

Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the Council of the European Union in complaint 2395/2003/GG

Special Report

Case 2395/2003/GG - Opened on 18/12/2003 - Recommendation on 09/11/2004 - Special report on 18/12/2003 - Decision on 17/10/2005

(Made in accordance with Article 3 (7) of the Statute of the European Ombudsman [1])

Summary

The present special report concerns the question as to whether the Council should meet publicly whenever it acts in a legislative capacity. The Ombudsman's inquiry into this matter results from a complaint made in December 2003. At present, the extent to which the Council's meetings in its legislative capacity are public is limited by the Council's own internal Rules of Procedure. All that needs to be done in order to open all such meetings to the public would therefore be for Council to amend its Rules of Procedure. In the Ombudsman's view, the Council's failure to do so constitutes an instance of maladministration. This finding is based on the following considerations: (a) Article 1 (2) of the Treaty on European Union establishes a general principle that the Council and the other Community institutions and bodies must take decisions "as openly as possible" and (b) the Council has not submitted any valid reasons as to why it should be unable to amend its Rules of Procedure with a view to opening up the relevant meetings to the public.

The Council took the view that Article 1 (2) of the Treaty on European Union merely indicated that the *future* Union should be as open as possible, but that at the time of drafting the EU Treaty this was not yet possible. However, as regards the process towards achieving that aim, time is an important factor. The Ombudsman therefore considers that the analysis cannot limit itself to the provisions that were introduced by the Treaty of Amsterdam but has to take into account subsequent developments. In this context, it is important to note that the Council itself, in the new Rules of Procedure adopted in 2000, introduced rules that provided for an increased openness of its meetings as a legislator. In the Ombudsman's view, the Council thus made clear



that steps to increase the transparency of its legislative activity had to and could be taken. The adoption of the new Rules of Procedure in 2000 also confirms that doing so was and is possible under Community law as it presently stands.

The complainants in the present case referred to a provision of the Treaty establishing a Constitution for Europe according to which the Council shall meet in public when considering and voting on a draft legislative act (Article 50 (2) of the Treaty). For the avoidance of any doubt, it should be noted that the Ombudsman's special report is based on the existing Treaties and Community law as it currently stands, not on the Treaty establishing a Constitution for Europe.

The complaint

The complainants' case

In December 2003, the complainants, an MEP belonging to the CDU ("Christlich Demokratische Union Deutschlands"), a German political party, and a representative of the youth group of the same party, complained to the Ombudsman about the fact that the meetings of the Council acting in its legislative capacity were only public to the extent foreseen by Articles 8 and 9 of the Council's Rules of Procedure of 22 July 2002 [2] (OJ 2002 no L 230, p. 7).

The complainants' approaches to the Council

On 18 September 2003, the complainants addressed an open letter to the Council concerning this issue.

On 19 November 2003, Mr Solana, the Council's Secretary General, replied to the complainants' open letter on behalf of the Council. Mr Solana pointed out that Article 8 of the Council's Rules of Procedure reflected the compromise that had been reached at the European Council in Seville. He added that the Council deliberations preceding a vote on legislative acts were already public and were made available to the interested public by audiovisual means. Mr Solana noted that the same applied to the presentation by the Commission of its most important legislative proposals and the ensuing debate in the Council. In Mr Solana's view, a substantial part of the Council's legislative activity was thus in practice already public. In addition to that, nearly all documents relating to the Council's legislative activity were accessible on the basis of Regulation No 1049/2001. Mr Solana added that opening the legislative deliberations of the Council to the public was (as evidenced by the deliberations of the Convention) an issue that found widest-reaching support and that the complainants' proposal should therefore be discussed again in the context of preparing to implement the new Treaty establishing a Constitution for Europe.

The complainants' arguments

In their complaint to the Ombudsman, the complainants submitted the following arguments:



The complainants pointed out that the Council was, together with the European Parliament, the legislative body of the European Union. They submitted that the decisions taken by the Council affected the lives of citizens of Europe. Notwithstanding this central importance of the Council, the Council only met in public in exceptional cases and to a limited extent.

