

European Ombudsman - Public consultation - Transparency of legislative work within Council preparatory bodies

Public consultation - 10/03/2017

Background

European Union citizens have a right to participate in the democratic life of the Union, and decisions must be taken as openly as possible.

On 10 March 2017, the European Ombudsman opened a strategic inquiry focusing on the transparency of legislative discussions in the preparatory bodies of the Council of the EU, one of the EU's two legislative bodies.

The inquiry is not concerned with how the Council organises the preparatory discussions which lead to the adoption of its formal positions on EU legislation; nor is it concerned with any particular legislative proposal. The inquiry is about how the General Secretariat of the Council (GSC) administratively supports the legislative decision-making process in its recording of the outcomes of the discussions that take place between Member States in preparatory bodies and by registering, managing and publishing the related documents.

Before the Council adopts its formal position for negotiations with its co-legislator, the European Parliament, preparatory discussions on draft legislation take place at ambassador/deputy ambassador level (Coreper II and I, respectively), and through more than 150 committees and working parties [1] attended by civil servants. In some cases, agreement is reached at preparatory body level and the agreed position is then adopted without discussion by the Ministers at Council level. After final adoption of a legislative act, the Council makes publicly available most of the legislative file, including documents drafted in the preparatory bodies.

The Ombudsman's inquiry covers four areas:

- accessibility of legislative documents on the Council's document register;
- completeness of the Council's register;
- consistency of drafting and disclosure practices between preparatory bodies;
- transparency as regards Member States' positions.



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?
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?

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



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?

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?

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.

How to contribute

The deadline for submitting comments has been extended to **31 December 2017**.

By e-mail using the following contact form:

http://www.ombudsman.europa.eu/email?to=contactform_email_EO-CouncilConsultation [Link]

or

By letter: European Ombudsman, 1 avenue du Président Robert Schuman, CS 30403, F - 67001 Strasbourg Cedex, France

Please clearly indicate 'Council consultation - OI/2/2017' at the start of your contribution.

Contributions may be submitted in any of the 24 official languages of the EU. If possible, please do not exceed **10 pages** for your contribution, including annexes if any.

The Ombudsman will forward to the Council all contributions received. The Ombudsman also intends to make these contributions available on her website. Physical persons who consider that, in accordance with Regulation 45/2001 on the protection of personal data [4], their name should not be published should inform the Ombudsman.

Should you require any further information, please contact Ms Alice Bossière, Strategic inquiries Officer at the Ombudsman (Tel: +32 228 33 401).



[1] For a detailed list of Council preparatory bodies, see the Council's dedicated webpage, available in all 24 official languages:

<http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/> [Link]

[2] See below for the Ombudsman's letter and the **Council's reply** .

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG
[Link]

[4] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.
See also: <http://www.ombudsman.europa.eu/en/resources/dataprotection/home.faces> [Link].