

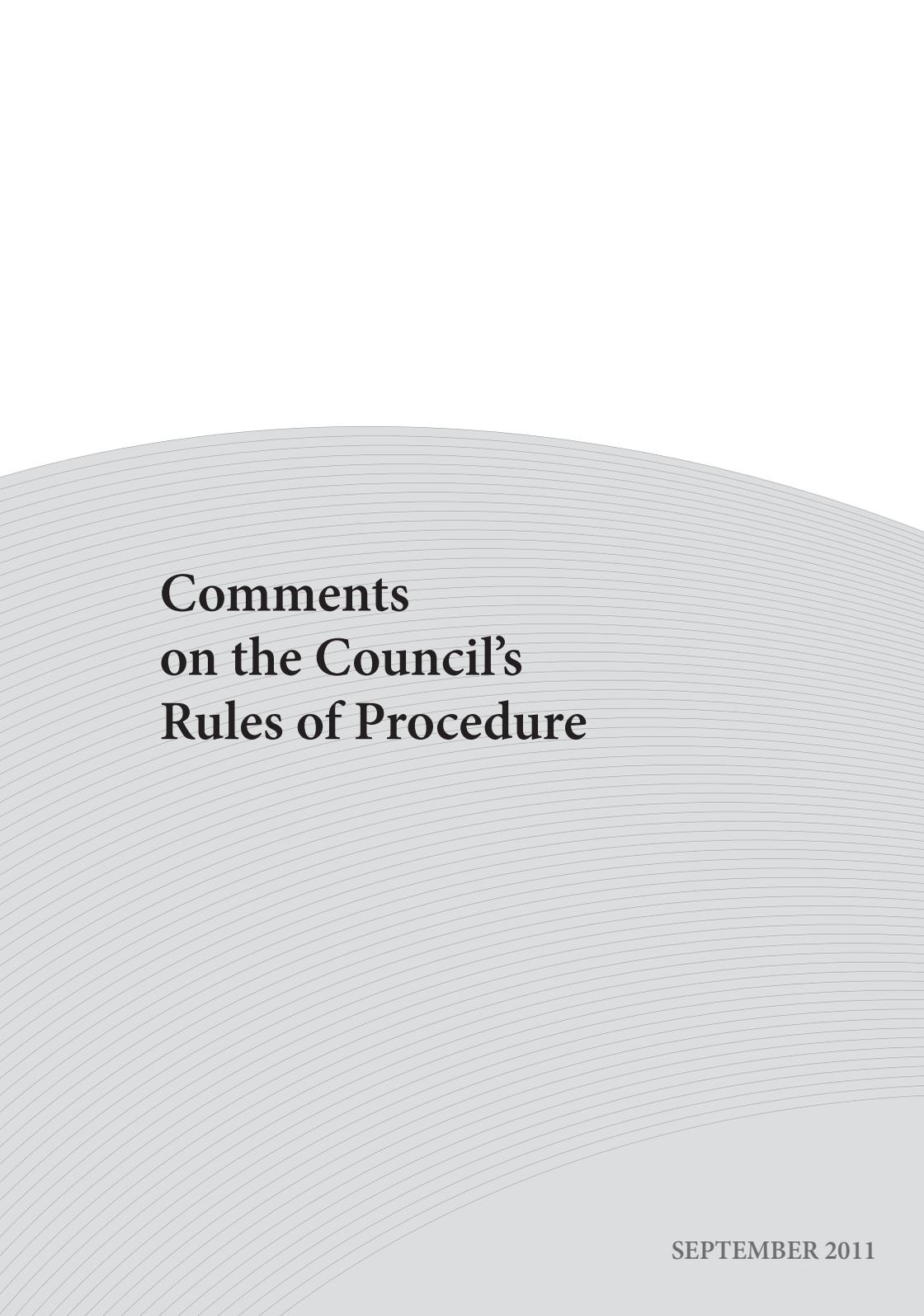
Comments on the Council's Rules of Procedure

REUNIONS DU MARDI 12-... ..

50.1 CONSEIL AFF. ECON. ET FIN.	10:00
50.2 SALLE D'ECOUTE CONSEIL	10:00
50.4 ELARGISSEMENT/PAYS NEG.ADH.	10:00
50.4 ACP	14:00
50.5 RESERVEE	10:00
50.5 RESERVEE SCIC/PRES	15:00
50.6 DEJEUNER FEMIP	13:00
50.7 CT.POLITIQUE ET DE SECURITE	10:30

meetings floor 50

SEPTEMBER 2011



**Comments
on the Council's
Rules of Procedure**

SEPTEMBER 2011

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Rue de la Loi/Wetstraat 175

1048 Bruxelles/Brussel

BELGIQUE/BELGIË

Tel: +32 22815650

Fax: +32 22814977

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FOREWORD

The main purpose of the *Comments on the Council's Rules of Procedure* is to help the rotating Presidencies, the members of the Council and the officials of the General Secretariat of the Council find their way through the new legal environment resulting from the entry into force of the Lisbon Treaty.

This publication has been compiled under the sole responsibility of the General Secretariat; it has no legal force and is an internal working document.

I hope that this guide will prove useful to delegations and to our colleagues in the General Secretariat, and that it will answer many of the questions which may arise as to the functioning of the Council.

The relevant services of the Secretariat will of course be happy to provide any further information required.

A handwritten signature in black ink, appearing to read 'Uwe Corsepius', is centered on a light gray rectangular background.

Uwe Corsepius
*Secretary-General
of the Council of the European Union*

INTRODUCTION

The Council's Rules of Procedure, (hereinafter referred to as "CRP"), constitute an essential instrument for the smooth operation of the institution. Within the framework established by the Treaty on European Union (hereinafter referred to as "TEU") and the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU"), the CRP lay down a series of provisions governing the Council's proceedings.

Like earlier editions, this edition of the Comments on the CRP is not intended to be exhaustive or to state the legal position but rather to serve as a practical guide for members of the Council and their representatives. It is divided into five chapters:

1. Council structure
2. Council proceedings
3. Council decision-making
4. Council acts and their form
5. Other provisions.

The twenty-eight Articles of the CRP have been grouped together by subject under these five chapters. The CRP, in the latest version of 1 December 2009¹, are reproduced in the Annex with the updated figures of the EU population for 2011. This edition also contains an index to facilitate searches for key words.

1 Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

Chapter I – Council structure

Although it meets in different configurations depending on the subject matter dealt with, the Council of the European Union is a single legal entity. Its proceedings are prepared by a Committee of Permanent Representatives of the Member States (known as “Coreper”) and by specialised committees and working parties. The Council, whose President ensures that its proceedings run smoothly, is assisted by the General Secretariat, placed under the responsibility of a Secretary-General.

1. The Council as a single legal entity

The CRP apply to the Council itself (i.e. at the level of Ministers) and to its preparatory bodies (Coreper, Committees and Working Parties). However, those provisions of the CRP which are directly linked to the formal decision taking role of the Council (such as rules regarding the deadlines for Council agendas, voting, language versions of documents, publicity of meetings, etc) apply only to the Council itself meeting at the level of Ministers and not to the Council’s preparatory structures.

As mentioned above, the Council is a single legal entity which may meet in different configurations (Agriculture and Fisheries, Environment, etc.) according to the subject matter dealt with (Article 2(1) CRP). Except for the configurations “General Affairs” and “Foreign Affairs” (Article 16(6) TEU Article 2(2), (4) and (5) CRP), the specialisation or remit of each configuration is not stated but follows from practice. The number of configurations was reduced from 22 to 16 in 2000 and then to nine in 2002. Since the entry into force of the Treaty of Lisbon it has increased to ten through the splitting of the former General Affairs and External Relations Council into two Council configurations.

The fact that the Council is a single legal entity has three consequences.

Firstly, a legal act concerning any subject falling within the Union’s competence can be formally adopted by any Council configuration. For example, a Council configuration can adopt as an “A” item a text falling within the remit of another configuration. A Council act has the same legal value regardless of the configuration which adopted it.

Secondly, because the Council is a single legal entity, there is no hierarchy among the different Council configurations. However, it is necessary to underline the coordinating role of the General Affairs Council (see point 2.B) and its responsibility for institutional, administrative and horizontal matters as well as the specific remit of the Foreign Affairs Council. The latter elaborates the Union's external action on the basis of guidelines laid down by the European Council and ensures consistency of the Union's action (see point 2.C). Arbitration is a matter for the European Council which, in accordance with Article 15(1) TEU, "shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof".

Thirdly, since the Council is a single legal entity, the office of the Presidency of the Council is also a single office. Thus, the rules applicable to the Presidency apply to any person chairing any one of the Council configurations, including the Foreign Affairs configuration, or, as appropriate, any person chairing one of the Council's preparatory bodies.

2. Council configurations (Article 2 and Annex I CRP)

A – General

The European Council, acting by qualified majority, establishes (or amends) the list of configurations in which the Council meets, other than those of the General Affairs Council and of the Foreign Affairs Council, (Article 2(1) CRP, Article 236 TFEU). This list was amended on 16 September 2010¹ and is set out in Annex I to the CRP.

The ten configurations of the Council are as follows:

1. General Affairs;
2. Foreign Affairs²;
3. Economic and Financial Affairs³;
4. Justice and Home Affairs⁴;
5. Employment, Social Policy, Health and Consumer Affairs;

1 OJ L263 of 6.10.2010, p.12.

2 Including the European Security and Defence Policy and Development Cooperation.

3 Including Budget.

4 Including civil protection.

6. Competitiveness (Internal Market, Industry, Research and Space)¹;
7. Transport, Telecommunications and Energy;
8. Agriculture and Fisheries;
9. Environment;
10. Education, Youth, Culture and Sport².

Joint meetings of two or more Council configurations (“Jumbo meetings”) are now a rarity. More than one minister may, however, take part in the same Council configuration. In that case, the Presidency should organise the Council’s proceedings by grouping together linked agenda items so that each member of the Council concerned can participate more easily.

It is not unusual for the members of the Council to continue their discussions at the meals which are organised on the occasion of Council meetings; however, it should be noted that such events do not form part of the official Council meetings and that any decisions taken or conclusions reached must therefore be confirmed in the official meeting.

Finally, it is a constant practice that each Council Presidency organises informal meetings of ministers. Such meetings are not Council meetings and cannot take the place of Council activities. The aim of these informal meetings is to enable joint reflection and an exchange of views that is as free as possible on topics of general scope. These meetings are outside the framework and the procedural rules laid down by the Treaties and are not subject to the CRP. In order to preserve the informal nature of these meetings, it was decided at the European Council meeting in Helsinki held on 10 and 11 December 1999 that there should be no agenda and that the discussions cannot give rise either to the production of documents, before or after the meeting, or to the drafting of conclusions or formal decisions. Any press releases must indicate clearly the informal nature of these meetings. It was also decided to limit the number of informal Ministerial meetings to five per Presidency³.

1 Including tourism.

2 Including audiovisual matters.

3 See Section E of the Presidency conclusions of the Helsinki European Council in December 1999: «Informal meetings of Ministers ... are not Council sessions and cannot replace the Council’s normal activities ... A maximum of 5 informal Ministerial meetings may be held during any Presidency».

B – General Affairs configuration

The General Affairs Council carries out the preparations for and follow-up to the meetings of the European Council in liaison with the President of the European Council and the Commission (Article 16(6) second sub-paragraph TEU), including the coordination of all preparatory work, the general coordination of policies, institutional and administrative matters, horizontal files affecting more than one Union policy such as the multi-annual financial framework and enlargement, and any file sent by the European Council, taking into account the operating rules of Economic and Monetary Union (EMU). It also ensures consistency in the work of the different Council configurations in cooperation with the Commission (Article 2(2) CRP).

The General Affairs Council is also responsible for preparing meetings of the European Council (Article 2(3) CRP). To this end, at least four weeks before each ordinary meeting of the European Council, the President of the European Council draws up an annotated draft agenda in cooperation with the Member State holding the Presidency of the Council and with the Presidency of the Commission and transmits it to the General Affairs Council. The General Affairs Council also holds a final preparatory meeting within the five days preceding the European Council meeting, following which the provisional agenda is drawn up by the President of the European Council. No item may subsequently be added without the agreement of all delegations. To ensure the best possible preparation of the proceedings of the European Council, except for imperative and unforeseeable reasons linked, for example, to current international events, no other configuration of the Council or preparatory committee for a Council may meet, to discuss a subject submitted to the European Council, between the final preparatory meeting of the General Affairs Council and the European Council meeting. The other Council configurations must therefore send their contributions to the proceedings of the European Council to the General Affairs Council at the latest two weeks before the European Council meeting. The definitive agenda is adopted at the beginning of the European Council meeting.

C – Foreign Affairs configuration

The Foreign Affairs Council elaborates the Union's external action on the basis of guidelines laid down by the European Council and ensures consistency of that action (Article 16(6) TEU). It is responsible for the European Union's external action as regards common foreign and security policy, common security and defence policy, common commercial policy, development cooperation and humanitarian aid. (Article 2(5) CRP).

The Foreign Affairs configuration is chaired by the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter referred to as the “High Representative”). It is however possible for the High Representative to be replaced by the member in the Foreign Affairs Council representing the Member State holding the Council Presidency (Article 2(5) second subparagraph CRP). This will normally be the case when the Council is convened to discuss common commercial policy issues¹.

D – Representation of the Member States in the Council

According to Annex I to the CRP, “It is for each Member State to determine the way in which it is represented in the Council, in accordance with Article 16(2) TEU “.

According to Article 16(2) TEU, the Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote. It follows, first of all, that each Member State must be represented by a Government member (Minister or State Secretary). It also follows from the wording of this provision that federal or decentralised States may also be represented by members of regional governments on condition that they are able “to commit the government of [the] Member State” in question, i.e. the federal or central government.

Without prejudice to Article 16(2) TEU and the rules on the quorum (see Chapter III, point 2.A), it is for each member of the Council to compose his delegation in the way which he deems appropriate². He may be accompanied by officials who assist him. It should be noted that it follows from the system of the Treaties, and from Article 16 TEU in particular, that the representation of the governments of the Member States of the Council is composed by nationals of the Member State concerned or, in any event, by a national of one of the Member States of the European Union. Therefore, the presence at a Council meeting of a national of a third State as a member of the delegation

1 See Statement (a) regarding Article 2(5) second subparagraph CRP which provides, «When the Foreign Affairs Council is convened to discuss common commercial policy issues, its President will ask to be replaced by the six-monthly Presidency as provided for in Article 2(5) second subparagraph».

2 The Council may, in accordance with Article 5(3) CRP, limit the maximum number of persons per delegation present in the Council meeting room.

of a member of the Council should be ruled out, as it could be regarded by the other members of the Council as a factor which could affect the decision-making autonomy of the Council¹.

Article 5(3) CRP lays down that the names and functions of the officials forming part of the delegation of a member of the Council must be notified in advance to the General Secretariat. Admission to Council meetings is subject to the production of a pass issued by the General Secretariat.

A member of the Council who is prevented from attending a meeting may arrange to be represented (Article 4 CRP). In practice, he is represented by the Permanent Representative or his Deputy. However, the representative has no right to vote as the right to vote may only be exercised by a member of the Council. In accordance with Article 239 TFEU, which is reproduced in the CRP (Article 11(3) CRP), "Where a vote is taken, any member of the Council may also act on behalf of not more than one other member". Where a member of the Council arranges to be represented by a person who does not meet the definition of "member of the Council" within the meaning of Article 16(2) TEU, his representative is not included for the purposes of verifying the quorum.

3. Coreper, committees and working parties (Articles 19 and 21 CRP)

A – Coreper

As its name indicates, Coreper is composed of the Permanent Representatives of the Governments of the Member States to the European Union. The reference to "Governments" was added in Article 16(7) TEU and in Article 240(1) TFEU by the Lisbon Treaty in order to underline that Permanent Representations express the position of their Government. Coreper is divided into two parts, the first (Coreper Part 1) being composed of the Deputy Permanent Representatives, the second (Coreper Part 2) being composed of the Permanent Representatives themselves.

In accordance with Article 19(1) CRP, Coreper prepares the work of the Council and carries out the tasks assigned to it by the Council; it ensures consistency of the Union's policies and actions and observance of the following principles and rules:

1 The Council may, in accordance with Article 5(3) CRP, limit the maximum number of persons per delegation present in the Council meeting room.

- the principles of legality, subsidiarity, proportionality and providing reasons for acts;
- rules establishing the powers of Union institutions, bodies, offices and agencies;
- budgetary provisions;
- rules on procedure, transparency and the quality of drafting.

As allowed by the Treaty (Article 240(1), last sentence, TFEU), it may adopt the following procedural decisions, provided that the items relating thereto have been included on its provisional agenda at least three working days before the meeting; unanimity on the part of Coreper being required for any derogation from that period (Article 19(7) CRP):

- decision to hold a Council meeting in a place other than Brussels or Luxembourg;
- authorisation to produce a copy of or an extract from a Council document for use in legal proceedings;
- decision to hold a public debate in the Council or not to hold in public a given Council deliberation;
- decision to make the results of votes and the statements entered in the Council minutes public in the cases laid down in Article 9(2) CRP;
- decision to use the written procedure;
- approval or amendment of Council minutes;
- decision to publish or not to publish a text or an act in the Official Journal;
- decision to consult an institution or body wherever such consultation is not required by the Treaties;
- decision setting or extending a time limit for consultation of an institution or body;
- decision to extend the periods laid down in Article 294(14) TFEU;
- approval of the wording of a letter to be sent to an institution or body.

Procedural decisions often do not take a particular form, except for a mention in Coreper's summary of proceedings. A letter to be sent to an institution or body may be signed by the Chairman of Coreper.

If a member of the Council considers that a procedural decision submitted to Coreper raises a question of substance, it is placed before the Council.

Coreper Part 1 prepares the work of six Council configurations (Agriculture and Fisheries, Competitiveness, Transport, Telecommunications and Energy, Environment, Education, Youth, Culture and Sport, Employment, Social Policy, Health and Consumer Affairs). Coreper Part 2 prepares the work of four configurations (General Affairs, Foreign Affairs, Economic and Financial Affairs and Justice and Home Affairs).

The chief role of Coreper is to coordinate and prepare the work of the different Council configurations and to attempt to find, at its level, an agreement which will subsequently be submitted for adoption by the Council.

In this framework, Coreper ensures adequate presentation of each file to the Council. It evaluates the different aspects of the file, defines the options available and prepares the Council's deliberations, drafting, where necessary, suggestions.

Coreper's central role is illustrated by the fact that all the items included on the Council's agenda must be examined beforehand by Coreper (Part 1 or 2) unless, for reasons of urgency, the Council decides unanimously to settle the matter without prior examination or Coreper itself has decided (by a simple majority) to refrain from prior examination (Article 19(2) CRP).

It should, however, be emphasised that any agreement worked out by Coreper can always be called into question by the Council, which alone has the power to make decisions. Coreper is therefore neither an EU institution nor a decision-making body which can replace the Council. It is certainly vested with its own powers (see the above list of procedural decisions which can be taken by Coreper), but it can reach a valid decision only in this limited sphere. It is a preparatory body or, as described by the Court of Justice, "an auxiliary body of the Council, for which it carries out preparation and implementation work. Coreper's function of carrying out the tasks assigned to it by the Council does not give it the power to take decisions which belongs, under the Treaty, to the Council"¹.

1 Judgment of the Court of 19 March 1996, *Commission v. Council*, Case C-25/94, ECI 1966 3 I, points 26 and 27.

Coreper 2 is chaired by the Permanent Representative and Coreper 1 by the Deputy Permanent Representative of the Member State which holds the Presidency of the General Affairs Council (Article 19(4) CRP).

Coreper's agenda is divided into two parts: I and II. Part I, like the A items on the Council's agenda (see Chapter II, point 3), includes items which do not in principle require discussion, whereas Part II, like the B items on the Council's agenda, implies discussion. If Coreper reaches agreement on a "II" item on its agenda, that item will normally become an "A" item on the Council's agenda. When an item has been solved at the level of the working party, it normally becomes an "I/A" item i.e. one which will be treated without discussion at Coreper or Council level.

Coreper meets every week. Preparations for its work are made the day before by the closest collaborators of the members of Coreper who meet under the name "**Mertens Group**" for Coreper Part 1 and "**Antici Group**" for Coreper Part 2. The Antici Group (named after its first Chairman) was set up in 1975 to review the agenda for Coreper Part 2 and settle technical and organisational details. The Mertens Group (also named after its first Chairman) was set up for the same purpose in 1993. That preparatory stage also makes it possible to form an initial idea of the positions which the various delegations will take at the Coreper meeting.

B – Committees set up by the Treaties or by the Council

The Treaties or Council decisions set up certain specific committees responsible for coordinating activities in a particular field. However, given the institutional unity provided for in the preamble to the TEU, those committees are without prejudice to Coreper's central role. Each provision of the Treaty setting up one of those committees specifically reserves application of Article 240 TFEU, i.e. Coreper's general responsibility for preparing the work of the Council. Reports from those committees must be available in sufficient time before the Coreper meeting at which they are to be examined (Article 21 CRP).

The **Economic and Financial Committee**¹, provided for by Article 134(2) TFEU, is responsible for monitoring the economic and financial situation of the Member States and of the Union and periodically submitting a report on it to the Council and the Commission, and for delivering opinions for submission to the Council

1 Council Decision 1999/8/EC of 31 December 1998 adopting the Rules of Procedure of the Economic and Financial Committee (OJ L 5, 9.1.1999, p. 71).

and the Commission. It is also responsible, without prejudice to Article 240 TFEU, for contributing to the preparation of the Council's work in various fields, such as those concerning safeguard measures in the matter of movements of capital or those concerning the coordination of the economic policies of the Member States, and for carrying out the other tasks assigned to it by the Council. Finally, it is responsible for examining the situation as regards capital movements and freedom of payments. In addition to these tasks, the Committee also monitors the monetary and financial situation and the general payments arrangements in the Member States which enjoy a derogation from the rules of Economic and Monetary Union. The particular role of this Committee is specifically pointed out in a footnote to Article 19 CRP. Unusually, the secretariat of this preparatory body of the Council is not carried out by the staff of the General Secretariat of the Council but by the Commission's staff.

The ***Economic Policy Committee***¹ contributes to preparing the work of the Council by providing economic analyses, methodological opinions and draft policy recommendations concerning, in particular, structural policies aimed at improving the potential for growth and employment in the Union. In carrying out its task, the Committee works in close cooperation with the Economic and Financial Committee when it reports to the Council. Also in this case, the secretariat is not carried out by the staff of the General Secretariat of the Council but by the Commission's staff.

The ***Special Committee on Agriculture (SCA)***, set up in May 1960, is specifically responsible for preparing many matters falling within the scope of the Agriculture and Fisheries Council. This Committee therefore plays the same role in the agricultural area (but not in the area of veterinary and plant health measures) as Coreper does in other areas. It is the only exception to Coreper's monopoly in preparing the Council's work. The items which the SCA has examined are therefore included directly on the agendas for the Agriculture and Fisheries Council.

