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REX/401
Enhancing the transparency
and inclusiveness of the EU
accession process

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PRELIMINARY DRAFT OPINION

of the
Section for External Relations
on
Enhancing the transparency and inclusiveness of the EU accession process
(own-initiative opinion)

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To the members of the Study Group on **Enhancing the Transparency and Inclusiveness of the EU accession process**
(Section for External Relations)

N.B.: This document will be discussed at the meeting on **22 April beginning at 9.30 a.m.**

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Study Group on
Enhancing the transparency and
inclusiveness of the EU accession
process

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At its plenary session of January 2014, the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on

Enhancing the transparency and inclusiveness of the EU accession process.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on

At its ... plenary session, held on ... (meeting of ...), the European Economic and Social Committee adopted the following opinion by ... votes to ... with ... abstentions.

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1. Conclusions and recommendations

1.1 Since Croatia's accession to the EU in July 2013, there have been improvements to the transparency and inclusiveness of the accession process, which are apparent in the accession process for Serbia and Montenegro. The strategic shift towards the fundamentals - rule of law and economic governance - creates an opportunity for fostering participatory democracy within, rather than in parallel with, the scope of accession negotiations.

1.2 Nevertheless, there are several challenges ahead. There is a need for greater consistency in ensuring that both the EU institutions and the governments concerned adopt a transparent and inclusive approach throughout the accession process and across all policy areas and in all candidate and potential candidate countries. There is a need for tighter policy integration with respect to (1) the actual negotiations, (2) fostering civil society development and social dialogue, and (3) institutional capacity building, all of which should be more appropriately reflected in the funding of pre-accession assistance. Finally, there is a need for more proactive and continuous engagement from enlargement countries as well as the Member States, the general public and parliamentary structures, in order to ensure timely ownership and informed public debate. This entails more effective support for media reporting and greater investment in public communication services and programmes.

Recommendations to the Commission, the Council and the European Parliament:

1.3 The public disclosure policy for information and documents directly related to the negotiation process should be jointly agreed and adopted by all the negotiating parties, in order to reconcile overarching public interests and the citizens' right to access information. Information that provides parameters for negotiations, i.e. screening reports for each

negotiation chapter, translation of the EU *acquis* and opening and closing benchmarks, should be publicly disclosed in good time, in order to facilitate independent monitoring and public information throughout the accession process.

- 1.4 The EU institutions should treat the effective and democratic legal and institutional framework for public access to information, public consultations and social dialogue as prerequisites for the capacity of governments to engage in negotiations, which should be closely monitored throughout the process.
- 1.5 For the sake of simplifying public and media access to information, the websites of the EU Delegations should post clear lists of the opening, intermediate and closing benchmarks and summaries of the negotiation chapters, screening reports, and links to EU Common Positions.
- 1.6 It would be commendable if the improved focus on transparent and inclusive negotiations adopted in the current Enlargement Strategy 2013-2014, which has resulted in the provisions of the most recent Negotiating Framework with Serbia and practical improvements in Montenegro, could also be applied to Turkey's negotiations.
- 1.7 EU Delegations, the Commission's services, the EP, and the EESC should make an effort to enhance coordination and synergies between their consultations with local civil society organisations. They must improve communication on their respective activities and share reports more systematically.
- 1.8 A greater proportion of pre-accession assistance should be focused on building institutional capacities and inclusive policy-making and citizen engagement, as well as on strengthening the professionalism and independence of the media.
- 1.9 The DG Enlargement Guidelines for EU support to Civil Society in Enlargement Countries 2014-2020 should be applied with equivalent vigour in all the enlargement countries in order to foster a more enabling environment for participatory democracy. The guidelines should elaborate more on the specific challenges faced by the social partners in the context of social dialogue.
- 1.10 Special attention should be paid to enhancing social dialogue in enlargement countries and linking it more closely with the accession process. This implies a more strategic approach to the funding and provision of technical assistance to trade unions and business associations with respect to the EU *acquis*, networking with their EU counterparts, outreach to their constituents and engagement in the accession negotiations, both directly and in an oversight role.

