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#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Summary report of the meeting of the <b>Constitutional Affairs Committee (AFCO)</b> of the European Parliament, held in Brussels on 14 January 2016

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A full agenda for AFCO's meeting, with the committee receiving both the LU and NL Presidencies, the former presenting its achievements and the latter its priorities for the months ahead. Both debates revolved largely around the future of the EU, with a number of members expressing genuine concern and a fair amount of pessimism. AFCO also heard Jonathan FAULL, head of the Commission's task force for strategic issues relating to the UK referendum, who was relatively optimistic that a deal next month could be reached with the UK without treaty change. Members also discussed a draft AFCO report by Ms HÜBNER recommending the adoption of the IIA on Better Regulation. Although members discussed what they regarded as some of the agreement's shortcomings, the committee's approach was generally supportive of the IIA results. Ms HUBNER expressed the hope that many of the interinstitutional arrangements could be further enhanced in the implementation phase of the IIA. Finally, Mr BROK and Ms BRESSO discussed their draft report on the potential of the Lisbon Treaty. The need to win back citizens' confidence appeared to be the key issue for many members.

**Item 6 - Jonathan FAUL (Head of the Commission's task force for strategic issues relating to the UK referendum) on the renegotiation of the UK constitutional relationship with the EU**

Mr FAULL explained that intense discussions - both formal and informal - had followed PM Cameron's requests, set out in a letter to Mr TUSK in November 2015. The next European Council would be the one in which important decisions would be taken - he hoped it would be the decisive one. Within the UK, legislation was being enacted to organise the referendum, which must be held before the end of 2017, but the campaign was beginning in earnest and would begin more formally once negotiations were concluded and a referendum date formally set.

As to the Commission's position, it wanted to help, and wanted to ensure that the integrity of the EU legal system was maintained. It was working closely with GSC colleagues, and trying to keep the EP informed as much as possible. It was also playing a role in crafting solutions and liaising with the other 27 MS to ensure their interests were properly reflected.

In terms of timing, there was not long to go: given the upcoming European Council on 18 - 19 February 2016, papers would in all likelihood be issued in early February. The issue would then become a matter of public debate all across the Member States.

As to the *form* of the potential settlement, this would depend on its content. The possibilities ranged from a simple declaratory statement from the European Council, to legislative activity, to treaty change. However, some thought it was preferable to resolve issues within the current treaties if at all possible.

In the subsequent round of questions, Mr FAULL further clarified:

- although the four freedoms were fundamental, they were not unconditional, even under the current legal framework (in reply to Mr SCHÖPFLIN (EPP, HU)). However, the fundamental aspects of the freedoms had to remain intact (to Ms PAGAŽAURTUNDÚA (ALDE, ES));

- PM Cameron wanted legally binding and irreversible solutions: many could be found within the existing framework. Accommodating the UK concerns did not necessarily require Treaty change. Recourse to an international law agreement (used for example in the past in relation to Ireland and Denmark) was a possibility and could legitimately be described as legally binding (to Ms BRESSO (S&D, IT) who asked about the range of possible instruments available);
- many issues raised by the UK would, in his opinion, lead to commitments that would be available to all Member States. They would not necessarily be granted *specifically* to the UK. In relation to a possible "domino effect" of requests from other Member States, there was nothing that would stop the latter from making further demands (to Mr CASTALDO (EFDD, IT);
- in reply to a question on the difficulty of negotiations (Mr McALLISTER (EPP, DE)), Mr FAULL stated that negotiations had "not been easy at all", particularly as they raised difficult legal and political issues. Difficulties included reflecting on the precise meaning of "ever closer Union", on the relationship between euro and non-euro area Member States and on the consequent operation of the single market, and on the treatment of workers in all Member States. However, the political will to resolve the issue was strong, as well as the desire not to sacrifice what had been built up and was considered good in the EU;
- asked whether a comparable spirit of compromise to overcome the "empty chair crisis" with France (which could have marked its departure from the EU), would be used in relation to the UK (Mr CORBETT (S&D, UK)), Mr FAULL discussed the "honourable and respectable tradition" in the EU whereby a Member State, regardless of its size, was listened to when it raised important difficulties. The tradition of listening and seeking to help a Member State was very much alive. That was, in his view, an important factor in the discussions, where levels of engagement were shown by all Member States at every level;
- on the possibility of eliminating all forms of abuse of the UK welfare system rather than imposing a 4-year ban (Ms HÜBNER (EPP,PL)), Mr FAULL explained that the UK in-work benefits system was non-contributory: essential credits were paid to workers as a matter of right, not depending on their contributions. The issue was whether that system had created incentives for the free movement of people - a matter to be addressed.