The Special Committee for the Common Commercial Policy known as the ***"Trade Policy Committee"*** referred to in Article 207 TFEU), is responsible for assisting the Commission when, after receiving authorisation from the Council, it conducts negotiations for the conclusion of international trade agreements.

1 Council Decision 2000/604/EC of 29 September 2000 concerning the composition and Rules of Procedure of the Economic Policy Committee (OJ L 257, 11.10.2000, p. 28).

The Standing Committee set up to strengthen cooperation within the Union on internal security (known as “*COSI*” and set up by Article 71 TFEU) facilitates the coordination of Member States’ actions, without prejudice to Article 240 TFEU¹.

The ***Employment Committee***², set up in accordance with Article 150 TFEU, is responsible for monitoring employment and employment policy developments in the Member States and in the Union and for delivering opinions, also without prejudice to Article 240 TFEU. The Commission is entrusted with the task of providing the organisational support for the Committee. In this respect one of the Commission’s staff acts as Secretary to assist the Committee. The Commission must, however, liaise with the General Secretariat of the Council with regard to the holding of meetings.

The ***Committee on Social Protection***³, set up in accordance with Article 160 TFEU, delivers opinions at the request of the Council and the Commission. The Committee’s task is to monitor the social situation and social protection policy developments in the Member States and in the Union, to facilitate exchanges of information, experience and good practice between the Member States and with the Commission, and to prepare reports, deliver opinions or undertake other action in the areas falling within its competence. Again here the Commission is entrusted with the task of providing the organisational support for this Committee. In this respect one of the Commission’s staff acts as Secretary to assist the Committee. The Commission must, however, liaise with the General Secretariat of the Council with regard to the holding of meetings.

The ***Political and Security Committee (PSC)***, provided for in Article 38 TEU, plays a central role in the Common Foreign and Security Policy (CFSP), including the European Security and Defence Policy (ESDP). It exercises two functions⁴. Firstly, it monitors the international situation in the areas falling within the Common Foreign and Security Policy and contributes to the definition of

1 Council Decision 2010/131/EU of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security (OJ L 52, 3.3.2010, p. 50).

2 Council Decision 2000/98/EC of 24 January 2000 establishing the Employment Committee (OJ L 29, 4.2.2000, p. 21).

3 Council Decision 2004/689/EC of 4 October 2004 establishing a Social Protection Committee (OJ L 314, 13.10.2004, p. 8).

4 The Annex to the Council Decision of 22 January 2001 setting up the Political and Security Committee (OJ L 27, 30.1.2001, p. 1) defines these functions in detail.

policies, delivering opinions within the Council, without prejudice to Article 240 TFEU. Secondly, under the responsibility of the Council and of the High Representative, it ensures the political control and strategic direction of crisis management operations referred to in Article 43 TEU and may, within this framework and when it is empowered to do so by the Council, take decisions in this area. According to Article 19(4) CRP, this committee shall be chaired by a representative of the High Representative¹.

The ***Military Committee of the European Union (EUMC)***², which is composed of the Member States' Chiefs of Defence, represented by their military representatives, is responsible for providing the PSC with advice and recommendations on all military matters within the EU. It exercises direction of all military activities within the EU framework.

A ***Committee for Civilian Aspects of Crisis Management (CIVCOM)***³ is tasked with formulating recommendations and giving advice on civilian aspects of crisis management to the PSC and other appropriate Council bodies, in accordance with their respective areas of responsibility.

The ***Security Committee***⁴, composed of representatives of the national security authorities (or other appropriate authorities) of the Member States and chaired by the Secretary-General or his delegate, has the power to examine and assess all security issues relating to Council proceedings, and to present recommendations to the Council as appropriate. As regards the activity of the General Secretariat of the Council, the Committee is empowered to make recommendations on security issues to the Secretary-General.

Lastly, the ***Financial Services Committee***, set up in February 2003⁵, is responsible for providing advice to the Council and the Commission on a range of financial market issues. More specifically, the committee is responsible, amongst other

1 This rule is provided for in Article 2, second paragraph, of the European Council Decision of 1 December 2010 on the exercise of the Presidency of the Council (OJ L315 of 2.12.2009, p.50).

2 Council Decision No 2001/79/CFSP of 22 January 2001 setting up the Military Committee of the European Union (OJ L 27, 30.1.2001, p. 4).

3 Council Decision No 2000/354/CFSP of 22 May 2000 setting up a Committee for civilian aspects of crisis management (OJ L 127, 27.5.2000, p. 1).

4 Council Decision No 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

5 Council Decision No 2003/165/EC of 18 February 2003 concerning the establishment of the Financial Services Committee (OJ L 67, 12.3.2003, p. 17).

things, for helping to define the medium- and long term strategy for financial services issues, providing political advice and following up both internal issues (e.g. single market, including implementation of the Financial Services action plan) and external issues (e.g. WTO).

C – Committees and working parties set up by Coreper

To help prepare the Council's work, Coreper may set up committees or working parties and define their mandate (Article 19(3) CRP). These working parties are composed of delegates from each Member State. They may be more or less permanent as required. Presently, there are roughly 150 such committees or working parties in the various areas of the Council's activities. A list of these preparatory bodies is regularly updated by the General Secretariat¹. In line with the conclusions of the 1999 European Council in Helsinki, the Council and Coreper refrain from setting up any new high level working parties.

Reports from Council committees and working parties must be available in good time for the Coreper meeting at which they are to be examined. It is the responsibility of the Presidency, pursuant to Article 21(1) CRP, assisted by the General Secretariat, to organise the meetings of the various committees and working parties so that their reports are available before the Coreper meeting at which they are to be examined. To do so, before the start of its six-month term, the Presidency draws up a timetable of the meetings it plans to hold for the various working parties and committees. That timetable has to be adjusted in accordance with the progress of proceedings. Article 21(2) CRP lays down that the Presidency must postpone to a subsequent Coreper meeting any legislative items which the committee or working party has not finished discussing at least five working days prior to Coreper's meeting, unless considerations of urgency require otherwise.

If a working party reaches agreement on a file, the item concerned is placed on the agenda for Coreper (as an I-item) and then normally entered as an "A" item in the relevant part² of the Council's agenda. However, it is still possible for any member of Coreper or the Council, or the Commission, to express an opinion when "I/A items" are being approved and to have statements entered

1 The full and updated list is contained in Council document 12319/10 of 20 July 2010.

2 The Council's provisional agenda is divided into a first part entitled «Legislative deliberations» and a second part entitled «Non-legislative activities». Both parts are further sub-divided into two parts containing respectively A items and B items.

in the Council minutes (Article 3(6) CRP), or indeed to change their opinion and request a debate or a postponement of the item in question.

D – Presidency of Council's preparatory bodies

On 1 December 2009 the European Council adopted a Decision on the exercise of the Presidency of the Council¹, which has been implemented by Council Decision No 2009/908/EU.² According to the European Council Decision, the Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of eighteen months (so-called "Trio Presidency"). These groups are made up on the basis of equal rotation among Member States and each member of the group shall in turn, for a period of six months, chair all configurations of the Council, with the exception of the Foreign Affairs configuration. The members of the group may, however, agree to alternative arrangements among themselves.

The composition of the Trio Presidency and the order in which the Member States shall hold the Presidency are set out in Council Decision No 2009/908/EU³. In effect, the six-monthly Presidency system has been kept after the Treaty of Lisbon. The concrete expression of the Trio Presidency is the existence of the 18-month programme and the mutual help they can bring to each other, such as replacement of a President where necessary (Article 20(2) CRP).

All the Council's preparatory bodies are chaired by a delegate of the Member State which holds the Presidency, unless otherwise provided for or the Council decides otherwise by a qualified majority (Article 19(4) CRP). It follows that although committees and working parties are, as a general rule, chaired by a delegate of the Member State holding the six-monthly rotating Presidency of the Council, the Council may decide otherwise in individual cases. For example, it may confer the chairmanship of a committee or a working party, for a certain period, on a delegate from a given delegation (chosen by his peers in the committee or working party) or on a person other than a delegate

1 OJ L 315, 2.12.2009, p.50.

2 Council Decision No 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council (OJ L 322, 9.12.2009, p.28).

3 See Annex I to Council Decision 2009/908/EU which lays down the order of Presidencies into groups of three Member States.

of a Member State, such as a member of staff of the General Secretariat of the Council.

In this respect, according to Council Decision 2009/908 and subject to transitional measures, the preparatory bodies of the Foreign Affairs Council are chaired in accordance with Annex II of that Decision. Thus, geographic preparatory bodies, most of the CFSP-related horizontal preparatory bodies and the ESDP-related preparatory bodies (ex EUMC, CIVCOM) are to be chaired by a representative of the High Representative.

Annex III to the Decision referred to in the previous paragraph lists the preparatory bodies with a fixed chair; some of these bodies have elected chairpersons (e.g. Economic and Financial Committee, Economic Policy Committee, Military Committee, etc) while others are chaired by a member of the Council's General Secretariat (e.g. Security Committee, Working party on Codification, etc).

In addition, when preparing for a meeting of a Council configuration which convenes only once every six months, where that meeting is held during the first half of the six-month period, meetings of these committees during the preceding six months may be chaired by a delegate of the Member State whose turn it is to chair the said Council meeting (Article 19(5) CRP).

Similarly, when a file will essentially be dealt with during a given six-month period, a delegate of the Member State holding the Presidency during that six-month period may, during the preceding six month period, chair meetings of the committees when they discuss that file, in accordance with arrangements agreed between the two Presidencies concerned (first subparagraph of Article 19(6) CRP). This applies except where Council has made other chairing arrangements.

Furthermore, when the Union budget is being examined, meetings of the Council's preparatory bodies, other than Coreper, dealing with budget items must be chaired by a delegate of the Member State which is to hold the Council Presidency during the second six-month period of the year prior to the financial year of the budget in question (Article 19(6) second subparagraph CRP).

Without prejudice to the provisions of Article 19(4) to (6) CRP and to its powers and its overall political responsibility, the six-monthly Presidency is to be assisted by the other members of the pre-established group of three Member States referred to in Article 1(4) CRP or, where appropriate, by the representative of the Member State next holding the Presidency. At the Presidency's request and acting on its instructions, the latter representative

or a member of the group of three replaces it as and when required, relieves it, where necessary, of certain administrative tasks and ensures the continuity of the Council's proceedings (Article 20(2) CRP).

Hence, when a chairman of a working party or a committee is prevented from chairing a meeting and the Presidency cannot find a replacement, or when the six-monthly Presidency is unable to provide a chairman for a particular working party, a delegate of one of the group of three or of the following Presidency will, in principle, act as chairman. In both cases the aim is to ensure continuity as far as possible. If a chairman is replaced by one of the above for a six-month period, the Presidency will have the list of working parties concerned endorsed by Council at the beginning of the semester pursuant to Article 19(4) CRP.

4. The Presidency and the smooth conduct of discussions (Article 20 and Annex V CRP)

The Presidency is responsible for ensuring that discussions are conducted properly. To that end, it makes sure that the CRP are applied and that the provisions of Annex V "Council's working methods" are complied with; these provisions apply both to the Council and its preparatory bodies:

- (a) *Concerning preparation for meetings (points 1 to 5):*
- the Presidency ensures that no file is submitted to Coreper unless there is reasonable prospect of progress or clarification of positions being achieved at that level and that files are referred back to a working party or a committee only when necessary, with precise and well-defined remit;
 - the Presidency takes the steps necessary to advance work between meetings, for example by drafting compromise texts, holding consultations on specific problems or by requesting delegations to give their reactions to a proposal in writing before the next meeting of the working party or committee;
 - whenever appropriate, delegations should set out the positions they are likely to take at a forthcoming meeting in written form before that meeting. When that includes proposals for amending texts, delegations should suggest specific wording. Wherever possible, written input should be submitted jointly by delegations taking the same positions;
 - when preparing for Coreper proceedings, the Presidency conveys all the information necessary for thorough preparation to delegations

as soon as possible, including what the Presidency expects to achieve from the discussion on each agenda item. Conversely, the Presidency will, as appropriate, encourage delegations to inform other delegations of the positions they will be taking in Coreper when Coreper's proceedings are being prepared. Against this background, the Presidency finalises Coreper's agenda. If necessary, it may convene the working parties preparing for Coreper's proceedings more frequently;

- Coreper should avoid going over ground already covered in the Antici and Mertens meetings respectively and wherever possible, delegations should raise “Any other business” items during such meetings rather than in Coreper itself.

(b) Concerning the conduct of meetings (points 6 to 16)

- no item should be placed on the Council agenda simply for presentation purposes, except where a debate on major new initiatives is planned ; the Presidency should refrain from placing items which are purely for information purposes on Coreper's agenda. Such information should preferably be forwarded in writing when Coreper's proceedings are being prepared ;
- the Presidency may restrict the numbers per delegation present in the meeting room for discussion of a specific item, and decide whether to open an overflow room ; it can also set the order in which items are to be taken and determine the duration of discussions on them ; likewise, it can organise the time allotted for discussion of a specific item, in particular through limiting the time during which participants may speak and determining the order in which they may take the floor. In this connection, the Presidency indicates at the start of the meeting the length of time it intends to devote to each item ; it refrains from making lengthy introductions or repeating information which has already been brought to delegations' attention; at the start of discussion on a point it also tells delegations how long they may speak for;
- full table rounds should not be allowed; the Presidency gives as much focus as possible to discussions, in particular by requesting delegations to react to compromise texts or specific proposals; it refrains from making lengthy summaries of discussions at the end of meetings; for their part, delegations should avoid repeating points made by previous speakers and refrain from taking the floor when in

agreement with a proposal; in this case silence is taken as agreement in principle;

- the Presidency may ask delegations to present, in writing, their proposals for amendment of a text under discussion before a given date, together with a brief explanation if appropriate (point (d) of the second subparagraph of Article 20(1) CRP), rather than merely express their disagreement with a particular proposal;
- the Presidency may also ask delegations which have identical or similar positions on a particular item, text or part thereof to choose one of them to express their shared position at the meeting or in writing before the meeting.

5. The Secretary-General and the Council General Secretariat (Article 23 CRP)

At its first meeting in September 1952, the Coal and Steel Council set up a secretariat under the direction of a Secretary-General. When the two Treaties of Rome entered into force (EEC and EURATOM), the General Secretariat extended its activities accordingly. The Secretariat and the Secretary-General were thus mentioned in successive versions of the CRP until the Maastricht Treaty introduced a direct reference to them in the TEC and, a few years later, the Amsterdam Treaty introduced a reference to them in the Treaty on the European Union. The Secretary-General is responsible for the running of the General Secretariat and is appointed by the Council by qualified majority (Article 240(2) TFEU). This is repeated in Article 23(1) CRP. The principle of the single Council therefore also applies to its General Secretariat, which assists the Council and its preparatory bodies in all its activities.

A – The Secretary-General

The Secretary-General, as head of the General Secretariat, assists the Council (Article 240(2) TFEU). He is in charge of the General Secretariat and, under the Council's authority, takes any measures needed to ensure its smooth running.

The Secretary-General normally attends the meetings of the General Affairs Council. His role is essentially to ensure the continuity and progress of the Council's work and to advise the Council. He is also responsible for management of the General Secretariat.

Under the responsibility and guidance of the Presidency, the General Secretariat is closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work and implementation of its 18-month programme. It assists the Presidency in finding solutions.

The CRP mention several other tasks incumbent on the Secretary-General, namely:

- (a) the Secretary-General is depositary of a number of agreements (Article 25 CRP; see Chapter V, point 2);
- (b) the Secretary-General signs the minutes of Council meetings (Article 13(1) CRP, Annex I);
- (c) the Secretary-General officially forwards acts for publication in the Official Journal (Article 17 CRP);
- (d) the Secretary-General notifies certain directives, decisions and recommendations to their addressees and sends the Governments of the Member States and the Commission certified copies of the Council directives and decisions referred to in the third subparagraph of Article 297(2) TFEU and of Council recommendations (Article 18 CRP);
- (e) the Secretary-General is responsible for submitting to the Council, every year, in good time, the draft estimate of the expenditure of the Council (Article 23(4) CRP);
- (f) the Secretary-General has full responsibility for administering the appropriations entered in Section II – European Council and Council – of the budget and takes all measures necessary to ensure that they are properly managed. He implements the appropriations in accordance with the Financial Regulation (Article 23(5) CRP, Annex I). The Secretary-General has thereby defined the criteria, limits and procedures for reimbursement of the expenses of Member States' delegates¹.

1 Decision concerning reimbursement of travel expenses of delegates of Council members, Annex III to the Presidency Handbook.

The Secretary-General of the Council is also the Secretary-General of the European Council. He attends the meetings of the European Council and takes all measures necessary for the organisation of its proceedings (Article 13 of the European Council's Rules of Procedure).

B – The General Secretariat

It follows from Article 240(2) TFEU and Article 23(1) CRP that the General Secretariat's main task is to assist the Council and its preparatory bodies in all their activities (indivisibility of the General Secretariat). The General Secretariat is at the service of the Council, which decides on its organisation. It is independent and impartial with regard to both the members of the Council and its Presidency¹. Since the entry into force of the Treaty of Lisbon, it also assists the European Council which became a separate institution.

The General Secretariat is both the Council's "registrar" (drafting of records, material organisation and planning of meetings, production, translation and circulation of documents and their archiving) and its adviser. It is closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work and implementation of its 18-month programme. It assists the Presidency of the Council in its work (Article 23(3) CRP). It also receives notification of the names and functions of officials accompanying members of the Council and the Commission (Article 5(3) CRP).

The General Secretariat, which employs some 3 460 officials and other staff who are nationals of EU Member States, is divided into eight Directorates-General, in addition to the Secretary-General's private office and the Council Legal Service.

1 In this connection, see the GSC's «Mission Statement», which reads: «As a permanent and independent European public service, the General Secretariat of the Council ensures that the Council of the European Union operates smoothly, and lends it every assistance necessary to perform the missions conferred on it by the Treaties to further the development of the Union. It provides this support to Council members and the Presidency and to the Secretary-General in all areas of activity of the Council, European Council, Ministerial meetings and intergovernmental conferences».

The Legal Service assists the Council and its preparatory bodies, the Presidency and the General Secretariat in order to ensure that Council acts are lawful and well drafted. It has the right and the duty to intervene when it considers it necessary, orally or in writing, both at the level of working parties and committees and at the level of Coreper or the Council by giving fully independent opinions on any legal question, whether at the request of the Council or on its own initiative. It also represents the Council before the Court of Justice, the General Court and the Civil Service Tribunal¹. It is also responsible for checking the drafting quality of proposals and draft acts and for formulating drafting suggestions for the Council and its bodies, pursuant to Article 22 CRP and the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation².

1 Council Decision of 12 June 1989 delegating the power to appoint agents to represent the Council before the Court of Justice.

2 OJ C 73, 17.3.1999, p. 1.

Chapter II – The Council’s proceedings

1. Programming of the Council proceedings (Article 2(6) and (7) CRP)

The Council’s activities are structured by an 18-month programme of Council activities prepared by the pre-established group of three Presidencies due to hold office over that period. These Presidencies draw up a draft programme with the President of the Foreign Affairs Council [in order to take into account matters of the latter’s activities during that period] and in close cooperation with the Commission and the President of the European Council, after appropriate consultations.

The programme includes a general introductory section setting the programme in the context of the European Union’s long-term strategic orientations. In this connection, the group of three Presidencies in charge of preparing the draft programme consults the next group of three Presidencies. The draft programme has regard, *inter alia*, to points arising from the dialogue on political priorities for the year, conducted at the Commission’s initiative.

The draft 18-month programme shall be presented in a single document for endorsement by the General Affairs Council, no later than one month before the relevant period. The General Affairs Council holds a public policy debate on the programme (Article 8(3) CRP).

On the basis of the 18-month programme, after consulting the Commission, the Presidency which is to hold office in the relevant period draws up provisional agendas for the Council meetings scheduled for the next six-month period, at the latest one week before the beginning of the relevant six-month period. They shall be set out in a single document applying to all Council configurations. In other words, it is an obligation which applies to the President of the Foreign Affairs Council (the High Representative) as to any other President of the Council (Article 1(5) CRP). For guidance, this document indicates the legislative work and operational decisions envisaged. In the course of the six months, the Presidency may, as the need arises, schedule

additional Council meetings, or decide not to convene a meeting if one of the meetings scheduled proves to be no longer warranted.

2. Notice and venue of meetings (Article 1 CRP)

A – Notice

As in Article 237 TFEU, Article 1(1) CRP provides that the Council meets when convened by its President on his own initiative or at the request of one of its members or of the Commission. If a delegation or the Commission requests that the Council be convened, the President is obliged to convene it. The President may, however, exercise some discretion in selecting the date of the meeting. In making this choice, he must take account, in addition to his colleagues' opinions, of:

- the deadlines imposed by the CRP (Article 3(1) to (3) CRP);
- the fact that the Council may be legally obliged to meet or to act before a set date (e.g. in the case provided for in Article 30(2) TEU);
- rules governing the quorum so that the Council can take a vote (Article 11(4) CRP);
- preparation for Council discussions in Coreper (Article 19 CRP).

The Presidency makes known the proposed dates for Council meetings for each Council configuration at least seven months before the start of the six-month period concerned and, after appropriate consultations. Those dates shall be set out in a single document applying to all Council configurations again underlying the fact that this obligation applies to the President of the Foreign Affairs Council (the High Representative) as it does to any other Council President.

Naturally, this programming is flexible and the scheduled dates may be changed during the Presidency. Specific dates are given when, one week at the latest before it takes up office, the Presidency which is to hold office in the relevant period draws up provisional agendas for the Council meetings scheduled for the following six months. The Presidency may schedule extra meetings or, possibly, cancel those already planned, as needed.

In cases related to foreign affairs requiring a rapid decision, the Presidency may convene an extraordinary Council meeting. For example, Article 30(2) of the TEU provides that the High Representative is to convene an extraordinary Foreign Affairs Council meeting, of his own motion, or at the request of a Member State, within 48 hours or, in an emergency, within a shorter period.

Lastly, in accordance with well-established practice, as mentioned above each Council Presidency organises a maximum of five informal ministerial meetings during its term (Chapter I, point 2.A).

B – Venue of meetings

Protocol (No 6) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union provides that the seat of the Council is in Brussels and that Council meetings are held in Luxembourg in April, June and October. It may exceptionally be necessary for the Council to meet in other places. This is the case in particular with international negotiations in which the Union takes part. In that case, the second subparagraph of Article 1(3) CRP provides that the decision to hold a meeting elsewhere must be taken unanimously, by the Council or Coreper.

3. Agenda (Article 3 CRP)

A – Drawing up of the provisional agenda

(a) *Entry of items on the agenda*

The provisional agenda for each meeting is drawn up under the responsibility of the President, taking into account the Council's 18-month programme and requests for inclusion from a member of the Council or from the Commission. Thus drawn up, the provisional agenda is then sent by the President to the members of the Council and to the Commission at least fourteen days before the beginning of the meeting. It must also be forwarded to Member States' national Parliaments at the same time.

