



Brussels, 11 December 2015
(OR. en)

11384/15

PE 190
INST 287
JUR 790

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Summary report of the meeting of the Constitutional Affairs Committee (AFCO) of the European Parliament, held in Brussels on 3 December 2015

Transparency largely dominated this AFCO meeting, which took place against the backdrop of Mr GIEGOLD's draft report on "Transparency, accountability and integrity in the EU institutions". The committee held an exchange of views on the issue with FVP Timmermans, and then discussed Mr GIEGOLD's draft report. Several members deemed that, in some areas, the rapporteur's suggestions were too far-reaching. Of note was also a discussion on the UK's relationship with the EU; an update on the IIA negotiations and a further exchange of views on Ms BRESSO and Mr BROK's working document on how to improve the potential of the Lisbon Treaty. The committee also unanimously endorsed the composition of the negotiating team for the EP's committees of inquiry file.

Item 5.

Exchange of views with Frans TIMMERMANS, First Vice-President of the European Commission, in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights

First Vice-President TIMMERMANS discussed a number of issues relating to transparency:

- **The Transparency Register in the Commission:** since 1 December 2014, Commissioners, their cabinets and Commission Director-Generals met with registered lobbyists only. However, the same lobbying transparency rules had to apply across all three institutions.

- In reply to Mr GIEGOLD's (Greens, DE) request that the Commission broaden its rules to include more Commission staff, Mr Timmermans noted that MEPs could also, in turn, register all *their* meetings - and yet not all did. He refuted the traditional reply that MEPs should not be obliged to do so because they were directly elected.
 - The First Vice-President clarified that government representatives were not required to register with the Commission (Mr SCHÖPFLIN (EPP, HU)) and confirmed that an institution could unilaterally decide to strike a company from the register (Mr CORBETT (S&D, UK)).
 - He did not share the concern raised by Ms PAGAZAURTUNDÚA RUIZ (ALDE, ES) that the register could only work effectively with more personnel.
- **A mandatory register for all institutions:** the Commission was committed to proposing - and delivering on an IIA on transparency, which would also cover a mandatory register for all three institutions. The Commission would first allow the institutions to complete the IIA on Better Regulation. When pressed further on this by Mr GIEGOLD, Mr LEINEN (S&D, DE) and Mr CASTALDO (EFDD, IT) the First Vice President clarified that he hoped to start the public consultation early next year and while preferring an IIA, he would not hesitate to submit a legislative proposal if necessary.
 - **Transparency in trade negotiations:** the Commission would continue improving transparency in relation to TTIP. Mr TIMMERMANS dismissed Mr SCHOLZ's (GUE/NGL, DE) criticism that the Commission did not reveal the draft negotiating mandates being discussed by the Council: anyone in politics knew that all negotiations necessarily had a part of confidentiality and in this context full transparency was impossible. He called for greater trust in the Council and conceded that more room for transparency on mandates could be considered - but not while the Council was discussing them.

The First Vice-President addressed a number of additional issues raised by members:

- a stronger **revolving door policy** (favoured by Mr GIEGOLD and Mr CASTALDO): Mr Timmermans deemed the current 18-month 'cooling off period' to be sufficient - more would present an unnecessary bureaucratic burden.
- **whistle-blowers** (Mr GIEGOLD requested a commitment to propose a Whistleblower Protection Directive): Mr Timmermans did not envisage such a Directive, and with respect to the Commission, was of the opinion that internal staff regulations provided sufficient protection.
- **transparency in trilogues** (Mr CASTALDO advocated the publication of all trilogue documents and called for a strong Commission position on this); the First Vice-President replied that this would be addressed within the context of his proposed IIA on transparency.

Item 6.

