

‘From Maastricht to Amsterdam: the Union inches towards transparency’ from Le Monde Économie (14 November 2000)

Caption: On 14 November 2000, in its ‘Economy’ supplement, the French daily newspaper Le Monde outlines the slow progress made in improving public access to the documents of the European institutions, particularly to Council documents, since the early 1990s.

Source: Le Monde Economie. 14.11.2000, n° 17357. Paris. "De Maastricht à Amsterdam, les lents progrès de l'Union vers la transparence", auteur:Rivais, Rafaële , p. 4.

Copyright: (c) Translation 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/from_maastricht_to_amsterdam_the_union_inches_towards_transparency_from_le_monde_economie_14_november_2000-en-cbob2d8c-cdff-4131-a7e3-48ccd7981f65.html



Last updated: 22/12/2016

From Maastricht to Amsterdam: the Union inches towards transparency

Right of access to the EU institutions' documents sparks controversy in Parliament and Council

Brussels

from our European desk

Winning citizens' right of access to documents of the European Union institutions has proved quite a struggle. The first steps towards transparency were taken in the early 1990s at the initiative of Denmark — keen to bring Europe closer to its citizens — and also of the European Parliament, which was not content for the Council to legislate in secret.

The Intergovernmental Conference, meeting in Maastricht on 7 February 1992, adopted, as an annex to the new Treaty on European Union, a Declaration (a non-binding text) which asserted that 'transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration'. It recommended that 'the Commission submit to the Council [...] a report on measures designed to improve public access to the information available to the institutions'.

When the Danish electorate rejected the Maastricht Treaty in an initial referendum in June 1992, political affirmation of the transparency principle became imperative, and the Birmingham European Council in October of that year acknowledged the need to 'make the Community more open'. It referred to 'the possibility of some open Council discussion — for example on future work programmes'. Two months later, the Edinburgh European Council was advocating 'open' debates on major Community issues as well as publication of Member States' votes and, possibly, their explanations of vote.

In December 1993, acting on these conclusions, the Council and the Commission voluntarily adopted a Code of Conduct setting out the principle that the public should, on request, have the widest possible access to documents produced by both institutions. The Code provided for exceptions, both to protect the public interest (in the areas of security, international relations, monetary stability, commercial secrecy, the Community's financial interests, etc.) and to secure the private interests (protection of the individual and of privacy).

Access to documents may still be refused in order to protect the confidentiality of an institution's proceedings. With regard to Commission proceedings, the protection of confidentiality reflected a conviction that disagreements in the run-up to collective decision-making should not be publicised for fear that those involved would no longer be bold enough to express themselves freely. Another concern was to shield Commissioners and officials from the influence of pressure groups.

The aim of protecting confidentiality in the Council was to avoid putting individual states on the spot within a legislative body regarded as a forum for international negotiation among diplomats. Parliament believed, however, that the public could be informed about compromises agreed prior to the adoption of legally binding acts.

The need to keep its proceedings confidential was the main reason cited by the Council for refusing requests for public access, more and more of which were being received (from researchers, lawyers, journalists and lobbyists). Access could not be refused systematically, however, after the Court of First Instance penalised the Council for failing to 'balance' the interest of citizens against its own interest.

In 1997, the Treaty of Amsterdam gave citizens and residents of the Union 'a right of access to European Parliament, Council and Commission documents', subject to exceptions to be determined jointly by the Council and Parliament under the codecision procedure. Since then (on 26th January 2000), the Commission has published a draft regulation to make the Code of Conduct more restrictive by excluding from its scope 'internal documents which express individual opinions or reflect [...] discussions', and, indeed, those recording 'advice as part of internal consultations', for example with the institutions' legal services, and by extending the list of exceptions.

Security and defence

The draft regulation met with opposition in the Council from those Member States which have traditionally advocated greater transparency (Sweden, Denmark and Finland), along with the United Kingdom, whose attitude has changed since the BSE crisis. France, on the other hand, wants ‘preparatory documents’ in the legislative process to continue to be excluded. MEPs, meanwhile, are keen to have pro-transparency amendments made to the proposal.

On 14 August, the Council took a decision designed to restrict Parliament’s powers: with a view to the development of EU military capability and information-sharing with NATO, the Council withdrew certain defence- and security-related documents from the scope of the regulation. It considers itself entitled to amend its own Rules of Procedure, pending the adoption of legislation.

European Parliament President Nicole Fontaine, however, condemned what she called a ‘unilateral’ decision, in breach of the Treaty stipulation that any restrictions placed on the principle of free access should be subject to codecision. She therefore referred the matter to the Court of Justice (*Le Monde*, 25^oOctober). Stormy exchanges are in prospect when MEPs debate the draft legislation at the plenary sitting in Strasbourg on 16^oNovember.

Rafaële Rivais

Council keeps its deliberations confidential

Although the Council, representing the Member State governments, is the primary EU legislative body, it was only in 1994 that citizens of the Union became entitled to know how individual governments voted in Council decisions. The Council’s conclusions of May 1995 indicated that the results of voting had been ‘systematically’ published.

It was not until May 1999, however, that the Council’s Rules of Procedure were amended accordingly, and the provision included there did not cover discussions leading to the adoption of preparatory acts, even though these are the very discussions that would have helped people to understand how decisions were taken. The provision for publicity also excluded non-legislative decisions (on internal and budgetary matters and international relations).

In order to enable members of the public to request specific information, the Council undertook to make available a register of the documents that it had produced since 1 January 1999 — except those that it had decided to keep confidential!