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*Plenary sitting*

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**A8-0420/2018**

4.12.2018

## **REPORT**

on the Ombudsman's strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU (2018/2096(INI))

Committee on Constitutional Affairs  
Committee on Petitions

Rapporteurs: Jo Leinen, Yana Toom

(Joint committee procedure – Rule 55 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Ombudsman's strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU (2018/2096(INI))

*The European Parliament,*

- having regard to Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and its provisions regarding access to documents of the Union institutions,
- having regard to Article 228 of the TFEU,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof,
- having regard to Article 3(7) of the Statute of the European Ombudsman,
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>,
- having regard to its resolution of 28 April 2016 on public access to documents (Rule 116(7)) for the years 2014-2015<sup>2</sup>,
- having regard to its resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty<sup>3</sup>,
- having regard to its resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions<sup>4</sup>,
- having regard to its resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making<sup>5</sup>,
- having regard to Articles 2.6 and 2.7 of the Contribution of the LIX COSAC, adopted during its plenary meeting in Sofia on 17-19 June 2018,
- having regard to the Special Report of the Ombudsman to the European Parliament following the strategic inquiry OI/2/2017/TE on the transparency of the Council legislative process,
- having regard to Rule 52 of its Rules of Procedure,
- having regard to the joint deliberations of the Committee on Constitutional Affairs and the Committee on Petitions under Rule 55 of the Rules of Procedure,

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

<sup>2</sup> OJ C 66, 21.2.2018, p. 23.

<sup>3</sup> OJ C 252, 18.7.2018, p. 215.

<sup>4</sup> OJ C 337, 20.9.2018, p. 120.

<sup>5</sup> Texts adopted, P8\_TA(2018)0225.

- having regard to the report of the Committee on Constitutional Affairs and the Committee on Petitions (A8-0420/2018),
- A. whereas Article 228 TFEU and Article 3 of the Statute of the Ombudsman allow the Ombudsman to conduct inquiries for which she finds grounds, either on the basis of a complaint or on her own initiative;
- B. whereas Articles 1 and 10(3) of the Treaty on European Union (TEU) establish that at Union level decisions must be taken as openly as possible and as close as possible to the citizens;
- C. whereas the European Parliament, as the institution directly representing the citizens, and the Council of the European Union, representing the Member States, are the two components of the European legislature constituting the dual source of legitimacy of the European Union;
- D. whereas the European Parliament works with a high degree of transparency in its legislative procedure, including at the committee stage, making it possible for citizens, the media and stakeholders to clearly identify different positions within Parliament and the origin of specific proposals, as well as to follow the adoption of final decisions;
- E. whereas according to Article 16(8) TEU the Council must meet in public when it deliberates and votes on a draft legislative act;
- F. whereas the Council takes a majority of decisions that could be made by qualified majority voting (QMV) by consensus and without a formal vote;
- G. whereas the Ombudsman launched an inquiry into the transparency of legislative discussions in the Council's preparatory bodies, putting 14 questions to the Council on 10 March 2017 and launching a public consultation;
- H. whereas following the inquiry, the Ombudsman found that the Council's lack of transparency regarding public access to its legislative documents and its current practices with regard to transparency of its decision-making process – specifically during the preparatory stage at Coreper and working group level – constitute maladministration;
- I. whereas on 9 February 2018 the Ombudsman made six suggestions for improvements and three specific recommendations to the Council regarding transparency of its preparatory bodies, and asked the Council for a reply;
- J. whereas the Council did not reply to the recommendations contained in the Ombudsman's report within the legally prescribed timeline of three months, and, because of the importance of the issue of legislative transparency, the Ombudsman decided not to grant the Council any extensions beyond this deadline, and submitted the report to Parliament;
- 1. Is deeply concerned that a common criticism of the European Union is that it is democratically deficient; stresses, therefore, that having one of its three main institutions taking decisions without the transparency that is to be expected from a

democratic establishment is detrimental to the ambitious venture that is the European project;