Transparency, accountability and integrity in the EU institutions - consideration of draft report by Sven Giegold (Verts/ALE, DE)

Background: Mr GIEGOLD's (Verts/ALE, DE) [draft report](#), dated 18 November 2015, puts forward numerous suggestions to improve transparency, accountability and integrity in the EU institutions:

- it supports a mandatory **transparency register** and promotes a '**legislative footprint**' (a record of all input received from interest groups on draft policies and legislation) for all institutions, MEPs and Commission staff in the policy-making process; it suggests that rapporteurs and committee chairs meet only registered lobbyists and that EP access be restricted for non-registered lobbyists.
- it suggests the independent control of the **financing of European political parties**, and the independent assessment of **conflicts of interest** (by external members, not MEPs); and **longer "cooling-off periods"** for MEPs and members of the Commission (2-3 years before engaging in lobbying activities).
- it promotes full transparency of **economic governance**, and the protection of **whistle-blowers**.
- it proposes measures to grant **full access to documents** (inviting the Council and the Commission to list all available documents, including all trilogue documents, in their online registers). It also calls on preparatory meetings within the Council to be largely public.
- it suggests that the Commission publish all **negotiating mandates** prior to each trade negotiation round.

Mr GIELGOLD explained that his report aimed to counter citizens' loss of trust in the EU project and the consequent rise of populist movements. He argued that the EP was not dealing with **conflicts of interest** satisfactorily, with MEPs deciding on fellow members' potential conflict of interest. Such assessments should instead be made by external experts, and related decisions on sanctions should not be taken by the EP President. Furthermore, stronger rules on **"cooling off periods"** were required: he felt it was not acceptable that one's knowledge, acquired in the institutions, could be turned into private gain. This was a fundamental principle. Although the EU was in the lead in relation to **access to documents**, there was still room for improvement, particularly in respect of communicating the very *existence* of documents. On **transparency and the legislative process**, Mr GIELGOLD focused on the Council and the eurogroup. Lastly, **whistle-blowers**, who were key in securing the public interest, especially in taxation, should be granted a minimum standard of protection all over Europe by means of a whistle-blower protection directive.

The shadow rapporteurs shared their views on the draft report:

Mr PLENKOVIĆ (EPP, HR) claimed that the EPP would show its strong commitment and openness, but the draft report was too far-reaching, namely in respect of the "unacceptable" **burdensome procedure imposed on MEPs** when meeting their voters, a disproportionately long **cooling-off period** (3 years) and the restrictions on the efficiency of **trade** negotiations.

Mr LEINEN (S&D, DE) questioned whether transparency would really improve citizens' trust in the EU. He supported a "complete" Transparency Register, whether binding or not, the protection of whistle-blowers, and information on trade agreements. Problematic suggestions included those on conflicts of interest, and on the cooling off period.

Mr UJAZDOWSKI (ECR, PL) and Ms PAGA ZAURTUNDÚA RUIZ (ALDE, ES) claimed that their respective groups would support the report. ECR called for greater EU openness in its relations with the public and with national parliaments.

Mr SCHOLZ (GUE/NGL, DE) highlighted 3 points that needed to be fleshed out further in the report: (1) **economic governance** and the rise of intergovernmental legislation; (2) the **legislative footprint** (an excellent idea, to be coupled with a binding commitment); (3) **negotiations with third countries** (to be examined beyond trade, to include also visa negotiations, development issues, etc.) and negotiation mandates (the Council and the Commission should be bound by an IIA to liaise with the EP when establishing mandates).

Individual members also intervened:

Mr SCHÖPFLIN (EPP, HU) echoed Mr LEINEN in querying the assumption that greater transparency resulted in greater public trust. Trust could also be gained by success. He warned members that **whistle-blowers** could also be malicious and frivolous.

Ms BRESSO (S&D, IT) was reluctant to delegate outside of the EP the power to assess **conflicts of interest**, and to examine the **financing of political parties**. She claimed that showing too much distrust between the EU institutions could negatively affect citizens' trust in them.

