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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Improving the functioning of the EU - Final Presidency Report from the Friends of Presidency Group

At the beginning of a new legislative and political cycle, the European Council seized the opportunity to open a debate on the future EU priorities, which has led to the adoption of a “Strategic Agenda for the Union in times of change” (Strategic Agenda) in June 2014. Both the Strategic Agenda and the 10 points indicated by Jean-Claude Juncker, President of the European Commission, will guide the work of the EU Institutions in the next five years.

The Italian Presidency of the Council has stated within its six month program its intention to work towards the emergence of a new shared vision of the EU: strongly oriented to growth, competitiveness, innovation, and more integrated in key areas such as the Economic and Monetary Union (EMU) and the Single market; more democratic, accountable and closer to its citizens; rules-based but also discerning, rigorous and yet cohesive; strongly grounded in the principles of conferral, subsidiarity and proportionality, and therefore less intrusive in domains which can be more effectively dealt with at the level of Member States or at regional and local level.

The General Affairs Council (GAC) endorsed the idea of examining the current functioning of the EU system and to this end, the Presidency activated the Friends of the Presidency Group (FoP), with a view to making EU action more effective and ensuring implementation of the overarching priorities of the Union.

On the basis of the mandate endorsed by COREPER in September 2014 ¹, four meetings of the FoP have taken place, each examining: i) “horizontal issues and the role of national parliaments”; ii) “the Council of the European Union in the framework of interinstitutional relations”; iii) “the Council of the European Union”; and iv) “unexploited potential of the Lisbon Treaty”.

¹ See document 12730/1/14 of 8 September 2014

I. HORIZONTAL ISSUES AND THE ROLE OF NATIONAL PARLIAMENTS

1. During the first session, Member states had a wide discussion on a broad range of horizontal issues. Out of this broad debate, some specific topics were highlighted by delegations.
2. The Group had a wide debate on the principles of **Subsidiarity, Conferral and Proportionality**. There was a clear consensus among delegations that subsidiarity is not about "less Europe", but rather about "better" Europe. There was large consensus that the EU needs to focus its work from a subsidiarity perspective on the priorities that have been identified in the Strategic Agenda and that subsidiarity should also be reflected in the context of legislative programming. However, delegations concurred that the principles of conferral, subsidiarity and proportionality already rely on a satisfactory framework of provisions and measures. The necessary tools and legal instruments to verify the respect of these principles are already in place. In this context, when discussing the Commission's Annual Work Programme (AWP) particular attention should be paid to the respect of the subsidiarity and proportionality principles.
3. As regards **transparency**, discussions highlighted a distinction between better communicating with citizens and National Parliaments and access to the Council's official documents, as well as the usability of EU documents. There was considerable support for increased inter-institutional cooperation in sharing document databases. The Group also discussed the possibility of the Council joining the Transparency Register for lobbyists. Furthermore, various delegations invited the Commission to submit a proposal for a European Law of Administrative Procedure.
4. As regards the **EU goals and objectives and their concrete implementation**, there was consensus that all objectives set out in the Treaty are equal and should be pursued as such, without prioritising, and that all these objectives should be factored in the different policies when examining legislative proposals.

5. The **principle of solidarity** was recognized as a crucial principle of the EU construction and an investment in the EU's future, which needs to be discussed on a case-by-case basis without undermining the responsibility each Member State has in implementing EU policies. Solidarity was considered particularly important in the fields of energy, climate change, migration and asylum as well as in policies linked to recent geopolitical developments. More awareness shall be raised among EU stakeholders and citizens on the importance of this principle for our security and the European economic and social development.
6. The issue of **relations with National Parliaments** was debated at length, and it was agreed that the current Treaty mechanisms provide a satisfactory framework for National Parliaments to contribute to the EU decision-making process. There was broad agreement that there is no need for additional tools, but greater contact and dialogue between the Commission and National Parliaments would be most useful and constructive. The best way to ensure this would be through Commissioners addressing National Parliaments more often. In this context, improving the role of COSAC was also highlighted by some delegations.
7. An issue which received considerable attention was the need for the Commission to address National Parliaments' reasoned opinions, the triggering of the so-called "**yellow card**" procedure. A number of delegations called for a more rigorous analysis by the Commission in the event of a yellow card, whereby the Commission would undertake to have a formal internal debate, possibly through a formal debate in the College, when a "yellow card" is triggered.
8. Several delegations raised the issue of the deadlines for monitoring subsidiarity and there was a consensus that a more flexible interpretation of the related Protocol provisions should be considered. Finally, the idea of ensuring adequate monitoring of compliance with the principle of subsidiarity throughout the legislative process, beyond the initial compulsory subsidiarity check foreseen in Protocol No. 2 to the TEU and to the TFEU, was considered to be potentially beneficial.