2. Is deeply convinced that fully democratic and highly transparent decision-making at the European level is indispensable to increase citizens' trust in the European project and the EU institutions, especially in the run-up to the European elections in May 2019, and is therefore determined to enhance the democratic accountability of all EU institutions;
3. Shares the view of the Ombudsman that ensuring that citizens are able to understand, follow in detail and participate in the progress of legislation is a legal requirement under the Treaties and a basic requirement for a modern democracy;
4. Emphasises that a high level of transparency of the legislative process is essential to enable citizens, media and stakeholders to hold their elected representatives and governments accountable;
5. Believes that a high level of transparency acts as a safeguard against the spread of speculation, fake news and conspiracy theories, as it provides a factual basis for publicly refuting such claims;
6. Recalls that the European Parliament represents the interests of European citizens in an open and transparent manner, as confirmed by the Ombudsman, and takes note of the progress made by the Commission in improving its transparency standards; regrets that the Council does not yet follow comparable standards;
7. Points out that the work of the preparatory bodies of the Council, i.e. the Committees of Permanent Representatives (Coreper I + II) and more than 150 working groups, is an integral part of the Council's decision-making procedure;
8. Deplores the fact that, unlike committee meetings in Parliament, meetings of the preparatory bodies of the Council as well as the majority of debates in the Council are held in camera; believes that citizens, media and stakeholders must have access by appropriate means to the meetings of the Council and its preparatory bodies, including via live- and webstreaming, and that the minutes of these meetings should be published in order to ensure a high level of transparency in the legislative process in both components of the European legislature; underlines that, according to the principle of democratic legitimacy, the public must be able to hold both components of the legislature accountable for their actions;
9. Deplores the fact that the Council does not proactively publish most documents related to legislative files, preventing citizens from knowing which documents actually exist and thus impeding their right to request access to documents; regrets the fact that available information on legislative documents is presented by the Council in a register which is incomplete and not user-friendly; calls on the Council to list in its public register all the documents related to legislative files, irrespective of their format and their classification; notes in this regard the efforts made by the Commission, Parliament and the Council to create a joint database for legislative files and underlines that all three institutions have a responsibility to swiftly finalise this work;
10. Considers the Council's practice of systematically classifying documents distributed in

its preparatory bodies relating to legislative files as ‘LIMITE’ to be a violation of the case law<sup>1</sup> of the Court of Justice of the European Union (CJEU) and of the legal requirement that there should be the widest possible public access to legislative documents; calls on the Council to fully implement the rulings of the CJEU and to abolish the still existing inconsistencies and divergent practices; recalls that the ‘LIMITE’ marking has no solid legal basis and considers that the Council’s internal guidelines should be reviewed in order to guarantee that documents can only be marked as ‘LIMITE’ in duly justified cases complying with CJEU case law;

11. Deplores the fact that following the judgment of the CJEU in the *Access Info Europe* case in 2013, Coreper decided that as a rule, the drafter of the document should record Member States’ names in documents relating to ongoing legislative procedures ‘where appropriate’; deems it unacceptable that the positions taken in the preparatory bodies of the Council by individual Member States are neither published nor systematically recorded, making it impossible for citizens, media and stakeholders to effectively scrutinise the behaviour of their elected governments;
12. Points out that this lack of information also hampers the ability of national parliaments to control the actions of national governments in the Council, which is the essential function of national parliaments in the EU’s legislative procedure, and enables members of national governments to distance themselves in the national sphere from decisions made at the European level which they shaped and took themselves; considers that this practice is in contradiction to the spirit of the Treaties and that it is irresponsible on the part of members of national governments to undermine trust in the European Union by ‘blaming Brussels’ for decisions they themselves were involved in; argues that a systematic record of the positions of Member States in the Council’s preparatory bodies would act as a disincentive to this practice, which must be ended immediately; notes that this practice plays into the hands of politicians who seek to delegitimise the EU in the eyes of the public;
13. Considers it incompatible with democratic principles that, in interinstitutional negotiations between the co-legislators, the lack of transparency in the Council leads to an imbalance with regard to available information and thus to a structural advantage of the Council over the European Parliament; reiterates its call for the improvement of the exchange of documents and information between Parliament and the Council and for access to be granted to representatives of Parliament as observers to meetings of the Council and its bodies, in particular in the case of legislation, in a way equivalent to which Parliament grants the Council access to its meetings;
14. Recalls that following the strategic inquiry by the Ombudsman concerning the transparency of trilogues, recommendations have not been taken up, largely owing to the reluctance of the Council; believes that, because trilogues have become the common practice for reaching agreements on legislative files, a high level of transparency should apply to them; considers that this should include proactive publication of relevant documents, the definition of an interinstitutional calendar and a general rule according

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<sup>1</sup> For the principle of the widest possible public access, see: Joint Cases C-39/05 P and C-52/05 P *Sweden and Turco v Council* [2008] ECLI:EU:C:2008:374, para 34; Case C-280/11 P *Council v Access Info Europe* [2013] ECLI:EU:C:2013:671, para 27; and Case T-540/15 *De Capitani v Parliament* [2018] ECLI:EU:T:2018:167, para 80.

to which negotiations can only start after the adoption of public mandates, in line with the principles of publicity and transparency inherent in the EU legislative process;