When drawing up the provisional agenda, the President is required to observe various deadlines (on the understanding that, if the sixteen and fourteen-day deadlines for inclusion of items on the provisional Council agenda are met, these items can be entered on the final agenda by a simple majority). These are, more specifically:

- a deadline of sixteen days before the beginning of the Council meeting for the receipt of requests for inclusion of items on the provisional agenda by Council members or the Commission, together with any documents relating thereto. The President is obliged to accede to any request from a member of the Council or from the Commission if it, and any documents relating to it, reach the General Secretariat within the time limit (Article 3(2) CRP);

- a deadline of fourteen days before the beginning of the Council meeting for the Presidency to draw up the provisional agenda and send it, together with any documents relating to it, to members of the Council and to the Commission;
- a deadline of eight weeks for entry on the provisional agenda, with a view to a decision, of a legislative act or a position at first reading in the ordinary legislative procedure (see Article 4 of Protocol (No 1) on the role of national parliaments in the European Union and Article 6 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality: this is to allow national parliaments to express their views on questions that might have particular interest for them or, where Protocol (No 2) applies, to send a reasoned opinion on whether the draft legislative act complies with the principle of subsidiarity. This prevents the Council from adopting a legislative act or a position at first reading under the ordinary legislative procedure before national parliaments have had time to examine the text. However, the Council may, acting in accordance with the voting rule applicable for the adoption of the act or position concerned, derogate from the eight-week period for reasons of urgency, which must be set out in the act or position concerned; this eight-week period starts to run on the date the legislative proposal is received by the Council in all languages (Article 3(3) second and third subparagraphs CRP). A ten-day period must elapse between placing of a draft legislative act on the provisional agenda and the adoption of a position. This period may be derogated from in urgent cases for which due reasons have been given (Article 3(3) third subparagraph CRP).
- a non-compulsory deadline of twenty-one days for the provisional agenda and any documents relating thereto to be sent to the members of the Council, in respect of proceedings under Title V of the TFEU (“Area of freedom, security and justice”). This deadline is provided for in a Council statement which indicates that the President will endeavour to ensure that this deadline is, in principle, met¹.

1 See statement (c) regarding Article 3 CRP inserted in footnote 10 to Article 3 CRP.

The General Secretariat forwards to the members of the Council and to the Commission requests for the inclusion of items on the agenda and documents in respect of which the time-limits specified above were not met; these items, entered on the provisional agenda after the time-limit, cannot be entered on the definitive agenda unless the Council approves such entry unanimously, when adopting its definitive agenda at the beginning of its meeting (see point 3.B).

(b) Calculation of deadlines

For the calculation of the deadlines, the provisions of Council Regulation No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits¹ apply *mutatis mutandis*.

For the purposes of determining the deadline, pursuant to the second subparagraph of Article 3(1) of Regulation No 1182/71, the day on which the Council meeting is held is not included in the calculation of the periods in question, since pursuant to this provision, “where a period expressed in days [...] is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs [...] shall not be considered as falling within the period in question”.

In short, the day on which an item is entered and the day on which the Council meeting takes place, are not counted for the purposes of calculating the time limits. A fourteen day period, for example, must therefore run in between these two events.

Example: how to calculate the fourteen-day period:

Council meeting: Monday 22 November 2010

Start of fourteen-day period: midnight on Sunday 21 November 2010

End of fourteen-day period: on 00.00 Monday 8 November 2010

Provisional agenda to be sent at the latest: by midnight on Sunday 7 November 2010.

1 OJ L 124, 8.6.1971, p. 1.s

(c) *Withdrawal of items from the agenda*

Once an item has been entered on the provisional agenda within the (fourteen of sixteen day) deadline, it cannot be withdrawn unless all the members of the Council agree. Otherwise, a member of the Council could, for example, request entry of an item within the deadline and then unilaterally withdraw its request. In this case, the other members of the Council who had not requested that the item be included since it was already on the agenda would thus be deprived of their right to request its inclusion as they would be out of time.

In practice, the last chance to remove an item from the provisional agenda, is the last Coreper meeting before the relevant Council meeting. At this meeting, the President of Coreper would check if anybody opposes the removal of a given item from the provisional agenda of the Council, where that item had initially been entered within the fourteen or sixteen days deadline. If all agree, the item may be withdrawn from the provisional agenda during the Coreper meeting preceding the relevant Council meeting.

Alternatively, the Council may decide by simple majority not to enter this item in the definitive agenda of the relevant Council meeting at the time of adoption of its definitive agenda. In the latter case, at the time of such adoption the Presidency announces orally that the relevant item will be deferred to a future Council meeting. If the item concerns an act which needs to be adopted urgently and which may be adopted by a qualified majority or a simple majority, the item may be maintained on the provisional agenda or entered in the definitive one despite the reservation by a delegation. In such case, the delegation concerned will have to indicate if its reservation is to be converted into an abstention or a vote against.

Except in cases of urgency, the Presidency is required to remove from the provisional agenda any items relating to draft legislative acts which Coreper has not finished examining by the end of the week preceding the week prior to a Council meeting (second subparagraph of Article 3(5) CRP).

B – Adoption of the definitive agenda

The definitive agenda is adopted by the Council at the beginning of each meeting. The Council adopts its agenda by a simple majority for all those items which have been entered within the deadlines. However, the inclusion in the agenda of an item other than those which have been put on the provisional agenda within the fourteen or sixteen days deadline, requires unanimity in

the Council (see above)¹. Items entered in this way may be put to the vote if all the procedural requirements provided for by the Treaties have been complied with.

“Any Other Business” items may be entered freely on the agenda since these items, which should concern information points, cannot give rise to any decision or even, in principle, any discussion. Any request for the inclusion of an “Any Other Business” item must be accompanied by an explanatory document (Article 3(9) CRP).

If, when the definitive agenda is adopted, a delegation or the Commission opposes the maintenance of an item which was entered in the provisional agenda within the time-limit laid down in Article 3, the item remains on the definitive agenda if a simple majority is in favour. However, if the time limit was not complied with, unanimity is required for the item to be put on the definitive agenda. If the objection concerns the maintenance of an “A” item, the item may be dealt with as a “B” item if the Council decides to keep it on the definitive agenda (see point 3.C(b)).

An “A” item is removed from the definitive agenda if a position on that “A” item might lead to further discussion or if a member of the Council or the Commission so requests (Article 3(8) CRP). However, the Council may decide to keep the item on its agenda by a simple majority.

C – Structure and contents of the agenda

(a) *Legislative and non-legislative*

With the entry into force of the Treaty of Lisbon, Council meetings, and therefore also the agenda, are to be divided into two parts dealing respectively with deliberations on Union legislative acts and non-legislative activities (Article 16(8) TEU). The provisional agenda is therefore divided into two parts: a part entitled “Legislative deliberations” which deals with deliberations on legislative acts and a part entitled “Non-legislative activities” which deals with non-legislative activities. The items appearing in each of the above parts are further divided into “A” items and “B” items (Article 3(6) CRP).

1 Note that if the item to be added concerns a decision in respect of which, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members when the addition of the item is approved unanimously (Annex IV, 1(b) ROP). See Chapter III, point 1.C.

Legislative and non-legislative acts are identified formally according to the procedure used to adopt them. Thus acts adopted through a legislative procedure (ordinary or special) as indicated by the legal basis in the Treaty on which those acts are based, constitute “legislative acts”. However, acts based on a legal basis which does not mention that it is subject to a legislative procedure are not “legislative acts”¹. This does not mean that the latter do not produce legal effects, but for the purposes of classification of acts in the agenda of the Council this is irrelevant. Thus an act which is legally binding but which is not adopted according to an ordinary or special legislative procedure foreseen in the Treaty, is not a “legislative act” and is not inserted in the part of the agenda entitled “Legislative deliberations”. Such act should be inserted in the part entitled “Non legislative activities”.

(b) Parts A and B of the agenda

The two parts of the agenda, legislative and non-legislative, are further divided into a sub-part with “A items” and a sub-part with “B items” (Article 3(6) second subparagraph CRP). “A” items on the agenda are items for which, given their state of preparation by Coreper, approval by the Council seems possible without discussion, which does not exclude the possibility, offered to any member of the Council and to the Commission, of expressing an opinion at the time of the approval of those items and having statements included in the minutes. On the other hand, matters which must be discussed are included under the Part of “B” items.

The practice of “A” items avoids Council meetings being burdened by a large number of items on which agreement has already been reached and which therefore do not need to be examined individually.

“A” items are included on a list which in principle is approved as a whole by the Council, normally at the beginning of the meeting. The “A items” of the legislative part of the agenda are adopted in public. Legally speaking there is a set of votes covering each “A” item individually. Any item included on the list of “A” items is the subject of a note, known as an “A” item note (or “I/A” item note, when the item was approved by Coreper without discussion i.e. when an item is in Part I of its agenda), forecasting the outcome of the vote and indicating the existence of the majority required, as ascertained during Coreper’s proceedings. By adopting the list of “A” items, each item on the

1 See Article 289(3) TFEU which states «Legal acts adopted by legislative procedure shall constitute legislative acts».

list is formally adopted, by confirming the forecasts of votes mentioned in each “A” item note. Those vote forecasts may of course be altered when the members of the Council adopt the “A” items.

It must, however, be pointed out that an “A” item is withdrawn from the agenda and thus is not adopted if a position on an “A” item might lead to its further discussion or if a member of the Council or of the Commission so requests. In that case, the item is deferred to a subsequent Council meeting. The Council may, however, decide otherwise by a simple majority¹. The item concerned may then be included in Part “B” of the same meeting by a decision taken by simple majority. This option only exists, of course, if the item was included on the provisional agenda at least fourteen days before the meeting. Otherwise, i.e. if the “A” item in question does not appear on the provisional agenda at least 14 days before the meeting, the Council may keep it as a “B” item during the same meeting only by unanimity², failing which, the item is carried over to another meeting.

An item concerning which a delegation has entered a reservation can be included as an “A” item on the Council’s agenda. If the reservation is not lifted during the Council meeting, the delegation which entered it is deemed to have voted against. If the act concerned may be adopted by a qualified majority or a simple majority, the item will then be adopted if the necessary number of votes in favour is obtained without that delegation’s approval but the delegation must indicate if its vote is to be understood as an abstention or a vote against. In the event of a unanimous vote, the act cannot be adopted unless the delegation concerned abstains.

1 Note that with regard to the possibility of requesting that an «A» item be withdrawn from the agenda (Article 3(8)), a member of the Council or of Coreper may not make use of this provision in connection with decisions on which, under the Treaties, that member may not participate in the vote (Annex IV, 2(a)). See Chapter III point 1.C.

2 Note that if the «A» item to be maintained on the agenda under the procedure laid down in Article 3(8) CRP concerns a decision in respect of which, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members in the unanimous approval required to keep the item on the agenda (Annex IV, 1(c)). See Chapter III point 1.C.

(c) *Wording of items*

Where an item is placed before the Council for deliberation on a proposal from the Commission or at the initiative of the Commission or of a Member State or other author¹, its wording should reproduce the full title of the proposal or the initiative without any modification thereto.

The wording of items relating to the adoption, by the Council, of a legislative act or a position at first reading in the ordinary legislative procedure should – provided that the texts in question have been finalised by the Legal/Linguistic Experts – reproduce the full title of the text thus finalised, preceded by “draft”.

The wording of items relating to atypical acts² should reproduce the full title of the text placed before the Council by Coreper.

In addition, where the Council adopts legally binding rules, a description of the decision sought should be indicated in the agenda. In this respect, where a text has been finalised by the Legal/Linguistic Experts the term “adoption” or “position at first reading” is used. Where the text has not yet been finalised by the Legal/Linguistic Experts but the Council reaches a definitive position on the text, the term “political agreement” is used. In both these cases the relevant terms should only be used where the title of the text is followed by both an asterisk (see (d) below) and a reference to the legal basis proposed (see (e) below).

Where the Council reaches a position on a text or part of a text before fulfilment of the voting conditions applicable to the relevant legislative procedure (e.g. the European Parliament’s obligatory opinion has not yet been adopted), the term “general approach” is used and the item appears on the agenda without an asterisk.

1 This includes Commission proposals for legally binding acts, viz. regulations, the directives referred to in Article 297 TFEU and decisions, as well as Commission proposals for non-binding acts, viz. recommendations within the meaning of Article 288 TFEU. Also Commission, the High Representative or Member States’ initiatives for legally binding acts under for example Article 76, Article 215, Article 218 TFEU and Article 30, Article 42.

2 Council resolutions, resolutions of the Council and of the Representatives of the Governments of the Member States, Council conclusions, recommendations other than those referred to in Article 288 TFEU as well as statements/declarations.

(d) *Asterisks*

In the provisional agenda, an asterisk placed after an item indicates that the Presidency, a member of the Council or the Commission may request a vote on the item¹. These items comprise atypical acts, including conclusions, which are indissolubly linked to a binding act or draft thereof and therefore must be adopted in accordance with the same voting rule as that prescribed for adopting the relevant binding act.

Items on which a vote may be requested must be indicated in the agenda within the specified time-limit (see point 3.A). This means that, unless the Council unanimously decides otherwise, items entered on the agenda within the above time-limit, but without an asterisk, cannot be put to a vote.

The items concerned must be marked with an asterisk if all the procedural requirements provided for by the Treaties have been complied with². This is a legal obligation provided for in Article 3(2) CRP. An asterisk does not mean that a vote will necessarily take place, but that it may. It is intended to enable members of the Council to complete all necessary preparatory procedures and to ensure that the vote does not take them by surprise, as well as to permit the Presidency, members of the Council or the Commission to exercise their right to request the opening of a voting procedure in accordance with the second subparagraph of Article 11(1) CRP. It also has a bearing on the application of the transparency rules (see (g) below).

If, by mistake, an item has been entered on the agenda without an asterisk, a member of the Council or the Commission may ask for that error to be corrected. If the error is not corrected before the expiry of the 14-day time-limit laid down in Article 3(1) CRP, any member of the Council may oppose the vote.

1 Re voting, see Chapter III points 1 and 2.

2 For instance, under a number of legal bases in the Treaties, the mandatory opinions of the European Parliament, the Economic and Social Committee, the Committee of the Regions, the European Central Bank and/or the Court of Auditors are preconditions for the adoption of the act. It must therefore be checked whether the mandatory opinions required have been delivered by the date of the Council meeting.

(e) *Indication in the agenda of the legal basis*

In the provisional agenda, under each item identified by an asterisk, there is an indication of the legal basis proposed by the Commission (or identified by the author of the proposal). In the case of an atypical act, the legal basis indicated is that of the act to which the atypical act is indissolubly linked.

In the case of atypical acts not indicated with an asterisk, i.e. strictly political undertakings and statements/declarations by the Council for which there is no specific legal basis, the Council's provisional agenda specifies their adoption by common accord. The procedure for adopting an act by common accord is not equivalent to a vote.

(f) *Legislative items (automatic publicity)*

Any item on the Council's provisional agenda relating to a legislative act should be placed in the part of the agenda entitled "Legislative deliberations" (Article 3(6) and 7 CRP). The placing of items in this part has a bearing on transparency (see point 6 below).

Note that, unless otherwise required because of urgency and without prejudice to Article 3(3) CRP, the Presidency must remove from the provisional agenda those legislative items which Coreper has not completed its examination by the end of the week preceding the week prior to the Council meeting (second subparagraph of Article 3(5) CRP).

(g) *Indications relating to the transparency rules (for certain non-legislative acts)*

In all cases where the Council deliberates for the first time on new non-legislative proposals which are important and which relate to the adoption of rules which are legally binding in or for Member States - with the exception of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts -(Article 8(1) CRP), the wording to be inserted in the Council's agenda under the item concerned is "*public deliberation*". It is for the Presidency to identify which new proposals are important (the Council or Coreper may decide otherwise by simple majority). Likewise, the Presidency may decide, on a case by case basis, that subsequent Council deliberations on one of these proposals shall be open to the public (Council or Coreper may decide otherwise by simple majority) (Article 8(1) second subparagraph). The provisional agenda must specify which CRP Article and paragraph apply in the case in question (for the cases covered by each paragraph, see Chapter II, point 6.A) and state,

if applicable, that the public deliberation was proposed by the Presidency. Accordingly, where public deliberations are concerned, the wordings to be included in the agenda are, respectively, as follows:

- *“Public deliberation pursuant to Article 8(1) first subparagraph”;*
- *“Public deliberation pursuant to Article 8(1) second subparagraph (proposed by the Presidency)”.*

In cases where the Council deliberates in public on specific subjects (Article 8(2) CRP) or on programmes and priorities (Article 8(3) CRP), the wording to be inserted in the Council’s agenda under the item concerned is “public debate”. Items under Article 8(3) CRP must be held in public. The agenda must specify the article, including the paragraph (see Chapter II, point 6.A), which applies in the case in question and, if applicable, mention the proposal on which the public debate is to be held. The wordings to be included in the agenda are, respectively, as follows:

- *“Public debate pursuant to Article 8(2) (proposed by the Presidency)”;*
- *“Public debate pursuant to Article 8(2) (proposed by the Commission)”;*
- *“Public debate pursuant to Article 8(2) (proposed by the XX delegation)”;*
- *“Public debate pursuant to Article 8(3)”.*

4. Professional secrecy (Articles 5 and 6 CRP)

A – Participation in Council meetings

“Participation”, in the sense of taking, shaping or influencing decisions, results from membership of the Council, as defined in Article 16(2) TEU: “The Council shall consist of a representative of each Member State at ministerial level”. Only representatives of the Member States – who are, in principle, nationals of Member States of the European Union – may participate in Council meetings (see Chapter I, point 2.D). This preserves the Council’s decision-making autonomy.

Similarly, Article 5 provides that, unless deliberating or voting on legislative acts, Council meetings shall not be public and Article 6(1) stipulates that “Without prejudice to Articles 7, 8 and 9 and to provisions on public access to documents, the deliberations of the Council shall be covered by the obligation of professional secrecy [...]”.

The exceptions to the rule that only representatives of the governments of the Member States may participate in Council meetings are expressly provided for in the Treaties themselves¹ or result implicitly but necessarily from the role assigned by the Treaties to a Union institution² or from a State's having signed a treaty of accession to the EU³.

This rule also applies to the preparatory work for Council meetings, i.e. all the Council's preparatory bodies (Coreper, committees and working parties). However, legislative work in preparatory bodies is not public.

In practice, the Commission is virtually always present at, and takes part in, Council meetings and meetings of Council preparatory bodies at all levels and in all fields of action (Article 5(2) CRP), even if the act to be adopted by the Council does not require a Commission proposal. Commission participation in the Council's proceedings is facilitated by the fact that it receives documentation issued by the General Secretariat of the Council, on an equal footing with the Permanent Representations. The European Central Bank is invited to take part in meetings of the Council in cases where it exercises its right of initiative. The Council rarely decides to deliberate without the presence of the Commission, but this occurs above all when the Council considers internal affairs (appointment of officials, cases before the Court of Justice, etc.). In these cases, the Council (or the relevant preparatory body) may decide, by simple majority, to meet "in closed session" (Article 5(2) CRP).

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- 1 For instance the participation of the President of the European Central Bank provided for in Article 284(2) of the TFEU, which stipulates that «The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB».
 - 2 The Commission, exercising the right of initiative assigned to it under the Treaty, submits to the Council proposals or other draft instruments, which it must be able to explain, defend or amend. It is therefore routinely «invited to take part in meetings of the Council» (Article 5(2) CRP). The same applies to the European Central Bank, in cases where it exercises its right of initiative (Article 5(2) CRP).
 - 3 Participation by representatives of States acceding to the European Union in meetings of Council preparatory bodies, as observers with a right to speak following the signature of the accession treaty and before its entry into force, is accounted for by the fact that acceding States, by signing the accession treaty, have accepted the Union *acquis* in its entirety, even after the end of the negotiations. The provisions of the *acquis* after the signature of the accession treaty are, however, binding on acceding States although the latter cannot legally participate in their adoption.

Representatives of other European Union institutions or bodies are occasionally invited to attend the Council's proceedings¹, depending on the subject discussed and the appropriateness. A decision concerning any invitation shall be taken by the Council in advance, by a simple majority.

B – Presence at Council meetings

Participation in Council meetings must not be confused with the occasional presence of representatives of third States or of international organisations, who are sometimes invited as observers to attend certain Council meetings or meetings of Council preparatory bodies, concerning a specific item.

Article 6(1) CRP provides that “[...] the deliberations of the Council shall be covered by the obligation of professional secrecy, except insofar as the Council decides otherwise”. Under this article, the Council may, whenever it considers it appropriate, decide by a simple majority² to open its deliberations – or to disclose their content, inter alia by forwarding documents³ – to certain persons (or categories of persons).

The presence of observers must be explicitly authorised by the President for a specific item on the agenda. In this case, the Presidency must warn the Council members of this fact in advance. In respect of this item, the Council (or the relevant preparatory body) implicitly decides, by simple majority, to set aside the professional secrecy provided for in Article 6(1). The observer must leave the room once the deliberations on this item have ended, or when requested to leave by the Presidency. The third-party observer may be invited by the Council Presidency to state his views or inform the Council concerning the subject at issue.

1 For instance, representatives of the Court of Justice or the Court of Auditors are normally invited to attend Council meetings where issues relevant to these institutions are discussed; the same applies to the European Investment Bank (EIB).

2 If the invitation to a third party constitutes a political decision with a bearing on the CFSP, it must be taken unanimously.

3 One example of the forwarding of documents is expressly provided for in Article 6(2) CRP: «The Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions on public access to documents».

From a legal point of view, the third party does not participate in the deliberations leading to the taking of a decision by the Council, but simply provides the Council with information which it can draw upon before taking its decision.

The same rules apply to meetings of the Council's preparatory bodies. The Presidency is responsible for organising the proceedings so as to preserve the Council's decision-making autonomy.

5. Minutes (Article 13 CRP)

A – Structure and content of the minutes

Article 13 CRP provides that minutes of each Council meeting shall be drawn up. The minutes are a document which summarises the decisions taken and occasionally the content of the discussions held during that meeting¹. These minutes constitute documentary evidence of the proceedings which they describe and of compliance with the procedural rules relating to the adoption of an act.

The minutes generally contain three points concerning each item on the agenda:

- a reference to the documents submitted to the Council;
- the decisions taken or the conclusions reached by the Council;
- the statements made by the Council alone, those made jointly by the Council and the Commission and those whose entry has been requested by a member of the Council, or the Commission.

With regard to the indication of documents, all documents submitted to the Council are numbered and bear a reference for their identification.

With regard to decisions taken or conclusions adopted, the practice of drawing up Council minutes tends towards a very brief description of the decision taken. The content of Council discussions is in fact reflected more fully in the press releases issued by the General Secretariat after each Council meeting than in the minutes of the meeting. Press releases are produced by the General Secretariat under its own responsibility.

1 A summary record of Coreper's meetings is also produced by the General Secretariat.

The statements in the minutes reflect their authors' positions. They cannot in any way restrict the scope or effects of the legal act, which can only be determined from the content of the act itself¹; statements in the minutes can only serve to confirm an interpretation based on the wording of the act itself. A statement cannot therefore be taken as a basis for the interpretation of a provision in an act of secondary legislation if the content of the statement is not expressed in the text of the relevant provision².

