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**NOTE**

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from:	General Secretariat of the Council
to:	Delegations
Subject:	Summary of the meeting of the <b>Constitutional Affairs Committee (AFCO)</b> of the European Parliament, held in Brussels on 26 February 2015

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**A lengthy meeting, the first half of which was dedicated to a joint hearing on the European Citizens' Initiative (ECI), attended by VP Timmermans. He displayed an openness to listen to the various shortcomings of the ECI and attempt to address them in the Commission's forthcoming review of the ECI Regulation (due by 1 April 2015). Other discussions of relevance revolved around the reports to be drawn up by Mr BROK, Ms BRESSO and Mr VERHOFSTADT, examining the potential of the Lisbon Treaty, as well as possible evolutions and adjustments of the current institutional set up of the EU. As a last point, the EP legal service provided a detailed explanation of the Court's opinion rejecting the draft agreement on the EU's accession to the ECHR.**

3. Lessons to be drawn from the implementation of the European Citizens' Initiative (ECI) Regulation

The AFCO/PETI hearing was attended by VP TIMMERMANS, as well as organisers of ECIs, academics and EP rapporteurs on the ECI Regulation, who each offered their particular view of the shortcomings of the current instrument. Ms WIKSTRÖM (ALDE, SV), PETI's chair, was of the opinion that the initial enthusiasm for the ECI was beginning to fade in the face of practical obstacles, the lack of awareness and of resources.

The Commission's First Vice-President, Mr TIMMERMANS made the commitment to listen to concerns and to do everything he could, within the limits of the Treaty, to improve the current ECI instrument. He admitted that an improved ECI would not solve all of the EU's problems, but could contribute to addressing today's biggest challenge, namely countering distrust in the EU. He confirmed that the Commission report on the implementation of the ECI Regulation would be out by April 2015. He also reiterated his wish to give more political significance to ECIs - even if rejected for legal reasons, they could be used as a platform for political dialogue.

The first panel of speakers, composed of representatives of ECI campaigns, focused on the administrative and bureaucratic hurdles of the current ECI Regulation:

- **Mr CENTELLAS, spokesman for the organisers of the ECI on the Right to Water**, regretted that "successful" ECIs did not automatically result in binding legislation, was critical of the Commission's "pick and choose approach" and called for the wider use of social media.
- **Ms MERZ, from the failed End Ecocide in Europe ECI**, presented a list of improvements to bring to the current ECI Regulation (less stringent data requirements, legal admissibility check to be non-binding, one same form across the EU for the collection of signatures, more time between registration and collection of signatures, removing personal liability of organisers from any damage caused by the ECI and greater commitment on behalf of the Commission to take ECIs seriously). She claimed that the most disgraceful shortcoming of the current system was that in some Member States, citizens from another Member State could not sign an ECI.
- **Mr HARDEN, Secretary-General of the European Ombudsman's office**, confirmed that the results of the Ombudsman inquiry into the effectiveness of the ECI would soon be available. He echoed the concern that in many Member States, foreign EU citizens could not sign an ECI, and advocated the highest standard of engagement from the institutions, urging the EP to exercise control over the way the Commission dealt with each ECI.
- **Ms SIGMUND, Chair of the European Economic and Social Committee's ad hoc group on ECIs**, explained how the EESC was providing support to ECI organisers: cooperating on a database with the **European Citizen Action Service (ECAS)**, planning an annual ECI Day event, offering translation services and advice, and disseminating information. It also planned to start work on a communication strategy on ECIs.

Three legal experts shared their views on the impact of the ECI on EU decision-making:

- **Mr SAURON (Professor of International law at the Paris-Dauphine University)** advocated a more informal, less legalistic, approach to ECIs. He also suggested that a debate on ECIs be placed on the Council agenda once a year.
- **Mr MOLNÁR (Corvinus University of Budapest)** was critical of the restrictive scope of ECIs, arguing that it should be broadened beyond areas of "Commission competence" - as is currently the case - to encompass all areas of EU competence under the Treaties.
- **Mr POIRIER (chair of parliamentary studies at the University of Luxembourg)** was critical of the current ECI leaving citizens to their own devices. He urged for the areas in which ECIs could intervene to be defined at the beginning of each legislative term. Challenging the central role played by the Commission, he felt that the EP should be at the heart of the registration process of an ECI so as to strengthen its legitimacy. He also echoed the argument that ECIs should be binding in order to be credible.

