

Decision of the European Ombudsman closing the inquiry into complaint 262/2012/OV against the European Parliament

Decision

Case 262/2012/OV - **Opened on** 29/02/2012 - **Recommendation on** 31/03/2014 - **Decision on** 06/10/2014 - **Institution concerned** European Parliament (Draft recommendation accepted by the institution) |

The complainant made a request for public access to the minutes of meetings of Coordinators of several Committees of the European Parliament relating to the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). Parliament replied that, with some exceptions, no separate minutes of the meetings of Committee Coordinators exist, and that these minutes are included in the minutes of the Committee meetings themselves. The complainant then turned to the Ombudsman *alleging that Parliament fails to include the minutes of Committee Coordinators in its register of documents. The Ombudsman made a recommendation to Parliament that, when such minutes are drawn up, Parliament should include them in its public register of documents. Parliament replied that, in order to promote greater transparency, recommendations or decisions adopted by the Coordinators would, after their endorsement by the Committee, be included in the Committee minutes which are accessible in the public register. Parliament stated that this new approach would be applicable from July 2014 onwards. The Ombudsman concluded that Parliament has taken appropriate measures to implement her draft recommendation. With regard to existing minutes of Committee Coordinators adopted under the 2009-2014 parliamentary term, the Ombudsman stated that she trusts that, for the sake of consistency, Parliament will include them in the public register.*

The background

1. This complaint concerned a request for public access to the minutes of meetings of Coordinators of the Committees of the European Parliament [1] . The request was made by a transparency NGO under Regulation 1049/2001.
2. On 8 July 2011, the complainant requested the minutes of the meetings of Parliament's International Trade Committee (INTA), Legal Affairs Committee (JURI) and Constitutional Affairs Committee (AFCO) relating to the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). It also requested the minutes of all related meetings of Committee Coordinators.



3. On 28 July 2011, Parliament replied that the minutes of all meetings of Parliament's Committees were available on Parliament's website [2] and that these minutes include a point called " *Coordinators Decisions* " or " *Chair's announcements* " with the relevant decisions by the Coordinators. However, it added that it had no separate minutes for the Committee Coordinators' meetings.

4. In its confirmatory application, the complainant however pointed out that a Google search for " *European Parliament coordinator's meetings* " identified separate minutes of meetings of the Committee Coordinators for the Environment, Public Health and Food Safety Committee (ENVI Committee).

5. On 5 August 2011, Parliament reiterated that, normally, no separate minutes of the meetings of Committee Coordinators existed, but that some Committees, like the ENVI Committee, had decided to publish results of their meetings. Moreover, on 25 October 2011, Parliament granted the complainant access to the minutes of the INTA Coordinators' meetings dealing with ACTA, that is to say, the minutes of the meeting of the INTA Committee Coordinators which took place on 21 June 2011.

6. On 20 November 2011, the complainant pointed out to Parliament that, in its request of 8 July 2011, it had also asked for the minutes of the JURI Committee Coordinators' meeting, but that Parliament had denied the existence of these meetings three times. It again requested public access to these minutes.

7. On 28 November 2011, Parliament replied to the complainant that " *following information obtained from the JURI secretariat, we confirm our reply provided last July: the JURI committee secretariat does not elaborate separate coordinator's minutes. JURI minutes are available on EP webpage, please visit: [reference] . The decisions taken by coordinators are included in the committee minutes (point "Chair's announcements") ...* " [3] .

8. In February 2012, the complainant turned to the Ombudsman who opened an inquiry into the **allegation** that Parliament fails to register all existing Parliament documents in its electronic Register of documents, in particular the minutes of the meetings of Parliament Committee Coordinators, and the corresponding **claim** that Parliament should register all those documents.

Alleged failure to register Committee Coordinators' minutes in Parliament's register

The Ombudsman's draft recommendation

9. When addressing the draft recommendation to Parliament, the Ombudsman took into account the arguments and opinions put forward by the parties.



