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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 2 March 2016
To: Delegations
Subject: Working Party on Information - 23 February 2016

1. Adoption of the agenda

The agenda was adopted as set out in document CM 1578/16.

2. Transparency

a) Access to documents - Commission's procedures

- Presentation by the European Commission of the procedures followed for consultation of Member States in the framework of Regulation 1049/2001

The Commission indicated that the Transparency Unit at the Secretariat General of the European Commission is responsible for the overall policy on access to documents and the uniform and coherent application of Regulation 1049/2001 and presented an overview of the Commission organisation on the handling of access to documents requests.

The Commission handles these requests in a decentralised manner corresponding to the two stage procedure foreseen in Regulation 1049/2001: the initial requests are dealt by the relevant Directorate General (DG) and the confirmatory requests are dealt by the Transparency Unit at the Secretariat General. At the initial stage, the relevant service of the DG handles the request without the intervention of the Transparency Unit. Each DG has a legal coordinator for access to documents issues.

In this context, the consultation of delegations on an initial request for access to Member States' documents is managed by the service of the relevant DG handling the request. The reply and reasoning presented by the MS consulted is followed by the DG service.

Consultations relating to confirmatory requests are always managed by the Transparency Unit. In case the Commission disagrees with the MS' opinion and reasoning to refuse access to a document, the Commission takes the responsibility on the value of arguments put forward and may decide to release a document. In this case, the Commission informs the MS concerned that it intends to grant access to the requested document within a time limit of ten days. Therefore, if MS deem it opportune, they may bring an action for annulment in front of the Court of Justice.

The Commission clarified that the principle of loyal cooperation between the partners is essential. In this context, the Commission also consults MS on minutes drafted by the Commission services containing MS comments and MS do the same regarding Commission documents.

The Commission also referred to the specific provisions agreed with the European Parliament and the need to distinguish from requests received by individual MEPs.

In reply to questions from delegations (IT, SE, FR, CY), the Commission elucidated that the consultation addressed to MS on confirmatory requests may indicate the line to be taken by the Commission, but does not include a draft reply. In case various MS were consulted and replies are differing, the Commission takes the responsibility on the reply.

On the follow-up of MS' replies to consultations, the Commission explained that only in the case of divergence of opinions, there is further communication with the relevant MS. Finally, the Commission took note of the delegations' request that consultations of MS pass by the members of the Working Party on Information.

b) *Draft proposal: Arrangement for the consultation of the Member States with a view to assessing the applicability of an exception to the disclosure of joint documents held by the GSC - Article 4 (5) of Regulation 1049/2001*

– Presentation and exchange of views

docs 6120/16 JUR 75 API 17 INST 56 CIG 1

12258/15 JUR 608 API 96 INST 331 CIG 1 COUR 43 POLMIL 80 UEM 349

The Presidency introduced the draft proposal set out in document 6120/16 to establish an arrangement aiming at facilitating the consultation of MS on requests for access to documents held by the Council and which have been jointly authored by several or even by all Member States.

The Legal Service underlined that the proposed arrangement will speed up the consultation process and, at the same time, allow Member States to coordinate their positions on the possible release of joint documents.

Several delegations expressed doubts on the proposal and needed more time to examine it. Other delegations supported the draft proposal and the proposed arrangement for the consultation of MS. The main comments referred to the following:

- the approval of a general arrangement for documents of an intergovernmental character within the scope of application of Regulation 1049/2001
- the nature of the proposed group
- the level of representation of the Governments of the MS

- the possible need for more meetings of WPI
- the deadlines to reply to requests
- minutes of the meetings
- adoption of the proposed arrangement

In reply to comments from delegations, the Legal Service referred to document 12258/15 on the handling of requests for public access to certain categories of documents held by the Secretariat General of the Council. In particular, it is stated that requests for public access to documents held by GSC in relation to the performance of tasks of support to bodies or entities other than the Council are to be processed by GSC in line with the substantive and procedural legal framework set out in Regulation 1049/2001.