The complainants noted that Article 49 (2) of the Draft Treaty establishing a Constitution for Europe that had been prepared by the Convention in 2003 was worded as follows:

"The European Parliament shall meet in public, as shall the Council of Ministers when examining and adopting a legislative proposal."

In the complainants' view, a considerable number of legal and political reasons argued in favour of making it possible that the Council meet in public as of now.

The complainants pointed out that public sessions of the Council when it acted as a legislator would in any event become practice when the new constitution entered into force. They submitted that the result achieved by the Convention and the reactions on a European and on a national level left no doubt that a conviction had formed in Europe according to which it was right that the Council should meet in public, since this would strengthen citizens' confidence in the decisions that are taken in Brussels.

They further argued that the Council's current practice was not in conformity with the aim laid down in Article 1 (2) of the Treaty on European Union ("TEU") according to which decisions in the EU "are taken as openly as possible and as closely as possible to the citizen". According to the complainants, the transparency of the activity of the EU nowadays had to be considered as a general principle of law which should be fully reflected by the Rules of Procedure of the Council.

The complainants further argued that the exclusion of the public did not serve any aims of a higher order. According to them, the exclusion of the public only protected the governments in Member States from close scrutiny by the European public, and this had only negative effects for European integration and for citizens.

According to the complainants, the Council's Rules of Procedure should therefore be amended so as to foresee that the Council acting in its legislative capacity should always meet in public.

The inquiry

The Council's opinion



The Ombudsman forwarded the complaint to the Council for its opinion.

In its opinion, the Council made the following comments:

The principle of openness laid down, *inter alia*, in Article 1 (2) TEU had great importance. However, this provision was phrased in general terms that suggested more an aim than an absolute rule. The language of this provision was programmatic, as was clear from the phrase "marks a new stage in the process of creating an ever closer union".

The Council's current practice concerning the publicity of its meetings was in accordance with its Rules of Procedure. The complainants appeared to argue that the Rules of Procedure themselves were an instance of maladministration. However, the adoption of the Rules of Procedure (which had their legal basis directly in Article 207 (3) of the EC Treaty) was a political and institutional matter. Articles 8 and 9 of the Rules of Procedure had been amended following a compromise between the Member States at the Seville European Council in June 2002.

The Draft Treaty establishing a Constitution for Europe provided for the Council to meet in public when examining and adopting legislative proposals. It would seem that the very fact that any such provision had been included in a (draft) constitution confirmed that the matter was not one of maladministration or administrative practice, but a legal and political question outside the scope of the Ombudsman's mandate.

The Council furthermore pointed to the existing arrangements for informing the public of the Council's legislative activities, including the possibility to obtain access to documents under Regulation 1049/2001.

In the light of the above, the Council submitted that no maladministration had occurred and that the issue raised by the complainants reached beyond the Ombudsman's mandate.

The complainants' observations

In their observations, the complainants maintained their complaint. They submitted that the fact that Article 1 (2) TEU established a generally phrased aim and not an absolute rule did not stand in the way of their demand that the meetings of the Council should be public. The complainants argued that, on the contrary, it followed from the programmatic meaning of this provision and the aim of taking decisions as openly "as possible" that it was mandatory to further this principle in practice. For a legislative body like the Council, meeting publicly was the classic form of the openness of decision-making, as practised by the legislative bodies of all Member States of the Union.

The power to organise its internal matters did not free the Council from its duty to respect and further the principles of the Union. The way in which the Rules of Procedure were actually drafted and their implementation could therefore collide with principles of superior order and thus constitute an instance of maladministration.



According to the complainants, the conclusion of the work on the Draft Treaty establishing a Constitution for Europe marked a qualitatively new development regarding the principle of the public character of the Council's meetings when acting as a legislator. This principle would become a general principle of law at the latest with the adoption of the constitution by the heads of state and government of the Member States.

Further inquiries

After careful consideration of the Council's opinion and the complainant's observations, it appeared that further inquiries were necessary.

