

Transparency in the Council of the European Union

Source: CVCE. European Navigator. Cédric Sangaletti.

Copyright: (c) CVCE.EU by UNI.LU

All rights of reproduction, of public communication, of adaptation, of distribution or of dissemination via Internet, internal network or any other means are strictly reserved in all countries.

Consult the legal notice and the terms and conditions of use regarding this site.

URL:

http://www.cvce.eu/obj/transparency_in_the_council_of_the_european_union-en-17c906d0-5a12-4726-bf6c-7279a73e8d8d.html

Last updated: 08/07/2016



Transparency in the Council of the European Union

Context and principle of confidentiality

It is not always easy for the citizens of the European Union to understand how its institutions work. This is particularly true of the Council of the European Union. This decision-making body represents the Member States, which, while seeking to reach a compromise, nevertheless wish to uphold their national interests within the Union. From the outset, the workings of the Council followed the same pattern as intergovernmental diplomatic conferences. This resulted in a certain lack of clarity surrounding the decision-making process and in access to documents being difficult.

Accordingly, the provisional Rules of Procedure of the Council of the European Coal and Steel Community (ECSC), dated September 1952, and of the Council of the European Economic Community (EEC), dated March 1958, specified that meetings of the Council were not public, unless it decided otherwise (respectively, Articles 5 and 3). The Rules of Procedure of the EEC Council added that its deliberations were covered by the obligation of professional secrecy, unless it decided otherwise (Article 18).

In 1958, the General Secretariat of the Council nevertheless set up a Press Office in order to provide journalists with information on the institution's activities. From 1973 onwards, this department became part of Directorate-General F, which combined the Communication and Protocol Departments, among others.

With regard to the archives of the EEC and Euratom, on 1 February 1983 the Council adopted a regulation stipulating that the institutions should keep historical archives and open them to the public after a period of 30 years beginning on the date on which the documents and background material were produced (Regulation (EEC, Euratom) No 354/83). On 8 February 1983, the Commission of the European Communities adopted an identical decision for the archives of the ECSC (Decision 359/83/ECSC).

Establishing and developing transparency

Since the early 1990s, the determination to make the European Union more open and bring it closer to its citizens has encouraged the adoption of measures designed to foster greater transparency in the work of the Council.

In Declaration No 17, annexed to the Final Act of the Treaty on European Union (EU), which was signed in Maastricht on 7 February 1992 and came into force on 1 November 1993, the Intergovernmental Conference called for an improvement in public access to the information available to the institutions. In addition, the introduction of the codecision procedure, under which the European Parliament and the Council must reach agreement on a text, encouraged greater transparency on the part of the Council.

In the various Member States, the debates during the ratification procedures for the Treaty of Maastricht highlighted the need for a more democratic and, consequently, more transparent Union. The European Council of 16 October 1992 responded to these demands. In the 'Birmingham Declaration', the Heads of State or Government asked the Foreign Ministers to propose ways for introducing a degree of transparency into the debates of the Council. Implementation of this Declaration started with the European Council of Edinburgh, held on 11 and 12 December 1992, which adopted a series of specific measures on transparency. These measures covered three topics: firstly, access to the work of the Council, through debates open to the public and the publication of voting records; secondly, information on the role of the Council and its decisions; and thirdly, simplification of and easier access to Community legislation. It was up to each institution, in so far as it was concerned, to take the legal action required to make these measures effective.

By decision of 6 December 1993, the Council changed its Rules of Procedure so that the results and, subject to certain conditions, explanations of votes should be made public when it was acting in a legislative capacity. As for the proceedings of the Council, they could be broadcast to the public by audiovisual means. By decision of 20 December 1993, the Council allowed public access to its documents. Subsequently, the principles of openness gained ground and became systematic, in particular as a result of the successive

changes to the Rules of Procedure of the Council.

