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from : Antici Group
to : Permanent Representatives Committee

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Subject : Procedure to be followed for the review of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

1. On 30 April 2008 the Commission submitted a proposal concerning the review of Regulation (EC) No 1049/2001. The Working Party on Information began the examination of the proposal at its meetings on 16 May and 11 June and planned to continue its proceedings on this matter at its meeting on 22 September 2008. On 27 May 2008, however, the Swedish delegation wrote to all the Permanent Representations asking that the proposal be examined by an *ad hoc* working party set up specifically for that purpose.
2. The Antici Group examined that procedural suggestion at its meetings on 22 July and 2 and 10 September.

3. In the course of its proceedings the Group took note of the arguments advanced by the Swedish delegation in favour of setting up an *ad hoc* working party, which were supported by a certain number of delegations. In particular, the Swedish delegation pointed out that as constituted at present the Working Party on Information had neither the expertise nor the time necessary for the examination of the proposal and there had to be a unified hierarchical chain between the Council Presidency, the Permanent Representatives Committee and the chairmanship of the working party to deal with a matter of such particular political sensitivity, particularly in view of recent political developments. The Swedish delegation also reminded the Group that in 2001, when the proposal for a Regulation was being discussed by preparatory Council bodies, the Working Party on Information was chaired by the six-monthly Presidency. It also pointed out that as a general rule it was not appropriate for the same authority both to chair the body responsible for the preparation of a legal act (the Council General Secretariat in the present case) and to implement that act (the Council).

4. Another group of delegations, however, argued that the Working Party on Information was the body competent to deal with matters in the field of transparency and access to documents (and regularly prepared decisions on confirmatory applications, which were subject to Council approval). Those delegations pointed out that the Working Party's terms of reference had not been amended since the chairmanship had been entrusted to the Council General Secretariat in 2002. They referred to the opinion of the Permanent Representatives Committee itself to the effect that new substantive proposals that required technical expertise ought not, as a general rule, to involve the creation of new standing or *ad hoc* working parties. Those delegations also stressed that the rôle of the chairmanship of a working party consisted in organising proceedings equitably and efficiently and that chairing a body was not theoretically incompatible with the implementation of the rules that that working party drew up.

5. Accordingly, in a spirit of compromise, the Antici Group agreed that the proceedings of the Working Party on Information should be organised in such a way that the proposal could be dealt with as well and as efficiently as possible, in parallel with the Working Party's usual activities. It therefore invited the Permanent Representatives Committee to note that:
- the chairman of the Working Party on Information would work in close cooperation with the Presidency's representative on the Working Party and with the chairman of the Permanent Representatives Committee on, in particular, the timetable of Working Party meetings to discuss the proposal, tactical examination and the organisation of proceedings on the preparation of the Permanent Representatives Committee's discussions;
 - the timetable and the agendas for Working Party meetings would be organised in such a way that delegations could be composed so that the necessary expertise would be available for efficient examination of all aspects of the proposal;
 - the contacts and consultations considered useful for the efficient preparation of the Working Party's proceedings would be carried out by the Presidency's representative on the Working Party on Information and by the chairman of the Working Party, acting in concert, and that
 - all politically sensitive matters that would have to be raised with the European Parliament would be dealt with under the responsibility of the chairman of the Permanent Representatives Committee.

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