Request for further information

The Ombudsman therefore wrote to the Council at the end of June 2004. In this letter, the Ombudsman noted that Article 49 (2) of the Draft Treaty establishing a Constitution for Europe had also been included in the Treaty establishing a Constitution for Europe that had been agreed at the European Council held in Brussels a few days beforehand. The Ombudsman pointed out that although this treaty had not yet been ratified by Member States, it had been accepted by all Member States. He also noted that the Council's Rules of Procedure were adopted by the Council, that is to say by the representatives of the Member States.

In view of the above, the Ombudsman asked the Council to inform him as to what obstacles, if any, it saw to the implementation of the change of its Rules of Procedure requested by the complainants, now that the Treaty establishing a Constitution for Europe, including the above-mentioned provision, had been accepted by Member States.

The Council's reply

In its reply, the Council again stressed the importance it attached to the issue of transparency. The Council noted that the Treaty establishing a Constitution for Europe still had to be ratified by the Member States. It added that the mere fact that the relevant provision had been added to Part I of the Constitutional Treaty illustrated that the matter raised by the complainants was a political and constitutional question rather than one of maladministration.

In conclusion, the Council reiterated its view that there was no maladministration since it had acted in full conformity with the pertinent rules in force.

The complainants' observations

No observations were received from the complainants.

The Ombudsman's draft recommendation



The draft recommendation

On 9 November 2004, the Ombudsman addressed the following draft recommendation to the Council, in accordance with Article 3 (6) of the Statute of the European Ombudsman:

"The Council of the European Union should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity."

The European Ombudsman gave reasons for the draft recommendation as follows:

1 The scope of the Ombudsman's mandate

1.1 Article 195 of the EC Treaty entrusts the Ombudsman with the task of examining cases of maladministration in the activity of the Community institutions and bodies. The Treaty does not contain a definition of the term 'maladministration'. In his Annual Report for 1997 [3] , and in response to a call for clarification by the European Parliament, the Ombudsman proposed the following definition: "Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it." This definition was subsequently welcomed by the European Parliament [4] .

1.2 On the basis of the above, the Ombudsman considered that the fact that the Council's present practice was in conformity with the rules in force, which the Council itself has adopted, did not mean that there could not be maladministration. A measure adopted by a Community institution or body can still constitute an instance of maladministration if it fails to be in accordance with a principle that is binding upon the institution or body.

1.3 The Council appeared to argue that the extent to which it opened the meetings that it holds in its legislative capacity to the public was a political decision that was beyond the mandate of the Ombudsman. The Ombudsman accepted that the adoption of the Council's Rules of Procedure on the basis of Article 207 (3) of the EC Treaty was a political and institutional matter to be decided upon by the Council itself. However, the present complaint did not concern the way in which the Council organised its internal procedures but the question as to whether the public could be excluded from the Council's meetings in its legislative capacity. As the complainants had correctly noted, it appeared that the legislative bodies in all the Member States of the European Union met publicly. Article 1 (2) TEU stipulates that decisions in the Union should be taken "as openly as possible". In these circumstances, the Ombudsman considered that the Council had not established that the issue of the access of the public to its meetings was a purely political one that should therefore not be subject to any scrutiny.

1.4 The Council further argued that the very fact that a provision like Article 49 (2) had been



added to Part I of the Draft Treaty establishing a Constitution for Europe illustrated that the matter raised by the complainants was a political and constitutional question rather than one of maladministration. The Ombudsman was not convinced by this argument. It was of fundamental importance for citizens to be able to inform themselves about the activity of the legislative bodies. The best way to achieve this was indubitably to open the debates of these legislative bodies to the public. In the light of the importance of the principle of openness in this area, it was not surprising that a provision enshrining it was included first in the Draft Constitutional Treaty and subsequently in the Treaty establishing a Constitution for Europe that had been adopted by Member States at the European Council in Brussels in June 2004 [5] .

1.5 In order to avoid any possible misunderstanding, the Ombudsman considered it useful to add that the present complaint did not concern the legislative activity of the Council as such, but the question as to whether the meetings of the Council acting in its legislative capacity should be public.