The EU and national legal systems contained an arsenal of measures to prevent benefits *abuse*, but the UK in-work benefits could apply to people working lawfully and paying taxes;

- he would not speculate on the result of the referendum or on the possibility that the reforms secured by the UK would play no part in the referendum result (Ms KAUFMANN (S&D, DE)). The Commission was not considering the impact of the result of the referendum - it was working to keep the UK in the EU, in the interest of both the EU and the UK;
- in relation to concerns that an opt-out from "ever-closer Union" could trigger similar requests from other Member States, and the consequent freezing, or even regression of the EU project (Mr GUERRERO SALOM (S&D, ES) and Ms BERES (S&D, FR)), Mr FAULL stated that the UK was not putting into question the willingness of other Member States to go down the path of further integration. In fact, the UK believed euro-area Member States should actually move *more* towards a genuine economic and monetary union;
- several ideas were indeed being discussed on how the current system could be improved in order to enhance the role of national parliaments (to Mr MESSERSCHMIDT (ECR, DK)).

#### **Item 7 - Presentation of the NL Presidency Programme by Minister KOENDERS**

The Dutch Foreign Minister, Bert KOENDERS, opened the discussion thanking the LU Presidency for its outstanding job, and spoke of the difficult circumstances in which the Netherlands Presidency was starting its 6-month term: extremism, migration, economic insecurity, and fragility at the EU's eastern borders all warranted urgent European cooperation. Europe was stronger united, and it had to show decisiveness. The NL Presidency would be active and pragmatic, seeking tangible results. The Minister touched upon various issues and files of interest to the committee:

- **National parliaments:** relations among national parliaments should be strengthened, as should dialogue between national parliaments, the Commission and the EP. There was no competition between the EP and national parliaments.
- **IIA on Better Regulation:** a seemingly technical agreement, but of great importance for the functioning of the EU. The Presidency would now focus on implementation, in order for the IIA's principles to be put into practice in the second half of the legislature of the Commission.

The Council would have to reflect on its internal procedures (e.g. for the preparation of the Commission's Annual Work Programme) and the way it made use of certain instruments (e.g. impact assessments, stakeholder consultations and evaluations). The Presidency was looking forward to working with the EP and the Commission on the IIA provisions on transparency and on the coordination of the legislative process in the coming months.

- **Transparency:** a key principle for the Presidency, which was committed to taking steps to increase transparency in European decision-making. The Council was "seriously looking at the issue of transparency of Council documents". The Presidency hoped to work towards a joint database and stated that it would start negotiations on a mandatory register if the Commission submitted a proposal during its term.
- **Reform of the European electoral law:** while underlining the procedural constraints of this file, the Minister stated "We have to do something about it", adding that formal discussions in the relevant Council working group would start within the coming weeks.
- **EP right of inquiry:** the Presidency reiterated that the Council had serious concerns in relation to this file, but welcomed an informal technical meeting with the rapporteur and the Commission to see how the EP intended to foster progress.
- **The European Citizens' Initiative:** the Presidency acknowledged the instrument's deficiencies and its need for improvement in order to function effectively.

In the subsequent round of questions, members probed the Minister on the following:

- **The future of the EU:** Mr LEINEN (S&D, DE) discussed the possibility that the EU would not hold together in the next 6 months. He lamented a lack of unity and of common values, which he perceived as being side-lined in favour of narrow national interests. Conversely, Mr ANNEMANS (ENF, BE) contested the assumption that common solutions necessarily implied better solutions and asked the Presidency to take this into consideration during its term. **Minister KOENDERS replied** that common values, such as the rule of law, reflected the EU's founding principles. Referring to recent events in Poland, he stressed that those values had to be taken seriously. As a democrat, he was also committed to hearing *all* voices, including dissenting ones, and assured members that the Council would do the same. He nevertheless argued that in the context of certain crises facing the EU, including terrorism, there needed to be an effective form of European cooperation.