10. The Ombudsman stated that it was an established fact that Parliament's services do not systematically include the separate minutes of Committee Coordinators' meetings in Parliament's public register of documents, even though these minutes certainly do exist. For example, there is currently no reference in Parliament's public register to the minutes of the meeting of 21 June 2011 of the Coordinators of the INTA Committee (document INTA(2011)0621_2), even though that document exists and the complainant was, eventually, given access to it (see paragraph 5 above).

11. The Ombudsman found that the failure of Parliament's services to include that document in Parliament's public register of documents not only means that the complainant's exercise of its right of access to that document was delayed, it also means that other members of the public are not, even today, made aware of the existence of that document.

12. The Ombudsman agreed that the wording and purpose of Articles 11 and 12 of Regulation 1049/2001 do not imply an obligation on Parliament to have, in its public register of documents, a reference to each and every document it holds. However, Parliament should certainly interpret Articles 11 and 12 of Regulation 1049/2001 in a manner which allows the public to obtain as complete a picture as possible of how Parliament carries out its core tasks. Documents which relate to these core tasks should, as far as possible, be recorded in Parliament's public register of documents.

13. The work of MEPs in Committees certainly constitutes a core task of Parliament. This work encompasses work in meetings of Committee Coordinators. If separate minutes are drafted of meetings of Committee Coordinators, the existence of such minutes should be recorded in Parliament's public register of documents.

14. Parliament's own internal Rules which seek to implement the right of public access to European Parliament documents [4] are in accordance with the above principles. Article 4(3) of those Rules states: "*Documents drawn up under the legislative procedure or for the purposes of parliamentary business shall be entered in [the public register] as soon as they have been tabled or made public*" (emphasis added).

15. However, in the present case, Parliament failed to comply with its own internal rules. Even though minutes of at least one meeting of Committee Coordinators relating to the negotiation of ACTA exist and even though those minutes certainly fall under the category of "*documents drawn up ... for the purposes of parliamentary business*", no reference to that document is included in Parliament's public register.

16. It was the Ombudsman's understanding that Parliament does not, as a matter of general policy, include references to minutes of meetings of Committee Coordinators in Parliament's public register of documents. As a result, rather than being an isolated failure by Parliament to make public the existence of a single document that relates to the work of MEPs, there is a systemic failure by Parliament to mention, in the public register of documents, the existence of a whole series of documents that relate to the work of MEPs.



17. In light of the above, the Ombudsman found that Parliament's failure to include references to the minutes of the meetings of Committee Coordinators in its register of documents amounts to an instance of maladministration. She therefore made the following draft recommendation to Parliament:

" When minutes of meetings of Committee Coordinators are drawn up, Parliament should include the minutes in its public register of documents and make them, in principle, directly accessible, in accordance with Article 12 of Regulation 1049/2001 ".

18. In its detailed opinion on the draft recommendation, Parliament stated that the complaint leading to the draft recommendation brought to light certain discrepancies as to the implementation of Article 192 of Parliament's Rules of Procedure [5] , governing the work of Committee Coordinators. Practices do indeed differ from one Committee to another as regards the publication of Coordinators' decisions and recommendations, and that this may seem to be contrary to increasing demands for transparency in the legislative field.

19. In line with the Ombudsman's draft recommendation, and for the sake of clarity and greater transparency of Parliament activities, the relevant Directorates-General (DG Internal Policies and DG External Policies) which support the work of parliamentary Committees, have been invited to harmonise their practices concerning coordinators across the different committees. In principle, the Committee secretariats will not prepare any *separate* minutes of Coordinators' meetings. Instead the recommendations or decisions adopted by the Coordinators, after their endorsement by the full Committee, will be included in the public Committee minutes. In this way, the outcome of Coordinators' meetings will automatically be registered in the public register via the minutes of Committee meetings, which are directly accessible to the public in the register. This new approach will be implemented as of the constitution of the Committees of Parliament's 8th legislature, at the beginning of the new parliamentary term in July 2014.