1.6 On the basis of the above, the Ombudsman took the view that the issue raised in the present complaint fell within the mandate that had been conferred upon him by Article 195 of the EC Treaty.

2 The lack of openness of the meetings of the Council when acting as a legislator

2.1 The complainants basically alleged that the Council's current practice of not opening all the meetings it holds in its legislative capacity was not in conformity with the aim laid down in Article 1 (2) TEU according to which decisions in the EU "are taken as openly as possible and as closely as possible to the citizen".

2.2 The Council agreed that the principle of openness laid down inter alia in Article 1 (2) of the Treaty on European Union had great importance. It submitted, however, that this provision was phrased in general terms that suggested more an aim than an absolute rule and that the language of this provision was programmatic. The Council therefore took the view that its current practice as laid down in Articles 8 and 9 of its Rules of Procedure did not constitute maladministration.

2.3 The Ombudsman agreed that Article 1 (2) TEU did not contain a precise rule but rather a general principle. The fact remained, however, that this provision clearly directed the institutions and bodies to see to it that all decisions at the level of the EU are taken as openly "as possible". The Ombudsman therefore considered that it should be ascertained whether opening all the meetings of the Council acting in its legislative capacity would be possible and, if so, whether there were nevertheless good reasons for not doing so.

2.4 The Ombudsman noted that, as the Council itself had stressed, some of the meetings of the Council acting in its legislative capacity were already public by virtue of the rules that were laid down in Articles 8 and 9 of the Council's Rules of Procedure. These Rules of Procedure are



adopted by the Council itself, that is to say a body composed of a representative of each Member State (Article 203 of the EC Treaty). The Ombudsman noted that in October 2004, the Member States of the EU had signed the Treaty establishing a Constitution for Europe that contained an express provision to the effect that the Council should meet in public when considering and voting on a draft legislative act. Although this treaty had not yet been ratified by all the Member States in accordance with their respective constitutional requirements, the Ombudsman considered that the very fact that the representatives of the Member States had felt able to agree on such a provision appeared to indicate that it would be possible to open the relevant meetings of the Council to the public already now. Mindful of the possibility that he might have overlooked considerations that could be relevant in this context, the Ombudsman nevertheless wrote to the Council in June 2004 in order to ask it to inform him as to what obstacles, if any, it saw to the implementation of the change of its Rules of Procedure requested by the complainants. In its reply, the Council did not refer to any such obstacle. The Ombudsman therefore considered that it would be possible for the Council to decide that the public should be admitted to its meetings in a legislative capacity, unless there were good reasons for not doing so.

2.5 The Ombudsman carefully examined the arguments submitted by the Council. However, the Council did not refer to any principles or aims of a higher order that could entitle it to refuse to open its meetings in a legislative capacity to the public. On the contrary, the Ombudsman noted that the Council had stressed the great importance it attached to the issue of transparency. In its letter to the complainants of 19 November 2003, the Secretary General of the Council had accepted that opening the legislative deliberations of the Council to the public was an issue that found widest-reaching support.

2.6 In its opinion, the Council referred to the existing arrangements for informing the public of the Council's legislative activities, including the possibility to obtain access to documents under Regulation 1049/2001. The Ombudsman considered that these arrangements, important and commendable though they might be, were not relevant for the present inquiry which concerned access to the meetings of the Council, and not information about these meetings.

3 Conclusion

In view of the above, the Ombudsman concluded that the fact that the Council refused to decide to meet publicly whenever it is acting in its legislative capacity without giving good reasons for this refusal was an instance of maladministration.

The Council's detailed opinion

After having received the draft recommendation, and in accordance with Article 3 (6) of the Statute of the European Ombudsman, the Council sent a detailed opinion on 17 February 2005.

In its detailed opinion, the Council made the following comments:



Article 2 (1) of the Ombudsman's Statute defined the Ombudsman's remit as uncovering maladministration in the "activities" of Community institutions and bodies. The Council's Rules of Procedure were not in themselves an "activity" of the Council but rather governed the manner in which the Council exercised its activities.

