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REPORT

From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	State of play on the Interinstitutional Agreement on Better Regulation

The General Affairs Council in March 2015 launched the preparations for the Interinstitutional Agreement negotiations. It mandated COREPER to examine the issues which may, or may not, be included in the future Interinstitutional Agreement on Better Law Making (IIA)¹. The Presidency presented an analysis of the main issues, namely, **Annual and Multiannual programming, Better Regulation, Trilogues, National Parliaments, Delegated/Implementing Acts and Transparency**, and made concrete suggestions as regards the Council's position on the way forward. This analysis also showed that certain issues would be best tackled through other arrangements, outside the IIA.

¹ The previous such agreement was named, "IIA on Better Law Making", hence this was the title used in the beginning of the process. However, the Commission's final proposal was entitled, "IIA on Better Regulation."

Discussions at the technical level and later in COREPER confirmed broad support for the Presidency's proposals on the way forward. More importantly, a certain hierarchy among the issues emerged: **Programming, Better Regulation and Expert consultation on Delegated Acts** were identified as the Council's top priorities. As regards **Trilogues, National Parliaments and the Council's participation in the Transparency Register**, there was large support that certain elements could be addressed in the IIA context, while others should remain outside the scope of the future agreement. Transparency towards the public was also highlighted as an integral element in the negotiations.

Drawing on the consensual elements of these discussions, the Presidency submitted a **Non-paper** which focused on the issues identified as top priorities, namely, Programming, Better Regulation and Delegated Acts and proposed the "way forward". On the basis of the lines set out in the Presidency's Non-paper, Ministers agreed on the Council's position regarding the IIA at the GAC in April. This position was reflected in a **letter from the GAC's Chair, Minister Rinkevics to the Commission's first VP, Frans Timmermans**, of 30 April 2015². This letter forms the basis for negotiations with the other two institutions.

The **Commission adopted the Better Regulation Agenda** on 19 May 2015. The Agenda includes a number of elements³, among which a proposal for an **Interinstitutional Agreement on Better Regulation**⁴, which consists of the following chapters, i) common commitments and objectives; ii) programming and planning; iii) application of Better Regulation tools; iv) legislative instruments; v) delegated and implementing acts; vi) coordination of the legislative process; vii), implementation and application of union legislation, viii) simplification. In addition, Annex 1 contained the Commission's proposal for a Common Understanding between the EP, the Council and the Commission on Delegated Acts, and Annex 2 contained the proposed standard clauses on delegated acts.⁵

² Doc. 8294/15

³ see also doc. 9804/15

⁴ Doc. 9121/15

⁵ Doc. 9121/15 ADD 1

The Commission's IIA proposal includes a number of elements which had been either partially, or, not addressed in the Council's initial examination. The Presidency organised additional technical discussions to examine these elements, focusing on the chapters on the legislative instruments, coordination of the legislative process, implementation and application of union legislation, and simplification. In parallel, experts started the examination of the Delegated Acts parts of the IIA proposal (Chapter V of the IIA and related Annexes).

The Working Party met on 5 June 2015 and the Commission presented in a comprehensive manner the IIA proposal. Delegations welcomed the Commission's initiative and concurred that the proposal was a good basis and set the stage well for the interinstitutional negotiations.

Delegations also had the opportunity to seek clarity on certain elements. Some were of a legal nature, namely, requests for precision as regards the relation between the new IIA and the 2010 Framework Agreement between the Commission and the European Parliament, and also whether the new agreement would be of a binding nature or not. Delegations also reiterated the need to preserve the notion of quality of law-making in the new agreement, to recall that subsidiarity is a "two way street", and to highlight the importance of the "cost of non-Europe".

In addition, there were queries and requests for clarity on how the new system on Impact Assessments would tally with the role of the co-legislators in the legislative process as set out in the Treaties, as well as concerns on potential delays on the legislative process and in the same vein, queries on the ex-post evaluations. Traceability of the legislative process and stronger language on transparency towards the public were also reiterated as important elements. Discussions confirmed that a public database on the state of the play of co-decision files remains a high priority for the Council. As regards the coordination of the legislative process, many underscored the need to respect the prerogatives of the two co-legislators in planning work on co-decision files and there was broad consensus that joint planning should remain indicative. The Commission's proposals on "gold-plating" were unacceptable to the large majority of delegations.

The legal advisers met on Friday 12 June to discuss the parts of the Commission's proposal related to delegated and implementing acts (paragraphs 21 to 23 of the proposed IIA as well as Annexes 1 and 2). The Council's position as set out in the letter to First VP Timmermans was generally confirmed and fine-tuned in the light of the Commission's proposal:

- The establishment of a robust mechanism for the systematic and thorough consultation of experts from all Member States during the preparation of delegated acts remains one of the Council's top priorities for the negotiations. The legal advisers repeated that the procedures to that end need to be reflected in the standard clauses, for instance as was done in the Council's initiative to complement the Common Understanding (doc. 6774/14).
- As regards transparency, the meeting confirmed general support, including for the establishment of a register for delegated acts.
- It was clear during the discussions that there is widespread scepticism about the usefulness of delineation criteria, with many delegations stressing that several of the criteria proposed are unacceptable. Any criteria would have to be indicative and include a clear reference to the co-legislators' prerogative to decide on the appropriateness of empowering the Commission to adopt further measures.

The Council has now completed a first analysis of the key elements in the Commission's proposal. The letter from the GAC's Chair, Minister Rinkevics to the Commission's first VP, Frans Timmermans, of 30 April 2015, reflects the Council's position regarding the IIA and forms the basis for negotiations with other two institutions. The incoming Presidency may further develop the Council's mandate in view of the negotiations with the other two institutions.