MEPs who subsequently took the floor:

- called for a limit on the **arbitrary nature of the Commission's involvement** (Mr UJAZDOWSKI - ECR, PL) and for another institution to participate in the procedure (Mr POLČÁK - EPP, CZ).
- were doubtful of the suggestion of merely a yearly Council debate on ECIs (Ms KIRTON-DARLING (S&D, UK)
- supported a broadening of the **scope of the ECI** to include all competences under the Treaties, including those of the Council (Mr LEINEN (S&D, DE). It was also suggested that, to that effect, AFCO and PETI submit a request for a Treaty change.
- felt that the real stumbling block was the **requirement to gather 1 million signatures**. Mr CORBETT (S&D, UK) argued that there should be no restrictions on sending good ideas to the Commission. He called for the Commission to be more flexible, accepting an ECI when it secures roughly one million signatures, without the bureaucratic burden of checking each individual signature.

- argued that a successful ECI did not necessarily have to **result in binding legislation**, but could bring about a change in policy or recommendations (Mr JAUREGUI ATONDO (S&D, ES)).
- Mr TERRICABRAS (Greens, ES) set out what he believed were the three specific improvements to bring to the current ECI: (1) better support and infrastructure for organisers, (2) removal of personal liability for organisers and (3) simplification and standardisation of data requirements (ie only name, address and nationality).

The second panel offered a technical perspective on the issue:

**Mr Carsten BERG, the General Coordinator of "the ECI Campaign"**, qualifying the ECI as "fatally flawed", presented what he viewed as the 3 most pressing reforms: (1) making registration less restrictive; (2) the Commission taking successful ECIs seriously, and (3) like the previous speaker, simplifying personal data requirements (in particular eliminating ID numbers - a requirement which scared off many potential supporters and, according to the speaker's research, was information which authorities did not even use to verify the identity of signatories). His other recommendations included a total redesign of the online collection system of signatures, giving ECI organisers access to supporters' email addresses, allowing ECIs to select their start date and lowering the age of ECI support to 16. He suggested that a successful ECI could allow the EU to become the driving force of participatory democracy worldwide.

In response to a question from Mr HÄFFNER, a former MEP, Mr BERG confirmed that at the time of adoption of the ECI Regulation, 3 Member States had objected to standard data requirements but had committed to reducing them. Three years later, however, only Luxembourg had improved its situation. He urged the EP to press the Council to comply with its obligations.

**Mr POLO** from the successful online petitions platform "Change.org", which has over 85 million users, described the key characteristics which made change.org a successful petitions instrument: (1) making the setting up and participation in a petition easy, (2) ensuring participation is useful, and (3) giving supporters a follow-up.

The last panel was composed of former and current EP rapporteurs on ECIs:

**Diana WALLIS, former PETI rapporteur on the ECI Regulation**, lamented the lack of dialogue and engagement and stressed the need for further information and education on ECIs. She was also critical of the Member States that had not made progress towards standard data requirements, claiming this went against the clear understanding when the ECI Regulation was adopted.

**Carlo CASINI, former AFCO Chair**, echoed calls for Treaty change, advocating less power to the Commission and more to the legislators.

**Mr SCHÖPFLIN (EPP, HU), current rapporteur on the implementation of the ECI Regulation**, took good note of the suggestions which he would include in his report. He called for (1) a dedicated ECI assistance office in each Member State, (2) a reduction in the number of signatures required, (3) longer time-limits, (4) simplified signature verification systems (potentially including such a project in the EU digital agenda) and (5) a stronger programme of post-ECI hearings. He claimed that an unreformed ECI had the potential to create "one million eurosceptics".

Among the various suggestions made by ECI organisers who subsequently took the floor was the idea of externalising the admissibility checks to a neutral arbiter.