For reasons of legal certainty and legitimate expectations, no statements which contradict the legal provisions, add elements to them or give them a specific interpretation should be made. In this respect, the Council has acknowledged that "Recourse to statements interpreting legal acts should therefore be avoided where possible and the content of possible statements should, as appropriate, be included in the text of the act."³

Statements by the Council do not form part of the legal act as such. Consequently, they do not follow the procedural rules laid down by the Treaties for the adoption of such acts. The Commission need not agree with their content, and Parliament need not be consulted. Statements cannot have any normative effect: for instance, they cannot oblige the Commission to act in a given way, since the Commission is bound to comply with the rules deriving from the legislative act itself.

1 In its judgment of 15 April 1986, the Court stated the following: «the Court has consistently held that the true meaning of rules of Community law can be derived only from those rules themselves, having regard to their context. That meaning cannot therefore be affected by such a statement [referring to point 16: «statement... inserted in the Council minutes»].». Case 237/84, *Commission v. Kingdom of Belgium*, ECR p. 1247, point 17. Cf. also the judgment of the Court of 10 December 1991 in the *Commission v. Hellenic Republic* case, C-306/89, ECR p. I-05863, point 8.

2 Judgments of the Court of 26 February 1991, in case C-292/89, *Antonissen*, ECR p. I-745, point 18; 8 June 2000, in the *Epson Europe* case, C-375/98, ECR p. I-4243, point 26; 10 January 2006, in the *Skov Evg v. Bilka Lavprisvarehus A/S, Bilka Lavprisvarehus A/S v. Jette Mikkelsen and Michael Due Nielsen* case, C-402/03, not yet published, point 42; 27 February 2007, case C-354/04 P, *Gestoras Pro Amnistía and others v. Council*, not yet published, point 60; 27 February 2007, case C-355/04 P, *Segi and others v. Council*, not yet published, point 60.

3 Statement by the Council on the occasion of the adoption of the interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1). Cf. also the statement by the European Parliament on the same occasion.

As regards the procedures for adoption, Council statements in the minutes the contents of which relate directly to a legislative act must be adopted according to the same voting method as the legislative act itself. On the other hand, statements which have intrinsic content not directly related to the adoption of a legal act by the Council constitute political agreements and must therefore be adopted by common accord.

B – Approval of minutes

The draft minutes are drawn up by the General Secretariat within fifteen days of the Council meeting and submitted for approval to the Council or, in most cases, to Coreper (Articles 13(2) and 19(7)(f) CRP).

Before the minutes are approved, any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda. These requests may be made in Coreper. When approved, the minutes are signed by the Secretary-General of the Council, who may delegate signature to the Directors-General of the General Secretariat of the Council.

Once approved, the addendum to the minutes relating to the “Legislative deliberations” part of Council meetings shall be forwarded directly to national parliaments and Member States’ governments at the same time.

6. Public access and transparency (Articles 5 to 10 CRP)

The principle of openness, laid down in Article 1 TEU, is reflected in the Council’s activities. The principle, now stated specifically in the Treaties, is that “The Council shall meet in public when it deliberates and votes on a draft legislative act” (Article 16(8) TEU).¹ Therefore the CRP provision according to which “Meetings of the Council shall not be public” (Article 5(1) CRP) applies only when the Council is not deliberating and voting on draft legislative acts. The same applies with regard to the provision under which “the deliberations of the Council shall be covered by the obligation of professional secrecy” (Article 6(1) CRP) which is tempered by the provisions concerning the holding of legislative deliberations, public deliberations and debates (A), making agendas public (B), making public votes and statements in the Council minutes (C) and public access to Council documents (D).

1 See also Article 15(2) TFEU which provides, «The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.»

A – Legislative deliberations, public deliberations and debates

Whenever the Council deliberates and votes on legislative acts, such deliberations are open to the public. This is a Treaty obligation and no derogation is possible (Article 16(8)TEU and Article 7 CRP). In addition, Article 8 CRP specifies the cases in and conditions under which the Council opens its deliberations on non-legislative acts to the public and the cases in which the Council holds public debates.

(a) *Legislative deliberations (legislative acts - Article 7 CRP)*

The rule here is that the Council shall meet in public when it deliberates on draft legislative acts. The whole deliberation (including the final vote) must therefore take place in public when it concerns legislative acts. The Council agendas are in fact organised in a such a way so as to identify, in a part entitled “Legislative deliberations”, those legislative items, (whether “A” or “B” items) which are to be adopted or discussed in public.

All documents submitted to the Council which are listed on the “Legislative deliberations” part of the agenda, shall be made public (Article 7(2) CRP).

(b) *Public deliberations (non-legislative acts - Article 8 CRP)*

Pursuant to Article 8 CRP, the Council’s first deliberation on important new non-legislative proposals shall be open to the public where they contain legally binding rules in or for Member States. A distinction must be drawn between legally binding rules which are adopted by means of regulations, directives or decisions on the basis of the Treaty, which are to be or may be made public, and internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts, which are not open to the public.

It is for the Presidency to identify which new proposals are important although the Council or Coreper may explicitly decide otherwise by simple majority. In addition, the Presidency may decide, on a case-by-case basis, that the subsequent Council deliberations on one of the non-legislative proposals referred to above should also be opened to the public. Again, the Council or Coreper may decide otherwise by a simple majority.

These items should be inserted in the “non-legislative activities” part of the Council agenda together a specific indication of “Public deliberation” (Article 8(4)(a) CRP).

(c) *Public debates*

Under Article 8(2) and (3) CRP, the Council holds public debates on specific issues as well as public debates on programmes and priorities.

(i) Public debates on specific issues

On a decision taken by the Council or by Coreper, acting by a qualified majority, the Council holds public debates on important issues affecting the interests of the European Union and its citizens. (Article 8(2) first subparagraph CRP). It is for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such debates (for instance, the Community framework for healthcare services).

(ii) Public debates on programmes and priorities

The Council is required to hold the following policy debates in public (Article 8(3) CRP):

- debates in the General Affairs Council on the Council's 18-month programme;
- policy debates in other Council configurations on their priorities.
- the Commission's presentation of its five-year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debates in the Council.

(d) *Means of opening legislative deliberations, public deliberations and public debates to the public (Article 7(3) and last subparagraph of Article 8(4) CRP)*

Council legislative deliberations, public deliberations and public debates are opened to the public in the following way: Council meetings are transmitted by audiovisual means, notably in an overflow room, and also through broadcasting in all official languages of the institutions of the European Union using video streaming. A recorded version of such a Council meeting remains available for at least one month on the Council's Internet site (<http://consilium.europa.eu>).

If any, the outcome of voting is indicated by visual means.

The General Secretariat of the Council informs the public in advance of the dates and approximate time on which such audiovisual transmissions will take place.

B – Making agendas public

The specific provisions on public access to Council documents set out in Annex II CRP stipulate that the General Secretariat of the Council shall make the provisional agendas for Council meetings available to the public as soon as they have been circulated (Article 11(3)(b) of Annex II CRP). The same applies to the agendas for meetings of the Council's preparatory bodies, provided that they are not covered by any of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001¹. The public access rule does not, therefore, apply to the Political and Security Committee, the Military Committee, the Military Committee Working Group, the Politico–Military Working Party, the Security Committee and the Terrorism Working Parties (internal and international aspects). The provisional agenda is available before the meeting and updated if any changes are made. Since 1 January 2000, the list of provisional agendas has been made publicly available on the Internet (<http://consilium.europa.eu>).

C – The making public of votes, explanations of votes, statements in the minutes and minutes (Article 7 and 9 CRP)

Article 7 deals with openness of the legislative procedure. It specifies the cases in and conditions under which the results of votes and explanations of votes by members of the Council or their representatives on the Conciliation Committee, as well as the statements in the minutes and the items in those minutes relating to the Conciliation Committee meeting² are made public (Article 7(4)).

Article 9 deals with openness in other cases. It specifies the cases in and conditions under which the results of votes and explanations of votes by Council members, as well as the statements in the minutes and the items in those minutes relating to the relevant acts³ are made public.

“Votes” comprise decisions taken unanimously (not including those taken by common accord) and decisions taken by a qualified majority or a simple majority. Except in cases where the Council's deliberations are opened to

1 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2 On «statements in the minutes» and «minutes», see Chapter III, point 5.

3 *ibid.*

the public under Articles 7 and 8 CRP, it is formal votes, i.e. the results of the votes (who voted for what), which are made public – that is, votes by which the Council adopts an act or adopts its position by virtue of the decision-making power conferred upon it by the Treaties or by an act based thereon. Accordingly, the results of votes are not normally made public when the Council holds “indicative” votes or when the results of votes form part of the preparatory phase of the decision making process (when they relate, for instance, to authorising the Commission to open negotiations with a view to the conclusion of an international agreement, and directives to that end) (Article 9(3) CRP).

The principle of making public the results of votes applies, of course, both to decisions taken as “A” items and those taken as “B” items.

An “explanation of a vote” is a brief statement of the specific reasons which led a Council member to vote in a given way (for, against or abstention); it should add something to the reasons set out in the recitals to the relevant act or, in the case of a vote against, it should not simply express a rejection of those reasons but give more explanation.

As regards making public the results of votes, explanations of votes by Council members, statements in the minutes and items in the minutes relating to the relevant acts, a distinction must be drawn between cases in which they are automatically made public and those in which they are made public by a Council or Coreper decision.

(a) Automatic publicity

The results of votes, explanations of votes by Council members, statements in the minutes and the items in the minutes relating to the relevant acts are automatically made public when:

- Council deliberates and votes on legislative acts;
- Council deliberates on certain non-legislative acts which are opened to the public (Article 8(1) CRP);
- the Conciliation Committee set up by Article 294 TFEU meets. In cases where Council members are represented in the Conciliation Committee, the results of their representatives’ votes, and explanations of those votes, are made public.

In the above cases, the results of votes, explanations of votes by Council members, statements in the minutes and the items in the minutes relating to the relevant acts are made public and the Council cannot decide otherwise.

(b) Publicity by a Council or Coreper decision

The results of votes are made public by a Council or Coreper decision when the Council acts within the framework of Title V TEU (CFSP) and in certain other cases.

When the Council acts within the framework of Title V TEU (CFSP), the Council or Coreper decides unanimously in response to a request by a Council or Coreper member, whereas in other cases the decision is taken by a simple majority in response to a request by a Council or Coreper member. It is not possible to take a blanket decision, at the beginning of a Council meeting, to make public the results of the votes. A decision can only be taken on a case-by-case basis, after each vote. The President must therefore ask the Council members after each vote whether the results of the vote in question should be made public (in practice, this is included in the "A" item notes).

When the results of votes are made public in the cases set out above, the explanations of votes given at the time of voting are also made public at the request of the Council members concerned, with due regard for the CRP, the principle of legal certainty and the interests of the Council. The decision is taken by a simple majority. In this connection, it should be emphasised that, when drawing up their explanations of votes, Council members must comply with the principle of the professional secrecy of Council deliberations laid down in Article 6(1) CRP.

With regard to explanations of votes, it should be noted that they can never be given after the event; they must always be communicated to the Council when the vote is held, either orally or in writing. This needs to be done so that Council members can assess the extent to which the explanation is compatible with the CRP, legal certainty and the interests of the Council. The Commission must also be able to make any comments it may have. In addition, each Council member must be able to decide whether it considers it appropriate to request that the explanation of its own vote also be made public.

Statements in the Council minutes and items in the minutes relating to the adoption of the acts referred to in the first paragraph above are also made public by a Council or Coreper decision taken by a simple majority at the request of one of their members. Statements in the minutes must be made and communicated to all Council members, either orally or in writing, during the Council meeting. They cannot be made after the event.

In all cases where a vote is taken, it is for the Antici Group, the Mertens Group and the SCA to examine these statements before the definitive adoption of the act. The lists of "A" items submitted to the Council are marked, where

appropriate, “S”, to indicate that the act in question is possibly accompanied by one or more statements entered in the Council minutes. Consequently, when the Council adopts an “A” item bearing this reference, it decides ipso facto that the statements in question are not covered by professional secrecy and may therefore be made public.

D – Public access to documents

Under Article 15(3) TFEU, every citizen is entitled to access to documents of the Union institutions, bodies, offices and agencies. The terms under which this right may be exercised are set out in Regulation No 1049/2001¹ and, more especially as regards the Council, in Annex II to its CRP. They are explained in detail in the Transparency-Access to documents Guide.

7. Language rules (Article 14 CRP)

The language rules which apply to the Treaties (TEU, TFEU, Euratom) and the Treaties amending them (A) must be distinguished from the rules applicable to the institutions of the European Union (official languages and working languages) (B). Moreover, the use at the Council of additional languages whose status is recognised under the constitution of a Member State may be authorised (C).

A – Language rules applying to the constituent Treaties

The texts of the treaties on which the European Union is founded are authentic in 23 languages, namely Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish².

1 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2 See Article 55 TEU, Article 358 TFEU, Article 225 of the Euratom Treaty, and acts of the Accession Treaties, most recently Articles 18 and 60 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, annexed to the Treaty of Luxembourg of 25 April 2005 (OJ L 157, 21.6.2005).

B – Language rules applying to the institutions of the European Union (official languages and working languages)

The rules applicable to the institutions are based on Article 342 TFEU.

(a) *Basic texts*

Article 342 TFEU instructs the Council to determine unanimously the rules governing the languages of the institutions of the Union “without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union”. It was therefore on that basis that on 15 April 1958 the Council adopted Regulation No 1 determining the languages to be used by the European Economic Community¹ and Regulation No 1 determining the languages to be used by the European Atomic Energy Community², which have been amended regularly by the various Acts of Accession (hereinafter referred to as “Regulation No 1”). Today, this Regulation provides for twenty-three official languages and working languages of the institutions of the European Union. The main provisions of that Regulation are as follows:

- the official languages and the working languages of the institutions of the Union are Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish (Article 1);
- documents which a Member State or a person subject to the jurisdiction of a Member State sends to the institutions may be in one of the official languages selected by the sender, the reply being drafted in the same language, whereas documents which an institution sends to a Member State or to a person subject to its jurisdiction are drafted in the language of that State (Articles 2 and 3); only the text in the languages used in that correspondence is authentic;

1 Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385), as last amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ L 363, 20.12.2006, p. 1).

2 Council Regulation No 1 determining the languages to be used by the European Atomic Energy Community (OJ 17, 6.10.1958, p. 401), as last amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ L 363, 20.12.2006, p. 1).

- regulations and other documents of general application are drafted in the official languages (Articles 4 and 5); all the language versions are authentic.

One official and working language –Irish – is covered by temporary derogation measures in respect of these principles. Irish is one of the authentic languages of the constituent treaties. Since 1 January 2007 it has also become one of the official and working languages of the European Union by virtue of an amendment to Regulation No 1¹, which nonetheless establishes the following temporary derogation measures:

- for a renewable period of five years beginning on 1 January 2007, the institutions of the European Union will not be bound by the obligation to draft all acts in Irish and to publish them in that language in the Official Journal. This is, however, a partial derogation, and its scope does not cover regulations adopted jointly by the European Parliament and the Council (i.e. co-decision) which should therefore be adopted and published in all the official and working languages of the institutions, including Irish;
- not later than four years from 1 January 2007 and at five-yearly intervals thereafter, the Council will determine unanimously whether to put an end to that derogation.

(b) Arrangements for internal implementation (Article 14 CRP)

Under Article 6 of the abovementioned Council Regulation No 1, the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases; the Council has done so in Article 14 CRP. This Article does not contain provisions on interpreting; it deals solely with language arrangements for documents submitted to the Council.

1 Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations (OJ L 156, 18.6.2005, p. 3). On December 2010, the Council decided to extend the derogation provided for in Article 2 of Regulation No 290/2005 for a period of 5 years from 1 January 2012.

(i) *The principle*

Under Article 14(1) CRP, “[...] the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages” (i.e. the abovementioned Council Regulation No 1)¹. The term “draft” refers in particular to Commission proposals that must be submitted to the Council in the twenty-three – or, where the derogation for Irish applies, twenty-two – official languages. If the Council does not have the relevant documentation available in all official languages on the day of the meeting, a delegation may oppose discussion of an item under Article 14 CRP. More especially, Article 14(2) CRP enables any member of the Council to oppose discussion if the text of any proposed amendments is not drawn up in all the official languages².

Therefore a particular effort is made by the translation services of the Council’s General Secretariat to ensure that documents are available in all required languages (22 or 23) at Council meetings. Subject to the possible derogations set out below, an act may only be adopted if it is available in good and due form (i.e. revised by the Legal/Linguistic Experts) in the twenty-three – or, where applicable, twenty-two – official languages.

Where the provisional agenda for a Council meeting contains a Commission proposal which the Commission, contrary to Regulation No 1, has not submitted to the Council in all languages, the item concerned cannot be included on the final agenda unless the Council agrees to its inclusion unanimously (equivalent to an item included out of time: see Article 3(4) and (7) CRP). However, this agreement may be deemed to be reached tacitly with the adoption of the final agenda when the meeting begins, without the need for adoption of a separate procedural decision. Where the Council is bound by a procedural time-limit (such as in an anti-dumping or ordinary legislative procedure), formal referral of the proposal to the Council takes place – and the time-limit begins – only once the Council has received the proposal in all languages.

1 Note that under the procedure provided for in Article 14(1) (unanimous decision concerning deliberations and decisions on the basis of documents and drafts not drawn up in all the languages), when under the Treaties members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex IV, paragraph 1(h) CRP). See Chapter III, point 1.C.

2 A member of the Council or of Coreper may not make use of this provision in connection with decisions on which, under the Treaties he may not participate in the vote (Annex IV, paragraph 2(d) CRP). See Chapter III, point 1.C.

It should be noted that:

- regulations, directives or decisions adopted under the ordinary legislative procedure (i.e. co-decision), Council and Commission regulations and Council and Commission directives addressed to all Member States cannot enter into force (nor can the Member States be notified thereof), nor can they be published in the Official Journal, unless the text in question exists in all official languages (Article 4 of Regulation No 1), i.e. in the twenty-three – or, where the derogation for Irish applies, twenty-two – official languages;
- a position at first reading of the Council adopted pursuant to the ordinary legislative procedure is not forwarded to the European Parliament unless it is available in all twenty-three official languages.

(ii) *Waivers*

Article 14(1) CRP allows for the possibility of waiving the rule under which the Council deliberates and takes decisions only on the basis of documents and drafts drawn up in line with the language rules. The Council may decide to waive that rule, provided that it does so unanimously and on grounds of urgency.

- *Unanimous decision to waive the rule*

The Council may waive the rule set out in Article 14(1) CRP by unanimous agreement only. The same applies both in cases where the Council merely deliberates without adopting an act or adopts an act with no legal effect (a statement or conclusion) and in cases where the Council adopts a legal act (a regulation, directive, decision or position at first reading under the ordinary legislative procedure).

However, only where the Council must adopt a legal act must this agreement take the form of a procedural decision, taken separately and unanimously, with reference made to the urgent need to adopt the act in fewer languages than specified in the language rules. This procedural decision – which may either, in respect of “A” items, be indicated expressly in the “I/A” item note submitted to the Council or, in respect of “B” items, be taken orally during the meeting and must thus be included as a reminder in the note to the President – must be contained in the minutes of the Council meeting concerned. Once the procedural decision has been taken, the Council may adopt the act in question under the voting rules provided for in the legal basis for the act. Thus, in practice, whenever the Council has recourse to the waiver provided for in Article 14(1) CRP when adopting a legal act, it is necessary to:

- indicate it in the documents submitted to it (report to the Council, “I/A” item notes);
- record in the Council minutes the decision to have recourse to the waiver and outline briefly the grounds for that decision;
- likewise record therein any decision to stay publication or notification of the act pending availability of the text in the twenty-three – or, as applicable, twenty-two – official languages (thereby rendering the matter concerned not urgent);
- ensure subsequent adoption of the missing language versions by the Council (“I/A” item).

By contrast, where Council deliberations do not relate to the adoption of a legal act, unanimity on the waiver can be deemed to have been reached tacitly if no objections are raised when the Council deals with the item concerned, without the need for formal adoption of a separate procedural decision.

- *Grounds of urgency*

The circumstances may be deemed urgent in particular in the following instances:

- where failure to adopt an act threatens to place the Union in breach of international law;
- where the Council must adhere to a procedural time-limit (such as in an anti-dumping or ordinary legislative procedure);
- where a rapid decision in the field of the CFSP is imperative (see Article 30(2) TEU);
- where there is the risk of a legal vacuum.

In practice, the waiver is mainly used in the first few months following the accession of new Member States to the European Union, as revised translations in their languages may not be available within the period laid down.

In principle, an act of general application (regulation, directive, decision addressed to all Member States) cannot enter into force unless it has been drawn up and published in all official languages. Having regard to the principle of legal certainty, an act of general application cannot be applied to those concerned before they have had the opportunity to acquaint themselves with

it¹. Such an opportunity is provided when an act is drawn up in accordance with the language rules and is published in the Official Journal.

Nevertheless, in cases of urgency, decisions referred to in Article 25 TEU – acts whose publication must be decided on a case-by-case basis² – may enter into force prior to its having been drawn up in all languages, except where it affects the legal situation of individuals, be they physical or legal persons (as in the case of a visa ban, freezing of assets, etc.)³.

Thus, with the exception of the Article 25 TEU decisions referred to above, the circumstances can never really be qualified as urgent when it comes to adopting an act of general application. An act of general application cannot be said to require urgent adoption when it has not been drawn up in all languages and thus will have no legal effect, since it cannot enter into force immediately. This is the case, for example, with regard to regulations, directives and decisions adopted under the ordinary legislative procedure, together with Council and Commission regulations and directives addressed to all Member States. Pursuant to Article 297 TFEU, read in conjunction with Article 342 TFEU and Articles 3 and 4 of Regulation No 1, these acts only enter into force after they have been published in the Official Journal in all official languages.

This being the case, where an act of this kind is nonetheless adopted in fewer languages than provided for under the language rules, it is important that the final clause relating to its entry into force should refer to a date established in relation to the date of publication in the Official Journal, rather than mentioning a specific date. This is necessary in order to avoid legal problems (such as the retroactive effect of an act which the legislator has not foreseen) in the event of the missing language versions being validated later than the date originally indicated.

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- 1 See, for example, the judgment of the Court of 25 January 1979, Case 98/78 Racke [1979] ECR 69, paragraph 15.
 - 2 According to Article 17(3) ROP, «The Council or Coreper shall decide unanimously, on a case-by-case basis, whether there should be publication in the Official Journal [...] of the decisions referred to in Article 25 of the TEU «.
 - 3 In the CFSP field, Council acts may be adopted by a simplified written procedure (known as COREU – see Article 12(2)) CRP particularly adapted to urgent situations justifying recourse to the waiver provided for in Article 14(1) CRP (see Chapter III, point 3.B).

It should be noted that an individual directive or decision may enter into force by virtue of its notification to the addressee in the latter's language (see Article 3 of Regulation No 1) before it has been drawn up in all languages and, where applicable, published in the Official Journal.