The Treaty of Amsterdam, which was signed on 2 October 1997 and entered into force on 1 May 1999, changed the first article of the EU Treaty by providing that decisions should be taken as openly as possible. Furthermore, the Treaty of Amsterdam established, in an act of primary legislation of the Union, the right of access to European Parliament, Council and Commission documents by any citizen of the Union and any natural or legal person residing or having its registered office in a Member State (Article 255 of the Treaty establishing the European Community (EC)). The Council may, however, restrict this right for reasons of public or private interest. This right of access also applies to documents relating to the common foreign and security policy and police and judicial cooperation in criminal matters (Articles 28 and 41 of the EU Treaty). With respect to the Council, the Treaty specifies that, when it is acting in its legislative capacity, the results of votes and explanations of votes as well as statements in the minutes shall be made public (Article 207 of the EC Treaty).

In 1999, the establishment of a public register of Council documents, available for consultation by members of the public on the website of the institution (<http://www.consilium.europa.eu>), substantially increased public access to its documents. Since 2006, it has also been possible to view most of the meetings of the Council on the website, directly or on request.

The rules governing transparency

The Rules of Procedure of the Council, dated 15 September 2006, retain the basic principle that its meetings are not public and that its proceedings are covered by the obligation of professional secrecy, unless it decides otherwise (Articles 5 and 6).

However, Article 8 stipulates that the following deliberations and debates **shall be open to the public**:

- Council deliberations on legislative acts to be adopted in accordance with the codecision procedure;
- the Council's first deliberation on important new legislative proposals other than those to be adopted in accordance with the codecision procedure and, by a decision of the Presidency, subsequent deliberations on a given act, unless the Council or the Committee of Permanent Representatives (Coreper) decide otherwise;
- the public policy debate of the General Affairs and External Relations Council on its 18-month programme and policy debates in other Council configurations on their priorities;
- the Commission's presentation of its five-year programme, of its annual work programme and of its annual policy strategy, as well as the ensuing debate in the Council;
- on a decision taken by the Council or by Coreper, acting by a qualified majority, public debates on important issues affecting the interests of the European Union and its citizens.

Article 9 details the cases in which **the results of votes and explanations of votes** and the **statements in the Council minutes** and **the items in those minutes** are made public:

- where the Council acts in its legislative capacity;
- when the Council adopts a common position pursuant to Article 251 or Article 252 of the EC Treaty, the same rule shall apply to the votes and explanations of votes of the members of the Council or their representatives on the Conciliation Committee;

— when the Council establishes a convention under Title VI of the EU Treaty.

Article 9 also stipulates that the **results of votes** are to be made public:

— when the Council acts pursuant to Title V of the EU Treaty, by a unanimous Council or Coreper decision taken at the request of one of their members;

— when the Council adopts a common position under Title VI of the EU Treaty, by a unanimous Council or Coreper decision taken at the request of one of their members;

— in the other cases, by Council or Coreper decision taken at the request of one of their members.

In these three cases, **the explanations of votes** are to be made public, at the request of the Council members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Council. As for **the statements in the Council minutes** and **the items in those minutes** relating to the adoption of the acts, they are made public by a Council or Coreper decision taken at the request of one of their members.

With respect to **Council documents**, any natural or legal person may **have access to** them, subject to the principles, conditions and limits laid down in the special provisions set out in Annex II to the Rules of Procedure and the Regulation of the European Parliament and of the Council of 30 May 2001 on public access to the documents of the European Parliament, the Council and the Commission. The documents qualified as sensitive and concerning, in particular, public security, defence and military issues, must be given special treatment depending on whether they are classified as ‘très secret/top secret’, ‘secret’ or ‘confidentiel’.

The policy of transparency pursued by the Council does not only concern *making public the decision-making process* and *public access to documents*. The other two aspects of transparency are *information policy on the role, objectives and working methods of the Council* and *the clarity and the quality of the drafting of legislative texts* (Articles 19 and 22 of the Rules of Procedure).