## **6. The review of the economic governance framework: stocktaking and challenges**

Ms GOULARD's (ALDE, FR) draft opinion on the ECON report calls for the democratic legitimacy of the EMU to be substantially improved; for an interinstitutional agreement on parliamentary validation of the various stages of the European Semester; for proper parliamentary scrutiny of the economic dialogue; for the Interparliamentary Conference on Economic and Financial Governance of the EU to pressure decision makers on their accountability; for a better distinction between a country's operating expenditure and its productive investment; and for the Court of Justice to be competent for breaches of economic policy.

Following the presentation of the draft opinion to AFCO on 20 January 2015, 42 amendments were tabled to the text. Most amendments aim to boost the EP's involvement and scrutiny in order to ensure democratic legitimacy and accountability.

Ms GOULARD restricted her report to the institutional aspects of the economic governance framework. She supported a Treaty change, urging members not to shy away from this. The issue of greatest concern was the exclusion of the Court's competence in these matters, which undermined the rule of law.

- **EPP**, represented by Mr BROK (DE), supported the rapporteur's suggestion to broaden the jurisdiction of the Court. He also stressed the need to involve national parliaments and the EP and to favour the community method. The Commission should be duty bound to adopt the guidelines in the country-specific recommendations (CSR) under codecision.
- **S&D**, represented by Mr SILVA PEREIRA (PT), largely echoed previous interventions with the notable exception of the suggestion to change the Treaty in order to broaden the Court's competence. This was deemed not to solve the problem. He also stressed the need to respect the social dimension of financial instruments.

- **GUE/NGL**, represented by Ms SPINELLI (IT), called for the troika to be abolished, and echoed the need for a social dimension of economic governance.
- **Greens**, represented by Mr DURAND (FR), did not support calls for the Court to impose pecuniary sanctions on breaches of economic governance rules, arguing that this would affect the whole balance that had been struck. The rapporteur clarified that this was not suggested in her report.

*Next steps: vote on the draft opinion and amendments in AFCO on 17 March and vote on the draft report in ECON on 14 April. Plenary vote scheduled for the April II session.*

## **9. Recommendations to the European Commission on the negotiations for TTIP**

AFCO had a first exchange of views on the draft opinion drawn up by Mr GONZALES PONS (EPP, ES). The rapporteur's recommendations to the Commission include: the need to specify the role of the Regulatory Cooperation Council and the legal status of its findings; an ISDS clause giving regulatory freedom to European, national and local authorities; greater transparency; full involvement of national parliaments in the TTIP debate, as well as a mandatory transparency register for activities relating to the TTIP negotiations.

While most groups largely adhered to the line taken by the rapporteur, ISDS was a dividing issue. S&D (Mr SILVA PERREIRA, PT) argued that there was no certainty ISDS mechanisms would be used at all in the agreement, and intended to table amendments to that effect. Conversely, the Greens (Mr DURANT, FR) wished to strengthen the wording on ISDS and ensure no deviation from social and environmental standards. ALDE also claimed its opinion differed from the rapporteur's on ISDS. The EPP, on the other hand, stressed that arbitrators have no legislative powers (Mr BROK, DE) and Mr RANGEL (PT) suggested that a permanent arbitration court be set up.

A further matter on which there was limited consensus was the mandatory registration of those involved in TTIP negotiations: while EPP and ALDE supported it, S&D expressed misgivings.

Jean-Charles EECKHAUTE, Head of Unit of Policy Coordination and inter-institutional relations in DG Trade, clarified a number of issues raised in the draft opinion: the Regulatory Cooperation Council was by no means a decision making body - it would therefore not compromise constitutional decision-making processes in EU or the US or the powers of the EP. Regulations would continue to be decided upon in same way as today, with TTIP merely adding a layer of cooperation between regulators to see where there was a level of convergence.

On ISDS, the Commission acknowledged recent abuses and intended to propose a completely modernised ISDS, much in line with that in the trade agreement with Canada, with ethical rules for arbitrators and better defined protection standards for investors so that arbitrators had a clear set of rules to apply and less margin for improvisation.

Mr GONZALES PONS closed the debate stressing that his opinion was to be the product of the entire committee, not just of the majority.