Where the Council uses the waiver to adopt an act in fewer official languages than provided for under the language rules, the sole date of adoption of the act in question is that of its adoption by the Council in fewer languages than provided for under the language rules.

C – Use of additional languages

The Council conclusions of 13 June 2005¹ reflect the desire for account to be taken of languages other than official and working languages whose status is recognised by the constitution of a Member State in all or part of its territory or the use of which as a national language is authorised by law. It seeks to enable the Council – and possibly other EU institutions and bodies – to use such languages on the basis of an administrative arrangement concluded between the Member State in question and the Council, whereby:

- translations into these languages of acts adopted in the ordinary legislative procedure by the European Parliament and the Council can be published (without their having legal status);
- the government of a Member State may use one of these languages to address a meeting (passive interpreting);
- citizens of the Member State concerned may send a communication to an institution or body in one of these languages, via a body appointed by said Member State, and may receive a reply in that language.

The Council has concluded such an arrangement with the Kingdom of Spain², regarding languages whose status is recognised by the Spanish constitution, namely Catalan/Valencian, Basque and Galician.

1 OJ C 148, 18.6.2005, p. 1.

2 OJ C 40, 17.2.2006, p. 2.

Chapter III – Council decision-making

1. Voting arrangements (Article 11 CRP)

A – Decision to take a vote

Under Article 11(1) CRP, the decision to hold a vote is taken by the Presidency, which judges its desirability, even if it may be obliged to do so by a decision of the Council taken by simple majority. Article 11(1), second subparagraph, CRP provides that any member of the Council or the Commission may request a vote. In such event, the Presidency must open a voting procedure, provided that a majority of the Council’s members so decides¹. That provision merely reflects the unwritten general rule that the Presidency is always “in the Council’s hands”: the Council can always override a procedural decision taken by its President.

However, as stated earlier (see Chapter II, point 3), a set of rules is applied for setting the provisional agenda which makes “surprise” voting impossible. Indicating an item with an asterisk on the provisional agenda to indicate that a vote may be taken on that item keeps Council members constantly aware of the possibility of such a vote. It does not, however, imply that a vote will necessarily be taken. The Presidency may decide not to call a vote if it observes that the conditions have not been met.

¹ Note that when, under the Treaties, members of the Council may not participate in the vote, account is not to be taken of votes by such members in respect of the decision to take a vote (Annex IV, paragraph 1(f) ROP). Furthermore, a member of the Council may not make use of this provision in connection with decisions on which, under the Treaties, that member may not participate in the vote (Annex IV, paragraph 2(d) ROP).

B – Voting procedure

Pursuant to Article 11(2) CRP, the members of the Council vote in the order laid down in the list of successive presidencies, beginning with the member who, according to that order, follows the member holding the office of President. That practice is not always followed, but it is specifically followed in circumstances where the vote is of higher significance or where delegations' positions are not sufficiently clear. As often as not, at the end of the discussion, the Presidency asks the members voting for, against or wishing to abstain to identify themselves. Whatever the practice followed, it should be noted that the Council takes a vote whenever it adopts an act in accordance with the Treaty.

A member of the Council may wish to receive confirmation from his national authorities of the position to be adopted, or the internal formalities for defining his position may not be completed. He will then enter a reservation which may subsequently be withdrawn, but only during the same meeting. If at the end of the meeting the reservation is not withdrawn and that reservation has been converted into a vote against or an abstention whereby the required majority has not been achieved, the item is not adopted. It may be added to the provisional agenda of another meeting. Apart from the written procedure, formal voting is carried out only during a meeting of the Council.

Where the Council acts on a proposal from the Commission, at some stage in the procedure the Commission may be unable to agree to the amendments that the Council intends to make to its proposal. This situation changes the Council's voting rules since, under Article 293(1) TFEU, the Council must act unanimously if it wishes to adopt an act constituting an amendment to the Commission proposal which the Commission does not agree to. In practice, therefore, the Council votes only when the Commission has clearly adopted a position on any amendment of its proposal. There is, however, no need for a written document to this effect: the Commission may amend its proposal in line with the Council's desired amendments even orally during the meeting.

Finally, the Council (or its preparatory bodies) often takes a so-called "indicative" vote that serves to define its members' positions concerning the item under consideration. An "indicative" vote is not a vote within the meaning of the Treaty and has no legal effect. Such a vote need not be made public (Article 9(3) CRP). Formal adoption must therefore take place in due course¹.

1 See Chapter III, point 3, for voting by the written procedure.

The voting rules within the Council are laid down in Article 238 TFEU. Until 31 October 2014, the voting rules are those laid out in Article 3 of the Protocol (No 36) on transitional provisions. There are three voting rules provided for in the Treaty, namely: the Council acts by a majority of its members, by qualified majority or unanimously. Neither a “consensus” nor a “common accord”¹ constitutes a voting rule within the meaning of the Treaty in respect of the adoption of Council acts. By and large, and except in cases where the Treaty explicitly provides for recourse to a common accord, the rules are employed for the adoption of atypical acts of a political nature with no legal basis under the Treaty, such as resolutions, conclusions and declarations.

In the CRP the default voting rule is simple majority, unless the CRP provisions specifically provide for other voting arrangements (Article 1(5) first subparagraph CRP).

(a) *Simple majority voting*

Before the entry into force of the Treaty of Lisbon, the default voting rule under which the Council acted was simple majority, unless a specific provision in the Treaty provided otherwise. Article 16(3) TEU changes this default rule, failing a specific provision in the Treaty, to a qualified majority of Council’s members.

According to Article 238(1) TFEU where it is required to act by a simple majority, the Council shall act by a majority of its component members i.e. at twenty seven Member States, a majority of fourteen members. Such is the case, for example, with adoption of the CRP or procedural decisions (Article 240(3) TFEU), requests for studies or proposals addressed to the Commission (Article 241 TFEU) or decisions taken pursuant to Article 337 TFEU². The Treaty makes specific provisions for the applicable voting rule when the default rule of qualified majority does not apply.

1 Acts of the Representatives of the Governments of the Member States meeting within the Council are adopted by «common accord», which implies the agreement of all the Member States. They are not Council acts. The TFEU, for example, provides in a number of provisions for the adoption of an act by the Member States themselves or their Governments rather than the Council (see Article 253 on the appointment of Judges and Advocates-General of the Court of Justice, Article 254 on the appointment of Judges of the General Court, Article 341 on determining the seats of the institutions, etc.).

2 See judgment of the Court of 9 November 1995, Case C 426/93 Germany v. Council [1995] ECR I 3723.

(b) *Qualified majority voting*

Since the entry into force of the Treaty of Lisbon, qualified majority voting is the default voting rule (Article 16(3) TEU). It applies in particular in the areas subject to the ordinary legislative procedure.

In qualified majority voting, each Member State representative has a certain number of votes, the weighting for which is laid down in Article 3(3) of Protocol (No 36) on transitional measures annexed to the Treaties.

Until 31 October 2014, a qualified majority is achieved in the Council if three conditions are met:

- (i) From a total of 345 votes, at least 255 votes must be cast by Council members in favour of the Council act based on the following weightings:

France, Germany, Italy, United Kingdom	29
Poland, Spain	27
Romania	14
Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Denmark, Finland, Ireland, Lithuania, Slovakia	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3

The blocking minority is therefore 91 votes.

- (ii) The 255 votes must be:
- votes in favour cast by a majority of the members of the Council (i.e. at least fourteen Member States) in the case of acts adopted on a proposal from the Commission¹;

¹ The fact that the Commission does not support a text put to the vote which requires a qualified majority does not attenuate that requirement but adds the additional condition of unanimity to that of a qualified majority (Article 293(1) of the TFEU).

- votes in favour cast by at least two-thirds of the members of the Council or European Council (i.e. at least eighteen Member States) in other cases, namely where the Council is not examining a Commission proposal but is deliberating on the basis of a recommendation, initiative or draft.
- (iii) Until 30 October 2014, a member of the Council may request verification that the Member States constituting the qualified majority also represent at least 62 % of the total population of the Union.

From 1 November 2014, the new «double majority» system will apply (Article 16(4) TEU and Article 238(2) TFEU). According to this system, a qualified majority in the Council shall be achieved if the following conditions are met:

- (i) Article 16(4) TEU: Where the Council acts on a proposal from the Commission or the High Representative, at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the Union's population vote in favour.

In addition, the blocking minority must include at least four Council members, failing which the qualified majority shall be deemed to be attained.

- (ii) Article 238(2) TFEU: Where the Council does not act on a proposal from the Commission or the High Representative, at least 72% of the Council members, representing Member States comprising at least 65% of the Union's population vote in favour.

As from 1 November 2014, in cases where not all members of the Council participate in voting pursuant to the Treaties, a qualified majority shall be achieved if the following conditions are met (Article 238(3) TFEU):

- (i) Where the Council acts on a proposal from the Commission or the High Representative, at least 55% of the Council members representing the participating Member States and comprising at least 65% of the population of these States vote in favour.

In addition, the blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed to be attained.

- (ii) Where the Council does not act on a proposal from the Commission or the High Representative, at least 72% of the Council members,

representing the participating Member States and comprising at least 65% of the population of these States vote in favour.

Annex III¹ to the CRP lays down the figures for the calculation of the total population of each Member State and of the EU. The Council approves the figures for the total population of each Member State every year on the basis of the annual data sent by the Member States to the Statistical Office of the European Union. These figures, as last amended, are listed in Annex III CRP.

(c) *Unanimity*

Article 238(4) TFEU provides that abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

In addition to cases in which the Council adopts an act amending a Commission proposal (Article 293(1) TFEU), unanimity is required by a number of Articles of the TFEU, such as those concerning , harmonisation of indirect taxation (Article 113), legislative harmonisation in fields other than those foreseen in Article 114 TFEU (Article 115), certain measures to protect the environment (Article 192(2)) and also certain measures in the fields of social policy (Articles 153(2) and 155(2)) and, in addition, of course, to the flexible clause in the form of Article 352.

C – Absence of the possibility to participate in the vote

There are cases in respect of which the Treaties stipulate that members of the Council may not participate in votes to adopt certain decisions. In these cases, Article 16 CRP provides that account is not taken of the votes by such members of the Council or of Coreper for the application of certain provisions of the CRP, which are listed in Annex IV thereto². Those provisions are:

1 Council Decision of 11 October 2004 amending the Council's Rules of Procedure (OJ L 319, 20.10.2004, p. 15).

2 It should be pointed out, however, that according to statement (g) re Article 16 and Annex IV, «The Council agrees that the provisions of Article 16 and Annex IV apply to acts for the adoption of which some members of the Council are, under the Treaties, not entitled to vote. However, application of Article 7 of the TEU is not covered by those provisions». The statement stipulates further that «In the first application of the provisions on enhanced cooperation, the Council will, in the light of experience acquired in other fields, consider any adaptations necessary to Article 16 of and Annex IV to these Rules of Procedure».

- (a) Article 1(3), second subparagraph (holding of a meeting in a place other than Brussels or Luxembourg);
- (b) Article 3(7) (inclusion on the agenda of an item other than those appearing on the provisional agenda);
- (c) Article 3(8) (maintaining as a «B» item on the agenda an «A» item which would otherwise have had to be withdrawn from the agenda);
- (d) Article 5(2), as regards the presence of the European Central Bank only (deliberation without the presence of the European Central Bank);
- (e) Article 9(2), first subparagraph, point (b), and second and third subparagraphs (making public the results of votes, explanations of votes, statements in the Council minutes and items in those minutes relating to cases other than those when the Council adopts non-legislative acts referred to in Article 8(1) CRP);
- (f) Article 11(1), second subparagraph (opening of a voting procedure);
- (g) Article 12(1) (use of the written procedure);
- (h) Article 14(1) (decision to deliberate and take decisions exceptionally on the basis of documents and drafts not drawn up in all the languages);
- (i) Article 17(2)(a) (non-publication in the Official Journal of an initiative presented by a Member State pursuant to Article 76 TFEU);
- (j) Article 17(2)(b) (non-publication in the Official Journal of certain directives, decisions, recommendations and opinions);
- (k) Article 17(5) (whether to publish in the Official Journal decisions taken by a body set up under an international agreement).

Furthermore, it is stipulated that a member of the Council or of Coreper may not make use of certain provisions of the CRP in connection with decisions on which, under the Treaties, that member may not participate in the vote. Those provisions are:

- (a) Article 3(8) (possibility of a member of the Council requesting withdrawal of an «A» item from the agenda);
- (b) Article 11(1), second subparagraph (possibility of a member of the Council requesting the opening of a voting procedure);
- (c) Article 11(3) (possibility of a member of the Council acting on behalf of another in a vote);

- (d) Article 14(2) (possibility for any member of the Council to oppose discussion if the texts of any proposed amendments are not drawn up in the language he or she has specified).

2. Quorum and delegation of voting rights (Articles 4 and 11 CRP)

A – Quorum

The quorum requirement must be read in the light of Article 16(2) TEU, which provides that the Council consists of a representative of each Member State at ministerial level who may commit the government of that Member State and cast its vote, and of Article 239 TFEU, which provides that, when a vote is taken, any member of the Council may act on behalf of not more than one other member (see B). It follows that the physical presence of a majority of the members of the Council is required to enable the Council to vote (at twenty seven members, the majority is fourteen).

The quorum must be checked when Council acts and decisions are to be adopted.

Of course, a quorum is vital both for the adoption of «A» items and for the adoption of an act or decision as a «B» item.

Responsibility for checking that there is a quorum for each instance of decision-making by the Council lies with the President, assisted by the General Secretariat.

The quorum rule, normally limited to the final stage of decision-making, i.e. voting at a Council meeting, also informs the practice of preparatory Council bodies, which generally suspend their discussions if fewer than fourteen delegations are present.

B – Delegation of voting rights

Article 11(3) CRP replicates Article 239 TFEU in stipulating that «Where a vote is taken, any member of the Council may also act on behalf of not more than one other member»¹. It follows that each Council member may act on behalf of one, and not more than one, other member.

Delegation of voting rights is not subject to any kind of formality and is done as a matter of course. Once there is a quorum, it can justifiably be assumed that an absent member of the Council will have delegated his voting rights to a fellow Council member. In such an event it is also assumed that the vote of an absent member has been cast by a fellow Council member.

Delegation of voting rights under Article 11(3) CRP is different from the representation of a Council member as provided for in Article 4 CRP. A member of the Council who is unable to attend a meeting may arrange to be represented. In practice, the position of the member in question is voiced by the Permanent Representative or Deputy Permanent Representative of the Member State concerned, even though, in formal terms, the power to represent the member does not include the right to vote, which may be exercised only by a Council member.

3. Written procedure (Article 12 CRP)

Recourse to the written procedure is prompted by grounds of urgency. Such grounds arise, for instance, where failure to adopt a Council act by a specific date would create a legal vacuum, or in general terms, where an act must be adopted by a certain deadline but a Council meeting has not been scheduled and cannot be arranged in good time.

The CRP make provision for two types of written procedure, namely the ordinary written procedure and the simplified written procedure (known as the «silence procedure»).

1 If a member of the Council or Coreper cannot take part in the voting, he or she may not act on behalf of another in a vote (Annex IV(2)(c)).

A – Ordinary written procedure

Under this procedure, two possibilities exist for deciding to use the written voting procedure:

- the decision to use the written procedure may be taken beforehand, unanimously, at a Council or Coreper meeting¹;
- failing that, and in specific circumstances, the Presidency may propose use of the written procedure by means of the written procedure itself. In that case, the decision to agree to use the written procedure forms part of the procedure itself: all the members of the Council must agree to use of the written procedure before expressing their substantive opinions.

In both cases, the Commission must also agree to use of the written procedure if it concerns a matter brought before the Council by the Commission.

Consequently, where a decision has already been taken within the Council or Coreper to adopt the written procedure, the only question put in writing to members of the Council will be whether they agree to adopt the act concerned, whether they object or whether they abstain. The conditions for adopting the act are met as soon as the number of positive replies received tallies with the number of votes required, in accordance with the voting rules applicable to its adoption.

However, if use of the written procedure has not been decided beforehand within the Council or Coreper, the members of the Council and, where appropriate, the Commission (if the procedure concerns a matter which it has brought before the Council), must reply to the first question concerning use of the written procedure and the members of the Council must express their positions on the second question concerning adoption of the act, which remains subject to the relevant voting rules.

In order to expedite the written procedures, replies must be addressed to the General Secretariat official responsible for the file. Replies must, of course, be written (email suffices). Oral replies are not sufficient in any case.

1 Note that according to the procedure provided for in Article 12(1) CRP (unanimous decision to use the written procedure), when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex IV, 1(g)).

If the deadline for replying has not already been agreed within the Council or Coreper, it is set in accordance with the urgency of the matter. The importance of meeting the deadline must be emphasised, above all if the act has to be adopted before a specific date. If replies are late, the General Secretariat will issue a reminder. If the delay continues, an assessment should be made on a case-by-case basis of whether the period after which the procedure must be concluded is reasonable and whether its outcome is considered as being negative.

Once the General Secretariat is certain that the conditions for adoption of the act have been met, it takes the necessary steps for signature, publication in the Official Journal, or notification of addressees.

It is the General Secretariat's responsibility to conclude written procedures and to note their results.

Here, all members of the Council and, where appropriate, the Commission are informed of any unilateral statements made by the other members of the Council or by the Commission. They must be granted a short period of time in which to decide if they wish to respond to those statements. Neither the conduct nor the completion of the written procedure for adoption of the act concerned is affected by such statements.

Acts adopted by the written procedure are regularly the subject of press releases drawn up individually by the General Secretariat's press office. On such occasions the outcome and explanation of the vote are made public, together with the statements, under the terms of Article 9 CRP (see Chapter II, point 6.C).

The General Secretariat produces a monthly summary of acts adopted under the written procedure, which also includes any statements and explanations of votes. The sections of the summary which relate to adoption of legislative acts must be made public.

In addition, the General Secretariat's archives preserve at least:

- the communication opening the written procedure, the document on which the procedure was based and any Council statements;
- the replies from members of the Council and, where appropriate, the Commission, together with any unilateral statements;
- the duly signed original of the act adopted by the Council.

B – Simplified written procedure («silence procedure»)

The simplified written procedure is to be understood as meaning a written procedure under which no response from a member of the Council by the time a set deadline expires implies acceptance of the adoption of the act in question. In contrast to the ordinary written procedure, Council members are not obliged to respond expressly. That is why the procedure has been dubbed the «silence procedure».

The silence procedure is launched at the initiative of the Presidency, although any member of the Council, and the Commission, is free to suggest using the procedure to the Presidency. Here, too, the Presidency sets the deadline for this procedure, depending on the urgency of the matter. The act to which the procedure refers is deemed to have been adopted when this deadline expires, except where a member of the Council objects. The Commission is not entitled to lodge an objection in this regard. If a member of the Council objects to the adoption of an act, the act must be included as an item on a Council agenda as usual.

The Council may act under the silence procedure in four instances:

- for the purpose of adopting the text of a reply to a written question or, as appropriate, to an oral question submitted to the Council by a Member of the European Parliament, after the draft reply has been examined by Coreper¹;
- for the purpose of appointing Members of the Economic and Social Committee and Members of the Committee of the Regions, and their alternates, after the draft decision has been examined by Coreper;
- for the purpose of deciding to consult other institutions or bodies, wherever such consultation is required by the Treaties;

1 Statement (e) re Article 12(2)(a), (b) and (c) CRP: «In accordance with the Council's regular practice, the time limit fixed will normally be three working days».

- for the purpose of implementing the common foreign and security policy through the «COREU» network¹ («COREU silence procedure»)²

As is the case with the ordinary written procedure, the General Secretariat establishes that the written procedures have been completed.

Should a Council member object, the relevant text is not adopted and should follow the normal preparatory procedure for Council acts, i.e. it is either forwarded to Coreper if it is an act which can be adopted by Coreper under Article 19(7) CRP or it is sent to Coreper/Council for those acts which need to be adopted by Council or it is agreed by silence procedure once the matter has been cleared in the relevant Council working party.

1 The Council conclusions of 12 June 1995 [doc. 7896/95] state that the «COREU» network allows for the exchange of information between Member States' Foreign Ministries and the Commission, and consultation on political analyses relating to multilateral questions or third-country situations. The network is reserved for questions covered only by the provisions of Title V, which covers neither institutional questions nor questions relating to the use of the Union budget to which other Treaty titles also apply. The network must therefore not be used to set out or deal with Union subjects or, consequently, for matters relating to the Union's external relations.

2 Statement (f) re Article 12(2)(d): «The Council would point out that the COREU network must be used in accordance with the Council conclusions of 12 June 1995 concerning the Council's working methods».

Chapter IV – Council acts and their form

The form of Council acts is governed by Article 15 and Annex VI CRP. The publication of these acts and their notification to addressees are governed, respectively, by Articles 17 and 18 CRP. Also of general relevance is Article 22 CRP, which provides that in order to assist the Council in its task of ensuring the drafting quality of the legislative acts which it adopts, the Legal Service is responsible for checking the drafting quality of proposals and draft acts at the appropriate stage, as well as for bringing drafting suggestions to the attention of the Council and its bodies, pursuant to the Interinstitutional Agreement of 22 December 1998.

1. Signing of acts (Article 15 CRP)

Like Article 297 TFEU, Article 15 CRP provides for the obligation to sign acts adopted by the Council, alone or together with the European Parliament in accordance with a legislative procedure.

Those acts must be signed by the President-in-Office of the Council at the time of their adoption and by the Secretary-General of the Council who may delegate his power to sign to Directors General of the General Secretariat.

In practice, the President of the Council signs the last page of the original text of the act (this is a multilingual page); signing takes place at the Council meeting which adopted the act concerned. The Secretary-General subsequently signs the same page of the text, the original of which is forwarded to the Council General Secretariat's archives, where it is kept in a safety vault.

Acts adopted under the ordinary legislative procedure, which must be signed jointly by the President of the European Parliament and the President of the Council, are signed either at the time of the joint press conference at which the adoption of the act is announced, or during a plenary part-session of the European Parliament.

Where a Council act has been adopted in fewer language versions than provided for under the language rules in force (Article 14 CRP), the other

language versions must be signed by the President of the Council meeting at which they were «validated», even if this occurs under a Presidency subsequent to that under which the act was formally adopted and signed. The reason for this is that the Council is a single entity and the principle of institutional continuity applies.

In such a case, the date of adoption of the act is the one of the first adoption in the fewer language versions. The dates of «validation» of the remaining language versions is not the date of adoption.

2. Title and form of regulations (Annex VI, Part A.1 CRP)

Annex VI, Part A specifies the various features which must be included in the title of regulations adopted by the Council, alone or together with the European Parliament under a legislative procedure:

- the word «Regulation»;
- the serial number;
- the date of adoption;
- the subject-matter.

Implementing regulations adopted by the Council in accordance with Article 291(2) TFEU shall also bear the words «Implementing Regulations» in their title.

