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From: BEUC The European Consumer Organisation [REDACTED]
Sent: 21 December 2017 11:18
To: EO-CouncilConsultation
Subject: [EOWEB] BEUC response to Council consultation
Attachments: BEUC comments on Council transparency consultation final.pdf

Sender

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To Council consultation - OI/2/2017
Date Thursday, December 21, 2017 11:17:54 AM CET

Your data

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Language you would like to receive an answer in en - English

Part 2 - Data

To Council consultation - OI/2/2017
Subject BEUC response to Council consultation
Content

BEUC's comments on the European O-man consultation

Council consultation - OI/2/2017'

Comments submitted by mail using the following contact form:

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

General comments

BEUC, the European Consumer Origination, welcomes the EO's consultation. Though we understand that this consultation is limited to issues of administrative questions and thus somehow remains within the scope of questions related to the Council's register and the treatment of access to documents requests by the General Secretariat of the Council, we would like to underline that there is a general need to more broadly discuss how the transparency of the Council can be improved.

We fully acknowledge the progress that has been made over the last decade, but at the same time we believe that much more needs to be done to develop the Council into a more open and accessible institution and to increase the Member States accountability for their decisions. This would help to promote the credibility and transparency of the entire European decision making process and address the criticism about lack of democracy of EU institutions.

Currently, important documents remain secret and very often access to such documents can only be achieved via *personal* contacts to permanent representations or ministries.

This is not a desirable situation and rightly exposes the EU and its legislative procedure to criticism for being too much influenced by powerful lobbying for private interest groups.

The current rules also favor those interest representatives who have most power and resources at national and at EU level because access to information depends on specific efforts that must be undertaken or depends on specific contacts with decision makers;

It is not plausible anymore that the European Parliament should be the only "open" EU legislative institution and that the Member States have a "legislative responsibility" which they need to protect differently, via secrecy.

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?*

The current default rule is that only a few documents are being published automatically and systematically but that documents can be requested under the rules of the "access to documents" regulation. This rule should simply be turned around to say that by default, Council documents are automatically published but that certain sensitive documents can be withheld from publication and may be provided following an access request and after having been evaluated by the Council Secretariat General.

Consequently, preparatory documents submitted to Council preparatory bodies should be public by default and should be published at the moment of circulation. This would concern:

- "provisional agendas of committees and working parties"; each presidency should publish its working group meeting dates at the beginning of its presidency term. Agendas of working group meetings should be published when circulated to the delegations.
- "other documents", such as information notes, reports, progress reports and reports on the state of discussions in the Council or one of its preparatory bodies (except individual positions of delegations and Legal Service opinions and contributions); for example information by the presidency to the delegations about the work flow, etc should be made public at the moment of circulation to the delegations.

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.

Are there other measures the Council could take to make legislative documents easier to find?

Please see our response to question 1.

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.

Though access to documents requests can be made, for civil society organizations like BEUC, who work with limited resources and must make choices in term of which legislative dossier we pursue, such requests are too cumbersome. They require too high input given the uncertainty of their results and the fact that as applicant, one cannot expect that within the 14 days timeline, the requested document will be made available.

We have also observed a degree of incoherency between different services in the Council secretariat in terms of how much transparency is granted and within what timeframe, depending on different Council working groups

Likewise some presidencies seem to be more committed to transparent work flows and many documents are published in "real –time "during their term but others are not so committed to being a transparent leader.

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.

All documents are important, but in principle presidency progress reports or presidency documents that summarize the state of negotiations or trilogue preparatory documents like the '4 columns document' should be made public by default in the short term.

For example, in the case of the Council's press release announcing a general approach, generally only the summary of the GA can be found but not the full text, which is only available after xy weeks in the registry.

It would also be useful to have access to draft Council conclusions, which currently are never made public.

The register is generally not very user friendly and documents are sometimes difficult to find. We found that sometimes the press department of the council is helpful to provide a document that should have already been published.

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

Very rarely, because to follow the legislative procedure, "real-life" transparency is needed. After the adoption of a legislative act, the availability of the information is important but not very relevant anymore for interest representation and media work.

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.

We consider that the same transparency regime should apply.

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?

As said above, we think that the rule should be reversed. Documents should not be "LIMITE" by default but only become "LIMITE" if a special interest needs to be protected pro-actively, so that prior authorization is no more necessary in general.

We also would encourage the Council to change its rules to the fully mandatory "LIMITE" circulation of documents (documents not for publication) , which currently concerns Member States individual positions and the opinions of the legal service of the council.

We suggest that Member States positions should be "LIMITE" only if the Member State in question explicitly asks for it. If so, it should be indicated in the Council's register, which Member States have made a submission under the "LIMITE" regime.

Regarding the opinion of the Council's legal service, we don't see any reason why these should not be made public. They are an important source of information for the forming of Council positions and should also be made public by default at the moment of circulation to the delegations; exceptions to this default rule on sensitive issues could be considered and identified in advance, depending on the content of a legislative file. Conditions for a classification as "sensitive" opinions should be transparent such as to create legal certainty and credibility.

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?*

We consider that Member States governments should be more accountable for the positions that they take also during the preparatory work, not only on the final vote in Council . Currently it is too easy to hide behind “Brussels” or alleged majorities in the Council negotiations. There may be justified reasons in certain sectors not to publish national positions, but for example on most of the competences of COREPER I, Member States positions should be publicly known. This doesn't mean of course that an initial position is binding on a Member State.

Limited availability of Member States positions and documents should be possible only for a pre-established list of topics, such as for example in the sector of defence, interior or migration policy dealt with by the General Affairs or Foreign Affairs Council.

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.*

No comment

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