©thomas-martinsen

en

News | 01.12.2017

Transparency of legislative work within Council preparatory bodies

European Ombudsman - Public consultation and invitation to submit comments

As a first step in the inquiry, the Ombudsman asked the Council 14 questions, to which the Council replied on 26 July 2017 [2]. The Council listed various improvements that will enhance the public's ability to follow its decision-making process, including (i) a new system to record Council documents, (ii) a project to develop a common drafting platform with the European Parliament and the Commission, (iii) technical tools to make it easier to disclose documents which bear the distribution marking "LIMITE" (i.e. not to be disclosed publicly) and (iv) various initiatives to facilitate the public's access to documents.

The Ombudsman has now written to the Council to arrange an inspection of legislative files closed in 2016. In parallel, the Ombudsman is inviting members of the public to put forward their views on the issues raised by the strategic inquiry. The Ombudsman invites you to give your views on the following points:

I. Accessibility of information and documents

1. Once the European Commission makes a legislative proposal, it is discussed in one or more Council working parties. What useful information might be given at this stage to allow the public to see and to understand how the discussions develop?

- There should be a clear roadmap that shows which Council working parties are responsible for the dossier.

- Each working party should publish the names of the representatives at the discussions, including their job titles and organisation; or at least information about who is politically responsible for proposals and positions taken during the working party meetings
- The should be clarity on the timelines including the dates of upcoming meetings, published far enough in advance to permit civil society or small business interests to organise
- Minutes of the meetings should be produced that include specific information about which Member States

defended what position

2. In its reply to the Ombudsman, the Council describes the actions it is currently taking to make it easier to find documents on its website, such as improving its search form, giving access to documents via a calendar of meetings and developing the 'joint legislative database' provided for in the Inter-institutional Agreement on Better law-making[3].

Are there other measures the Council could take to make legislative documents easier to find?

- It could produce a legislative observatory, along the model of the European Parliament's system that lists the key players, key moments and key documents in the procedure
- It should review its system for classification of documents with a view to ensuring that only documents to which one or more of the exceptions under the access to documents Regulation (1049/2001) are marked as sensitive or "LIMITE".
- It should strive to make sure that all documents are duly uploaded to its public register in a timely manner and that any reasons for non-proactive disclosure are clearly listed

II. Transparency of discussions

3. Please describe any difficulties you have faced in obtaining information or documents linked to discussions in Council preparatory bodies and any specific suggestions for improvement.

- We often try to figure out why a certain decision went the way it did within the Council, not only in the working parties but also during the comitology procedure. What we find is that information about Member States' positions is blacked out in order to protect the decision-making process, information about the representatives at each meeting is denied on the basis of personal data protection, and, in other cases, the notes are taken in such a way that it does not contain much meaningful information about Member States' individual or collective positions.

A culture change is clearly required so that democratic responsibility is squarely placed on the shoulders of those attending working party meetings, or at least on their political superiors. The culture of diplomatic inter-governmentalism should be replaced with the acceptance that Council working parties fulfil a legislative function in a pan-European context. Specific and regular trainings could be organised to that effect.

Staff regulations could likewise be improved so that there is a specific obligation of transparency to counter the clear obligations on professional secrecy, notwithstanding the current rules on whistleblowing.

Member States and the Council administration could be obliged to proactively identify sensitive documents that should not be published, and provide due justification for not doing so, with the remaining documents being publically available by default, which would be a reversal of the current trend.

The possibility of organising regular debriefings to update journalists, NGOs, Parliamentarians on the national and EU level and citizens on the work carried out by key preparatory bodies should also be looked into.

4. Various types of documents can be produced and circulated in Council preparatory bodies (outcomes of proceedings, Presidency compromises, progress reports, etc.) In your opinion, are certain documents more useful than others in informing the public about ongoing discussions? Please explain.

- Presidency compromises are important for seeing the direction the dossier is going in, as are progress reports, which should show the evolution of the discussions over time.
- A key area in which transparency is lacking is in the positions defended by the various Member States. Also interesting to know is the alliances that form between the various delegations.

5. Do you ever consult the legislative file the Council publishes after the legislative act has been adopted?

Yes, sometimes

6. Do you consider that different transparency requirements should apply between discussions in working parties and discussions in Coreper? Please give brief reasons for your answer.

To date, our knowledge of the case law is that secrecy should continue to be the exception to the rule of transparency, particularly in legislative procedures also at Council working party level. This means that levels of transparency - or restrictions to transparency - would need to be applied on a case-by-case basis, where duly justified. Regulation 1049/2001 applies equally to all bodies at all stages of the decision-making process.

7. While discussions are ongoing, documents which bear the distribution marking "LIMITE" are not disclosed to the public without prior authorisation. In your opinion, what additional steps could be taken to further regulate and harmonise the use of the "LIMITE" marking concerning legislative documents?

- LIMITE is, in theory, only a distribution marking rather than a classification level, but in practice, the rules which are then applied to LIMITE documents restrict access in a manner that is not consistent and that arguably is not radically different from the treatment given to RESTREINT documents.

- It is also unclear what the legal status of LIMITE documents are, and what basis this marking has in the Treaties. To our knowledge there are notes and guidelines by the Council that lay out the rules to be applied to LIMITE documents
(e.g. http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011336%202011%20INIT), but there seems to be little clarity on how to trigger a procedure that would challenge the LIMITE status, other than requesting the document under Regulation 1049/201 in an attempt to overturn the presumption made by the Council that its internal documents should not be public.