II. STRENGTHENING INTER-INSTITUTIONAL RELATIONS FOR A BETTER FUNCTIONING OF THE UNION

9. During the second session, all aspects related to the inter-institutional cooperation were discussed. What emerged from this debate is that more time is needed for a final assessment of the impact of the Treaty of Lisbon provisions on the inter-institutional framework. However, some specific issues already emerged from the debate that can be key to improving the Union functioning in the years to come.
10. The Group discussed at length the prospects for **interinstitutional programming**. Delegations agreed that there was scope for enhancing interinstitutional cooperation on legislative programming, with many underscoring the need for the two co-legislators to be in parity and work with the Commission on an equal basis. The basis of this work for all three institutions should be the Strategic Agenda and President Juncker's ten points.
11. There was broad agreement on a "two-stage approach", covering both the Commission's 2015 AWP as well as a longer-term stage, to address multiannual legislative programming. The latter stage could be addressed in the context of possible future negotiations on the revision of the 2003 Inter-Institutional Agreement (IIA) on Better Law Making. There was consensus that GAC, assisted by COREPER, is the most suitable forum to guide this process. It was also highlighted that the new approach to legislative programming has to respect each institution's specific competences and particularly the Commission's right of initiative as well as the prerogatives of the Presidency within the Council. The deliberations during the term of the Italian Presidency have culminated in the decision to work towards a Joint Declaration on Interinstitutional Programming, to be endorsed by the three institutions in December 2014.
12. **Better Regulation** and ways to improving it was also debated. There was broad agreement that a lot has been done in the last years in this regard and that progress should continue. Necessary mechanisms to avoid red tape are already in place (REFIT, roadmaps, impact assessments, etc), but there is scope for improving the use of these mechanisms. The Group welcomed the focus of the new Commission on these issues.

13. **Impact Assessments** were perceived as one of the tools that could be enhanced within the Council, particularly when it comes to evaluating substantial amendments. A number of ideas were suggested to improve the role of Impact Assessments, notably, strengthening *ex-post* evaluation of legislation by inserting *rendez-vous* clauses and also factoring in the cost of "non-Europe".
14. As regards **relations between the Council and the European Parliament**, there was consensus that trilogue negotiations need to take place in a spirit of equality and fairness. Strengthening the standing of the Council and ensuring parity of the two institutions with a view to improving results and follow-up of meetings was highlighted by several delegations. There were some reflections on the possibility of addressing this through the Council's Rules of Procedure (*RIC*). Parity should be reflected in all aspects of trilogues, from the venue and chairmanship, to the level and size of representation and allotted speaking time. There is also a need to make a clearer distinction between technical preparatory meetings among the three institutions and trilogues proper. Reporting post-trilogues was also addressed, and there were suggestions for debriefs from trilogues in the immediate aftermath, as well as for the possibility for the two institutions to define joint communication strategies/positions. Many underlined the need to allow for a degree of flexibility and the continuation of informal meetings. Continuity could reinforce the Council's position in the negotiations. Emphasis was also put on the importance of agreeing mandates at COREPER, rather than at Working Party, level.
15. The issue of **delegated acts** proved an important topic to delegations, the handling of which merits further reflection. The intentions of the new Commission to find solutions to this divisive issue were highly welcomed and appreciated. There was wide consensus that more work needs to be done on the consultation of Member States' experts, which is seen as the crucial issue to avoid a repetition of the difficulties experienced in past legislative term. In this context, many delegations referred to the Council's initiative to amend the Common Understanding on EU delegated acts regarding the consultation of national experts and underlined the importance of following-up this initiative, possibly also in the revised IIA on Better Law Making. There was also support for resuming the interinstitutional dialogue on the delineation between delegating and implementing powers, even though there was considerable understanding of the difficulty of this exercise. Furthermore, there was a general request for more accountability and transparency in this field.