20. Parliament considered that this common and consistent approach would allow for a swift improvement of the present situation and give greater visibility to the work of the Coordinators, in full compliance with the draft recommendation.

21. In its observations on Parliament's detailed opinion, the complainant stated that Parliament's implementation of the draft recommendation was not in conformity with EU law which requires Parliament to list in its register all documents. The complainant noted the following failures:

22. First, Parliament's statement that the relevant DGs "*have been invited to harmonise their practices* " was too vague since there is room not to accept the invitation. Parliament instead should instruct the DGs to comply with EU law. The complainant stated that the Committees' secretariats will not prepare any separate minutes of Coordinator's meetings. Also, as the new regime will apply to recommendations and decisions, other aspects will remain secret. The endorsement of the recommendations and decisions is a criterion which is not in EU law. In sum, Parliament has created a "conditioned" registration with room for discretion.



23. Second, the new regime will apply to future minutes only, which is not in conformity with EU law.

24. Third, the complainant pointed out that the statement of the JURI Committee Secretariat of 28 November 2011 that it does not create separate Coordinator's minutes was also incorrect, because the complainant had obtained a (leaked) copy of JURI Coordinators' minutes of 19 December 2011 [6] . It had however not received the other JURI Coordinator's minutes it requested. The complainant therefore stated that Parliament had thus to acknowledge the existence of JURI Coordinators' minutes and to release the minutes he had asked for.

25. Fourth, Parliament's proposal concerns Coordinators' minutes only, but not other documents excluded from the register. For instance, the complainant pointed out that the JURI Committee had created a Coordinators' workspace which was accessible only to Coordinators, political advisors working with the Committee and the staff of the secretariat. The workspace contains the notes for and decisions of the Coordinators' meetings. These documents are not included in the register. Other Committees may have Coordinators' workspaces as well or keep documents not listed in the register. The complainant concluded that Parliament intended to (somewhat) solve the problem for one group of future documents (the Coordinators' minutes), leaving older and other documents excluded from the register.

The Ombudsman's assessment after the draft recommendation

Preliminary remark

26. With regard to *existing* minutes of the Coordinators of the JURI Committee [7] , the Ombudsman considers that it would not be in the interest of the complainant for her to make a new draft recommendation to Parliament on this aspect, since the complainant could obtain a quicker reply from Parliament by immediately submitting a new request for public access to those minutes (15 days instead of three months) [8] . If the complainant makes such a request, Parliament should in principle grant access to those documents, unless an exception under Article 4 of Regulation 1049/2001 applies.

Assessment

27. The Ombudsman welcomes the measures announced by Parliament in order to implement her draft recommendation. The Ombudsman understands those measures as meaning that the secretariats of Parliament's Committees will *not* draft *separate minutes* of Coordinators' meetings, but that the recommendations or decisions adopted by the Coordinators will, after their endorsement by the full Committee, be included in the public Committee minutes. The result is thus that, once approved, the Coordinator's recommendations or decisions (which constitute the result of their deliberations) will be integrated in the minutes of Committee meetings which are registered in the public register.



28. The Ombudsman considers that the measures taken by Parliament will improve the previously existing situation where there was no reference at all in the public register to the minutes of Committee Coordinators' meetings. The Ombudsman considers that Parliament's response to her draft recommendation, with a new approach being taken from July 2014 onwards, is reasonable. She thus considers that Parliament has taken appropriate measures to implement her draft recommendation.