There are also practical aspects to consider, since the usual procedure of written consultation by e-mail has proven to be particularly cumbersome. The new mechanism would allow MS to exchange views, coordinate their positions as well as to ensure coherence in the assessment of the risks linked to disclosure in a setting offering the necessary expertise on access to documents issues.

The Legal Service underlined that this arrangement does not imply the creation of a new group or to have additional meetings of the WPI. The representatives of the governments of MS will meet within the WPI. The result of the consultation will be indicated in the minutes.

The meetings of the representatives to decide on the possible disclosure of this type of documents have an intergovernmental character. The decision to convene a meeting will be taken by the rotating Presidency who will chair these meetings.

As for the process of adoption of this arrangement, it is proposed to submit the arrangement to the Representatives of the Member States in the margins of COREPER.

The Presidency took note of delegations' comments and mentioned that further reflections were needed. Delegations were invited to communicate their remarks to the Presidency and the Council Legal Service before next meeting. The WPI will revert to this issue at its meeting on 23 March 2016.

c) *Confirmatory applications*

– Information on pending requests

A number of voluminous requests for access to room documents established as a basis for the work of the Code of Conduct Group (1998 - 2015) was received by the general Secretariat.

Following the initial replies to some of these requests, the GSC is currently examining two confirmatory requests for public access to such documents, namely confirmatory application 2/c/01/16 for full access to 12 MS-contributions to the work of the Code of Conduct Group and confirmatory application 3/c/01/16 concerning 5 Commission documents relating to the Code of Conduct Group.

Due to the calendar of the WPI meetings, a written consultation of the Working Party will be launched in the course of this week.

d) *Information from the Legal Service*

– Complaint 21/2016/JAP to the Ombudsman

docs 6158/16 OMBUDS 2 INST 55 INF 22 API 16

6228/16 OMBUDS 5 INST 59 INF 25 API 20

Complaint 21/2016/JAP concerning the Council's refusal to grant access to three CLS opinions concerning respectively the Commission's proposal for a *Council Regulation on the establishment of the European Public Prosecutor's Office* (docs. 13302/1/14 REV 1 and 8904/15) and *the Commission proposal for a Regulation of the European Parliament and of the Council on the EU Agency for Criminal Justice Cooperation (EUROJUST)* (doc. 16983/14).

When informing the Secretary-General of the Council of this complaint on 8 February 2016, the Ombudsman asked for authorisation to inspect the documents concerned by this complaint. Document 6228/16 on the authorisation of the inspections by the Ombudsman services will be submitted to COREPER on 24 February 2016

- Legal proceedings pending before the General Court

COREPER has authorised Councils to intervene in case T-540/15 (De Capitani v. European Parliament). The Legal service is considering to request COREPER the authorisation to intervene in case T- 11/16 (De Masi v. Commission).

3. Communication / Information Policy

a) EU Climate Action : communication on the outcome of the UNFCCC

Conference COP-21 (Paris, 30 November - 12 December 2015) and follow-up (COP-22 - Marrakech, 7-18 November 2016)

The meeting focused on the communication of the outcome of the Paris conference, also against the background of the recently adopted Council conclusions on [European climate diplomacy after COP- 21](#).

The Presidency referred to the upcoming meeting of the Council (Environment) on 4 March and the need to maintain momentum, building on the successful and clear EU messaging in the run-up to COP 21. It was underlined that tailor-made messaging to different audiences was the most likely to support behavioural changes. The need to inform citizens in a clear and concrete manner on the outcome and the implementation of the agreement reached in Paris was also highlighted.

The French delegation informed Member States on lessons learned from the implementation of the information campaign carried out before and during COP-21.

Recalling the important achievements of the conference, the French delegation outlined the key phases and impact of its communication strategy and informed that it will continue to communicate on the Paris agreement, the next step being signature of the agreement foreseen in New York on 22 April, up to the handing over to the future COP Presidency (Morocco).

The Commission representative from DG Climate Action congratulated the French delegation for the excellent organisation of the COP 21, underlining that communication, coordination and information sharing were key for successful negotiations.

The Commission also briefed delegations on the results of its communication and awareness-raising activities in the run-up to and during the Paris conference. It finally outlined major events foreseen in 2016 and invited Member States to make use of the variety of the Commission's multilingual communication material available on climate action.