These are features which must be included in the regulation and which serve to identify it; moreover, acts adopted by the Council, alone or under the ordinary legislative procedure with the European Parliament, also contain the name(s) of the institution(s) which adopted the act and an indication of the European Union or Euratom.

The structure of the preamble to regulations adopted by the Council, alone or under the ordinary legislative procedure with the European Parliament, is specified in Annex VI, Part A.1(b) to (f).

The preamble must contain:

- the words «The European Parliament and the Council of the European Union» or «The Council of the European Union»;
- a reference to the provisions under which the regulation is adopted, preceded by the words «Having regard to»;
- a citation containing a reference to proposals submitted and to opinions obtained;

- a statement of the reasons on which the regulation is based, preceded by the word «Whereas», the recitals being numbered;
- the words «have adopted this Regulation» or «has adopted this Regulation», followed by the enacting terms of the Regulation.

This structure incorporates the features provided for in Article 296 TFEU, and also fulfils the obligation laid down by those provisions to state the reasons on which acts are based.

With regard to citations, it should be noted that the legal bases of the regulation and the prior procedural acts are set out in that order and preceded by the words «Having regard to». It should also be noted that according to the Manual of Precedents for acts established within the Council of the European Union¹, proposals, opinions, consents etc. as well as consultations are indicated in the citations at the beginning of the preamble to an act, just after the reference to the legal bases, using the words «Having regard to» or «After consulting», while non-obligatory opinions and consultations are mentioned after the citations using formulas such as «Having regard to the opinion of» or «After consulting», etc.

The citations are followed by the recitals, which constitute the reasons, in the strict sense, for the regulation. They are introduced by the word «Whereas» and are also numbered.

1 Manual of Precedents for acts established within the Council of the European Union, version of 9 July 2010, page 78, 2. «The citations, which appear at the beginning of the preamble, serve to indicate ... the legal basis of the act;, ... proposals, initiatives, recommendations, requests, opinions, and consents which must be obtained as envisaged by the Treaties (procedural acts not provided for by the Treaties are mentioned in the last recital). ... In the case of legislative acts, citations are added regarding ... the transmission of a draft legislative act to national parliaments,... the procedure followed (ordinary or special legislative procedure). ... Care should be taken to ensure that the citation is a strict citation and does not contain material which should instead be included in the recitals. For example: ... if the repetition of the main content of the enacting terms, other than the legal bases, is necessary in order to understand the enacting terms, or in order to facilitate a judicial review of the validity of the act, that repetition must be done in the citations, ... some preliminary procedural steps (opinions of technical bodies, some non mandatory consultations) normally appear at the end of the preamble and are introduced by formulae such as «Having regard to the opinion of», «After consulting»»

3. Structure of regulations (Annex VI, Part A.2, 3 and 4 CRP)

The enacting terms of a regulation contain articles which may be grouped, in descending order, into parts, titles, chapters and sections (or into some of them); no other name, such as «rule» or «principle» is permitted to describe or subdivide the components of the enacting terms of the regulation.

To take account of Article 297 TFEU concerning the entry into force of regulations, it is provided that if the Council, alone or, in accordance with the ordinary legislative procedure, with the European Parliament, wants a regulation to enter into force on a date other than the 20th day following its publication in the Official Journal, it must stipulate the date in the last article. If appropriate, that article may contain details of the date on which the regulation enters into force.

The last article of a regulation is followed by a form of words reflecting the general scope and the binding character of the regulation as provided for in Article 288 TFEU. In certain cases a regulation is not applicable in all Member States (see Annex VI, Part A.4(a)(ii) CRP).

Next, the place and date of adoption of the regulation are indicated.

A Council regulation is normally «Done at Brussels» unless adopted in April, June and October, periods during which Council meetings are held in Luxembourg¹. Regulations adopted by the European Parliament and the Council under the ordinary legislative procedure give Brussels, Luxembourg or Strasbourg as the place of signature, as appropriate.

The name(s) of the signatory or signatories appear(s) at the end of the enacting terms: depending on the case, the name of the President of the European Parliament (on the left-hand side at the foot of the enacting terms) and that of the President of the Council (on the same line on the right-hand side), or else only the name of the President of the Council in office at the time of the regulation's adoption. This is the layout of the text of the regulation as it appears in the Official Journal. The name of the Secretary-General (who, pursuant to Article 15 CRP, also signs the text of the regulation adopted) does not appear in the Official Journal.

1 For the Council's venues of meetings, see Chapter II, point 2.B.

4. Title and form of other acts of secondary legislation (Annex VI, Part B CRP)

Annex VI, Part B, gives rules for the title, preamble and enacting terms of other Council acts: it accordingly provides that directives, decisions, recommendations and opinions should include in their titles, respectively, the word «Directive», «Decision», «Recommendation» or «Opinion».

Implementing Directives or Decisions adopted by the Council in accordance with Article 291(2) TFEU must also bear the words «Implementing Directive» or «Implementing Decision» in their title.

No mention is made, however, of the other features (serial number, date of adoption, subject-matter) which must be included in the titles of regulations. In practice, however, all Council acts include all these other features, which enable them to be identified. For the preamble and enacting terms, Annex VI, Part B, refers to the provisions of Part A, which applies *mutatis mutandis* and subject to the provisions of the TFEU on directives and decisions¹.

5. Form of Decisions referred to in Article 25 TEU (Annex II, Part C CRP)

Part C of Annex VI simply defines the title which must be attributed to decisions referred to in Article 25 TEU (CFSP).

The title of these Decisions must read: «Council Decision », a serial number (year/number/CFSP), the date of adoption and the subject-matter.

6. Atypical acts

Mention should also be made here of certain kinds of act (e.g. declarations, resolutions, conclusions) which are frequently used by the institutions although not provided for by the Treaties.

These acts – often referred to as «atypical acts» – do not in principle give rise to rights and cannot be relied upon in legal proceedings.

¹ For example: the wording concerning the general scope and binding character of the act referred to in Part A.4 appears only in regulations; in directives, the last article indicates the Member State(s) to which the directive is addressed.

Nevertheless, they may in certain cases be regarded as sources of European Union law and generate legal effects¹. Case law has confirmed that an institution may be bound by an act not provided for by the Treaties, if it has clearly indicated its intention to be bound by it².

Article 7(5) CRP thus provides that «where legislative proposals or initiatives are submitted to it the Council shall refrain from adopting acts which are not provided for by the Treaties, such as resolutions, conclusions or declarations other than those accompanying the adoption of the act and intended for entry in the Council minutes»³.

Consequently, atypical acts may be used only for strictly political undertakings or declarations by the Council outside its areas of legislative competence, in which case they are adopted by common accord.

It should be remembered that, pursuant to Article 241 TFEU, requests for the Commission to act in atypical acts or in statements in the minutes must be adopted by a simple majority.

The Council may nevertheless deem it appropriate to adopt an atypical act in order to express its views on a subject within the area of European Union competence, where there is no relevant legislative proposal. This is frequently the case, for example, in response to Commission green or white papers. In such cases, the voting rule is that conferred by the legal basis at the origin of Union competence in the field⁴.

1 Once an atypical act is used within the sphere of Union competence and is intended to produce legal effects, it may be adopted only in accordance with the rules laid down in the Treaties.

2 e.g. the Court's judgment of 4 October 1979, *France v United Kingdom*, Case 141/78, ECR 2923 (regarding resolutions).

3 See also the Presidency conclusions of the Helsinki European Council in December 1999: «The Council shall refrain from adopting resolutions, declarations, or any other non-standard form of act when dealing with legislative matters».

4 See, for example, the Court's judgment of 13 July 2004, *Commission v. Council*, Case C-27/04, ECR [2004] I-6649, paragraphs 94 – 97. The Court unequivocally confirms that the voting procedure for atypical acts must be in accordance with the appropriate legal basis.

It may also happen that while not intended to produce a binding effect, an atypical act is related to a binding act (e.g. a regulation, directive or decision). In such cases, the voting rules for the adoption of the atypical act must be the same as those used to adopt the binding act to which it is related, being dependent on that act in the same way that statements are.

7. Publication of acts in the Official Journal of the European Union (Article 17 CRP)

The Official Journal is divided into two series, «L» and «C».

There are four headings in the «L» series¹:

- heading L I: legislative acts (Regulations, directives, decisions adopted under the ordinary or special legislative procedure and budgets);
- heading L II: non-legislative acts (International agreements, as well as regulations, directives, decisions not adopted under a legislative procedure, recommendations, guidelines, rules of procedure, acts adopted by bodies created by international agreements ;
- heading L III: other acts (e.g. acts adopted within the European Economic Area);
- heading L IV: acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty.

The «C» series has five headings:

- heading C I: resolutions, recommendations and opinions;
- heading C II: information (e.g. interinstitutional agreements, joint declarations as well as information from European Union institutions and bodies);
- heading C III: preparatory acts (e.g. Member States' initiatives and compulsory opinions of European union institutions and bodies etc.);
- heading C IV: notices (e.g. notices from European Union institutions and bodies, Member States, third countries, notices concerning the European Economic Area, etc.);

1 For a comprehensive list, see document 6700/1/10 REV 1 of 8 June 2010.

- heading C V: announcements (e.g. administrative procedures, court proceedings, procedures relating to the implementation of the common commercial policy or competition policy, etc.).

Pursuant to Article 17 CRP, legislative acts adopted under the ordinary or special legislative procedure and non-legislative acts in the form of regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed must be published in the Official Journal by the Secretary-General. Publication in the Official Journal is a condition of the applicability of those acts and their entry into force may be subject thereto (Article 297(1) and second subparagraph of paragraph (2) TFEU).

Article 17 CRP stipulates that the following shall also be published in the Official Journal by the Secretary-General:

- positions at first reading adopted by the Council in accordance with the ordinary legislative procedure, and the reasons underlying those positions;
- initiatives presented to the Council in accordance with Article 76 TFEU for the adoption of a legislative act;
- international agreements concluded by the Union;
- international agreements concluded by the Union in matters concerning the common foreign and security policy, unless the Council decides otherwise on the grounds of Articles 4 and 9 of Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Reference must be made in the Official Journal to the entry into force of agreements published in the Official Journal.

Unless the Council or Coreper decides otherwise, the following are also published in the Official Journal by the Secretary-General:

- proposals from the Commission or initiatives by a quarter of the Member States presented to the Council pursuant to Article 76 TFEU in cases other than those referred to above (i.e. not Article 76 TFEU initiatives presented for the adoption of a legislative act);

- directives and decisions referred to in the third subparagraph of Article 297(2) TFEU (non-legislative directives not addressed to the Member States and decisions which specify to whom they are addressed), recommendations and opinions, with the exception of decisions referred to in Article 25 TEU.

Decisions concerning common foreign and security policy referred to in Article 25 TEU are published in the Official Journal by the Secretary-General, following a decision by the Council or Coreper acting unanimously, on a case-by-case basis.

The following are published in the Official Journal, following a decision by the Council or Coreper¹, on a case-by-case basis and taking account of possible publication of the basic act, by the Secretary-General:

- decisions implementing the decisions referred to in Article 25 TEU;
- decisions adopted in accordance with the first and second indents of Article 31(2) TEU;
- other Council acts, such as conclusions or resolutions.

Where an agreement concluded between the Union or the European Atomic Energy Community and one or more States or international organisations sets up a body vested with powers of decision, it is for the Council to decide whether decisions to be taken by that body should be published in the Official Journal (Article 17(5) CRP).

8. Notification and transmission of acts (Article 18 CRP)

The first two paragraphs of Article 18 instruct the Secretary-General, or a Director-General acting on his behalf, to give notification of or transmit a number of acts to the Member States.

Under paragraphs 1 and 2, the Secretary-General of the Council, or a Director-General acting on his behalf, notifies addressees of the following acts:

¹ For the purposes of any such decision, where members of the Council or of Coreper may not take part in the vote, account is not to be taken of votes by such members (Annex IV.1(k)).

- non-legislative acts in the form of directives not addressed to all Member States and decisions which specify to whom they are addressed;
- recommendations;
- decisions referred to in Articles 25 TEU.

Decisions referred to in Article 25 TEU and recommendations are notified only if not published in the Official Journal. However, directives and decisions containing a specific addressee are always notified to their addressees and take effect upon such notification. Where those acts are published in accordance with Article 17(2)(b) CRP, publication does not render them applicable to their addressees. Under Article 297(3) TFEU, their taking effect is conditional upon notification. Publication is thus for information purposes only.

Under the language rules (see Chapter II, point 7), documents which an institution sends to a Member State or to a person subject to its jurisdiction are drafted in a language of that State.

Under Article 18(3) CRP, the Secretary-General or a Director-General acting on his behalf, sends certified copies of the following acts to the Governments of the Member States and to the Commission:

- directives and decisions referred to in the third subparagraph of Article 297(2) TFEU (addressed to specific addressee);
- Council recommendations.

For all atypical acts, the practice is to inform the Member States and the Commission.

Pursuant to the right granted to him to delegate his powers, the Secretary-General, by Decision No 351/84 of 11 April 1984, authorised the Directors-General or, if prevented from attending to their duties, the Directors in order of seniority in the Directorate-General concerned, to sign on his behalf the notifications and communications of Council acts provided for in Article 18 CRP according to the fields of competence of the respective Directorates-General.

Chapter V – Other provisions

1. Security (Article 24 CRP)

Article 24 CRP provides that the rules on security are to be adopted by the Council acting by a qualified majority. On the basis of that provision and of Article 240 TFEU (ex Article 207(3) TEC), the Council adopted security regulations¹ which lay down the basic principles and minimum standards of security which the Council, its General Secretariat, Member States and the decentralised agencies of the European Union must respect in order to protect the European Union's classified information.

2. Depositary of agreements (Article 25 CRP)

As permitted by Articles 77 and 78 of the Vienna Convention on the Law of Treaties, the Secretary-General of the Council may be designated as the depositary of agreements concluded by the Union or the European Atomic Energy Community (Euratom) and one or more States or international organisations;

Acts of ratification, acceptance or approval of those agreements are deposited at the address of the Council (first paragraph of Article 25 CRP). In such instances the Secretary-General also ensures that the dates of entry into force of such agreements are published in the Official Journal (second paragraph of Article 25 CRP).

The duties of a depositary of international agreements are laid down both by general texts (e.g. United Nations Charter and Vienna Convention on the Law of Treaties) and by the texts of specific agreements designating depositaries. The latter are either one of the Member States parties to the agreement concerned or the Secretary-General of an international organisation party

1 Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations, OJ L 101, 11.4.2001, p. 1.

to the agreement or under the aegis of which the agreement was signed and concluded.

At present, within the Council General Secretariat, the duties of the depositary of agreements are performed mainly by the Agreements Office set up on 15 June 1978, which forms part of the General Coordination Department. Four types of duties are carried out¹:

- that of depositary strictly speaking, i.e. involving the production of the texts of acts to be concluded and certified copies and their forwarding to the parties concerned; the centralisation of all information concerning acts which have been signed (ratifications, notifications, acts of accession, etc.) and their forwarding to the parties concerned; and registration of all such information;
- duties connected with protocol (in particular at the time of signing);
- linguistic editing of the versions of agreements in non-Community languages;
- printing of the texts.

3. Representation of the Council before the European Parliament (Article 26 CRP)

The first sentence of Article 26(1) CRP provides that the Council shall be represented by the Presidency before the European Parliament or, with the Presidency's agreement, by a member of the pre-established group of three Member States referred to in Article 1(4) CRP, by the following Presidency or by the Secretary-General of the Council. However, if the Presidency considers it desirable, it may also instruct senior officials of the General Secretariat to represent the Council before the European Parliament committees. The instructions do not need to be formal; a clear and precise statement of the Presidency's intention is sufficient.

1 Some of the depositary's duties are performed by other departments of the General Secretariat.

With respect to the Foreign Affairs Council, representation before the European Parliament or its committees must be carried out by the High Representative unless he asks to be replaced by the member of that Council representing the Member State holding the Council Presidency. Here too, if the High Representative considers it desirable, he may also instruct senior officials of the European External Action Service, or where appropriate, of the General Secretariat to represent the Foreign Affairs Council before the European Parliament committees.

The Secretary-General has issued instructions within the General Secretariat for implementation of this provision. When representing the Council, an official of the General Secretariat must therefore avoid entering into any commitment whatsoever on behalf of the Presidency or the Council unless he has clear and explicit instructions to that effect.

In order to comply with Article 26 CRP, the Council must therefore in principle be represented by the Secretary-General; otherwise the Council is represented before committees only by an official so designated by the Secretary-General (a Director-General or, exceptionally, a Director). If the Presidency requests an official directly, the latter informs the Secretary-General as soon as possible through his immediate superior in order to obtain the Secretary-General authorisation.

The Interinstitutional Relations Directorate must be informed beforehand of any appearance before the Parliament in order to ensure the best possible coordination and to enable the appearance to be prepared.

When a temporary Committee of Inquiry is set up by the European Parliament under Article 226 TFEU, the Council may designate an official of the General Secretariat to appear before it on its behalf (Article 3(3) of the Decision of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry¹). The official speaks only as instructed by the Council².

1 OJ L 113, 19.5.1995, p. 1.

2 See for example the designation of an official of the General Secretariat in September 1996 for the temporary Committee of Inquiry into BSE («mad cow disease»).

4. Correspondence (Article 28 CRP)

Article 28 CRP provides that correspondence to the Council is to be sent to the President at the Council's address. Correspondence addressed to the Presidency of the Council must be forwarded to all members of the Council.

The Council's address is:

Council of the European Union
Rue de la Loi/Wetstraat 175
1048 BRUSSELS (Belgium)

The Council's internet address is:

www.consilium.europa.eu
e-mail: public.info@consilium.europa.eu

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

COUNCIL DECISION

of 1 December 2009

adopting the Council's Rules of Procedure

(2009/937/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 240(3) thereof,

Whereas:

- (1) The Treaty of Lisbon brings several modifications to the functioning of the Council and of its Presidency, to the Council structure, as well as to the different types of Union legal acts and to the process for adopting acts, notably by distinguishing between legislative and non-legislative acts.
- (2) It is therefore necessary to replace the Rules of Procedure adopted on 15 September 2006⁽¹⁾ by Rules of Procedures which comprise the modifications necessary for the implementation of the Treaty of Lisbon,

HAS ADOPTED THIS DECISION:

Article 1

The Council's Rules of Procedure of 15 September 2006 shall be replaced by the provisions in the Annex.

By derogation from Article 2(2) of Annex III to the Council's Rules of Procedure, the population figures which are inserted by this Decision in Article 1 of that Annex shall apply for the period from 1 December 2009 to 31 December 2010.

Article 2

In accordance with the Protocol on the role of national Parliaments in the European Union, Article 3(3) of the Council's Rules of Procedure as adopted by this Decision shall apply to draft legislative acts adopted and forwarded as from the day on which the Treaty of Lisbon comes into force.

Article 3

This Decision shall take effect of the day of its adoption.

It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 1 December 2009.

For the Council

The President

B. ASK

⁽¹⁾ Council Decision 2006/683/EC, Euratom of 15 September 2006 adopting the Council's Rules of Procedure (OJ L 285, 16.10.2006, p. 47).

ANNEX

RULES OF PROCEDURE OF THE COUNCIL

Article 1

General provisions, notice and venue of meetings

1. The Council shall meet when convened by its President on his or her own initiative or at the request of one of its members or of the Commission ⁽¹⁾.

2. Seven months before the beginning of the six-month period concerned, for each Council configuration, and after appropriate consultations, the Presidency shall make known the dates which it envisages for meetings that the Council will have to hold in order to complete its legislative work or take operational decisions. Those dates shall be set out in a single document applying to all Council configurations.

3. The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg ⁽²⁾.

In exceptional circumstances and for duly substantiated reasons, the Council or the Committee of Permanent Representatives of the governments of the Member States (hereinafter referred to as Coreper), acting unanimously, may decide that a Council meeting will be held elsewhere.

4. ⁽³⁾ The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. The members of the team may decide alternative arrangements among themselves.

5. The decisions adopted by the Council or Coreper pursuant to these Rules of Procedure shall be adopted by a simple majority, unless these Rules provide for other voting arrangements.

Unless otherwise specified, references in these Rules of Procedure to the Presidency or the President shall apply to any person chairing one of the Council configurations or, as appropriate, one of its preparatory bodies.

Article 2

Configurations of the Council, role of the General Affairs configuration and the Foreign Affairs configuration and programming

1. The Council shall meet in different configurations according to the subject-matter dealt with. The list of Council configurations, other than the General Affairs and Foreign Affairs configurations, shall be adopted by the European Council acting by a qualified majority ⁽⁴⁾. The list of Council configurations is set out in Annex 1.

⁽¹⁾ This paragraph reproduces Article 237 of the Treaty on the functioning of the European Union (hereinafter referred to as the TFEU).

⁽²⁾ This paragraph reproduces point (b) of the sole Article of the Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union.

⁽³⁾ This paragraph reproduces Article 1 of the European Council Decision of 1 December 2009 on the exercise of the Presidency of the Council (OJ L 315, 2.12.2009, p. 50).

⁽⁴⁾ These two sentences are taken, with some adjustments, from the first subparagraph of Article 16(6) of the Treaty on European Union (hereinafter referred to as the TEU) and point (a) of Article 216 of the TFEU.

2. The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission ⁽¹⁾. It shall be responsible for overall coordination of policies, institutional and administrative questions, horizontal dossiers which affect several of the European Union's policies, such as the multiannual financial framework and enlargement, and any dossier entrusted to it by the European Council, having regard to operating rules for the Economic and Monetary Union.

3. The arrangements for the preparation of European Council meetings are provided for in Article 3 of the Rules of Procedure of the European Council, as follows:

(a) In order to ensure the preparation provided for in Article 2(2) of the Rules of Procedure of the European Council, at least four weeks before each ordinary meeting of the European Council as referred to in Article 1(1) of the Rules of Procedure of the European Council, the President of the European Council, in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission, shall submit an annotated draft agenda to the General Affairs Council.

Contributions to the proceedings of the European Council by other Council configurations shall be forwarded to the General Affairs Council at the latest two weeks before the meeting of the European Council.

The President of the European Council, in close cooperation as referred to in the first subparagraph, shall prepare draft guidelines for the European Council conclusions and, as appropriate, draft conclusions and draft decisions of the European Council, which shall be discussed in the General Affairs Council.

A final meeting of the General Affairs Council shall be held within the five days preceding the meeting of the European Council. In the light of that final discussion, the President of the European Council shall draw up the provisional agenda.

(b) Except for imperative and unforeseeable reasons linked, for example, to current international events, no other configuration of the Council or preparatory body may, between the session of the General Affairs Council at the end of which the provisional agenda for the European Council is drawn up and the European Council meeting, discuss any subject submitted to the European Council.

(c) The European Council shall adopt its agenda at the beginning of its meeting.

As a rule, issues entered on the agenda should have been examined beforehand, in accordance with the provisions of this paragraph.

4. The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission in accordance with paragraph 6 ⁽²⁾.

5. The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent ⁽³⁾. It shall be responsible for the whole of the European Union's external action, namely common foreign and security policy, common security and defence policy, common commercial policy, development cooperation and humanitarian aid.