29. The Ombudsman notes that, in its observations, the complainant argued that the secretariats of the Committees will not in future prepare any separate minutes of Coordinators' meetings. The Ombudsman points out in this respect that her recommendation was that " *when minutes of meetings of Committee Coordinators are drawn up* ", the minutes should be included in the public register. It was not the intention of the Ombudsman's recommendation that Committee Coordinators (or the secretariat of the Committee on their behalf) should be required to start drafting minutes of their meetings (in fact, the activity of Committee Coordinators, i.e. MEPs, is outside the mandate of the Ombudsman who can deal with complaints against Parliament as an institution only). Indeed, in her draft recommendation, the Ombudsman also pointed out that whether or not minutes of a particular meeting of Committee Coordinators are drafted is at the discretion of the Committee Coordinators [9] . Parliament's Rules of Procedure do not impose an obligation on Committee Coordinators to draft minutes, but refer only, in Rule 207, to the minutes of the meetings of the Committees themselves. The Ombudsman also reiterates that the need to include references to documents in the public register, provided for at Articles 11 and 12 of Regulation 1049/2001, applies to existing documents only and does not imply an obligation to create new documents. It is not possible to require the secretariats of the Committees to draft minutes of the Coordinators' meetings when they take place.

30. Finally, as regards the existing minutes of Committee Coordinators adopted during the 2009-2014 parliamentary term which are not covered by Parliament's new approach, the Ombudsman trusts that, for the sake of consistency with the new procedure adopted following the Ombudsman's draft recommendation, Parliament will include them in its public register. She will therefore make the further remark below.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

Parliament has taken appropriate measures to implement the Ombudsman's draft recommendation.

The complainant and Parliament will be informed of this decision.

Further remark



In the light of Parliament's positive reply to the draft recommendation, the Ombudsman trusts that, for the sake of consistency with its new policy adopted after the draft recommendation, Parliament will include in its public register existing minutes of meetings of Committee Coordinators adopted during the 2009-2014 parliamentary term.

Emily O'Reilly Done in Strasbourg on 6 October 2014

[1] The European Parliament has 20 parliamentary committees consisting of between 24 and 76 MEPs. The parliamentary committees meet, in public, once or twice a month in Brussels. They produce reports on legislative proposals, which are then presented to the plenary assembly of Parliament. Rule 205 (previously 192) of Parliament's Rules of Procedure states that the political groups in Parliament may designate one of their members as "coordinator" in each committee. Meetings of "Committee Coordinators" are then convened, normally on the same day as committee meetings, to prepare the decisions to be taken by that committee, in particular decisions on procedure and the appointment of rapporteurs. A committee may also delegate the power to take certain decisions to the coordinators, with the exception of decisions concerning the adoption of reports, opinions or amendments.

[2] <http://www.europarl.europa.eu/committees/en/minutes.html> [Link]

[3] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's draft recommendation available at:

<http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/53909/html.bookmark>.

[4] Bureau decision of 28 November 2001, OJ 2011 C 216, p. 19, see also

<http://www.europarl.europa.eu/RegistreWeb/information/publicInfo.htm?language=EN> [Link].

[5] The Ombudsman notes that, in the latest version of the Rules of Procedure adopted for the 8th parliamentary term, Rule 192 became Rule 205:

<http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>.

[6] The complainant stated that the document could be accessed via the following webpage (which does not seem to work):

http://moechel.com/doqs/2011_12_19_EP_JURI_coordinator_meeting_minutes.pdf

[7] See footnote 6 above.

[8] Whereas Parliament must respond to a draft recommendation by the Ombudsman within three months, it must respond to any new request for public access to documents within 15 working days (Article 7(1) of Regulation 1049/2001).

[9] In the same way, and as a working tool, Committee Coordinators have of course the discretion to set up a workspace and to exchange notes for their work in the framework of that workspace. It is however only when recommendations or decisions adopted by the Coordinators are endorsed by the full Committee that they will be included in the public Committee minutes and thus be available in the register. The Ombudsman will however not conduct further inquiries



into the question of documents belonging to the workspace since the complainant raised this new issue only after Parliament had reacted to the Ombudsman's draft recommendation.