Either LIMITE should be included as another category under the rules on the classification of documents, or there should be a clear codification of the LIMITE rules, which does not appear to be the case.

- The current guidelines are framed in a way that violates the principle that information should be public unless specific exceptions apply. There seem to be no clear rules on what criteria should be applied in order to remove a document from public circulation by marking it as "LIMITE".

- Furthermore, the conditions on access to LIMITE documents are so restrictive that they can undermine proper Parliamentary scrutiny, at the national level but also within the European Parliament: "Exceptionally, hard copies of "LIMITE" documents may be made available to the chairpersons of relevant European Parliament committees, upon written request to the General Secretariat of the Council (GSC) and following agreement by duly authorised Council officials, on the understanding that the European Parliament will handle them in a manner that is consistent with this policy and will not make such documents or parts of them public without prior authorisation."
(http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011336%202011%20INIT)

- It would be important to have an independent body that would be given the competences to oversee the functioning of the rules on classified documents and on LIMITE documents, and that could also make recommendations to de-classify certain documents.

8. Bearing in mind that delegations' positions may evolve during the negotiations and that the Council must protect the effectiveness of its decision-making process, to what extent do you believe positions expressed by national delegations during negotiations in Council working parties/Coreper should be recorded? How important would it be for you to find out the position of the national delegation?

- We strongly believe that positions expressed by national delegations should be recorded. Otherwise future generations will never be able to know why a decision was taken or what impact their government had - or didn't have - on EU legislation.

- It is essential for us to be able to know what the positions of the national delegations are as this is a key principle of democratic accountability of governments towards their electorate. The lack of transparency in this regard is easily exploited by politicians who refuse to take responsibility for decisions that they had, or could have had, a key role in shaping. This culture of blame-shifting towards Brussels is arguably one of the key reasons behind the seemingly rising tide of euro-scepticism. Breaking this crucial link between national governments and the European Union is a key reason why citizens feel alienated from the EU institutions rather than empowered to participate. One could even argue that this is the birthplace of Europe's so-called "democratic deficit".

III. Other

9. Please comment on any other areas or measures which in your opinion are important to enhance the transparency of legislative discussions within Council preparatory bodies. Please be as specific as possible.

European Parliament resolution of 28 April 2016 on public access to documents for the years 2014-2015 (2015/2287(INI)) "calls, in particular, on the Council, including its preparatory bodies, to publish minutes of the meetings of Council working groups and other documents, in the light of the Access Info Europe case, intervening Member States and their proposals"

It also "Points out that, while trilogues are important and effective, the procedures currently applicable to them give rise to concerns as regards the openness in the legislative procedure; calls on the institutions involved to ensure greater transparency of informal trilogues to strengthen democracy by allowing citizens to scrutinise the relevant information which has formed the basis of a legislative act, as stated by the Court of Justice of

the European Union in the joined cases Sweden and Turco v Council, while ensuring adequate space to think for the co-legislators;"

It further "Regrets that official documents are frequently over-classified; reiterates its position that clear and uniform rules should be established for the classification and declassification of documents; regrets that institutions call for in-camera meetings without proper justification; reiterates its call on the institutions to assess and publicly justify requests for in-camera meetings in accordance with Regulation (EC) No 1049/2001; considers that requests for in-camera meetings in Parliament should be evaluated by Parliament on a case-by-case basis; believes that an independent oversight authority should oversee the classification and declassification processes;"

Finally, it "Encourages MEPs and the Council's representatives to follow the Commission practice, as established by its decision of 25 November 2014, to publish information about meetings between them or their staff, on the one hand, and stakeholders and civil society, on the other;"

In addition, the European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI) "insists that the Council must be just as accountable and transparent as the other institutions;". It reiterates the demands made in the resolution cited above and also calls "on the Council, including its preparatory bodies, to join the Transparency Register as soon as possible".

The recent European Parliament resolution of 16 November 2017 on the annual report on the activities of the European Ombudsman in 2016 (2017/2126(INI)) also makes the following important recommendations:

"Proposes a review of the European Ombudsman's Statute to empower her to investigate alleged non-compliance with Regulation (EC) No 1049/2001 regarding public access to documents from EU institutions and bodies and to take decisions on the release of the relevant documents;"

"Commends the Ombudsman's strategic inquiry on access to documents relating to Council preparatory bodies, including its Committees, working parties and the Committee of Permanent Representatives (COREPER), when discussing draft EU legislative acts; encourages the Ombudsman to call on the Council to improve transparency with regard to its meetings with stakeholders and the decisions adopted, comply with access to document requirements, and provide this access in a timely manner and without delays;"

Recommended

Press release

Leonardo1982



Parliament puts far-right party on notice

07.07.2026

Press release

European External Action Service (https://www.flickr.com/photos/eeas/32978511020)



Now is the time to transform the EU before another Orb…

21.04.2026

Press release

Foto von Sasun Bughdaryan auf Unsplash



GDPR: MEPs to vote on faster and fairer enforcement

21.10.2025

News

© European Union 2019 - Source : EP



Debriefing of the September Plenary Session

12.09.2025

Contact person



Pam Bartlett Quintanilla

Team leader - Outreach and campaigns

Please share

- E-Mail