⁽¹⁾ These two sentences reproduce the second subparagraph of Article 16(6) of the TEU.

⁽²⁾ This paragraph reproduces the first sentence of Article 3 of the European Council Decision of 1 December 2009 on the exercise of the Presidency of the Council.

⁽³⁾ This sentence reproduces the third subparagraph of Article 16(6) of the TEU.

The Foreign Affairs Council shall be chaired by the High Representative of the Union for Foreign Affairs and Security Policy, who may, where necessary, ask to be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council ⁽¹⁾.

6. Every 18 months, the pre-established group of three Member States holding the Presidency of the Council for that period, in accordance with Article 1(4), shall prepare a draft programme of Council activities for that period. The draft shall be prepared with the President of the Foreign Affairs Council with regard to that configuration's activities during that period. The draft programme shall be prepared in close cooperation with the Commission and the President of the European Council, and after appropriate consultations. It shall be presented in a single document no later than one month before the relevant period, with a view to its endorsement by the General Affairs Council ⁽²⁾.

7. The Presidency which is to hold office in the relevant period shall establish, for each Council configuration, and after appropriate consultations, draft agendas for Council meetings scheduled for the next six-month period, showing the legislative work and operational decisions envisaged. These draft agendas shall be established at the latest one week before the beginning of the relevant six-month period, on the basis of the Council's 18-month programme and after consulting the Commission. They shall be set out in a single document applying to all Council configurations. Where necessary, extra Council meetings may be provided for, in addition to those previously planned.

If during a six-month period any of the meetings planned during that period proves to be no longer warranted, the Presidency shall not convene it.

Article 3 ⁽³⁾

Agenda

1. Taking into account the Council's 18-month programme, the President shall draw up the provisional agenda for each meeting. The agenda shall be sent to the other members of the Council and to the Commission at least 14 days before the beginning of the meeting. It shall be forwarded to Member States' national Parliaments at the same time.

2. The provisional agenda shall contain the items in respect of which a request for inclusion on the agenda, together with any documents relating thereto, has been received by the General Secretariat from a member of the Council or from the Commission at least 16 days before the beginning of that meeting. The provisional agenda shall also indicate by way of an asterisk the items on which the Presidency, a member of the Council or the Commission may request a vote. Such an indication shall be made once all the procedural requirements provided for by the Treaties have been complied with.

⁽¹⁾ See statement (a) set out below.

(a) Re Article 2(5), second subparagraph:

'When the Foreign Affairs Council is convened to discuss common commercial policy issues, its President will ask to be replaced by the six-monthly Presidency as provided for in Article 2(5), second subparagraph.'

⁽²⁾ See statement (b) set out below:

(b) Re Article 2(6):

'The 18-month programme will include a general introductory section setting the programme in the context of the European Union's longer term strategic orientations. On this section, the three Presidencies in charge of preparing the draft 18-month programme will consult with the three subsequent Presidencies, as part of the 'appropriate consultations' referred to in the third sentence of paragraph 6. The draft 18-month programme should also have regard, *inter alia*, to relevant points arising from the dialogue on the political priorities for the year, conducted at the Commission's initiative.'

⁽³⁾ See statements (c) and (d) set out below:

(c) Re Article 3(1) and (2):

'The President will endeavour to ensure that, in principle, the provisional agenda for each meeting of the Council dealing with implementation of the Title of the TFEU relating to the area of freedom, security and justice and any documents relating to the items involved reach members of the Council at least 21 days before the beginning of the meeting.'

(d) Re Articles 1 and 3:

'Without prejudice to Article 10(2) of the TEU, which specifies that an extraordinary Council meeting may be convened at very short notice in cases requiring a rapid decision, the Council is aware of the need for matters relating to the common foreign and security policy to be dealt with swiftly and efficiently. The arrangements in Article 3 shall not prevent this need from being met.'

3. In cases in which the eight-week period provided for in the Protocol on the role of national Parliaments in the European Union and the Protocol on the application of the principles of subsidiarity and proportionality is applicable, items relating to the adoption of a legislative act or a position at first reading in the ordinary legislative procedure shall not be placed on the provisional agenda for a decision until that eight-week period has elapsed.

The Council may derogate from the eight-week period referred to in the first subparagraph where the entry of an item is subject to the exception on grounds of urgency provided for in Article 4 of the Protocol on the role of national Parliaments in the European Union. The Council shall decide in accordance with the voting rule applicable for the adoption of the act or position concerned.

Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position⁽¹⁾.

4. Only items in respect of which the documents have been sent to the members of the Council and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.

5. The General Secretariat shall transmit to the members of the Council and to the Commission requests for the inclusion of items in the agenda and documents in respect of which the time limits specified above were not respected.

If, by the end of the week preceding the week prior to a Council meeting, Coreper has not completed its examination of draft legislative acts, the Presidency shall, unless considerations of urgency require otherwise and without prejudice to paragraph 3, remove them from the provisional agenda.

6. The provisional agenda shall be divided into two parts, dealing respectively with deliberations on legislative acts and non-legislative activities. The first part shall be entitled 'Legislative deliberations' and the second 'Non-legislative activities'.

The items appearing in each part of the provisional agenda shall be divided into A items and B items. Items for which approval by the Council is possible without discussion shall be entered as A items, but this does not exclude the possibility of any member of the Council or of the Commission expressing an opinion at the time of the approval of these items and having statements included in the minutes.

7. The agenda shall be adopted by the Council at the beginning of each meeting. The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Council. Items entered in this way may be put to the vote if all the procedural requirements provided for by the Treaties have been complied with.

8. However, an 'A' item shall be withdrawn from the agenda, unless the Council decides otherwise, if a position on an 'A' item might lead to further discussion thereof or if a member of the Council or the Commission so requests.

9. Any request for the inclusion of an 'Any other business' item shall be accompanied by an explanatory document.

Article 4

Representation of a Council member unable to attend

Subject to the provisions of Article 11 on the delegation of voting rights, a member of the Council who is prevented from attending a meeting may arrange to be represented.

⁽¹⁾ This subparagraph reproduces the last sentence of Article 4 of the Protocol on the role of national Parliaments in the European Union.

Article 5

Meetings

1. The Council shall meet in public when it deliberates and votes on a draft legislative act⁽¹⁾. In other cases, meetings of the Council shall not be public except in the cases referred to in Article 8.
2. The Commission shall be invited to take part in meetings of the Council. The same applies to the European Central Bank in cases where it exercises its right of initiative. The Council may, however, decide to deliberate without the presence of the Commission or of the European Central Bank.
3. The members of the Council and of the Commission may be accompanied by officials who assist them. The names and functions of those officials shall be notified in advance to the General Secretariat. The maximum number of persons per delegation in the Council meeting room at the same time, including members of the Council, may be laid down by the Council.
4. Admission to meetings of the Council shall be subject to the production of a pass delivered by the General Secretariat.

Article 6

Professional secrecy and production of documents in legal proceedings

1. Without prejudice to Articles 7, 8 and 9 and to provisions on public access to documents, the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise.
2. The Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public in accordance with the provisions on public access to documents.

Article 7

Legislative procedure and openness

1. The Council shall meet in public when it deliberates and votes on a draft legislative act. To that end, its agenda shall include a part entitled 'Legislative deliberations'.
2. Documents submitted to the Council which are listed under an item on the 'Legislative deliberations' part of its agenda shall be made public, and likewise those sections of the Council minutes which relate to that part of the agenda.
3. The opening to the public of Council meetings relating to the 'Legislative deliberations' part of its agenda shall be made through public transmission by audiovisual means, notably in an overflow room and through broadcasting in all official languages of the institutions of the European Union using video-streaming. A recorded version shall remain available for at least one month on the Council's Internet site. The outcome of voting shall be indicated by visual means.

The General Secretariat shall take steps to inform the public in advance of the dates and approximate time on which such audiovisual transmissions will take place and shall take all practical measures to ensure the proper implementation of this Article.

4. The results of votes and explanations of votes by members of the Council or their representatives on the Conciliation Committee provided for under the ordinary legislative procedure, as well as the statements in the Council minutes and the items in those minutes relating to the Conciliation Committee meeting shall be made public.
5. Where legislative proposals or initiatives are submitted to it the Council shall refrain from adopting acts which are not provided for by the Treaties, such as resolutions, conclusions or declarations other than those accompanying the adoption of the act and intended for entry in the Council minutes.

⁽¹⁾ This sentence reproduces the first sentence of Article 10(8) of the TEU.

*Article 8***Other cases of Council deliberations open to the public and public debates**

1. Where a non-legislative proposal is submitted to the Council relating to the adoption of rules which are legally binding in or for the Member States, by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, with the exception of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions), the Council's first deliberation on important new proposals shall be open to the public. The Presidency shall identify which new proposals are important and the Council or Coreper may decide otherwise, whenever appropriate.

The Presidency may decide, on a case-by-case basis, that the subsequent Council deliberations on one of the proposals referred to in the first subparagraph shall be open to the public, unless the Council or Coreper decides otherwise.

2. On a decision taken by the Council or by Coreper, acting by a qualified majority, the Council shall hold public debates on important issues affecting the interests of the European Union and its citizens.

It shall be for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such debates, taking into account the importance of the matter and its interest to citizens.

3. The General Affairs Council shall hold a public policy debate on the Council's 18-month programme. Policy debates in other Council configurations on their priorities shall also be held in public. The Commission's presentation of its five-year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debate in the Council, shall be public.

4. As from the sending of the provisional agenda pursuant to Article 3:

- (a) those items on the agenda of the Council which are open to the public in accordance with paragraph 1 shall be marked with the words 'public deliberation';
- (b) those items on the agenda of the Council which are open to the public in accordance with paragraphs 2 and 3 shall be marked with the words 'public debate'.

The opening to the public of Council deliberations and public debates in accordance with this Article shall be made through public transmission as described in Article 7(3).

*Article 9***Making votes, explanations of votes and minutes public in other cases**

1. Where the Council adopts non-legislative acts referred to in Article 8(1), the results of votes and explanations of votes by Council members, as well as the statements in the Council minutes and the items in those minutes relating to the adoption of such acts, shall be made public.

2. Moreover, the results of votes shall be made public:

- (a) when the Council acts pursuant to Title V of the TEU, by a unanimous Council or Coreper decision taken at the request of one of their members;
- (b) in other cases, by Council or Coreper decision taken at the request of one of their members.

When the result of a vote in the Council is made public in accordance with points (a) and (b) of the first subparagraph, the explanations of votes made when the vote was taken shall also be made public at the request of the Council members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Council.

Statements entered in the Council minutes and items in those minutes relating to the adoption of the acts referred to in points (a) and (b) of the first subparagraph shall be made public by Council or Coreper decision taken at the request of one of their members.

3. Except in cases where Council deliberations are open to the public in accordance with Articles 7 and 8, votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts.

Article 10

Public access to Council documents

The specific provisions regarding public access to Council documents are set out in Annex II.

Article 11

Voting arrangements and quorum

1. The Council shall vote on the initiative of its President.

The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the Council or of the Commission, provided that a majority of the Council's members so decides.

2. The members of the Council shall vote in the order of the Member States laid down in the list of successive presidencies, beginning with the member who, according to that order, follows the member holding the office of President.

3. Where a vote is taken, any member of the Council may also act on behalf of not more than one other member⁽¹⁾.

4. The presence of a majority of the members of the Council who are, under the Treaties, entitled to vote is required to enable the Council to vote. When the vote is taken, the President, assisted by the General Secretariat, shall check that there is a quorum.

5. Until 31 October 2014, when a decision is to be adopted by the Council by a qualified majority, and if a member of the Council so requests, it shall be verified that the Member States constituting the qualified majority represent at least 62 % of the total population of the European Union calculated according to the population figures set out in Article 1 of Annex III. This paragraph shall also apply between 1 November 2014 and 31 March 2017 when a member of the Council so requests in accordance with Article 3(2) of the Protocol on transitional provisions.

Article 12

Ordinary written procedure and silence procedure

1. Acts of the Council on an urgent matter may be adopted by a written vote where the Council or Coreper unanimously decides to use that procedure. In special circumstances, the President may also propose the use of that procedure; in such a case, written votes may be used where all members of the Council agree to that procedure.

Agreement by the Commission to the use of the written procedure shall be required where the written vote is on a matter which the Commission has brought before the Council.

A summary of acts adopted by the written procedure shall be drawn up every month by the General Secretariat. That summary shall contain any statements to be entered in the Council minutes. The sections of the summary which relate to adoption of legislative acts shall be made public.

⁽¹⁾ This paragraph reproduces Article 239 of the TEU.

2. On the initiative of the Presidency, the Council may act by means of a simplified written procedure called 'silence procedure':

- (a) for the purpose of adopting the text of a reply to a written question or, as appropriate, to an oral question submitted to the Council by a Member of the European Parliament, after the draft reply has been examined by Coreper⁽¹⁾;
- (b) for the purpose of appointing Members, and their alternates, of the Economic and Social Committee and of the Committee of the Regions, after the draft decision has been examined by Coreper;
- (c) for the purpose of deciding to consult other institutions, bodies, offices or agencies wherever such consultation is required by the Treaties;
- (d) for the purpose of implementing the common foreign and security policy through the 'COREU' network ('COREU silence procedure')⁽²⁾.

In that case, the relevant text shall be deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects.

3. The General Secretariat shall establish that the written procedures have been completed.

Article 13

Minutes

1. Minutes of each meeting shall be drawn up and, when approved, shall be signed by the Secretary-General. He or she may delegate his or her power to sign to Directors-General of the General Secretariat.

The minutes shall as a general rule contain in respect of each item on the agenda:

- a reference to the documents submitted to the Council,
- the decisions taken or the conclusions reached by the Council,
- the statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

2. The draft minutes shall be drawn up by the General Secretariat within 15 days and submitted to the Council or to Coreper for approval.

3. Prior to such approval any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda. These requests may be made in Coreper.

4. The minutes of the 'Legislative deliberations' part of meetings of the Council, once approved, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

⁽¹⁾ See statement (c) set out below:

(c) Re Article 12(2)(a), (b) and (c):

'In accordance with the Council's regular practice, the time limit fixed will normally be three working days.'

⁽²⁾ See statement (f) set out below:

(f) Re Article 12(2)(d):

'The Council would point out that the COREU network must be used in accordance with the Council conclusions of 12 June 1995 (doc. 7896/95) concerning the Council's working methods.'

Article 14

Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force

1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.
2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.

Article 15

Signing of acts

The text of the acts adopted by the Council and that of the acts adopted by the European Parliament and the Council in accordance with the ordinary legislative procedure shall be signed by the President in office at the time of their adoption and by the Secretary-General. The Secretary-General may delegate his or her power to sign to Directors-General of the General Secretariat.

Article 16 (1)

Absence of the possibility to participate in the vote

For the purposes of application of these Rules of Procedure, due account will be taken, in accordance with Annex IV, of cases in which, under the Treaties, one or more members of the Council may not participate in the vote.

Article 17

Publication of acts in the Official Journal

1. The following shall be published in the *Official Journal of the European Union* (hereinafter referred to as the 'Official Journal') by the Secretary-General:
 - (a) the acts referred to in paragraph 1 and the second subparagraph of paragraph 2 of Article 297 of the TFEU;
 - (b) the positions at first reading adopted by the Council in accordance with the ordinary legislative procedure, and the reasons underlying those positions;
 - (c) the initiatives presented to the Council in accordance with Article 76 of the TFEU for the adoption of a legislative act;
 - (d) international agreements concluded by the Union.

Reference shall be made in the Official Journal to the entry into force of such agreements:

- (e) international agreements concluded by the Union in matters concerning the common foreign and security policy, unless the Council decides otherwise on the grounds of Articles 4 and 9 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (7).

(7) See statement (j) set out below:

(j) Re Article 16 and Annex IV:

The Council agrees that the provisions of Article 16 and Annex IV apply to acts for the adoption of which some members of the Council are, under the Treaties, not entitled to vote. However, application of Article 7 of the TEU is not covered by those provisions. In the first application of the provisions on enhanced cooperation, the Council will, in the light of experience acquired in other fields, consider any adaptations necessary to Article 16 of and Annex IV to these Rules of Procedure.

(7) OJ L 145, 31.5.2001, p. 43.

Reference shall be made in the Official Journal to the entry into force of agreements published in the Official Journal.

2. Unless the Council or Coreper decides otherwise, the following shall be published in the Official Journal by the Secretary-General:

(a) initiatives presented to the Council in accordance with Article 76 of the TFEU in cases other than those referred to in paragraph 1(c);

(b) directives and decisions referred to in the third subparagraph of Article 297(2) of the TFEU, recommendations and opinions, with the exception of the decisions referred to in paragraph 3 of this Article.

3. The Council or Coreper shall decide unanimously, on a case-by-case basis, whether there should be publication in the Official Journal by the Secretary-General of the decisions referred to in Article 25 of the TEU.

4. The Council or Coreper shall decide, on a case-by-case basis and taking account of possible publication of the basic act, whether the following should be published in the Official Journal by the Secretary-General:

(a) the decisions implementing the decisions referred to in Article 25 of the TEU;

(b) the decisions adopted in accordance with the first and second indents of Article 31(2) of the TEU;

(c) other Council acts, such as conclusions or resolutions.

5. Where an agreement concluded between the Union or the European Atomic Energy Community and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

Article 18

Notification of acts

1. Directives and decisions referred to in the third subparagraph of Article 297(2) of the TFEU shall be notified to their addressees by the Secretary-General or a Director-General acting on his or her behalf.

2. When they are not published in the Official Journal, the following acts shall be notified to their addressees by the Secretary-General or a Director-General acting on his or her behalf:

(a) recommendations;

(b) the decisions referred to in Article 25 of the TEU;

3. The Secretary-General or a Director-General acting on his or her behalf shall send to the Governments of the Member States and to the Commission certified copies of the Council directives and decisions referred to in the third subparagraph of Article 297(2) of the TFEU and of Council recommendations.

Article 19⁽¹⁾**Coreper, committees and working parties**

1. Coreper shall be responsible for preparing the work of all the meetings of the Council and for carrying out the tasks assigned to it by the Council. It shall in any case⁽¹⁾ ensure consistency of the European Union's policies and actions and see to it that the following principles and rules are observed:

- (a) the principles of legality, subsidiarity, proportionality and providing reasons for acts;
- (b) rules establishing the powers of Union institutions, bodies, offices and agencies;
- (c) budgetary provisions;
- (d) rules on procedure, transparency and the quality of drafting.

2. All items on the agenda for a Council meeting shall be examined in advance by Coreper unless the latter decides otherwise. Coreper shall endeavour to reach agreement at its level to be submitted to the Council for adoption. It shall ensure adequate presentation of the dossiers to the Council and, where appropriate, shall present guidelines, options or suggested solutions. In the event of an emergency, the Council, acting unanimously, may decide to settle the matter without prior examination.

3. Committees or working parties may be set up by, or with the approval of, Coreper with a view to carrying out certain preparatory work or studies defined in advance.

The General Secretariat shall update and make public the list of preparatory bodies. Only the committees and working parties on this list may meet as Council preparatory bodies.

4. Coreper shall be chaired, depending on the items on the agenda, by the Permanent Representative or the Deputy Permanent Representative of the Member State which holds the Presidency of the General Affairs Council.

The Political and Security Committee shall be chaired by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall be chaired by a delegate of the Member State chairing the relevant configuration, unless the Council, acting by a qualified majority, decides otherwise. The list referred to in the second subparagraph of paragraph 3 shall also identify those preparatory bodies for which the Council has made other chairing arrangements, in accordance with Article 4 of the European Council Decision on the exercise of the Presidency of the Council.

5. For the preparation of meetings of Council configurations meeting once every six months, where held during the first half of this period, the meetings of committees other than Coreper and those of working parties held during the preceding six months shall be chaired by a delegate of the Member State whose turn it is to chair the said Council meetings.

⁽¹⁾ These provisions are without prejudice to the role of the Economic and Financial Committee as laid down in Article 134 of the TFEU and to existing Council Decisions thereon (OJ L 358, 31.12.1998, p. 109 and OJ L 5, 1.1.1999, p. 71).

⁽²⁾ See statement (b) set out below.

(b) *Re Article 19(1):*

'Coreper will ensure consistency and observance of the principles set out in paragraph 1, in particular for matters where substantive preparation is undertaken in other fora.'

6. Except where other chairing arrangements apply, when a dossier will essentially be dealt with during a six-month period, a delegate of the Member State holding the Presidency during that six-month period may, during the preceding six-month period, chair meetings of committees, other than Coreper, and working parties when they discuss that dossier. The practical implementation of this paragraph shall be the subject of an agreement between the two Presidencies concerned.

In the specific case of the examination of the budget of the Union for a given financial year, meetings of Council preparatory bodies, other than Coreper, dealing with the preparation of Council agenda items on the examination of the budget shall be chaired by a delegate of the Member State which will hold the Council Presidency during the second six-month period of the year prior to the financial year in question. The same shall apply, with the agreement of the other Presidency, to the chairing of Council meetings at the time when the said budget items are discussed. The Presidencies concerned will consult on the practical arrangements.

7. In accordance with the relevant provisions referred to below, Coreper may adopt the following procedural decisions, provided that the items relating thereto have been included on its provisional agenda at least three working days before the meeting. Unanimity on the part of Coreper shall be required for any derogation from that period⁽¹⁾:

- (a) decision to hold a Council meeting in a place other than Brussels or Luxembourg (Article 1(3));
- (b) authorisation to produce a copy of or an extract from a Council document for use in legal proceedings (Article 6(2));
- (c) decision to hold a public debate in the Council or not to hold in public a given Council deliberation (Article 8(1), (2) and (3));
- (d) decision to make the results of votes and the statements entered in the Council minutes public in the cases laid down in Article 9(2);
- (e) decision to use the written procedure (Article 12(1));
- (f) approval or amendment of Council minutes (Article 13(2) and (3));
- (g) decision to publish or not to publish a text or an act in the Official Journal (Article 17(2), (3) and (4));
- (h) decision to consult an institution or body wherever such consultation is not required by the Treaties;
- (i) decision setting or extending a time limit for consultation of an institution or body;
- (j) decision to extend the periods laid down in Article 294(14) of the TFEU;
- (k) approval of the wording of a letter to be sent to an institution or body.

⁽¹⁾ See statement (i) set out below.

(i) *Re Article 19(7):*

If a member of the Council considers that a draft procedural decision submitted to Coreper for adoption in accordance with Article 19(7) raises a question of substance, the draft decision will be submitted to the Council.

Article 20

The Presidency and the smooth conduct of discussions

1. The Presidency shall be responsible for the application of these Rules of Procedure and for ensuring that discussions are conducted smoothly. In particular, the Presidency shall ensure that the provisions of Annex V concerning the Council's working methods are complied with.