15. Demands that the Council, as one of the two components of the European legislature, align its working methods with the standards of a parliamentary and participatory democracy as required under the Treaties, rather than acting like a diplomatic forum, which is not its intended function;
16. Is of the opinion that Member States' governments deprive citizens of their right to information and circumvent transparency standards as well as proper democratic control by preparing or predetermining far-reaching economic and financial decisions in informal formats such as the Eurogroup and the Euro Summit; insists that EU legislation on transparency and access to documents be applied without delay to informal bodies and preparatory bodies within the Council, in particular the Eurogroup, the Eurogroup Working Group, the Financial Services Committee and the Economic and Financial Committee; calls for the Eurogroup to be fully formalised during the next revision of the Treaties in order to guarantee proper public access and parliamentary scrutiny;
17. Reiterates its call to transform the Council into a true legislative chamber, thus creating a genuinely bicameral legislative system involving the Council and Parliament, with the Commission acting as the executive; suggests involving the currently active specialised legislative Council configurations as preparatory bodies for a single legislative Council, both of which would meet in public, along similar lines to the functioning of the committees of the European Parliament, with all final legislative decisions being taken in the single legislative Council;
18. Considers voting in public to be a fundamental characteristic of democratic decision-making; urges the Council to make use of the possibility of QMV, and to refrain, where possible, from the practice of taking decisions by consensus and thus without a formal vote in public;
19. Fully endorses the European Ombudsman's recommendations to the Council and urges the Council – as a minimum – to take all measures necessary to implement as swiftly as possible the recommendations of the Ombudsman, namely:
  - a) to systematically record the identity of Member State governments when they express positions in Council preparatory bodies;
  - b) to develop clear and publicly available criteria for how it designates documents as 'LIMITE', in line with EU law;
  - c) to systematically review the 'LIMITE' status of documents at an early stage, before the final adoption of a legislative act, including before informal negotiations in trilogues, at which point the Council will have reached an initial position on the proposal;
20. Considers that references to professional secrecy cannot be used to systematically prevent documents from being registered and disclosed;

21. Takes note of the statement made by the Austrian Presidency to the joint committee on Constitutional Affairs and on Petitions on keeping the European Parliament informed on the progress of the Council's ongoing reflections on how to improve its rules and procedures as regards legislative transparency, and expressing readiness to engage with Parliament at the appropriate level in a joint reflection on those topics that require interinstitutional coordination, and regrets the fact that no input has been submitted to Parliament so far;
22. Instructs its President to forward this resolution to the Council, the European Ombudsman, the European Council, the Commission, and the parliaments and governments of the Member States.



## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	22.11.2018						
<b>Result of final vote</b>	<table style="width: 100%; border: none;"> <tr> <td style="width: 100px;">+:</td> <td style="text-align: right;">31</td> </tr> <tr> <td>-:</td> <td style="text-align: right;">0</td> </tr> <tr> <td>0:</td> <td style="text-align: right;">3</td> </tr> </table>	+:	31	-:	0	0:	3
+:	31						
-:	0						
0:	3						
<b>Members present for the final vote</b>	Margrete Auken, Beatriz Becerra Basterrechea, Soledad Cabezón Ruiz, Alberto Cirio, Richard Corbett, Eleonora Evi, Danuta Maria Hübner, Peter Jahr, Ramón Jáuregui Atondo, Jude Kirton-Darling, Jo Leinen, Svetoslav Hristov Malinov, Notis Marias, Ana Miranda, Miroslavs Mitrofanovs, Maite Pagazaurtundúa Ruiz, Paulo Rangel, György Schöpflin, Barbara Spinelli, Josep-Maria Terricabras, Yana Toom, Cecilia Wikström						
<b>Substitutes present for the final vote</b>	Martina Anderson, Max Andersson, Enrique Guerrero Salom, György Hölvényi, Carlos Iturgaiz, Kostadinka Kuneva, Anne-Marie Mineur, József Nagy, Julia Pitera, Ángela Vallina						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Teresa Jiménez-Becerril Barrio, Csaba Sógor						

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<b>31</b>	<b>+</b>
ALDE	Beatriz Becerra Basterrechea, Maitte Pagazaurtundúa Ruiz, Yana Toom, Cecilia Wikström
ECR	Notis Marias
EFDD	Eleonora Evi
GUE/NGL	Kostadinka Kuneva, Ángela Vallina
PPE	Alberto Cirio, György Hölvényi, Danuta Maria Hübner, Carlos Iturgaiz, Peter Jahr, Teresa Jiménez Becerril Barrio, Svetoslav Hristov Malinov, József Nagy, Julia Pitera, Paulo Rangel, György Schöpflin, Csaba Sógor
S&D	Soledad Cabezón Ruiz, Richard Corbett, Enrique Guerrero Salom, Ramón Jáuregui Atondo, Jude Kirton Darling, Jo Leinen
VERTS/ALE	Max Andersson, Margrete Auken, Ana Miranda, Miroslavs Mitrofanovs, Josep Maria Terricabras

<b>0</b>	<b>-</b>

<b>3</b>	<b>0</b>
GUE/NGL	Martina Anderson, Anne Marie Mineur, Barbara Spinelli

Key to symbols:

+ : in favour

- : against

0 : abstention