*Next steps: 5 March deadline for amendments, 17 March consideration of amendments, 16 April vote of draft opinion in AFCO.*

## **7. Improving the functioning of the EU, building on the potential of the Lisbon Treaty; and 8. Possible evolutions and adjustments of the current institutional set up of the EU**

Although no report was presented by Mr BROK and Ms BRESSO (S&D, IT), co-rapporteurs of the first report, nor by Mr VERHOFSTADT (ALDE, BE), rapporteur for the second report, a first exchange of views was held within the committee. It was clarified that the two reports were interlinked: the aim of the first report was to analyse how the Treaty provisions could be fully implemented in order to fully capitalise on their potential, while the objective of the second report was to examine what further steps could be taken after all the potential of the Treaty was exhausted in order for the EU to face future challenges. The two reports would therefore be based on a common introductory assessment of the EU's main challenges.

Mrs BRESSO and Mr BROK mentioned the EU's current difficulties which warranted a better use of the Treaty provisions: the economic crisis, the international political crisis (requiring a more coherent defence and security policy and common foreign policy) and a democratic crisis.

Mr VERHOFSTADT also provided a list of challenges, proposing his view of how these could be tackled:

- (1) economic governance - he argued EMU was not enough and called for greater economic integration, potentially a fiscal union, and common social and tax policies;
- (2) democracy and accountability - he called for the current system to be simplified, with a reduction in the number of "presidents" in the EU, and fewer executive powers in the hands of the Council. Under this heading his report would also address the issue of the Commission size and the single seat (which would not be tackled in a separate report);
- (3) EU membership, possible exits and opt-outs - with differentiation being one of the most significant topics under this heading
- (4) the EU in a geopolitical context - an issue requiring considerable reflection is whether unanimity can still be used in all foreign policy matters.

The reports prompted a number of S&D interventions:

- Mr JAUREGUI ATONDO (S&D, ES) warned members that there would not be any Treaty reforms any time soon, as confirmed by EP President SCHULZ, and thus favoured reforms that could be implemented without Treaty modification.
- Mr LEINEN (S&D, DE) welcomed the debate, claiming that the EP was the only institution which could hold it, the COM being too reluctant to do so, and the Council being "paralysed". He questioned how the debate could be projected outwards in order to involve the public.
- Mr CORBETT (S&D, UK) suggested waiting for the UK elections in May before producing any document. He defended the fragmented approach of the EU, claiming that it was always a minority who opted out, adding that it was not life-threatening for the EU, merely characteristic of this period in its history. He also spoke highly of the potential of the treaty provisions, which proved to be more flexible than anticipated, and which had not all been fully exploited (e.g. enhanced cooperation, permanent structured cooperation in foreign policy, etc).



*Next steps:* Mr VERHOFSTADT estimated that a first working document, setting out the common view of the EU's challenges, would be ready by May-June 2015. Ms BRESSO and Mr BROK would then produce their report by Sept-Oct and he would present his report by the end of this year.

#### **14. Exchange of views on the EU's accession to the European Convention of Human Rights (ECHR)**

Mr PASSOS, from the EP legal service, offered a detailed analysis of the 7 obstacles, identified by the Court in its opinion 2/13, which prevented the EU from currently acceding to the ECHR. Such grounds included the problem of coordinating protection standards under the Charter and the ECHR; mechanisms effectively circumventing the preliminary reference procedure or allowing the European Court of Human Rights to hear disputes on the application of the Treaties or to carry out a judicial review of CFSP measures (instead of the European Court of Justice).

Mr PASSOS suggested that a number of obstacles could be resolved by means of declarations to be added to the accession agreement. However, the EP would not adopt a resolution for the time being, given that it would wait for the situation to become clearer in the Commission.

Mr KRÄMER, the Commission representative, confirmed that the Commission was still analysing the opinion from a technical and political perspective, and that the accession agreement would have to be renegotiated on a number of points. He stated that a reflection period was necessary, and that some of the Court's objections were technically or legally complex or politically sensitive and that a tailored approach would be necessary. Contrary to the EP, he was hesitant to view declarations as sufficient to meet the counter the objections of the Court.

- *Next steps:* after an assessment of the Court's opinion, the Commission will have to issue revised negotiating directives, although so far it has not given any precise indication as to timing.

#### Next AFCO meeting:

17 March 2015. It will include the postponed discussion on the report by Mr UJAZDOWSKI on the 2012-2013 annual reports on subsidiarity and proportionality.