPER invited the European Research Area Committee to provide its opinion.

In the case of the legislative proposals on Transfer of Motor Vehicles, COREPER invited the Commission in January 2014 to provide supplementary analysis on a specific provision of the proposal. The Commission accepted the invitation and the examination of the proposal within the Council is now suspended for circa 6 months pending for the results. In the case of COREPER examination of the legislative proposal on Product safety, many delegations considered that the lack of an impact assessment on a specific provision was a significant constraint to moving forward with the proposal.

Impact Assessment on the Council's substantive amendments

The Council or the Presidency did not directly invite the Commission to provide assistance to assess the impact of substantive Council amendments. However, as part of negotiations on a proposal, the Commission often reacts, orally or in writing, to the amendments being considered within the Council, also referring to its IA. In the case of the Smart Borders Package, COREPER invited the Commission, in February 2014, to undertake further assessment work, as "Proof of concept", on a number of technical, cost-related and operational questions that had been identified during negotiations within the Council. The Commission is carrying out this work in 2014-15 in close collaboration with Member States' experts and negotiations within the Council should be finalised by mid-2016 when the results are available. There was a somewhat similar case in 2012, the so called Omnibus 2 Directive on insurance, where the European Parliament, supported by the Council (WP), requested the Commission to assess the impact of amendments proposed by the European Parliament. The assessment added circa one year to the duration of the legislative process.

4. RECOMMENDATIONS

Based on the experience gained from the first year of implementation of the measures developed in document 8406/13, in particular the pilot projects, and in addition to the recommendations contained therein, the following recommendations can be made:

- The practice of presenting the Commission IA at an early stage of the debate at the relevant Working Parties and examining it with the help of the indicative checklist should be extended to all legislative proposals accompanied by an IA. The final decision on such an examination should remain with the Presidency.
- The Presidency should inform delegations in a timely manner in order to facilitate preparations for the IA examination.
- An evaluation of the outcome of the general use of the checklist within the Council Working Parties should be included in the second annual report on IA within the Council in June 2015. This would also allow for ongoing consideration of any ways in which the process could be further strengthened and improved, including possible revisions to the indicative checklist, if needed, in line with delegations' experiences.
- The Council Secretariat is invited to update, by end-2014, the handbook "Indicative Guidance for Working Party Chairs", in accordance with the outcome of the pilot projects and make it electronically available to all delegations.
- The Council Secretariat is invited to raise the awareness of incoming Presidencies on IA work within the Council and provide training and guidance to Working Party chairs on the organisation of an IA examination with the indicative checklist.
- The Council Secretariat is invited to translate the indicative checklist into all official languages of the Union.