III. THE COUNCIL OF THE EUROPEAN UNION

16. As regards the **preparations leading up to European Council meetings (EC)**, there was consensus on the key role of the GAC as regards horizontal and cross-cutting issues, ensuring consistency of the work of the different Council formations, legislative programming and in ensuring better regulation. There were many suggestions on how the role of the GAC could be enhanced, notably by involving it at the intermediate stage of preparations, during the discussion of the draft EC Guidelines, in addition to discussing the Annotated Draft Agenda and the Draft Conclusions. Earlier communication of the draft conclusions could allow GAC to prepare for a more substantial debate, but more importantly, it would be possible to ensure appropriate parliamentary involvement, an issue highlighted by some delegations.
17. As regards the **follow-up to EC meetings**, notably the thematic debates initiated by the Italian Presidency on the priorities of the Strategic Agenda, there was a wide consensus that this practice has proved to be useful and should be continued by incoming Presidencies. However, improvements could be brought to this exercise, notably by inviting the sectorial Council's to provide clarity on why blockages persist in certain areas, and/or why there is a lack of implementation. Timing and coordination with the proceedings of other Council configurations will be important in order to maximize the usefulness and added value of these debates. As to frequency, there was a preference for holding such debates once per Presidency.
18. There was wide consensus that the existing **Council configurations** are appropriate. However, many underlined the importance of flexibility to adapt the work of the Council to the political priorities and to institutional developments. Three strands were underscored: i) consistency and coordination among the different formations, in particular when it comes to cross-cutting files; ii) enhancing the role of the Competitiveness Council in ensuring the "competitiveness proofing" of pertinent legislative proposals; iii) reviewing certain Working Party arrangements, in particular in the Justice and Home Affairs area. There was little support for the use of "Jumbo" Council meetings, but some benefits could be identified in applying the "Jumbo" approach at the working party level.

19. The discussion on the **Council's Rules of Procedure (RIC)** was consensual. Delegations agreed that it was not opportune to change the RIC and many argued that a more rigorous application of the RIC would increase efficiency of the Council's work. The Presidency has a key role to play in this, as well as in ensuring the interactivity of Council meetings and in organising constructive debates. Delegations should, for their part, exercise self-restraint, but it was also acknowledged that Council business cannot be too confined, given its political nature. Ministers need to have an opportunity to speak and a balance between efficiency and democratic legitimacy has to be sought.
20. Some concrete suggestions on improving the **Council's working methods** were made, namely, i) using modern technologies for quick decision-making; ii) limiting table rounds to most important cases; iii) making increased use of group interventions; iv) intervening only in case of disagreement following the principle that "who does not speak agrees"; v) limiting the adoption of conclusions and the presentation of Commission Communications in the Council.
21. The Group agreed that **cooperation between the Trio members** should not be confined to programming. There is room for increased collaboration in order to ensure continuity of proceedings in Council, for instance during trilogues or through common communication. Implementation of the Trio Programme could be improved, possibly through a mid-term review. Some delegations stressed that there is a space for better synergy between the Members of a Trio, for example, through chairing Working Groups for an 18 months period. The importance of collaboration of successive Presidencies -not necessarily part of the Trio - was also emphasized.