Recommendations to the national governments of candidate countries:

- 1.11 All documents regulating the negotiation's structure, procedures and appointments should be publicly disclosed at the time of their adoption and they should also include internal rules of procedure on information management and participation in document drafting and negotiations by all members of the negotiation bodies, including non-state actors.
- 1.12 Regarding the disclosure of documents owned by negotiating countries, national negotiation positions should be made available to members of parliament, whereas their summaries should be made available to the public and proactively discussed in the media. National governments and parliaments should adopt and publish a written access and disclosure policy for negotiation-related documents.
- 1.13 Regulatory impact assessments (RIA) should be carried out regularly in the context of preparing national negotiation positions and legal harmonisation, in order to ensure the timely detection of adjustment risks and to establish a more inclusive evidence-based policy development model.
- 1.14 Governments in enlargement countries should define their national priorities prior to starting the negotiation process. This would help the negotiating team to better defend priority sectors and to obtain better negotiation results.
- 1.15 National parliaments should be ensured a proactive deliberative and oversight role in the accession process in a timely and strategic manner. EU assistance should make it a priority to strengthen parliamentary capacities for policy analysis.
- 1.16 Special focus should be put on involving the social partners and business associations in economic governance and labour market reforms and in calculating the social and economic costs of harmonisation. Economic and Social Councils in enlargement countries might have a valuable role to play in programming pre-accession assistance aimed at addressing the social partners' needs. Wherever possible, the social partners and other relevant stakeholders, such as business associations, should be integrated in technical assistance and funding schemes available to civil society

Recommendations to the EESC:

- 1.17 Joint Consultative Committees (JCCs) should attempt to fill "empty niches" which are not covered by other bodies in negotiations and should focus on a select number of areas. Since the social partners are under-represented in negotiations, JCCs could provide added value by monitoring and promoting social dialogue with respect to accession negotiations.
- 1.18 In line with the current enlargement policy, JCCs could choose to focus on the four overarching areas – rule of law, economic governance, strengthening democratic institutions

and fundamental rights. JCCs should maximise their outreach to local stakeholders, through public hearings, online consultations, and by establishing cooperation with national TACSO advisers and key policy monitoring projects.

- 1.19 There are opportunities for more intense and flexible communication between JCCs and the Commission, the Council and the European Parliament bodies responsible for enlargement, which would facilitate the exchange of information between the EU institutions and civil society stakeholders in the enlargement countries and Member States. The formats may range from briefings before and during JCC meetings, the timely exchange of memos and reports, joint policy workshops, the co-organisation of parliamentary hearings, the provision of information for the Commission's progress reports and the European Parliament's resolutions and the participation of JCC members in important civil society consultations organised by the EU Delegations.
- 1.20 As already stated in previous EESC's opinions, the nomination procedures for JCCs should be totally transparent, relying on the self-selection of stakeholder groups. Governments should refrain from direct nominations and ensure the application of a transparent procedure, endorsed by stakeholder groups. National consultative bodies for civil society and Economic and Social Councils should be directly involved in developing the procedure and organising the selection of candidates.

2. Key features and changes in the EU's enlargement policy over the past five years

- 2.1 The EU's enlargement policy, while perhaps not the most popular, is definitely among the most successful political projects of the EU, considering that 13 countries have joined since 2004. The EU enlargement policy has acted as a powerful catalyst for the peaceful integration of Europe following the end of the Cold War. While its actual societal and political effects are open to debate, the enlargement policy has definitely been instrumental in accelerating changes in national governance structures towards market economies and democracies.

All institutional stakeholders should seek greater transparency and inclusiveness with respect to (1) the quality of information that shapes the negotiation process, (2) the effectiveness and sustainability of the reforms undertaken and (3) the democratic legitimacy of the accession process and EU membership.

- 2.2 The enlargement process is marked by a gradual and closely supervised adjustment to the criteria and conditions set by the EU, presently grouped into 35 different policy areas (or "negotiation chapters"). What gets negotiated is the transition periods and specific implementation modalities as well as the accompanying financial expenditure of both the EU and the candidate countries. As the opening and closing of each negotiation chapter depends on a unanimous vote at the Council the pace and timing of negotiations may be highly unpredictable.