The Council could not agree with the distinction made by the Ombudsman between the way in which the Council organised its internal procedures and the fact that the public was not admitted to all Council meetings dealing with legislative matters. In fact, the degree of publicity of Council meetings was one of the political choices made by the Council when it organised its internal procedures. The organisation of the Council's work was a matter of great importance for its members. The fact that the current provisions were the follow-up of a political decision by the European Council - the highest political body in the EU - in itself evidenced the political sensitivity of the matter.

The Council thus continued to believe that the current complaint was beyond the Ombudsman's mandate.

Article 1 (2) TEU stated that "[t]his Treaty marks *a new stage in the process of creating* an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen" (emphasis added). The Ombudsman's reasoning seemed to rest on the incorrect assumption that the highlighted words were superfluous. Article 1 (2) was not directly applicable. More importantly, by its wording, this provision was programmatic in character. That wording in itself did not permit the legal framework within which the Council operated to be judged against Article 1 (2); at most, it indicated that the future Union should be as open as possible, but that at the time of drafting the EU Treaty this was not yet possible.

Indeed, Article 3 TEU provided that "[t]he Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire* ."

Article 207 (3) of the EC Treaty was worded as follows:

"The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255 (3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public."

Article 1 (2) TEU was not hierarchically superior to Article 207 of the EC Treaty. Both were



provisions of primary Community law. Indeed, since Article 1 (2) did not even lay down a principle governing *current* law but stated a rather general long-term aim, it could not possibly override the explicit and clear language of Article 207.

Moreover, the current wording of both Article 1 (2) TEU and Article 207 (3) of the EC Treaty dated from the Amsterdam Treaty, which showed that the former provision did not reflect any more recent thinking than the latter. Rather, Article 207 (3) was the practical reflection - as far as the Council's operations were concerned - of how far the authors of the Treaties felt the aim laid down in Article 1 (2) could be pushed.

The Council concluded by saying that it was thus convinced that its Rules of Procedure did not constitute an instance of maladministration.

The complainants' observations

In their observations, the complainants maintained their complaint and made the following further comments:

It was true that both Article 1 (2) TEU and Article 207 (3) of the EC Treaty were provisions of primary Community law and thus found themselves on the same level as regards the hierarchy of norms. Article 1 (2) TEU did therefore not take precedence over Article 207 (3) of the EC Treaty.

However, Article 1 (2) TEU had legal effects for the Union, since it was a legally binding "principle" of the EU. Thus the need for decisions to be taken "as openly as possible" had to be taken into account as regards every decision taken by the EU. To the duty of the institutions to take account of the principle of openness in their decisions corresponded the duty to review their basic procedural rules in the light of Article 1 (2) TEU.

The fact that Article 1 (2) TEU stated that this Treaty "marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen" did not contradict this view, given that the implementation constituted a process that had already started with the Treaty of Amsterdam.

The Ombudsman's evaluation of the Council's detailed opinion

The Ombudsman notes that the Council objects to his position on two main grounds. First, the Council takes the view that the present complaint is beyond the Ombudsman's mandate. Second, the Council believes that there was in any event no maladministration.

As regards the *first* of these objections, it should be recalled that Article 195 of the EC Treaty



entrusts the Ombudsman with the task of examining cases of maladministration in the activities of the Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. The present complaint concerns the question as to whether the Council should meet publicly whenever it acts in a legislative capacity. The Ombudsman takes the view that the Council's meetings are "activities" of the Council in the sense of Article 195 of the EC Treaty. Moreover, the Ombudsman finds it difficult to see why the adoption of the Rules of Procedure by the Council should not also be considered as an "activity" of a Community institution.

As regards the Council's argument that the present complaint concerns a political choice that does not fall within the Ombudsman's remit, it should be recalled that this complaint does not concern the way in which the Council organises its internal procedures but the question as to whether the public can be excluded from the Council's meetings in its legislative capacity. The Ombudsman notes that the Council appears to argue that the degree of publicity of its meetings belongs to the political choices to be made by the Council. In the Ombudsman's view, and as explained below, this position is difficult to reconcile with Article 1 (2) TEU. Whilst Article 207 of the EC Treaty provides for the Council to adopt its own Rules of Procedure, it does not stipulate that the degree to which the meetings of the Council in its legislative capacity are to be open to the public should be regarded as a political choice and left to the discretion of the Council. Regardless of the issue as to what effect has to be attributed to Article 1 (2) TEU, it should be noted that this provision envisages that decisions in the EU should be taken as openly "as possible". There is no suggestion that the degree of openness should depend on the political will of the relevant institutions or bodies of the EU. The Ombudsman therefore continues to believe that the present complaint falls within his remit.