Ms GOULARD (ALDE, FR) welcomed the fact that the EU institutions were far more transparent than national institutions. She supported an element of confidentiality in **trade negotiations**, **although** more transparency was required in relation to **intergovernmental agreements** and the **European Council**. She echoed the sentiment that a 3-year **cooling-off period** was excessive (suggesting that a long period could be required from higher level staff). Finally, she questioned whether the EP was a real model in terms of transparency - she referred to the Spitzenkandidaten procedure, the carving up of posts according to nationality or political group, decisions by the Conference of Presidents and the way rapporteurs from the two large groups sidelined members from smaller political parties.

Mr CORBETT (S&D, UK) stated that in the UK, which could serve as a model, the evaluation of **conflicts of interests** was carried out by an independent authority (the Independent Parliamentary Standards Authority). He argued that the rules on MEPs **declaring their interests** should be extended to votes in committees (e.g. farmers in AGRI may have a vested interest in some reports) and, in relation to the **legislative footprint**, many MEPs, including himself, already indicated who they met, so he refuted objections that this was too burdensome and bureaucratic.

Mr SILVA PEREIRA (S&D, PT) supported an **interests register** and clear rules on **conflicts of interests**, but felt it would be excessive to forbid **rapporteurs** from meeting people who were not registered.

- *Next steps*: Mr GIEGOLD called for another committee debate and claimed that meetings with the shadow rapporteurs would continue. The deadline for tabling amendments was extended.

Item 11.

Improving the functioning of the European Union building on the potential of the Lisbon Treaty - exchange of views on the working document by Mr BROK (EPP, DE) and Ms BRESSO (S&D, IT).

Background: the rapporteurs' working document, produced on 30 November 2015, makes a number of suggestions including: increasing EP powers in various fields; preventing the "unlawful interference of the **European Council** in the legislative process"; merging the function of the President of the European Council with that of the presidency of the Commission; the European Council committing to respecting the Spitzenkandidaten procedure by means of an IIA; reducing the **Council's** current configurations to only one; giving observer status and access to Parliament representatives in meetings of the Council; switching to QMV in the Council; creating a new "**European Finance Minister**" by combining the roles of the permanent President of the Eurogroup and the Commission Vice-President for Economic and Financial Affairs; establishing an EU fiscal and Treasury Administration (similar to the Congressional Budget Office); **deepening EMU**; completing the **internal market**; establishing a European Energy Agency; addressing the social dimension by establishing a new Social Pact; developing the EU's **external action**, and moving progressively towards a **common defence policy**; and developing measures in the field of **Justice and Home Affairs**.

Ms BRESSO referred to various elements in the working document, including the social pact (which would define strong and binding indicators), developing a CFSP and defence policy (warranted by today's geo-strategic challenges) and involving national parliaments in the legislative process. She also discussed the Council ("the least transparent institution", almost unknown to citizens) arguing that its transparency would be enhanced if it were to resemble a Senate, with one Council maintaining legislative functions, all other Council formations being preparatory bodies. This was not prohibited by the Treaties. She also argued that unanimity within the Council made the EU increasingly intergovernmental.

Mr BROK hoped to include in the report, to be presented on 14 January 2016, feedback from national parliaments, which had been consulted. He lamented the fact that only 5 member states (none of which were the large ones) provided data to Europol - the member states therefore provided for mechanisms under the Treaty of Lisbon but did not exploit them.

Mr UJAZDOWSKI (ECR, PL) supported reinforcing the powers of national parliaments and suggested that they should be given the power to block proposals (for example if 1/4 of national parliaments opposed it). This would facilitate British negotiations.

Ms SPINELLI (GUE/NGL, IT) welcomed the rapporteurs' promotion of the Community method in their report, but asked them to come to an agreement on key aspects (including the role of national parliaments). She also questioned suggestions for an enhanced security policy (potentially going beyond the Treaty) and calls to integrate the Fiscal Compact into the Treaties (claiming it would not improve as a result).

