



**CIL OF
UROPEAN UNION**

Brussels, 26 September 2011

14603/11

LIMITE

INST 429

"I/A" ITEM NOTE

from:	Presidency
to:	Permanent Representatives Committee (Part 2) / Council
Object:	Explanatory documents on the transposition of directives
	= Approval of two joint political declarations
	= Approval of letters

1. The issue of correlation tables, which has had an adverse effect on several proposed directives, was discussed at several meetings of Coreper since the beginning of this year. During the Coreper meeting on 8 September 2011, the Polish Presidency indicated that it intended to find a solution based on two declarations and a standard Recital and to submit it for consideration by Coreper by the end of September^[1].

2. The technical meetings organised under the Polish Presidency resulted in two draft joint political declarations reproduced in Annexes I and II : a Joint Political Declaration of Member States and the Commission on explanatory documents and a Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents.

3. It is therefore suggested that the Permanent Representatives Committee:
- i) invites the representatives of the governments of the Member States meeting in the margin of Coreper to approve the *Joint Political Declaration of Member States and the Commission* set out in Annex I;
 - ii) suggests to the Council to approve in part "A" of its agenda for a forthcoming meeting :
 - the text of the *Joint Political Declaration of the European Parliament, the Council and the Commission* set out in Annex II; as well as
 - the text of the draft letters set out in Annexes III and IV;
 - iii) invites the Council to decide at the same occasion, subject to the agreement of the European Parliament and of the Commission, the publication of the two Joint Political Declarations in the Official Journal of the European Union (part C).
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**DRAFT JOINT POLITICAL DECLARATION OF MEMBER STATES AND THE
COMMISSION ON EXPLANATORY DOCUMENTS**
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Pursuant to Article 288 TFEU, "*A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*".

Member States and the Commission recognise that the effective implementation of Union law is a prerequisite for achieving the policy objectives of the Union and that, whilst the responsibility for such implementation lies primarily with Member States, it is a matter of common interest since it aims, *inter alia*, to create a level playing field in all Member States.

Member States and the Commission acknowledge that the correct and timely transposition of Union directives is a legal obligation. They note that the Treaties entrust the Commission with the task of overseeing the application of Union law under the supervision of the Court of Justice and share the common understanding that the notification of transposition measures should facilitate the achievement by the Commission of this task.

In this context, Member States acknowledge that the information they supply to the Commission as regards the transposition of directives in national law "*must be clear and precise*" and "*must indicate unequivocally the laws, regulations and administrative provisions*", or any other provisions of national law, as well as, where relevant, the jurisprudence of national courts, by means of which the Member States consider that they have satisfied the various requirements imposed on them by the directive^[2].

In order to improve the quality of information on the transposition of Union directives, where the Commission considers that documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments are required, it shall justify on a case by case basis, when submitting the relevant proposals, the need for, and the proportionality of, providing such documents, taking into account, in particular and respectively, the complexity of the directive and of its transposition, as well as the possible additional administrative burden.

In justified cases, Member States undertake to accompany the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose.

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DRAFT JOINT POLITICAL DECLARATION OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION ON EXPLANATORY DOCUMENTS

The institutions acknowledge that the information Member States supply to the Commission as regards the transposition of directives in national law "*must be clear and precise*"^[3], in order to facilitate the achievement by the Commission of its task of overseeing the application of Union law. Against this background, the European Parliament and the Council welcome the Joint Political Declaration of Member States and the Commission on explanatory documents of [date].

Consequently, where the need for, and the proportionality of, the transmission of such documents is justified in accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], the Institutions agree to include the following recital in the directive concerned:

"In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified."

By 1 November 2013, the Commission will report to the European Parliament and to the Council on the implementation of the two Joint Political Declarations on explanatory documents.

The Institutions undertake to apply these principles as from 1 November 2011 to new and pending directive proposals, with the exception of those on which the European Parliament and the Council have already reached an agreement.

DRAFT LETTER

Mr Jerzy BUZEK
President of the European Parliament

Dear President,

I am pleased to inform you that at its meeting on 14.2011, the Council approved the draft Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents set out in Annex I. I am also pleased to inform you that on 14. 2011, the representatives of the Member States approved the draft Joint Political Declaration of Member States and the Commission on explanatory documents set out in Annex II.

I believe that these Declarations lay down a horizontal solution that will allow our institutions to overcome the difficulties we have experienced in the past months when discussing several proposals for European Parliament and Council directives.

Therefore, I hope that your institution can approve the Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents so as to ensure that this solution can be applied without undue delay.

Moreover, the Council invites your institution to accept the publication of the Joint Political Declaration of the European Parliament, the Council and the Commission in the Official Journal of the European Union (part C).

Yours sincerely,

Council of the European Union

Brussels, 2011

DRAFT LETTER

Mr José Manuel BARROSO
President of the European Commission

Dear President,

I am pleased to inform you that at its meeting on 14.2011, the Council approved the draft Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents set out in Annex I. I am also pleased to inform you that on 14. 2011, the representatives of the Member States approved the draft Joint Political Declaration of Member States and the Commission on explanatory documents set out in Annex II.

I believe that these Declarations lay down a horizontal solution that will allow our institutions to overcome the difficulties we have experienced in the past months when discussing several directive proposals for European Parliament and Council directives.

Therefore, I hope that your institution can approve the Joint Political Declaration of Member States and the Commission and the Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents so as to ensure that this solution can be applied without undue delay.

Moreover, the Council invites your institution to accept the publication of the two Joint Political Declarations in the Official Journal of the European Union (part C).

Yours sincerely,

[\[1\]](#) Doc. 13699/11.

[\[2\]](#) See Judgment of the Court of Justice of 16 July 2009 in case C-427/07, point 107 and the case-law cited therein.

[\[3\]](#) See Judgment of the Court of Justice of 16 July 2009 in case C-427/07, point 107 and the case-law cited therein.

In a message dated 27/10/2011 12:02:03 GMT Daylight Time, statewatch-off@geo2.poptel.org.uk writes:

Hi Steve,

Any chance you could send me this as a zip file -our stupid server deleted the doc as "spam"

Thanks,

Tony

At 11:06 27/10/2011, you wrote: