

Accountability of National Governments in the EU legislative process

Aidan O'Sullivan
Meeting with Danish EU Affairs Committee
Copenhagen – 25 May 2018



European Ombudsman

European Ombudsman - Ms. Emily O'Reilly

- Former Irish Ombudsman
- Elected in 2013 by EP
- Independent
- Created in Maastricht Treaty
- Approx. 70 staff



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Inquiry background

- ‘**Blame Brussels**’ culture!?! EU democratic deficit?
- Council is **EQUAL** legislator with the EP (Lisbon Treaty);
- Discussions in Council working parties (~150) and COREPER are **intrinsic part of the EU legislative process** but do not meet in public;
- Need for **an easy, timely, complete and coherent access** to the records of discussions within Council;



Ombudsman inquiry timeline

- March 2017: Launch of inquiry
- July 2017: Council replies to 14 questions of Ombudsman
- October – December 2017: Public consultation
- January 2018: Inspection of 3 Council legislative files
- **Conclusion: Maladministration (Feb 9th)**
- No response from Council within the deadline (May 9th)
- **Special Report sent to European Parliament (May 17th)**



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Council of EU structure



Council of national Ministers



COREPER of national ambassadors



Working parties of national civil servants



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European Parliament – co-legislator

Draft Committee report	Published
Committee debate(s)	Public
Committee amendments	Published
Compromise amendments	Published
Committee roll call votes	Published
Committee report	Published
Plenary amendments	Published
Plenary debate	Public
Plenary roll call votes	Published
Plenary report	Published



Council ‘black-box’?

Council NON PAPER – April 2015

Supported by Denmark - Estonia - Finland – The Netherlands – Slovenia – Sweden

“Enhancing transparency in the EU”

1. Towards accessibility to information – creating a one-stop-shop IT portal
2. Towards a clear assessment framework for limited documents
3. Towards a transparency register for the Council
4. Towards a register for delegated acts
5. Towards transparent trilogues
6. Transparency regulation 1049/2001 – adaptation to the Lisbon Treaty



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Two main issues for citizens

- **Existence of Documents**
 - Are there documents that record legislative discussions?
 - Consistency of documentation between preparatory bodies
 - Recording individual **Member States' positions**
 - “Indicative” informal votes?
- **Accessibility of Documents**
 - Are documents accessible in an easy and timely manner?
 - Completeness and accessibility of Council’s public register
 - Use of ‘LIMITE’ marking
 - Disclosing individual **Member States' positions**



Council's 2017 reply to Ombudsman

- Progress:
 - New recording system in autumn 2016
 - More user-friendly access to public register
 - Reflection on how to make it easier to proactively release 'LIMITE' documents
- Open questions:
 - Application of 'LIMITE' status of documents
 - Recording of Member States' positions
 - Consistency of drafting practices
 - Completeness of public register



Submissions to public consultation

- **Dutch Tweede Kamer (COSAC Tallinn report)**
- **Dutch Eerste Kamer**
- **UK House of Commons (2016 report)**

- European Movement International
- European Consumer Organisation
- European Disability Forum
- Transparency International
- Various other NGOs
- Various academics

PUBLIC CONSULTATION



EU law on legislative transparency

- Article 1 TEU:
 - “This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. “
- Regulation 1049/2001 – legislative documents directly accessible
 - “In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible.”
- C-52/05 P *Sweden and Turco vs. Council* [2008]
- C-280/11 P *Council vs. Access Info Europe* [2013]



Recommendations of Ombudsman

1. Record the **identity of Member States** expressing positions in preparatory bodies;
2. Review within 12 months **how it meets legal obligation** to make legislative documents directly accessible;
3. Develop clear and publish criteria for **'LIMITE' status**;
4. Systematically **review the 'LIMITE' status** at early stage, before 'trilogues' and before final adoption of legislative act;
5. Develop a **up-to-date webpage** for each legislative proposal, following the example of EP Legislative Observatory.



Next steps

- Meeting with President Tajani on Special (May 22nd)
- AFCO & PETI committees report (possible hearings)
- Planned plenary vote before end 2018
- COSAC initiative with national parliaments
- EU 2019 elections topic?



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