- **National parliaments:** Mr SCHÖPFLIN (EPP, HU) asked the Presidency to further detail its thoughts on national parliaments, and Mr CORBETT (S&D, UK) focused on a potential "green card" (giving national parliaments the right to make legislative suggestions to the Commission), which, he suggested, could reflect national parliaments' lack of trust in the Council. **Minister KOENDERS** did not agree with this assessment. The Council supported national parliaments' involvement in EU policy-making. Despite potential developments following negotiations with the UK, he excluded the possibility of a green card in the near future given the unlikelihood of treaty change.
- **BREXIT:** Mr SCHÖPFLIN asked about developments in relation to the UK and how the Presidency was planning the upcoming European Council meeting. **Minister KOENDERS** underlined that the matter was first discussed in the December 2015 European Council. He described the issue as "difficult but not impossible". He stressed that the UK in the EU was best for both parties but that ultimately this was a decision for the British people.
- **Migration:** Mr SCHÖPFLIN wanted to explore the Presidency's views on Dublin and Schengen, claiming that existing steps had not worked, and calling for greater information-sharing at EU level. The Presidency replied that migration was a top priority for it. There was certainly not a lack of proposals on the table, which combined made a lot of sense. The European Council had made considerable efforts in this area during its December summit, and he hoped the monthly JHA Councils would make swift progress.

AFCO rapporteurs also questioned the Presidency on their specific files:

- **EP right of inquiry:** Mr JAUREGUI ATONDO (S&D, ES) welcomed the informal technical meeting suggested by the Presidency. He underlined that the right of inquiry was the linchpin of any parliament. He was aware that MS saw this as an uncomfortable power and that this file was a "hot potato" in the Council. Despite his frustration, having tried unsuccessfully for over a year to bring this file forward, he placed his trust in the NL Presidency, urging the institutions to work together and "get down to business". **The Presidency** acknowledged the rapporteur's sense of frustration, although this was a complex file that raised many problematic issues. It welcomed the EP's commitment to take into account these issues, which had to be addressed together in order for political negotiations to take place. A technical meeting with the rapporteur and the Commission was the way to move forward at this stage.

- **the IIA on Better Regulation:** Ms HÜBNER (EPP, PL) counted on the Presidency's support in the implementation of the agreement, which would require further cooperation between the three institutions. **The Presidency** hoped for the IIA's swift implementation and committed to working closely with the EP.
- **European electoral law:** Mr LEINEN asked for Presidency's commitment on this file and urged for legislative changes by the end of the year. **The Presidency** stated that it was reading with great interest the suggestions in the EP proposal: thresholds were a key element, as well as the common deadline for the nomination of lead candidates, enhancing visibility and harmonising deadlines. A preliminary examination of the text had been scheduled in the relevant working party for 29 January 2016 and the EP would be informed of progress. Minister KOENDERS warned that MS had differing views on some suggestions and that a lot of investment was required on this delicate but key file.

#### **Item 8 - Minister SCHMIT on the outcome of the Luxembourg Presidency**

Minister SCHMIT explained that the last six months had been marked by tragic events and serious challenges for the EU. While migration was the biggest issue, there were also discussions on the substantial elements of the integration project such as Schengen, solidarity in the EU, as well as challenges to our freedoms and democracy, and to our free and open societies. The very founding values of the EU were being put into question in some Member States.

As to the achievements of the LU Presidency, Minister SCHMIT mentioned the following:

- the IIA on Better Regulation: the Minister welcomed the closing of this file and commended Mr Verhofstadt's constructive and positive attitude which contributed to an agreement being reached. There were a few fundamental points for the LU Presidency, which were shared by a broad majority in the Council: (i) improving transparency; (ii) improving cooperation among the institutions: the institutions were not rivals; (iii) the competences guaranteed in the Treaties should not be restricted by the IIA. The LU Presidency also tried to ensure that the IIA would factor in the cost of non-Europe in its considerations, given that in some cases, the absence of Europe implied much higher costs.
- On AFKO files in particular, he welcomed the commitment towards better governance, set out in the BROK and BRESSO working document on improving the functioning of the European Union building on the potential of the Lisbon Treaty.

He underlined the desirability of addressing the *social* aspects of better governance.