The structure of the negotiation process falls within the operational realm of the Commission which has proved open to improving and adjusting it to changed political circumstances. It is important to note that the current negotiation methodology has greatly evolved over the years, based on this "learning by doing" approach. The key changes are set out in Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), which will remain open throughout the duration of the accession negotiations, starting with Montenegro's. Depending on progress on these two key chapters, the overall pace at which other negotiation chapters will be opened and closed may be slowed down if difficulties arise.

- 2.3 The Negotiating Framework with Montenegro, while providing a detailed overview of the negotiation process, does not provide any guidelines on public access to information or the involvement of non-state actors. The only statement, similar to the one used in the Croatian Negotiating Framework, refers to civil society dialogue with Montenegro, which the EU will continue in parallel with negotiations "with the aim of bringing people together and ensuring the support of citizens for the accession process".
- 2.4 The Negotiating Framework with Serbia, for the very first time, refers explicitly to inclusiveness and transparency principles. "In order to strengthen public confidence in the enlargement process, decisions will be taken as openly as possible so as to ensure greater transparency. Internal consultations and deliberations will be protected to the extent necessary in order to safeguard the decision-making process, in accordance with EU legislation on public access to documents in all areas of Union activities."
- 2.5 As announced in the Enlargement Strategy 2013-2014, "a key lesson from the past is the importance of addressing the fundamentals first", starting with the rule of law, "placed at the heart of the enlargement process". This represents a significant strategic shift from specific policy adjustments to the broad issue of democratic governance, finally understood as prerequisites for meaningful and sustainable policy harmonisation with the EU *acquis*. The strategy places emphasis on strengthening democratic institutions and ensuring inclusive democratic processes, with a stronger role for civil society, cross-party platforms for EU integration and further progress with electoral, parliamentary and public administration reforms. The latter is of particular importance for ensuring more inclusive policy-making processes, in line with the EU's good governance principles. This would be a great step forward in comparison to past accession processes, where the Commission established virtually no conditions regarding the quality and openness of the accession-related policy-making process.

A stronger focus on economic governance envisages national economic reform strategies and action plans for public financial management, with the hope that more timely information and macroeconomic surveillance might help prevent a protracted economic recession and an excessive deficit situation, as occurred in Croatia when it joined the EU. The timely preparation of the business sector is essential to help companies become more competitive and face the challenges of the EU single market. The Commission also calls for more robust

mechanisms to ensure fundamental rights, in particular freedom of expression and the rights of vulnerable groups. Both priority areas present opportunities for the systematic involvement of non-state actors.

- 2.6 On the one hand, changes in negotiation methodology with respect to previous rounds of accession are an indication of the Commission's flexibility and genuine concern for the effectiveness of negotiations. Greater attention to "evidence-based" enlargement has strengthened the position of non-state actors, whose independent information is valuable to the Commission. On the other hand, the changes introduced may be perceived as rather arbitrary, primarily reflecting the EU's selective need for evidence while ignoring the administrative burdens they impose on negotiating countries.
- 2.7 According to the "Guidelines for EU Support to civil society in enlargement countries, 2014-2020" of 19 December 2013¹, the role of civil society within the enlargement policy has been explicitly related to enabling and stimulating pluralism and participatory democracy. This rightly stresses that EU support to civil society should focus on (1) achieving an environment that is conducive to civil society activities and (2) to building the capacity of CSOs to be effective and accountable independent actors. These guidelines would appear to be a useful tool for the integration of civil society provided their implementation is in line with their level of ambition.
- 2.8 Judging from Croatia's case, the closed nature of negotiations led to a low level of public understanding of the accession process and EU policies in general. The short pre-referendum campaign by the government focused mainly on promotion and offered little real content, which created space for anti-EU groups and led to the lowest voter turnout (only 43.3%) for any EU accession referendum, and low interest in EP elections (21% voter turnout). The bottom line feeling was that the full potential of democratisation, as an important outcome of "Europeanisation", had not been realised.
- 2.9 There is concern about how much the EU institutions and Member States have done to address fears and negative attitudes towards enlargement, in light of rising xenophobia as a consequence of the economic crisis. It seems that the efforts of the Commission and individual Member States get little attention in the national and European media. As memories of the Balkan wars fade, the current crisis in Ukraine may act as a reminder of the importance of democratic governance throughout the continent for the security and prosperity of EU citizens.

