

[REDACTED]

From: [REDACTED]
Sent: 25 November 2017 16:14
To: EO-CouncilConsultation
Subject: [EOWEB] public consultation on transparency
Attachments: PAN PC Ombudsman transparency.docx; Emails obtained from EFSA in 2013.pdf; COM type of transparency in 2016.pdf; COM transparency - mainly blackened.pdf

Afzender

Afzender [REDACTED]
Aan Council consultation - OI/2/2017
Datum Saturday, November 25, 2017 4:14:07 PM CET

Uw gegevens

Deel 1 - Contact informatie

Voornaam	[REDACTED]
Naam	[REDACTED]
Uw geslacht	[REDACTED]
E-mail adres	[REDACTED]

Taal waarin u graag een antwoord wilt ontvangen en - English

Deel 2 - Gegevens

Aan Council consultation - OI/2/2017
Onderwerp public consultation on transparency
Inhoud The contribution of the Pesticide Action Network is attached, "PAN PC Ombudsman transparency", including 3 annexes on access-to-documents requests we did.



**Pesticide
Action
Network**
Europe

Response of the Pesticide Action Network to the public consultation of the Ombudsman on EU Commission's transparency.

I. Accessibility of information and documents Δ

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?

PAN: This is the answer we get in the last few years when we ask for documents: *“Public disclosure of the references to individual Member States would prevent Member States from frankly expressing their views in the framework of Standing Committees' and groups of experts' meetings and thus seriously undermining the possibility of the Commission to explore all possible options in preparation of a decision and impairing the quality of the decisionmaking process. Therefore, public access to documents or parts thereof containing references to individual Member States would seriously undermine the ongoing decisionmaking processes relating to the endocrine disruptors' file”*.

This is what we call elite-behaviour. It's a wrong attitude. Why should our tax-paid representatives have the right to keep their “frankly expressed views” to be kept secret? This sounds like they might propose dishonest proposals or propose something they would be ashamed of when the public would know. And why would these representatives or experts have the sole right to “explore all possible options” and ignore the public to have a say on all these options?

We think Commission should give full transparency on the discussion towards the final proposal, release draft proposals, internal documents including memo's and cabinet's briefings, release positions of DG's, positions of Member States, etc. It is hard to understand why different positions and different options and tactics used should be kept secret. We know Commission likes to be seen operating as a block with a single opinion and fiercely opposes transparency but a monolithic view and single options are not the reality. It would help the democratic process if the public could be involved from the beginning and know what opinions and options are available. And have their views heard. The current lack of transparency discourages people to get involved because they know the final proposal is not negotiable anymore and the much-used public consultations cosmetic. Nothing will change anymore after the final draft is published. This angers people and reinforces feelings like being ruled by 'elites'. In the end the EU will fall apart due to this Commission's attitude.

Entirely being involved from the start and a full transparency can help getting back trust in Europe. We understand civil servants at Commission and agencies like EFSA don't feel comfortable with opening up documents and their views, but this fear is unfounded as long as they are not unduly influenced by certain interests and have a personal financial interest in the regulation. We expect these personal elements do not play a role and therefore it is just the

professional opinion done based on the policy of the Commissioners, on science and on the current EU rules. There is nothing wrong with having a certain opinion or certain view on options and making this public does not harm in any way their professional career or position.

Everything on drafting a proposal should be public from the beginning, not by forcing others to do laborous access-to-documents requests, but immediately putting documents on the websites.

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?

PAN: these Council initiatives are minor issues if all access-to-documents requests are turned down (almosts all documents we request are kept secret because of ‘ongoing policy’, and for the rest relevant parts made black, & names made black) as is currently the situation. For every different regulatory parts, for drafting guidelines in agencies, for drafting opinions in agencies, for discussing decisions between member states in Standing Committees, a special website should be available to publish all documents immediately. Draft opinions, full meeting notes, contribution from no matter what party, member states stakeholders, industry, invitations, internal briefings, etc.

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

PAN: It is strange to note for us that while the promises of Commission and agencies like EFSA on transparency are going up, the actual transparency is going down all the time.

Attached are three documents that show that in 2012 (EFSA requests, 1 doc) names of civil servants were released and no parts made balck while in 2016 (COM request, 2 docs) names were made black as well as most of the tekst fort he new invention of “protection of the decision-making process” (or sometimes called “ongoing policy”).

We can provide more examples if needed.

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.

PAN: documents that are produced at early phases of decisions (internal discussions, options, etc.) are most useful because the decision is not fixed in concrete at that time and the public can have a say.

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

PAN: yes.

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.

PAN: no, the general opinion that EU is operating behind closed doors (and cooperates with industry all the time), and closes its ears for the needs of the public can only be changed by full transparency. Also 'misty' silo's like Coreper should not be exempted from full transparency.

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?

PAN: remove the option LIMITE

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?

PAN: Representatives have to keep in mind that they REPRESENT the public, that also pays their fine salary. There should in no way be a possibility to keep positions secret. Recording and releasing positions and votes is essential for the functioning of a democracy. This happens already in several member states. Why would the EU get exempted? It is normal in the process that delegations might change their position, that is a crucial element for democracy to get to compromises. So why keep it secret? We guess that delegates have good reason for changing positions and have the duty to make their position public and argue any change in a detailed way.

This very discussion already shows the infancy of the democracy at Brussels level. Transparency is a basic provision and should not be negotiable nor exempted in some silo's.

III. Other Δ

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

PAN: Another problem with transparency is the claimed confidentiality by commercial interests. While in cases releasing documents could lead to competitive advantage, in general

this is not the case. So any document submitted by commercial parties should be immediately made public. This also counts for testing results and field trials. The fear of competitors taking advantage of these tests is a myth. Therefore, only certain parts of a document can only given confidentiality status if the company submits full and detailed evidence (not reasoning but evidence) of potential harmful effects of releasing. This full and detailed evidence will be published immediately to allow others to challenge the confidentiality.