Mr GIELGOLD (Greens/ALE, DE) argued that the document should either address institutional concerns or political ones, but not both haphazardly. He broadly welcomed most of the proposals however. He advocated addressing two elements: (1) the exponential growth of the ECB's power, beyond what he viewed as being legitimate for an independent actor not subject to democratic scrutiny, and (2) the role of the eurogroup, and its lack of transparency.

In his closing remarks, Mr BROK highlighted that the Treaties were clear on the role of national parliaments. However, the 8-week period could be used better and cooperation with national parliaments could be improved. As to the institutional or political angle of the document, it merely gave examples of how the potential of the Treaty could be better exploited.

- Next steps: Presentation of draft report on 14 January 2016 and AFCO vote on 14-15 March 2016.

Item 7.

Votes

AFCO adopted Ms BRESSO's (S&D, IT) opinion on the CONT report on "the 2014 Annual Report on the Protection of the EU's Financial Interests - Fight against fraud".

AFO also unanimously endorsed the composition of the negotiating team for the EP right of inquiry file: Ms HÜBNER (EPP, PL - AFCO Chair), Mr JAUREGUI ATONDO (S&D, ES - rapporteur), Mr WIELAND (EPP), Mr UJAZDOWSKI (ECR), Ms PAGAZAURUTUNDUA RUIZ (ALDE), Mr SCHOLZ (GUE/NGL), Mr ANDERSSON (Verts/ALE), Ms ADINOLFI (EFDD), Mr ANNEMANS (ENF). The AFCO Chair announced that the prospect of negotiations on the file was becoming more likely. She clarified that the rapporteur's mandate continued to be the [Resolution adopted by the EP on 16 April 2014](#), supplemented by the rapporteur's second working document adopted by AFCO on 19 November 2015 (ST14803/15).

Items 9 and 10

Chair's communication on AFCO's missions to Washington and London (16-17 November 2015) and "The renegotiation of the United Kingdom constitutional relationship with the European Union"

The aim of the visit to London was to meet ministers, parliamentary committees and think tanks in order to discuss the UK referendum and the future of the EU institutional framework.

Mr SCHÖPFLIN (EPP, HU) felt that finalising a deal with the UK would take longer than expected (probably until February 2016). He noted that the Brexit campaigns had a strong and persuasive narrative. He welcomed the fact that 60% of the population in Scotland favoured staying in the EU. However, for Northern Ireland, a Brexit would have important consequences, and could endanger the peace process.

Mr LEINEN (S&D, DE) said he had left London more pessimistic. In his view, PM Cameron's four points would not condition the referendum, as voters would be swayed by other issues. Achieving legally-binding commitments on PM Cameron's four points would be difficult. The renegotiation should not take place behind closed doors, and the final deal should be in the interests of the whole of the EU, not just the UK (he referred to the French Front National which had recently claimed that it would also request better conditions for France if Britain secured some for itself). Mr LEINEN objected to cherry-picking and opt-outs, which were divisive.

Ms BRESSO (S&D, IT) largely reiterated these points, claiming that concessions should be explored for all member states, that negotiations should not be rushed and that the EP should be fully involved.

Ms JAMES (EFDD/UKIP, UK) - who is not an AFCO member and requested to attend the meeting - shared her assessment of the situation: the changes requested by PM Cameron required unambiguous and complex changes to the Treaty - changes which would only be made at an unspecified time in the future. They would need the agreement of the Council and ratification by all member states. She compared this to an "I owe you" that was not binding, had no repayment date and no guarantees that it would be respected.

Mr CORBETT (S&D, UK) suggested that many of PM Cameron's requests could be accommodated without the need for a burdensome Treaty change: for example, the Commission could commit to withdrawing proposals to which a number of national parliaments object (effectively giving national parliaments a red card). Similarly, an "ever closer union" could be the subject of a declaration along the lines of the European Council conclusions in June. The only challenge related to the 4-year ban on in-work benefits: this could either be addressed by non-discriminatory national legislation or the UK could try to change EU legislation on the matter.