¹ http://eeas.europa.eu/delegations/kosovo/documents/press_corner/elarg_guidelines_cs_support_after_online_consultation_03072013.pdf

3. **Public access to negotiation documents**

- 3.1 Even though the accession process does not foresee conditionality with respect to transparency and inclusiveness, the expectations of the interested public are on the rise due to their exposure to the EU governance model. Raised expectations further underline the actual lack of any written policy on public access to information on the negotiation process. In the case of Croatia, information was lacking on the technical procedures for negotiations, and the key documents were not available. Although the government adopted a protocol on internal policy coordination on EU negotiation positions, this document was never published. There is a general impression among the public that the government, with the tacit approval of the European Parliament and the Commission, kept the public at a safe distance from the accession process.
- 3.2 Public disclosure of accession-related documents is governed by the 2001 EU Regulation regarding public access to European Parliament, Council and Commission documents², which foresees a two-stage administrative procedure, with the additional possibility of court proceedings or complaints to the Ombudsman. The regulation entitles institutions to protect their internal consultations and deliberations where necessary in order to safeguard their ability to carry out their responsibilities, "unless there is an overriding public interest in disclosure". In their responses, institutions are obliged to provide reasons for delays or refusals. The vast majority of the Council's accession-related documents are categorised as sensitive documents since they require intergovernmental consultations and concern international relations, which are listed in Article 4 as grounds for refusing access to documents.
- 3.3 In Croatia, the timely insight of non-state actors into the negotiation process and its key contents was hindered by the fact that the documents produced by the European Commission and the Council (such as the screening reports, EU Common Positions or opening and closing benchmarks) were not the property of the Republic of Croatia. As a result, the Croatian government claimed that it had no authority to disclose them, and the Commission supported that attitude. At the same time, the Commission did not proactively disclose most of the documents (or their summaries). The chronic lack of public information about the contents of all the benchmarks aggravated the difficulties which civil society and the media encountered in undertaking systematic independent policy monitoring.
- 3.4 Nevertheless, due to an overall tendency towards greater transparency, there have been significant changes in the proactive publication of negotiation-related documents by the European Commission and the Council. The shift was prompted by Croatia's accession negotiations, the government of Montenegro's positive attitude towards information sharing, as well as falling public and political support for enlargement across Europe, in light of the economic crisis.

² Regulation (EC) No 1049/2001 of 30 May 2001.

- 3.5 Screening reports are the property of the Commission and they take stock of the current state of national legislation for each negotiation chapter. They are useful diagnostic tools and can help all stakeholders to get involved in the planning of the reform processes, within and beyond the negotiation framework. Starting with Montenegro's accession negotiations, the Commission has published all screening reports on its website. The same policy should be followed for Serbia and, retrospectively, for the chapters in accession negotiations with Turkey which are already open. The next step would be to translate and summarise them for the broader public, which is the responsibility of national governments, but could be encouraged through EU pre-accession assistance.
- 3.6 Opening benchmarks have not been published as such. There is no formal reason why the Council would not be able to publish them once they have been approved unanimously.
- 3.7 In the case of Montenegro, the Council has proactively published the EU Common Positions for Chapters 23 and 24, given the significance and public interest in the reforms entailed. This is of critical importance to enable the media and civil society to play their watchdog role effectively. That good practice, however, was not repeated in the case of Turkey for Chapter 22 on regional development, which was opened in November 2013.
- 3.8 During the course of the last two rounds of enlargement, no country has equalled the good practice of Slovenia, where the national parliament had the right of veto over negotiation positions³, which were fully disclosed to the public at the same time. In Croatia, access to government negotiation positions and reports on the fulfilment of negotiation obligations was restricted to government officials and selected group of parliamentarians and non-state members of the parliamentary National Committee for Monitoring the Accession Negotiations, resulting in the virtual exclusion of the vast majority of MPs. All EU accession-related documents, other than legal drafts, were discussed and adopted during closed government sessions. It meant that interested members of the public could not even request non-classified documents as there was no formal information about their existence. It took several years of civil society pressure before the government began to publish basic information on the documents discussed during the sessions. .