To ensure that discussions are conducted properly it may also, unless the Council decides otherwise, take any appropriate measure necessary to achieve the best possible use of the time available during meetings and in particular:

- (a) restrict the numbers per delegation present in the meeting room for discussion of a particular item, and decide whether to authorise the opening of an overflow room;
- (b) set the order in which items are to be taken and determine the duration of discussions on them;
- (c) organise the time allotted for discussion of a particular item, in particular through limiting the time during which participants may speak and determining the order in which they may take the floor;
- (d) ask delegations to present in writing their proposals for amendment of a text under discussion before a given date, together with a brief explanation if appropriate;
- (e) ask delegations which have identical or similar positions on a particular item, on a text or on part of a text to choose one of them to express their shared position at the meeting or in writing before the meeting.

2. Without prejudice to the provisions of Article 19(4) to (6) and to its powers and its overall political responsibility, the six-monthly Presidency shall be assisted in all its responsibilities by the other members of the pre-established group of three Member States referred to in Article 1(4) on the basis of the 18-month programme or pursuant to other arrangements agreed between them. It shall also be assisted, where appropriate, by the representative of the Member State next holding the Presidency. At the Presidency's request and acting on its instructions, that representative or a member of that group shall replace it as and when required, shall relieve it, where necessary, of certain tasks and shall ensure the continuity of the Council's proceedings.

Article 21 ⁽¹⁾ ⁽²⁾**Reports from committees and working parties**

Notwithstanding the other provisions of these Rules of Procedure, the Presidency shall organise the meetings of the various committees and working parties so that their reports are available before the Coreper meetings at which they are to be examined.

Unless considerations of urgency require otherwise, the Presidency shall postpone to a subsequent Coreper meeting any legislative acts on which the committee or working party has not completed its discussions at least five working days prior to Coreper's meeting.

⁽¹⁾ These provisions are without prejudice to the role of the Economic and Financial Committee as laid down in Article 134 of the TFEU and to existing Council Decisions thereon (OJ L 358, 31.12.1998, p. 104 and OJ L 5, 1.1.1999, p. 71).

⁽²⁾ See statement (j) set out below:

(j) Re Article 21:

'Reports from working parties and any other documents used as a basis for Coreper's discussions should be sent to delegations in time to allow for their examination.'

*Article 22***Quality of drafting ⁽¹⁾**

In order to assist the Council in its task of ensuring the drafting quality of the legislative acts which it adopts, the Legal Service shall be responsible for checking the drafting quality of proposals and draft acts at the appropriate stage, as well as for bringing drafting suggestions to the attention of the Council and its bodies, pursuant to the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation ⁽²⁾.

Throughout the legislative process, those who submit texts in connection with the Council's proceedings shall pay special attention to the quality of the drafting.

*Article 23***The Secretary-General and the General Secretariat**

1. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council acting by a qualified majority.

2. The Council shall decide on the organisation of the General Secretariat ⁽³⁾.

Under its authority the Secretary-General shall take all the measures necessary to ensure the smooth running of the General Secretariat.

3. The General Secretariat shall be closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work and implementation of its 18-month programme. Under the responsibility and guidance of the Presidency, it shall assist the latter in seeking solutions.

4. The Secretary-General shall submit to the Council the draft estimate of the expenditure of the Council in sufficient time to ensure that the time limits laid down by the financial provisions are met.

5. The Secretary-General shall have full responsibility for administering the appropriations entered in Section II - European Council and Council - of the budget and shall take all measures necessary to ensure that they are properly managed. He or she shall implement the appropriations in question in accordance with the provisions of the Financial Regulation applicable to the budget of the Union.

*Article 24***Security**

The rules on security shall be adopted by the Council acting by a qualified majority.

*Article 25***Duties as depositary of agreements**

In the event of the Secretary-General of the Council being designated as depositary of an agreement concluded by the Union or the European Atomic Energy Community and one or more States or international organisations, the acts of ratification, acceptance or approval of those agreements shall be deposited at the address of the Council.

⁽¹⁾ See statement (k) set out below.

(k) *Re Article 22:*

'The Council Legal Service has also been instructed to provide assistance to Member States responsible for an initiative within the meaning of Article 76(b) of the TFEU for the purpose inter alia of checking the quality of drafting of such initiatives if that assistance is requested by the Member State concerned. See statement (l) set out below.'

(l) *Re Article 22:*

'Members of the Council will comment on proposals for official codification of legislative texts within 30 working days of the circulation of such proposals by the General Secretariat. Members of the Council will ensure that those provisions of a proposal for the recasting of legislative texts which have been taken from the preceding act without substantive amendment are examined in accordance with the principles established for examination of codification proposals.'

⁽²⁾ OJ C 73, 17.3.1998, p. 1.

⁽³⁾ Paragraph 1 and the first subparagraph of paragraph 2 reproduce Article 240(2) of the TFEU.

In such instances the Secretary-General shall perform the duties of a depositary and shall also ensure that the dates of entry into force of such agreements are published in the Official Journal.

Article 26

Representation before the European Parliament

The Council shall be represented before the European Parliament or its committees by the Presidency or, with the latter's agreement, by a member of the pre-established group of three Member States referred to in Article 1(4), by the following Presidency or by the Secretary-General. The Council may also be represented before European Parliament committees by senior officials of the General Secretariat, acting on instructions from the Presidency.

The Foreign Affairs Council shall be represented before the European Parliament or its committees by its President. He or she may, where necessary, ask to be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council. On instructions from its President, the Foreign Affairs Council may also be represented before European Parliament committees by senior officials of the European External Action Service or, where appropriate, of the General Secretariat.

The Council may also present its views to the European Parliament by means of a written statement.

Article 27

Provisions concerning the form of acts

The provisions concerning the form of acts are set out in Annex VI.

Article 28

Correspondence addressed to the Council

Correspondence to the Council shall be sent to the President at the following address of the Council:

Council of the European Union
rue de la Loi/Wetstraat 175
B-1048 Brussels

ANNEX I

List of Council configurations

1. General affairs (*)
2. Foreign affairs (*)
3. Economic and financial affairs (*)
4. Justice and home affairs (*)
5. Employment, social policy, health and consumer affairs
6. Competitiveness (internal market, industry and research) (*)
7. Transport, telecommunications and energy
8. Agriculture and fisheries
9. Environment
10. Education, youth and culture (*)

It is for each Member State to determine the way in which it is represented in the Council, in accordance with Article 14(2) of the TEU.

Several Ministers may participate as full members of the same Council configuration, with the agenda and the organisation of proceedings being adjusted accordingly (*).

(*) This configuration is established by Article 14(6), second subparagraph, of the TEU.

(*) This configuration is established by Article 14(6), third subparagraph, of the TEU.

(*) Including budget.

(*) Including civil protection.

(*) Including tourism.

(*) Including audiovisual affairs.

(*) See statement (m) set out below.

(m) *Re Annex I, second paragraph:*

'The Presidency will organise Council agendas by grouping together related agenda items, in order to facilitate attendance by the relevant national representatives, particularly where a given Council configuration has to deal with clearly distinguishable sets of topics.'

ANNEX II

Specific provisions regarding public access to Council documents

Article 1

Scope

Any natural or legal person shall have access to Council documents subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 and the specific provisions laid down in this Annex.

Article 2

Consultation as regards third-party documents

1. For the purpose of applying Article 4(5) and Article 9(3) of Regulation (EC) No 1049/2001 and unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall not be disclosed, the third party concerned shall be consulted if:

(a) the document is a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001;

(b) the document originates from a Member State and:

— was submitted to the Council before 3 December 2001; or

— the Member State concerned requested that it not be disclosed without its prior agreement.

2. In all other cases, where the Council receives an application for a third-party document in its possession, the General Secretariat, for the purpose of applying Article 4(4) of Regulation (EC) No 1049/2001, shall consult the third party concerned unless it is clear, upon examination of the document in the light of Article 4(1), (2) and (3) of Regulation (EC) No 1049/2001, that it shall or shall not be disclosed.

3. The third party shall be consulted in writing (including by e-mail) and be given a reasonable time limit for its reply, taking into account the time limit laid down in Article 7 of Regulation (EC) No 1049/2001. In the cases referred to in paragraph 1, the third party shall be asked to give its opinion in writing.

4. Where the document does not fall within paragraph 1(a) or (b) and the General Secretariat, in the light of the third party's negative opinion, is not satisfied that Article 4(1) or (2) of Regulation (EC) No 1049/2001 is applicable, the Council shall be seized of the matter.

If the Council envisages the release of the document, the third party shall be informed immediately in writing of the Council's intention to release the document after a time period of at least 10 working days. At the same time, the third party's attention shall be drawn to Article 279 of the TFEU.

Article 3

Requests for consultation received from other institutions or from Member States

Requests for consultations with the Council made by another institution or a Member State concerning an application for a Council document shall be sent via e-mail to access@consilium.europa.eu or by fax to +32(0)2 281 61 61.

The General Secretariat shall give its opinion on behalf of the Council promptly, taking into account any time limit required for a decision to be made by the institution or the Member State concerned, and at the latest within five working days.

Article 4

Documents originating from Member States

Any request by a Member State under Article 4(5) of Regulation (EC) No 1049/2001 shall be made in writing to the General Secretariat.

Article 5

Referral of requests by Member States

When a Member State refers a request to the Council, it shall be handled in accordance with Articles 7 and 8 of Regulation (EC) No 1049/2001 and the relevant provisions of this Annex. In the event of a total or partial refusal of access, the applicant shall be informed that any confirmatory application must be addressed directly to the Council.

Article 6

Address for applications

Applications for access to a document shall be addressed in writing to the Secretary-General of the Council, rue de la Loi/Wetstraat 175, B-1048 Brussels, by e-mail to access@comsilium.europa.eu or by fax to +32(0)2 281 63 61.

Article 7

Processing of initial applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any application for access to a Council document shall be handled by the General Secretariat.

Article 8

Processing of confirmatory applications

Subject to Article 9(2) and (3) of Regulation (EC) No 1049/2001, any confirmatory application shall be decided upon by the Council.

Article 9

Charges

The charges for producing and sending copies of Council documents shall be set by the Secretary-General.

Article 10

Public register of Council documents

1. The General Secretariat shall be responsible for providing public access to the register of Council documents.
2. In addition to the references to documents, it shall be indicated in the register which documents drawn up after 1 July 2000 have already been released to the public. Subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁾ and Article 16 of Regulation (EC) No 1049/2001, their content shall be made available on the Internet.

Article 11

Documents directly accessible to the public

1. This Article shall apply to all Council documents, provided that they are not classified and without prejudice to the possibility of making a written application in accordance with Article 6 of Regulation (EC) No 1049/2001.
2. For the purpose of this Article:
 - 'circulation' shall mean distribution of the final version of a document to the members of the Council, their representatives or delegates.
 - 'legislative document' shall mean any document drawn up or received in the course of procedures for the adoption of a legislative act.
3. The General Secretariat shall make the following documents available to the public as soon as they have been circulated:
 - (a) documents of which neither the Council nor a Member State is the author, which have been made public by their author or with his or her agreement;

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

- (b) provisional agenda for meetings of the Council in its various configurations;
- (c) any text adopted by the Council and intended to be published in the Official Journal.
4. Provided that they are clearly not covered by any of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, the General Secretariat may also make the following documents available to the public as soon as they have been circulated:
- (a) provisional agenda of committees and working parties;
- (b) other documents, such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies which do not reflect individual positions of delegations, excluding Legal Service opinions and contributions.
5. The General Secretariat shall make legislative documents and the following documents available to the public, in addition to the documents referred to in paragraphs 3 and 4, as soon as they have been circulated:
- (a) cover notes and copies of letters concerning legislative acts and acts referred to in Article 8(1) of the Rules of Procedure addressed to the Council by other institutions or bodies of the European Union or, subject to Article 4(5) of Regulation (EC) No 1049/2001, by a Member State;
- (b) documents submitted to the Council which are listed under an item on its agenda included in the 'legislative deliberations' part or marked with the words 'public deliberation' or 'public debate' in accordance with Article 8 of the Rules of Procedure;
- (c) notes submitted to Coreper and/or to the Council for approval ('I/A' and 'A' item notes) concerning draft legislative acts and acts referred to in Article 8(1) of the Rules of Procedure, as well as the draft legislative acts and acts referred to in Article 8(1) of the said Rules to which they refer;
- (d) acts adopted by the Council during an ordinary or a special legislative procedure and joint texts approved by the Conciliation Committee under the ordinary legislative procedure.
6. After adoption of one of the acts referred to in paragraph 5(d) or final adoption of the act concerned, the General Secretariat shall make available to the public any documents relating to this act which were drawn up before one of such acts and which are not covered by any of the exceptions laid down in Article 4(1), (2) and (3), second subparagraph, of Regulation (EC) No 1049/2001, such as information notes, reports, progress reports and reports on the state of discussions in the Council or in one of its preparatory bodies (outcomes of proceedings), excluding Legal Service opinions and contributions.
- At the request of a Member State, documents which are covered by the first subparagraph and reflect the individual position of that Member State's delegation in the Council shall not be made available to the public.
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ANNEX III

Detailed rules for implementing the provisions concerning the weighting of votes in the Council

Article 1

For the purposes of implementing Article 16(5) of the TEU and Article 3(3) and (4) of the Protocol on transitional provisions, the total population of each Member State for the period from 1 December 2009 to 31 December 2010 shall be as follows:

Member State	Population (× 1 000)
Germany	82 002,4
France	64 350,8
United Kingdom	61 576,1
Italy	60 045,1
Spain	45 828,2
Poland	38 135,9
Romania	21 498,6
Netherlands	16 485,8
Greece	11 260,4
Belgium	10 750,0
Portugal	10 627,3
Czech Republic	10 467,5
Hungary	10 031,0
Sweden	9 256,3
Austria	8 355,3
Bulgaria	7 606,6
Denmark	5 511,5
Slovakia	5 412,3
Finland	5 326,3
Ireland	4 450,0
Lithuania	3 349,9
Latvia	2 261,3
Slovenia	2 032,4
Estonia	1 340,4
Cyprus	796,9

Member State	Population ($\times 1\,000$)
Luxembourg	493,5
Malta	413,6
Total	499 665,1
Threshold (62 %)	309 792,4

Article 2

1. Before 1 September each year, Member States shall communicate to the Statistical Office of the European Union the data concerning their total population as at 1 January of the current year.
2. With effect from 1 January each year, the Council shall, in accordance with the data available to the Statistical Office of the European Union on 30 September of the preceding year, amend the figures set out in Article 1. This Decision shall be published in the Official Journal.

ANNEX IV

Referred to in Article 16

1. In application of the following provisions of these Rules of Procedure and for decisions in respect of which, under the Treaties, one or several members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such member(s):

- (a) Article 11(3), second subparagraph (holding of a meeting in a place other than Brussels or Luxembourg);
- (b) Article 3(7) (inclusion on the agenda of an item other than those appearing on the provisional agenda);
- (c) Article 3(8) (maintaining as a B item on the agenda an A item which would otherwise have had to be withdrawn from the agenda);
- (d) Article 5(2), as regards the presence of the European Central Bank only (deliberation without the presence of the European Central Bank);
- (e) Article 9(2), first subparagraph, point (b), and second and third subparagraphs (making public the results of votes, explanations of votes, statements in the Council minutes and items in those minutes relating to cases other than those referred to in paragraph 1);
- (f) Article 11(1), second subparagraph (opening of a voting procedure);
- (g) Article 12(1) (use of the written procedure);
- (h) Article 14(1) (decision to deliberate and take decisions exceptionally on the basis of documents and drafts not drawn up in all the languages)⁽¹⁾;
- (i) Article 17(2)(a) (non-publication in the Official Journal of an initiative presented by a Member State pursuant to Article 76 of the TFEU);
- (j) Article 17(2)(b) (non-publication in the Official Journal of certain directives, decisions, recommendations and opinions);
- (k) Article 17(5) (whether to publish in the Official Journal decisions taken by a body set up under an international agreement).

2. A member of the Council or of Coreper may not make use of the following provisions of these Rules of Procedure in connection with decisions on which, under the Treaties, that member may not participate in the vote:

- (a) Article 3(8) (possibility of a member of the Council requesting withdrawal of an A item from the agenda);
- (b) Article 11(1), second subparagraph (possibility of a member of the Council requesting the opening of a voting procedure);
- (c) Article 11(3) (possibility of a member of the Council acting on behalf of another in a vote);
- (d) Article 14(2) (possibility for any member of the Council to oppose discussion if the text of any proposed amendments are not drawn up in the language he or she has specified).

⁽¹⁾ See statement (ii) set out below.

(ii) *Re Annex IV, paragraph 1(f):*

The Council confirms that present practice whereby the texts serving as a basis for its deliberations are drawn up in all the languages will continue to apply.

ANNEX V

Council working methods*Preparation for meetings*

1. The Presidency shall ensure that a file is submitted to Coreper by a working party or by a committee only when there is reasonable prospect of progress or clarification of positions being achieved at that level. Conversely, files may be referred to a working party or to a committee again only when necessary, and in any event only with the remit to tackle precise, well-defined problems.
2. The Presidency shall take the steps necessary to advance work between meetings. It can, for example, with the agreement of the working party or committee, undertake in the most efficient way necessary consultations on specific problems with a view to reporting back to the working party or committee concerned on possible solutions. It can also conduct written consultations by requesting delegations to react in written form to a proposal before the next meeting of the working party or committee.
3. Whenever appropriate, delegations shall set out the positions they are likely to take in a forthcoming meeting in written form before that meeting. When that includes proposals for amending text, delegations shall suggest specific wording. Wherever possible, written input shall be submitted jointly by delegations maintaining identical positions.
4. Coreper shall avoid going over ground already covered in the preparation of its proceedings. That shall apply in particular to T items, to information on the organisation and order of its business and to information on the agenda and organisation of forthcoming Council meetings. Wherever possible, delegations shall raise 'Any other business' items when Coreper's proceedings are being prepared rather than in Coreper itself.
5. The Presidency shall convey to delegations as soon as possible when Coreper's proceedings are being prepared all the information necessary to allow thorough preparation of Coreper's proceedings, including information on what the Presidency expects to achieve from the discussion on each agenda item. Conversely, the Presidency shall, as appropriate, encourage delegations to communicate to the other delegations, when Coreper's proceedings are being prepared, information on the positions they will be taking in Coreper. In this context the Presidency shall finalise Coreper's agenda. The Presidency may convene more frequently the groups that prepare Coreper's proceedings, when required by circumstances.

Conduct of meetings

6. No item shall be placed on the Council agenda simply for presentation by the Commission or by a Council member, except where a debate on new major initiatives is planned.
7. The Presidency shall refrain from placing on Coreper's agenda items for information only. Such information, e.g. on the outcome of meetings in another forum or with a third State or another institution, procedural or organisational questions, etc., should instead be transmitted to delegations when Coreper's proceedings are being prepared, whenever possible in written form, and should not be repeated in Coreper.
8. At the start of a meeting, the Presidency shall give any further information necessary regarding the handling of the meeting and in particular indicate the length of time it intends to be devoted to each item. It shall refrain from making lengthy introductions and avoid repeating information which is already known to delegations.
9. At the start of a discussion on a substantive point, the Presidency shall, depending on the type of discussion which is needed, indicate to delegations the maximum length of their interventions on that point. In most cases interventions should not exceed two minutes.
10. Full table rounds shall be proscribed in principle; they may be used only in exceptional circumstances on specific questions, with a time limit on interventions set by the Presidency.
11. The Presidency shall give as much focus as possible to discussions, in particular by requesting delegations to react to compromise texts or specific proposals.
12. During and at the end of meetings the Presidency shall refrain from making lengthy summaries of the discussions and shall confine itself to concluding briefly on the results (substance and/or procedure) achieved.
13. Delegations shall avoid repeating points made by previous speakers. Their interventions shall be brief, substantive and to the point.

14. Like-minded delegations shall be encouraged to hold consultations with a view to the presentation by a single spokesperson of a common position on a specific point.
 15. When discussing texts, delegations shall make concrete drafting proposals, in writing, rather than merely express their disagreement with a particular proposal.
 16. Unless indicated otherwise by the Presidency, delegations shall refrain from taking the floor when in agreement with a particular proposal; in this case silence shall be taken as agreement in principle.
-

ANNEX VI

Provisions concerning the forms of acts

A. Form of Regulations:

1. Regulations adopted jointly by the European Parliament and the Council and Council Regulations shall include:

- (a) in their title the word 'Regulation', followed by a serial number, the date of their adoption and an indication of their subject-matter; Implementing Regulations adopted by the Council in accordance with Article 291(2) of the TFEU shall include in their title the words 'Implementing Regulation';
- (b) the words 'The European Parliament and the Council of the European Union' or 'The Council of the European Union', as appropriate;
- (c) a reference to the provisions under which the Regulation is adopted, preceded by the words 'Having regard to';
- (d) a citation containing a reference to proposals submitted and to opinions obtained and consultations held;
- (e) a statement of the reasons on which the Regulation is based, preceded by the word 'Whereas'; the recitals being numbered;
- (f) the words 'have adopted this Regulation' or 'has adopted this Regulation', as appropriate, followed by the enacting terms of the Regulation.

2. Regulations shall be divided into Articles, if appropriate grouped into chapters and sections.

3. The final Article of a Regulation shall fix the date of entry into force, where that date is before or after the 20th day following publication.

4. The final Article of a Regulation shall be followed by:

- (a) (i) the words 'This Regulation shall be binding in its entirety and directly applicable in all Member States',
or
(ii) the words 'This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties', in any cases in which an act is not applicable to, or in, all Member States⁽¹⁾;
- (b) the words 'Done at ...', followed by the date on which the Regulation was adopted.

and

(c) in the case of:

(i) a Regulation adopted jointly by the European Parliament and the Council, the words:

<i>For the European Parliament</i>	<i>For the Council</i>
<i>The President</i>	<i>The President</i>

followed by the name of the President of the European Parliament and of the President of the Council in office at the time when the Regulation is adopted.

(ii) a Council Regulation, the words:

For the Council
The President

followed by the name of the President of the Council in office at the time when the Regulation is adopted.

(1) See statement set out below.

(2) *Re* Annex VI, paragraph A-46(3):

'The Council would point out that, in the cases provided for in the Treaties where an act is not applicable to or in all Member States, it is necessary to make clear its territorial application in the reasons given for and content of the act concerned.'

B. Forms of Directives, Decisions, Recommendations and Opinions

1. Directives and Decisions adopted jointly by the European Parliament and the Council, and Directives and Decisions of the Council, shall include in their titles the word 'Directive' or 'Decision':

Implementing Directives and Decisions adopted by the Council in accordance with Article 291(2) of the TFEU shall include in their titles the words 'Implementing Directive' or 'Implementing Decision'.

2. Recommendations and Opinions issued by the Council shall include in their titles the word 'Recommendation' or 'Opinion'.

3. The provisions relating to Regulations set out in A above shall apply *mutatis mutandis*, subject to the relevant provisions of the Treaties, to Directives and Decisions.

C. Forms of Decisions referred to in Article 25 of the TEU

Those Decisions shall bear the following headings:

'Council Decision', a serial number (year/number/CFSP), the date of adoption and the subject-matter.

General Secretariat of the Council

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Rue de la Loi/ Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Tel. +32 22816111

www.european-council.europa.eu
www.consilium.europa.eu

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