Alternatively, the UK could seek to add a Protocol on this to the Treaty, despite this being more burdensome. Countering UKIP claims, Mr CORBETT clarified that a "promise now, ratify later" approach had been adopted in the past in relation to Denmark and Ireland and this had not been problematic. With reference to Mr LEINEN and Ms BRESSO's comments, he clarified that no UK request involved an opt-out on policies, and although PM Cameron's achievements would not condition the referendum result, they would sway a crucial 10-15% of the population.

Ms SPINELLI (GUE/NGL, IT) contested many of the British demands, including giving greater powers to national parliaments (which would be at the expense of EP powers), opting out of an ever closer union and circumscribing ECJ competence. She warned of the danger of changing the Treaties for the UK, as this could open the floodgates to numerous requests from other member states. She also advocated an ordinary revision of the Treaties, rather than backroom deals, with full EP and national parliament involvement.

Mr SCHOLZ (GUE/NGL, DE) echoed the call for full EP participation in the renegotiation talks.

Mr UJAZDOWSKI (ECR, PL) urged the EP to abandon its paternalistic approach and show more sensitivity and empathy. On calls for EP involvement in negotiations, he cautioned members against fuelling competition between the Council and the EP: the institutions had to show unity and strength, and not compete against one another.

Ms HÜBNER (EPP, PL) highlighted that different instruments could be used to address each of PM Cameron's demands - the procedure for each could therefore vary. She conceded that Mr Cameron would be obliged to return with some concrete results, but surmised that British concerns would be broader, and include security issues and the refugee crisis. Britons would look positively upon the EU if it found solutions to those problems.

Item 12.

State of play regarding the negotiations on the Interinstitutional Agreement on Better Regulation

Background:

On 19 May 2015 the Commission adopted a '[Better Regulation Package](#)', containing, inter alia, a proposal for an Inter-institutional Agreement on Better Regulation ([COM\(2015\) 216/2](#) and annexes).

Mr VERHOFSTADT (ALDE, BE) was mandated in June 2015 to represent the EP in the IIA negotiations, which should be concluded by the end of the year. Mr VERHOFSTADT presented the state of play of negotiations to AFCO on 28 September 2015 and to JURI on 12 November 2015.

Ms HÜBNER briefed the committee instead of Mr VERHOFSTADT who was in The Hague as part of the Conference of Presidents' visit. She informed members that AFCO's non-paper on the IIA, drafted earlier this year, was apparently being used considerably by the negotiators.

The chairs of AFCO and of JURI were invited to Conference of Presidents' meetings whenever Mr VERHOFSTADT reported on his political negotiations - which he carried out with Minister SCHMIT for the Council and FVP TIMMERMANS for the Commission. Political negotiations were complemented by technical discussions among officials of the institutions. Mr VERHOFSTADT reported on the good atmosphere at the negotiating table and an openness towards EP proposals.

After five rounds of political negotiations, chapters 1 to 6 of the draft IIA had been politically finalised and chapters 7 and 8 would be addressed in the coming days. Mr VERHOFSTADT hoped to finalise the IIA political negotiations in December 2015.

Ms HÜBNER set out a tentative timetable for the following steps, cautioning that it may be optimistic. She hoped that:

- an IIA text would be available by the end of February 2016,
- AFCO could examine it during the course of March 2016, and propose a report on it,
- the AFCO vote would take place in April 2016, and
- the EP plenary would adopt the final text of the IIA in May 2016.

Ms HÜBNER hoped that Mr VERHOFSTADT could provide AFCO with a further briefing in January 2016.

➤ Next AFCO meeting: 14 January 2016, 9.00 – 12.30 and 15.00 – 18.30 (Brussels)