4. **The role of civil society in accession negotiations**

- 4.1 – Civil society engagement in the accession process concerns their involvement in the actual negotiations (i.e. screening, preparation of national positions, as well as independent oversight), policy formulation and legislative harmonisation (primarily through structured public consultations) and, last but not least, the programming of pre-accession funding, which is instrumental to timely institutional adjustments and the transposition of the *acquis*. It is

³ <http://www.ijf.hr/eng/EU4/marsic.pdf>

vital that civil society capacity-building and engagement in the entire process should also be accounted for in EU funding.

- 4.2 A high proportion of civil society experts have been included in Croatian and Montenegrin working groups involved in the preparation of negotiation positions. These were primarily academics, but NGOs, businesses and trade unions were also represented, making up 30% of the Croatian and 40% of the Montenegrin working group members. In both cases, there were open calls for applications and the working group membership was published. Yet, in the case of Croatia, the scope of involvement and internal communication primarily depended on the coordination and leadership style in each group due to a lack of internal rules of procedure. In several cases, working group members did not get to see the draft negotiation positions. They were not asked to comply with any rules regarding confidentiality of information or declarations of potential conflict of interest. Hence, their input mostly concerned the initial screening phase, with little impact on the design of the negotiation strategy and early assessments of social and economic costs and benefits.
- 4.3 The EU institutions have provided several channels for consultation with civil society for the purpose of collecting evidence on progress of accession-related reforms, including online correspondence, annual civil society consultations in Brussels with chapter desk officers, in-country meetings, briefings and public events during visits by EC, EP or EESC officials. The Commission has also been open to independent monitoring reports prepared by civil society organisations.
- 4.4 In both Croatia and Montenegro, the Commission has admittedly been much more proactive towards NGOs than towards trade unions and business associations. This is evident from the level of contact but also from the scope and purpose of pre-accession funding schemes for capacity building and policy monitoring. National Economic and Social Councils and other social dialogue structures have not been sufficiently used for debating negotiation-related issues or for the programming of pre-accession assistance. It is particularly important to involve businesses and trade unions in estimating the social and economic adjustment costs and support measures. Looking back, not enough use was made of the capillary structure of the Croatian Chamber of Economy and its capacity to interact with businesses at regional and local level in order to inform and involve the business community, which has entered the EU inadequately prepared. A far lower proportion of pre-accession funding was directed towards strengthening social dialogue structures and their involvement in the accession process than to civil society capacity building. Timely strategic investment in strengthening social dialogue in the context of accession could contribute to its effectiveness and sustainability following accession.
- 4.5 In Croatia, most EU accession-related legislation was fast tracked, often without any public consultation, with a negative impact on quality and transparency.

- 4.6 An additional obstacle to more timely access to policy formulation and the drafting of legislation was the lack of standards for public consultation, which were not introduced until November 2009 and had barely been implemented by the end of negotiations in December 2011. The difficulties which had to be overcome in order to adopt the Croatian Code on Public Consultations were a clear indication of the gap between words and practice in the area of civil society engagement.
- 4.7 In Croatia, the scope of regulatory impact assessments (RIAs) was limited to a few pilot projects and negotiation chapters even though in very specific policy areas (such as agricultural subsectors), this was of vital importance to the negotiation of transition periods and accompanying financial envelopes. It is indicative that the Law on RIAs, accompanied by an inadequate institutional framework, was only adopted in July 2011, reflecting the political attitude that broader consultation would only slow down the process. The opportunity presented by RIAs to systematically develop a more inclusive, evidence-based model and involve stakeholders in the timely detection of adjustment risks was clearly missed.
- 4.8 It is important to note that the European Commission did not formulate any specific requirements for the Croatian government regarding minimum standards for public consultations, nor were minimal standards set or checks carried out regarding the openness, transparency and quality of the legislative process. However, although these problems were repeatedly highlighted by civil society organisations, they had little influence on the Commission's official assessment of the Croatian accession process.
- 4.9 While the Croatian parliament was successful in acting as the guardian of political consensus throughout the negotiations, its role could have been much more prominent and effective. On a positive note, the parliament website served as the main source of updated information on legislative activities and documents. The Parliamentary Committee, which was responsible for the oversight of negotiations, but without the power of veto, was chaired by the opposition and included an equal number of members from ruling and opposition parties. It also involved CSO representatives. It played a constructive role in providing comments on draft negotiation chapters through discussions with the chief negotiator. Prior to the EU referendum campaign, the Committee organised very few local events. The main shortcoming was the passivity of parliament in the pre-referendum period, where it failed to act as a credible source of information on the outcome of negotiations.
- 4.10 In Croatia, the programming of pre-accession funding for the development of civil society was carried out through an institutional participatory process steered by the Council for Civil Society Development, with technical support from the Government Office for Civil Society. This approach was based on a decade of developments in dialogue and cooperation between civil society and state structures. This resulted in extremely relevant grant schemes, which also enabled the monitoring of reform in several critical areas (e.g. anti-corruption, anti-discrimination and environmental protection), and the sense of ownership by civil society and the regular detection of problems (such as the negative impact of widening the gap between

