

DG F 2 A TRANSPARENCY AND ACCESS TO DOCUMENTS

~ INFORMATION SHEET ~

WHEN TO INCLUDE AN ITEM IN THE "LEGISLATIVE DELIBERATIONS" PART OF THE PROVISIONAL COUNCIL AGENDA

Applicable rules:

Article 289(3) TFEU

3. Legal acts adopted by legislative procedure shall constitute legislative acts.

Council Rules of Procedure

Article 3(6) 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.

How to identify the legislative nature of a draft Act:

The legislative nature of an act is determined by its legal basis.

When the act is legislative, its legal basis states that the act is to be adopted "in accordance with the ordinary/special legislative procedure". Since the entry into force of the Lisbon Treaty, this wording is repeated in the preamble of each legislative act.

Interinstitutional codes can also help identify the nature of an act, as follows (the list is not exhaustive):

❖ **Interinstitutional code (NLE)**

When a draft Council act has a (NLE) interinstitutional code, this means that the draft act is non-legislative, therefore, this item should not be included in the 'Legislative Deliberations' part of the Agenda.

❖ **Interinstitutional code (CNS)**

When a draft Council act has a (CNS) interinstitutional code, this means its that the draft act is to be adopted after consultation of the European Parliament. The draft act could be legislative or not, depending on its legal basis.

If, on one hand, the respective legal basis refers to the adoption of the draft act by special legislative procedure, then the draft act is legislative and it should be included in the 'Legislative Deliberations' part of the Agenda.

If, on the other hand, the respective legal basis establishes that the Council should act "on a proposal from the Commission and after consulting the European Parliament", then the draft act is not legislative and it should not be included in the 'Legislative Deliberations' part of the Agenda.

Since the entry into force of the Lisbon Treaty, all Commission proposals bearing the Interinstitutional code (CNS) that are of a legislative nature, contain the following sentence in the preamble of the act: "Acting in accordance with a special legislative procedure".

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❖ Interinstitutional code (APP)

When a draft Council act has a (APP) interinstitutional code, this means that the draft act is to be adopted by special legislative procedure (EP consent required). Therefore, the draft act is legislative and it should be included in the 'Legislative Deliberations' part of the Agenda.

❖ Insteritutional code (COD)

When a draft Council act has a (COD) interinstitutional code, this means that the draft act is to be adopted by ordinary legislative procedure (former codecision). Therefore, the draft act is legislative and it should be included in the 'Legislative Deliberations' part of the Agenda.

The Codecision Unit of the Directorate for General Political Questions (DGPQ) of the Secretary-General's Private Office, includes such items in the Council provisional agenda and drafts the respective I/A Notes.

❖ Draft Budget and Draft Amending Budgets (DABs)

These acts are transmitted to the Council without an interinstitutional code. They are to be adopted by special legislative procedure (budget procedure), therefore, they should be included in the 'Legislative Deliberations' part of the Agenda.

Consequences of including an item in the "Legislative Deliberations" part of the Council agenda:

- ❖ The Items included in the "Legislative Deliberations" part of the Council agenda are adopted in public session, that is, this part of the Council meeting is broadcasted live through the Council's website;
- ❖ All documents listed under the Items included in the "Legislative Deliberations" part of the Council agenda are made public 24 hours before the Council's meeting, without prior consultation of the responsible DG and regardless of their previous status;
- ❖ In case the Items included in the "Legislative Deliberations" part of the Council agenda are to be adopted, a fiche de vote containing the voting results for the draft act is prepared and shown at the respective Council session.
- ❖ The voting results are also automatically included in the Council's data-base on voting records used for statistical purposes and for information to the public.
- ❖ The Items included in the "Legislative Deliberations" part of the Council agenda appear on the Addenda to the Council Minutes of the respective Council session. These ADDs are always public documents.

Who to contact in case of doubt?

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