The Chairman concluded by inviting delegations to make use of the communication material referred to by the Commission. The WPI will come back to this issue in the second semester ahead of Marrakech conference COP-22.

b) EU's management of migration flows : communication aspects

The Chairman recalled the discussion at the WPI meeting on 27 October 2015 and the follow-up joint Working Party on Information/Club of Venice workshop on "Communication challenges related to migration" of 9 December 2015.

The representative of the General Secretariat of the Council (DG Justice and Home Affairs) gave a comprehensive overview of recent developments at EU level in response to the migration crisis and an outlook on upcoming meetings of the Council (Justice and Home Affairs).

He recalled key areas for action to rapidly stem the flows, protect external borders and safeguard the integrity of the Schengen area, i.a. on the implementation of the EU-Turkey Action Plan; humanitarian assistance; restoring, in a concerted manner, the normal functioning of the Schengen area; making hotspots fully functional; and taking concerted action and ending the wave-through approach along the Western Balkans route.

Finally, he recalled the Integrated Political Crisis Response (IPCR) mechanism at the disposal of the Presidency, including roundtables to coordinate the policy response and ensure information sharing (including weekly Integrated Situation Awareness and Analysis (ISAA) statistics).

The Commission representative from DG HOME informed the Working Party of the progress made in the implementation of the common information strategy following the Council conclusions of 9 November 2015. He underlined the complexity of this task, given the need not only to inform migrants and asylum seekers within and outside the EU borders, but also to address smugglers and traffickers.

Moreover, the Commission representative recalled the three main steps of the strategy which is being coordinated through an ad hoc inter-institutional task force: 1) an assessment exercise; 2) a content production phase and 3) a dissemination phase.

Furthermore, he informed about the two main communication channels, i.e. institutional channels and via media outlets, and referred to the communication tools being developed by the Commission, as well as to ongoing Commission activities to produce multilingual information material (including in non- EU languages).

Finally, the Commission representative invited delegations to become increasingly involved in the production and dissemination of communication material and to provide guidance for their most effective deployment.

In his concluding remarks, the Chairman encouraged delegations to make full use of the Commission's invitation.

c) *EU Open Day 2016*

The General Secretariat of the Council informed delegations about the concept of this year's EU Open Day which will take place in Brussels on 28 May under the common inter-institutional theme "United in Diversity" and the Council theme "2 Institutions, 28 Member States". Member states are invited to participate in the event and present their country in a joint stand on Council premises.

Delegations will receive written information in order to facilitate internal preparations. The Chairman asked member states to confirm their participation to the Open Day by the end of March.

4. AOB

a) *Information from the Presidency*

- **General Affairs Council** – state of play: interinstitutional agreement on better lawmaking – transparency issues
- Transparency Camp Europe
- The Dutch Presidency: step by step towards increased transparency

The Presidency introduced the Presidency's step by step approach towards increased transparency¹. The Presidency's aim is to take a gradual approach, and seek to strike a balance between transparency, confidentiality and efficiency. The Presidency will strive to take pragmatic, practical, focused and necessary steps, always in close cooperation with the Member States and the European institutions.

In this context, the Presidency referred to the implementation of the interinstitutional agreement on better law-making which will be an important item of the **General Affairs Council** agenda in March. A general debate on transparency will be organized in the GAC in June. The Presidency will keep the WPI informed on this matter.

The Presidency informed delegations on the organisation of a Transparency Camp Europe (TCampEU) consisting of two parts: an app-challenge, using European Open Data to create an app that will give better insight into European policy, and an unconference on the subject of European transparency and invited delegations to visit its website page at <https://www.transparencycamp.eu/>. Open State Foundation will come to next WPI to present the event.

¹ document 6459/16.

b) *Club of Venice seminar on migration (Lesbos, 8-9 April 2016)*

The Greek delegation circulated and outlined the provisional agenda of the event, hosted by the General Secretariat for Media and Communication, which will comprise a fact-finding visit to the critical areas of the island, and a roundtable focused on challenges for European government communicators and perspectives to increase cooperation in this field.