large national, professional NGOs and smaller grassroots initiatives). This good practice should be reflected in further rounds of accession.

5. **The EESC's role in facilitating civil society engagement in the accession process**

- 5.1 The EESC has always been a strong supporter of the enlargement policy. Today, the EESC plays a role in the enlargement process for Turkey and the Western Balkans through the various association agreements in force. The EESC has set up joint consultative committees (JCC) with all negotiating countries, bringing together local and European CSOs to make recommendations to the political authorities on both sides and to foster public debate on EU integration in negotiating countries. The EESC also set up a Western Balkans Follow-Up Committee in 2004, which is responsible for coordinating the EESC's activities in the Western Balkans. The follow-up committee monitors changes in the political, economic and social spheres in the Western Balkan countries and in EU-Western Balkans relations. The follow-up committee leads the organisation of the Western Balkans Civil Society Forums, which the EESC has held every two years since 2006.
- 5.2 These structures have created space for continuous dialogue and cooperation opportunities to provide advice to governments, EU institutions, as well as civil society and direct insight into accession negotiations. They have enabled informed discussions about the negotiations, based on multiple perspectives, in some cases resulting in new approaches to problems. JCCs have been useful in identifying the consequences of adopting the EU *acquis* for different parts of society and in supporting civil society engagement in the process. The WB Forum has served as a platform for addressing political authorities and networking among WB CSOs, while analysing the major problems of civil society in the region.
- 5.3 The weaknesses and limitations of JCCs and the WB Forum relate to their structure and mode of operation. In some cases, governments have tended to exert too much influence in order to secure the appointment of JCC members they perceive as affiliated to official politics. Another problem is the limited capacity to reach out to a broader circle of local civil society organisations, especially those operating outside the capital and urban centres. In some instances, this has resulted in an inappropriate or insufficient representation of civil society concerns. Complete changes of JCC membership on the EESC side disrupt the quality of relations and work. However, far too little turnover takes place on the other side of JCCs, which prevents many organisations from getting involved and reduces the outreach of this policy tool.
- 5.4 The other problem is lack of awareness about the role of the EESC and JCCs, which leads to unrealistic expectations. In the WB Forum, the diversity of concerns in different countries has sometimes made it difficult to reach joint conclusions. In several countries, governments have maintained a negative attitude towards civil society and, as a result, the JCC's recommendations have had little resonance. National administration representatives who participate in negotiation procedures need to improve the knowledge and skills they require to

participate in the partnership process with civil society and JCCs are among the forums where this learning process can be facilitated. The Commission and other institutions with influence over national ruling elites should back the EESC's efforts to amplify the voice of civil society and the social partners in the accession process. With this in mind, it is vital for JCCs to engage in direct consultations with the Commission, the Council and the EP on the key concerns and the information gathered through civil society dialogue in candidate countries.

- a) JCC members and members of the WB Follow-up Committee should organise and carry out regular meetings both with the representatives of national governments and parliaments and with the representatives of EU institutions to ask for follow-up on their recommendations.
 - b) The JCCs should send reports/joint communiqués to an extensive mailing list: the EU institutions, the permanent representations of EU Member States in Brussels, the permanent missions of negotiating countries to the EU, and the economic and social councils of the relevant enlargement countries.
-