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LT 88/25

Ms Teresa ANJINHO
The European Ombudsman
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Subject: Follow-up to the European Ombudsman Decision on how the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents (OI/4/2023/MIK)

Madam,

Thank you for the letter from your services dated 3 December 2024 informing of the Decision of the European Ombudsman in the case in subject.

In that Decision, it was concluded that the files inspected in this inquiry show that the Council is failing to give full effect to the principle of legislative transparency, as set out in the EU Treaties, Regulation 1049/2001, and related case-law.

To assist the Council in improving its practices, four suggestions were provided for the Council. The Council should:

- (i) Explicitly state in its replies to public access requests whether the requested documents are 'legislative documents', to which the highest standards for transparency apply;
- (ii) Promptly disclose the requested legislative documents, notwithstanding the political sensitivity of proposed legislation and even if doing so would give rise to external pressure, as these are generic elements of any democratic law-making process;
- (iii) Ensure that it refuses public access to legislative documents in truly exceptional circumstances only, that is, where it identifies a concrete (non-generic) risk to the interests explicitly protected, which can be demonstrated by tangible evidence; otherwise, the requested documents must be disclosed;
- (iv) Demonstrate in its replies that it has carried out a genuine analysis regarding the existence of an overriding public interest in disclosure and, in any case, engage with any arguments made by the applicant in this regard.

The Council was requested to inform your office by 3 June 2025 of any action it has taken in relation to your suggestions for improvement.

We would like to stress that we fully support and share the commitment of the European Ombudsman to enhance legislative transparency, as enshrined in the Treaties and Regulation 1049/2001.

In this sense, further to documents directly accessible to the public under the Council's rules of procedure ¹ and with a view to strengthening legislative transparency, Coreper has also agreed that a number of documents related to legislative files should be made public proactively by the GSC, directly upon circulation (ST 9493/20). For 2022, 2023 and 2024, all Council mandates taken to trilogue negotiations were public (97 in 2022, 98 in 2023 and 57 in 2024); the final outcome of negotiations was made public for all files.

We would like to also inform you that the Decision of the European Ombudsman on this inquiry has been circulated to all delegations and to all services of the GSC. A reminder of the main transparency requirements in relation to legislative documents has been communicated to all the GSC services on that occasion.

Furthermore, the GSC is currently preparing a revised Transparency Guide, its in-house basic reference document for all matters related to access to documents. The revised Guide will take into account the relevant recent developments, in particular those related to legislative transparency. The aim of this Guide is to shed additional clarity on the current legal framework and to ensure a more consistent implementation across the GSC of the Council's transparency policy, also from the perspective of the everyday work of the GSC staff.

As for the suggestions themselves, we would like to confirm that the Council takes into account in the assessment of public access requests whether access is requested to legislative documents, to which the highest standard of transparency applies.

The Decision concerned access to documents requests received and handled in the years 2021, 2022 and 2023. In recent years, our statistics concerning access to documents request show improvements. Notably, at the end of 2022, 78,5% of the legislative documents referenced in the register (ST and CM documents) and issued that same year were publicly available in the Council public register at the end of the year. This figure is 80,6% in 2023 and 83,9% in 2024.

In addition, as of 1.01.2025, "Working papers" ² ("WK documents") are also referenced in the Council public register. This allows easier identification of legislative documents by the public. Searching in the Council public register therefore enables now the public to directly access or request access to the documents that they are interested in for a given legislative file.

Furthermore, the Council is a part of the interinstitutional project on the EU Law Tracker (EULT). The EULT is a portal that presents the legislative process as it is in practice and in a timeline view, including the informal negotiations phase, indicating the reference to the relevant documents concerned (and this without affecting rules on access to documents). From summer 2025, this will allow for Council documents in a given legislative procedure to be easily identified, accessed and/or requested.

¹ See Articles 7, 9(1) and 12 (1) of the Council's Rules of Procedure and Article 11 of Annex II to the Council's Rules of Procedure.

² "Working papers (WK documents) are documents for specific communities of users created on the basis of the Council's preparatory body or a subject."

This shows that we are committed to promptly disclose the requested legislative documents and to ensure that public access to legislative documents is refused only in exceptional cases.

As regards the analysis regarding the existence of an overriding public interest in disclosure, as the European Ombudsman rightly points out, it is for the institution to check whether an overriding public interest in disclosure exists if the institution envisages to refuse access based on the exceptions under Article 4, paragraph 2 and 3 of Regulation (EC) No 1049/2001. The refusal decision must be motivated in this respect. This assessment and motivation are always carried out and included by the Council, in full respect of the applicable rules. Nevertheless, the Council will look into how to improve its practice in relation to this assessment of the existence of an overriding public interest in its decisions, in particular as regards providing a more complete explanation whenever an overriding public interest is not deemed to exist.

Yours faithfully,



A. BARTOL
Chair of the
Permanent Representatives Committee