Prompted by Ms BRESSO (S&D, IT) to share his views on the possibility of a real Social Pact and on assessing Member States' performance on the basis of social criteria, in addition to economic criteria, Minister SCHMIT confirmed the need to improve and democratise economic governance. Given that budgetary decisions have a social impact there was indeed a need for some rebalancing. The idea of a pillar of social rights was interesting, but like many EU declarations on the matter, it had to have real legal force in order to be effective.

- On the reform of the European Electoral law, the EP report proposed clear improvements. Reforms were key and should be adopted. He nevertheless stressed the special and complicated procedure to reform the electoral law, despite assuring members that they could "count on our support on this matter".
- On the EP right of inquiry, although the LU Presidency regretted "not making the progress we should have made", it had managed to chart a path forward on this file, and Mr JAUREGUI ATONDO (S&D, ES), the rapporteur, thanked the Presidency for that.

The LU Presidency was subsequently questioned by members on the following:

- its views on the European Citizens' Initiative (MR SCHÖPFLIN (EPP, HU)): as a former member of the Convention, the Minister supported the ECI, as it was important to bring citizens closer to the EU and allow them to influence European policy. It was unfortunate that that stage had not yet been reached. He supported the review of the instrument's functioning and implementation - there was a need to modernise and rethink our democratic systems, to bridge the gap between citizens and the EU institutions, and for an awareness in the Council that the EU needs a second democratic push. The ECI could contribute to this, as it was a way to create more participative democracy.
- its views on Member States feeling that the principle of solidarity was being imposed on them as a diktat (MR SCHÖPFLIN (EPP, HU)): Minister SCHMIT replied that solidarity was indeed not a legal instrument and could not be imposed merely by rules, but should be an "*état d'esprit*". Diluting this principle would weaken the EU.
- Mr LEINEN countered that majority voting was not a diktat. He regretted that the Council always sought consensus - this took time and decisions were always at the level of the lowest common denominator. The Council was to be more courageous and use QMV more often. Minister SCHMIT agreed that, while the Council always sought to find as broad a consensus as possible, more QMV was indeed necessary. Unanimity meant that the EU



would not move along at a reasonable and competitive speed. Being part of a minority was not negative, but part of a democracy.

- national parliaments and in particular a potential "green card" (Ms BRESSO (S&D, IT): Minister SCHMIT stressed their important role, but cautioned that they should not become "a new institution" as this would change the balance in the EU system. He would err on the side of caution in relation to the green card, as this would imbalance the whole system: However, he would be open to consider ways to better associate national parliaments with the eurogroup.

Ms HÜBNER (EPP, PL) closed the debate thanking the LU Presidency and in particular Minister SCHMIT for his institutional memory, passion and vision.

### **Item 10 - Draft EP report on the IIA on Better Regulation**

Following the Commission's proposal for a new IIA in May 2015, inter-institutional negotiations began in June 2015 and were successfully concluded on 8 December 2015, with a provisional agreement on a draft IIA . Ms HÜBNER (EPP, PL) presented her [draft report](#) on the draft IIA. She clarified that the EP could only accept or reject the text of the IIA. The purpose of her report was to recommend that the EP approve the results of the negotiations and authorise the EP President to sign the IIA. The report also contained an appreciation of some of the main provisions of the new IIA, called for an examination of the extent to which the EP's rules of procedure needed to be amended in order to implement the IIA and pointed to a number of issues where follow-up was necessary.

Ms HÜBNER clarified that her report would be complemented by a further AFCO report, to be produced by Mr CORBETT (S&D, UK), in association with JURI, that would take into account all issues that required further negotiations in order to ensure the practical implementation of the IIA. While Ms HÜBNER conceded that she was not fully satisfied with the result of the final IIA, she suggested that the implementation aspects that were still to be decided among the institutions would provide a further opportunity to enhance arrangements (for example, in relation to the mutual exchange of information between the EP and the Council, more could still be done to establish an equal balance between the legislators; the same for the transparency of the legislative procedure: more specific provisions and tools could be considered in the implementation of this principle).

Mr CORBETT, speaking on behalf of the S&D, welcomed the draft IIA. It had struck a good balance on the delicate issue of impact assessments (IA). He was happy to see that IAs would come *early* in the procedure so that they could fully inform the legislative procedure. However, he felt IAs should refer more strongly to the cost of non-Europe: they should not merely look at the potential burden of legislation but be more comprehensive and assess the cost of *not* legislating. He reiterated the adage that EU legislation also meant reducing 28 rules to only 1.