IV. UNEXPLOITED POTENTIAL OF THE LISBON TREATY

22. The last working session of the FOP was dedicated to the unexploited potential of the Lisbon Treaty.
23. As regards the **European Citizens' initiative** and its implementation, discussions confirmed the importance of this instrument for the creation of a European public space and for enhancing transnational dialogue among European citizens. There is however a thin line between encouraging further use of this initiative and managing expectations. The 2015 review by the Commission should bring a number of improvements to the functioning of the instrument, notably in certain practical aspects, namely, better use of Internet and Communication Technologies, notably the use of electronic signatures and the requirements and deadlines set for the collection of signatures. The possibility of streamlining the requirements for signature at European level should also be taken into serious consideration.
24. The discussion on **Inter-governmental agreements signed outside the existing Treaties framework** confirmed that work within the EU legal framework is the preferred option and should be the norm. Delegations pointed out that intergovernmental agreements risk leading to fragmentation of the legal framework and producing unsuitable and uncalled for discrepancies among Member States. However, they concurred that exceptional cases may justify recourse to this type of agreements, notably when the limits of the Treaty does not allow for immediate, Treaty-based solutions. Most delegations stressed the importance of integration clauses, which foresee integration into the EU Treaty framework and that such agreements should be open, inclusive and transparent and be integrated as quickly as possible into the EU legal system.

25. As regards **Article 20 of the Treaty on European Union (TEU) (enhanced cooperation)**, there was broad agreement that enhanced cooperation is a useful tool offered by the Treaties. The existing examples of enhanced cooperation demonstrate that positive outcomes for the Union and its citizens can be achieved through this instrument. However, some delegations mentioned that this possibility should be used after having verified all available options. It has also been stressed the importance of respecting all the conditions attached to their use. Furthermore, when enhanced cooperation is activated, it should be inclusive (*ad includendum*) and not exclusive (*ad excludendum*), hence it is important to have a thorough assessment of the impact on non-participating Member States and the overall political implications.
26. The provisions of **Article 48 (7) TEU ("passerelle clause")** have never been used to date and the large majority of delegations argued that the current formulation makes its use difficult, at least for the time being, given its built-in conditions (unanimity plus veto right for any National Parliament).
27. As far as **Article 31 (2), (Council acting by QMV in the CFSP field upon a proposal of the High Representative requested by the European Council)** is concerned, delegations noted that this provision, even though it has never been used to date, could provide in future a useful tool to tackle common challenges and threats.
28. Lastly, as regards the possibilities to **improve the EU's external action**, there was strong support for the of the new Commission, notably the cluster of Commissioners dealing with external relations, as well as for the strengthened coordination and synergies between the Commission and the External Action Service. Many argued that internal Commission coordination should also extend to internal policies with an important external dimension (climate, migration, energy). Regarding the Council's activity, issuing the Agendas of the Foreign Affairs Council (FAC) and related documents in good time would allow for better preparation of Ministers. Discussions in FAC should be more strategic and conclusions more operational. The importance of Articles 42 and 44 TEU was underscored. Delegations also welcomed that further, thorough exchanges of views will be taking place at experts' level. In the same context, several delegation mentioned that other Treaty provisions could be further exploited, notably **Articles 9 and 10 TFEU**, of the Treaty on Functioning of the European Union (TFEU), or **Article 349 TFEU** on the outermost regions.

V. PRESIDENCY'S ASSESSMENT AND RECOMMENDATIONS

29. The Presidency deems that the **Friends of the Presidency Group on Improving the Functioning of the EU has proved to be a very useful exercise, that should be periodically repeated, for example at the beginning of each institutional cycle of the Union. The current political juncture made this debate particularly timely.**
30. The Union needs to constantly think about its policies and review the instruments to carry them out in order to move forward. If we are to tackle the current political, economic and social challenges, there is a clear need for a united, active and efficient European Union which is able to take swift and targeted decisions.

We set together the strategic priorities of the new political cycle, discussed how to improve the way the EU functions and paved the way to a fruitful dialogue and partnership between EU institutions, possibly negotiating a new IIA. It is our collective task now to act in order to deliver the goals set out in the Strategic Agenda with the aim to improve the quality of the EU decision making, iron out differences, getting to a common understanding and, ultimately, deliver results and regain our citizens' confidence.
