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From: General Secretariat of the Council

To: Permanent Representatives Committee

Subject: Interinstitutional Agreement
- Letter to the Commission on the Council's priorities in view of the IIA negotiations

Further to the discussions in the General Affairs Council and in view of the Commission's upcoming proposal on an Interinstitutional Agreement on Better Law Making, the Council has set out its key priorities in a letter to the Commission's first Vice President, Mr Frans Timmermans.

COREPER is invited to adopt the letter, as set out in the Annex to this note, pursuant to Article (19) 7 (k) of the Council's Rules of Procedure.

Dear First Vice-President Timmermans,

As a follow-up to our fruitful discussions at the General Affairs Council on 21 April 2015, I would like to take the opportunity to highlight the Council's main priorities in view of the upcoming negotiations on a new IIA on Better Law-making. In this context I would like to thank you for your openness to take into account the Council's views in the preparations of the Commission's proposal.

The Council considers that a new IIA provides a unique opportunity to jointly reflect on how to improve the way that the European Union legislates and how to enhance interinstitutional co-operation in order to ensure better delivery for our citizens.

Under the Italian and Latvian Presidencies, work has taken place to identify a range of issues pertinent to the interinstitutional agenda and to discuss how to best address these, with a particular view to providing a Council contribution on a new IIA. From the discussions, a hierarchy among the issues emerged. **Programming, Better Regulation and Expert consultation on Delegated Acts** were identified as the Council's top priorities. In addition, the role of **National Parliaments** has been highlighted as an important issue, notably in terms of improving the application of Protocols 1 and 2 of the Treaty.

Annual Programming remains one of the highest Council priorities, with the key objective of ensuring parity among the two co-legislators through a well-defined process. The examination of the 2015 Commission Annual Work Programme (AWP) provides a good basis for future IIA provisions. Such provisions should provide for the establishment of a structured process of consultation with a detailed calendar. They should include the following principles:

- the **Commission should seek the views of the Parliament and the Council at an early stage** on the priorities for the upcoming year;
- the **Commission should in a timely manner provide the two institutions with its detailed intentions** as concerns the scope and content of the Commission's AWP for the coming year ("letter of intent"), including considerations on withdrawal of proposals;
- in drafting its AWP, the Commission should take **due account of the priorities** expressed by the two institutions; and
- the Commission should regularly provide the **Parliament and the Council with necessary information on the AWP implementation.**

Improving **Multiannual Legislative Programming** among the three institutions is another key issue. While the Strategic Agenda adopted by the European Council in June 2014 is the basis for multiannual legislative programming for this term, the implementing arrangements will be a matter for the Parliament, Council and Commission. The role of the European Council in defining the Union's general political directions and priorities should be preserved and hence remain outside the scope of an IIA. While not putting into question the aim of preserving the quality of legislation and respecting the internal working methods of the institutions, joint multiannual programming could contribute to ensuring a more rapid and efficient legislative process. The Council proposes that the following elements be included in the IIA:

- a **general engagement to implement EU strategic priorities** through multiannual programming and to co-ordinate legislative activity (including information obligations) to this effect;
- an **engagement to compare indicative timetables** on the basis of the Commission's AWP; and
- an **undertaking to establish practical working arrangements** to implement the above (on the basis of rolling agendas, while preserving Presidency prerogatives).

Better Regulation should be a top priority for the negotiations, as it is at the heart of the functioning of the EU and makes an essential contribution to competitiveness and growth and jobs. The issue is multidimensional and complex with a number of aspects to be factored in, as our discussions have already clearly shown. It involves general principles such as democratic legitimacy, subsidiarity (including the "cost of non-Europe") and proportionality, legal certainty, transparency and respect for fundamental rights. It also involves considerations on which tools and mechanisms to use to ensure that the competitiveness, growth and job objectives are met, without creating cumbersome new mechanisms or allowing the technical assessment to prevail over the political choice. Furthermore, the objectives concerning protection of consumers, health, the environment and employees should be equally met. Against this background, the Council line is as follows:

- to **include in the IIA the principles** of and main tools for better regulation;
- concerning **impact assessments**, the *ex ante* impact assessments accompanying Commission proposals should be reinforced, in particular as regards the greater consideration of competitiveness, SME and digital aspects and stakeholder involvement. The Council is also willing to consider reinforcing the commitments regarding impact assessments on substantial amendments made during the legislative process without causing undue delays in the legislative process. More detailed provisions on impact assessment should be included in a revised Inter-institutional Common Approach on impact assessment;

- the IIA should build on **other relevant elements** where there is a high degree of common understanding such as better regulation tools, annual monitoring process, a better way of doing *ex post* evaluations in the legislative cycle, as well as greater transparency; and
- the Council is also interested in reflecting in the IIA the issue of developing and putting in place - within the REFIT programme - **burden reduction targets**, especially for SMEs.

The Council welcomes the Commission's intention to include the subject of **Delegated Acts** in its proposal for an IIA. The major priority for the Council in this regard is the establishment of the necessary confidence as regards the consultation of Member States' experts through mandatory steps. More specifically, the Council:

- wishes to agree a **robust mechanism for the consultation of Member States' experts** during the preparation of delegated acts, which includes a revision of the standard clauses to achieve firmer guarantees for systematic and thorough consultation of experts;
- is **in favour of the Commission's ideas regarding transparency** as set out in its non-paper, including the establishment of a register for delegated acts; and
- is **open to consider general, indicative delineation criteria**, taking into account earlier work done within the Council, **if this is a demand from the Parliament or the Commission**.

An integral part of improving the way the European Union legislates is increasing transparency of the legislative process towards citizens. The IIA could usefully provide joint tools to this end, inter alia, through the creation of a publicly accessible and user friendly database on the state of play of co-decision files, thereby facilitating the traceability of the various steps. We should also make efforts to communicate more pro-actively throughout the legislative process, including during the trilogue phase.

In the above I have highlighted the Council's main priorities. As indicated, there are many other important issues on the agenda. Some of these might best be tackled through other arrangements. The Council may also come back to some of these issues following the submission of the Commission's proposal and during the course of negotiations.

The Council looks forward to the Commission's proposal on a new IIA and the continuation of our constructive co-operation on interinstitutional issues.

Yours sincerely,
