



Brussels, 9 July 2019
(OR. en)

10641/2/19
REV 2

LIMITE

JAI 749
FREMP 88
POLGEN 129
AG 27
ANTICI 8

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Standard modalities for hearings referred to in Article 7(1) TEU

1. Article 7(1) TEU foresees a procedure whereby the Council may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU. Article 7(1) also provides that before making such a determination, the Council shall hear the Member State in question.
2. The Council is currently seized of two such procedures, the first one in respect of Poland, the second one in respect of Hungary.
3. On 27 February 2018 a procedure was triggered by the Commission against Poland. Hearings took place at the General Affairs Council meetings on 26 June, 18 September and 11 December 2018.
4. On 12 September 2018 a procedure was triggered by the European Parliament against Hungary. No hearing has taken place yet.
5. Laying down standard modalities for hearings under Article 7(1) TEU would help streamlining the process and create a level playing field for all the Member States involved and for the three possible cases (a reasoned proposal by a group of Member States, by the European Parliament or by the Commission).

6. Once such modalities have been adopted by Council, Coreper would need to agree on the substantive scope of the issues to be covered by each hearing.
7. The draft of standard modalities was discussed at the Antici Group meeting on 2 and 9 July. As compared to the Annex to doc. 10641/1/19 REV1, the text in the Annex to this note contains editorial amendments in paragraphs 5, 8, 11, 14, 17 and 20.
8. In view of the above, it is suggested that Coreper endorse the standard modalities as set out in the Annex to this note and recommend that the Council approve them, at its forthcoming session on 18 July 2019.

Standard modalities for hearings under Article 7(1) TEU procedures

1. Article 7(1) TEU foresees that before the Council eventually determines that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU or the Council addresses recommendations to it, the Member State with regard to which the procedure is triggered ('the Member State concerned') shall be heard.
2. As the Treaty does not lay down specific modalities for hearings under Article 7(1) TEU, standard modalities for hearings are laid down below.

Scope

3. The substantive scope of the issues to be covered by a hearing shall be agreed by Coreper in keeping within the scope of the issues as raised in the Reasoned Proposal triggering the procedure of Article 7(1) TEU.

Configuration

4. Up to eight seats (in a 3+2+3 format) are foreseen for the Member State concerned. Arrangements are made to ensure that Heads of Delegations of the other Member States can be assisted by a member of their Delegation at the front table (2+3 format).

A. Case of a Reasoned Proposal by one third of the Member States

5. At the first hearing, a representative of the Member States that submitted the Reasoned Proposal shall present it; this should not exceed 20 minutes. The Member State concerned shall then be given the opportunity to present its views; this initial presentation should not exceed one hour. The Member State concerned can always elaborate on its views also in writing. The Commission may provide comments or information relevant for the issues covered by the hearing; this should not exceed 10 minutes. A question and answer session is subsequently foreseen, according to the rules presented in paragraph 8.

At the end of the hearing, the Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.

The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

If further hearings are arranged, they shall be structured as set out below in paragraphs 6 to 10.

6. At the outset of each subsequent hearing, a representative of the Member States that submitted the Reasoned Proposal has the possibility to provide an update on issues to be covered by the hearing; this should not exceed 15 minutes. The Member State concerned is given the opportunity to present its views with regard to the said issues; this should not exceed 20 minutes.
7. The Commission may provide comments or information relevant for the issues to be covered by the hearing; this should not exceed 10 minutes.
8. Member States are invited to put up to two questions for each issue included in the substantive scope to the Member State concerned. Each question should not exceed two minutes. The Member State concerned is given the opportunity to respond to each question; the answer to each question should not exceed 10 minutes. If additional clarification is needed, delegations can ask follow-up questions, while respecting the same time limit of two minutes. The Member State concerned is given the opportunity to respond to the follow-up questions and, where necessary, to further elaborate its answers in writing.
9. At the end of the hearing, the Member States that submitted the Reasoned Proposal are given the opportunity to make observations on the elements provided by Member State concerned; this should not exceed 15 minutes. The Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.
10. The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

B. Case of Reasoned Proposal by the European Parliament

11. At the first hearing, the Presidency shall report to the Council about its contacts with the European Parliament on its Reasoned Proposal. The Member State concerned shall then be given the opportunity to present its views; this initial presentation should not exceed one hour. The Member State concerned can always elaborate on its views also in writing. The Commission may provide comments or information relevant for the issues covered by the hearing; this should not exceed 10 minutes. A question and answer session is subsequently foreseen, as set out in paragraph 14. At the end of the hearing, the Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.

The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

If further hearings are arranged, they shall be structured as set out below in paragraphs 12 to 16.

12. At the outset of a each subsequent hearing, the Member State concerned is given the opportunity to present its views with regard to the issues to be covered by the hearing; this should not exceed 20 minutes.
13. The Commission may provide comments or information relevant for the issues to be covered by the hearing; this should not exceed 10 minutes.
14. Member States are invited to put up to two questions for each issue included in the substantive scope to the Member State concerned. Each question should not exceed two minutes. The Member State concerned is given the opportunity to respond to each question; the answer to each question should not exceed 10 minutes. If additional clarification is needed, delegations can ask follow-up questions, while respecting the same time limit of two minutes. The Member State concerned is given the opportunity to respond to the follow-up questions and, where necessary, to further elaborate its answers in writing.
15. At the end of the hearing, the Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.
16. The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

C. Case of a Reasoned Proposal by the Commission

17. At the first hearing, the Commission shall present its Reasoned Proposal; this should not exceed 20 minutes. The Member State concerned shall then be given the opportunity to present its views; this initial presentation should not exceed one hour. The Member State concerned can always elaborate on its views also in writing. A question and answer session is subsequently foreseen, according to the rules presented in paragraph 20. At the end of the hearing, the Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.

The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

If further hearings are arranged, they shall be structured as set out below in paragraphs 18 to 22.

18. At the outset of each subsequent hearing, the Commission has the possibility to provide an update on the issues to be covered by the hearing; this should not exceed 15 minutes.

19. The Member State concerned is given the opportunity to present its views with regard to the said issues; this should not exceed 20 minutes.
20. Member States are invited to put up to two questions to the Member State concerned for each issue included in the substantive scope. Each question should not exceed two minutes. The Member State concerned is given the opportunity to respond to each question; the answer to each question should not exceed 10 minutes. If additional clarification is needed, delegations can ask follow-up questions, while respecting the same time limit of two minutes. At the end of the hearing the Member State concerned is given the opportunity to respond to the follow-up questions and, where necessary, to further elaborate its answers in writing.
21. At the end of the hearing, the Commission is given the opportunity to make observations on the elements provided by Member State concerned; this should not exceed 15 minutes. The Member State concerned is given the opportunity to present its own observations and remarks; no time limit is foreseen.
22. The Presidency presents procedural conclusions. No assessment on the substance of the issues is included.

Outcome

23. Minutes of the hearing reflect the procedural conclusions. In addition, a formal report is made by the General Secretariat of the Council.

Transitional and final provisions

24. For procedures under Article 7(1) TEU that have started before the present standard modalities for hearings were set out, the modalities laid down in this document shall be applicable as from the relevant stage reached by a procedure.
25. These standard modalities are without prejudice to the application of the rules of procedure of the Council.