Mr WIELAND (EPP, DE) claimed that he was all but satisfied with the outcome of negotiations. The IIA required clarity on some issues, while other issues had been left out altogether (for instance, in requesting that the Commission provide better answers to MEP questions). He wanted the Council and the EP to commit to working towards better legal documents, and more independence in the context of impact assessments and SMEs. He also regretted that the final text did not address the issue of first reading agreements.

Ms McINTYRE (ECR, UK), who was not a member of AFCO but who reviewed the IIA on behalf of the ECR group, was critical of the procedure used for the IIA negotiations. While she welcomed Mr VERHOFSTADT's efforts, she felt it was inconsistent to call for greater transparency, on the one hand, and follow this procedure on the other. Most significantly, the ECR's key priorities which were not included, and in respect of which the draft IIA therefore failed were: a binding competitiveness and SME text; a binding burden-reduction target; a sharp independent regulatory scrutiny body (the EP made a mistake not to insist on this). However, ECR was positive about revising other IIAs with REFIT principles in mind.

Ms HÜBNER reiterated that she hoped some of the weaknesses of the IIA could be overcome in the implementation phase.

- Next steps: AFCO vote on its final report: 22 February 2016; EP plenary vote on 9-12 March 2016.

**Item 9 - Exchange of views on working document on Improving the functioning of the EU building on the potential of the Lisbon Treaty (co-rapporteurs Mr BROK (EPP, DE) and Ms BRESSO (S&D, IT))**

Ms BRESSO highlighted once again the main objectives of the planned report, and the areas it would address. She claimed that the community method was "superior" to the intergovernmental one, adding that the Council was the weak link in the functioning of the EU.

Mr BROK stressed that for the first time, he genuinely felt that the EU boat could sink. The EU was often blamed for difficult situations - this required finding answers, but in some areas it was not to progress because changing the Treaties required unanimity. He thus advocated: greater QMV; greater transparency in the decision-making process; ministers in the Council taking greater responsibility for decisions they take and making this clear to the general public; and reducing first reading agreements.

Mr GIEGOLD (Greens, DE) agreed with most of the content of the draft report. He called for greater emphasis on the Council using the passerelle clause; on referring to the fundamental rights of asylum seekers and on clarifying the EU's lack of progress in the field of terrorism was also due to MS' reluctance to exchange information.

Mr ANNEMANS (ENF, BE) claimed he could not disagree more with the report. He contested the federalist ideas that underpinned it, as well as apparent sweeping statements and unsubstantiated assumptions, including that the community method was superior. He argued that the growing resentment with the EU was because of moves towards excessive integration, against the will of the EU citizens, as evidenced in recent elections and referenda.

Ms SPINELLI (GUE, IT) countered that the citizens' resentment was not triggered by the perception that the EU was speeding ahead too fast, but rather by confusion - they wanted to know what was happening and wanted to be part of the project.

She pressed for the report to support the quest for an ever closer union, a greater use of the passerelle clause and less unanimity. She was also concerned by the strengthening of various bodies (including, for instance, the Eurogroup or FRONTEX) which were not sufficiently answerable to the EP.

Mr RANGEL (EPP, PT) shared Mr BROK's pessimistic concerns about the current state of the EU. He asked for greater clarity on the rapporteurs' perception of the role of the European Council from a constitutional perspective.

Mr UJAZDOWSKI (ECR, PL) claimed that unless MS increase their spending on security, all other measures envisaged would be ineffective.

Ms BERES (S&D, FR) underlined that winning back citizens' confidence was the decisive issue. She referred to learning lessons from the past - for example in terms of EMU and now Schengen - where there was a large gap between the promises made to citizens and the final policies implemented.

Before closing the debate, Mr BROK clarified, in relation to Mr ANNEMANS, that some of the EU's problems (e.g. terrorism, climate change) could not be dealt with in splendid isolation. In reply to Mr RANGEL, he was of the opinion that the constitutional role of the European Council was to "philosophically" lead the EU, with leaders that were "real leaders".

- Next steps: it appears that, pursuant to Mr CORBETT's request, the deadline for tabling amendments to the draft report may be postponed until after the European Council meeting on 18 and 19 February 2016, as the conclusions of that meeting could have a bearing on the content of the report; EP plenary vote scheduled for 9-12 March 2016.
- Next AFCO meetings: 22 and 23 February 2016.