As regards the *substantive* issue, the Council correctly draws attention to the full wording of Article 1 (2) TEU according to which "[t]his Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen". The Ombudsman agrees that this provision envisages a process towards a situation where "decisions are taken as openly as possible". However, the Ombudsman is unable to agree with the Council's view that Article 1 (2) TEU should be regarded as a programmatic provision with no legal effect.

The relevant clause in Article 1 (2) TEU was introduced by the Treaty of Amsterdam that was signed on 2 October 1997 and that entered into force in 1999. As the Council has correctly pointed out, the present wording of Article 207 (3) of the EC Treaty was also adopted by that treaty. However, nothing in Article 207 (3) prevents the Council from opening its meeting as a legislator to the public. In the Ombudsman's view, the Council's reference to this provision is thus inconclusive.

The Ombudsman notes the Council's view that Article 1 (2) TEU merely indicated that the *future* Union should be as open as possible, but that at the time of drafting the EU Treaty this was not yet possible. However, even if this view were correct, the Ombudsman considers that the Council has failed to give due regard to two important considerations: First, Article 1 (2) TEU clearly indicates that decisions in the European Union should be taken "as openly as possible".



Article 1 (2) TEU thus unambiguously points the direction in which the Union and its institutions are to develop. There is thus no discretion or political choice to be made by the Council as regards this direction. However, the Council has not put forward any objective reasons to explain why the Council should be unable to move in that direction and open its meetings in a legislative capacity to the public. Second, as regards the process towards achieving that aim, time is an important factor. The Ombudsman therefore considers that the analysis cannot limit itself to the provisions that were introduced by the Treaty of Amsterdam but has to take into account subsequent developments. In this context, it is important to note that the Council itself, in the new Rules of Procedure adopted in 2000, introduced rules that provided for an increased openness of its meetings as a legislator. In the Ombudsman's view, the Council thus made clear that steps to increase the transparency of its legislative activity had to and could be taken. The adoption of the new Rules of Procedure in 2000 also confirms that doing so was and is possible under Community law as it presently stands.

In their complaint, the complainants argued that the adoption of a draft Treaty establishing a Constitution for Europe in 2003 and its signature by all the Member States of the EU in 2004 constituted important events that were relevant for their case. This Treaty has not yet been ratified by all the Member States and has thus not entered into force yet. For the avoidance of any doubt, it should be noted that the Ombudsman's appraisal of the present case is based on the existing Treaties and Community law as it currently stands, not on the Treaty establishing a Constitution for Europe.

The Ombudsman therefore maintains his view that the fact that the Council refuses to decide to meet publicly whenever it is acting in its legislative capacity without giving valid reasons for this refusal is an instance of maladministration.

The Ombudsman's recommendation

In view of the above, the Ombudsman re-states his draft recommendation as a recommendation to the Council as follows:

The Council of the European Union should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity.

The European Parliament could consider adopting the recommendation as a resolution.

Strasbourg, 4 October 2005

P. Nikiforos DIAMANDOUROS



[1] Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

[2] OJ 2002 L 230, p. 7. The text of these provisions is quoted in the Ombudsman's draft recommendation in the present case which is available (in English and German) on the Ombudsman's website (<http://www.euro-ombudsman.eu.int> [Link]).

[3] See pp. 22-23.

[4] See the Ombudsman's Annual Report for 2002, p. 18.

[5] It may be useful to point out that Article 49 (2) of the Draft Constitutional Treaty became Article 50 (2) of the Treaty establishing a Constitution for Europe and was slightly reworded. The provision is now phrased as follows: "The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act."