



EDF response to the consultation of the European Ombudsman concerning the transparency of legislative work within Council preparatory bodies (OI/2/2017)

EDF | December 2017



The European Disability Forum (EDF) is an independent NGO that represents the interests of 80 million Europeans with disabilities. EDF is a unique platform which brings together representative organisations of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.

Contents

Introduction	3
I. Accessibility of information and documents Δ	3
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?	3
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[3].	4
Are there other measures the Council could take to make legislative documents easier to find?	4
II. Transparency of discussions Δ	4
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	4
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.....	5
5. Do you ever consult the legislative file the Council publishes after the legislative act has been adopted?	5
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.....	5
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?	5



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?6

III. Other Δ 6

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.....6

Conclusion6


Contact person at the EDF secretariat:.....7

Introduction

I. Accessibility of information and documents Δ

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?

First of all, it is not always clear which Council working party deals with a specific proposal. The European Parliament has a useful tool, the OEIL (legislative database) where this information is usually published but it is also usually published far too late. It should be available immediately after the decision is taken and this should be indicated clearly on the Council website. It could also be advisable to stick to one single database such as the OEIL but make sure the information between the institutions is communicated faster and more efficiently to avoid having to check different websites. Finally, we recommend that for every Council preparatory body including the working parties, an updated list of the current files is published on the Council website.



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^[3].

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

There should be clear guidelines on publication of meeting reports as quickly as possible after each meeting, preferable two days after the meeting, with the key issues for discussion. Even if you proactively request the documents via the website, the Council often asks for additional delays - sometimes repeatedly - to release the documents where they refer to Article 7(3) of Regulation (EC) No 1049/2001 and say "The General Secretariat is still conducting consultations necessary to the examination of your request. Therefore, we have to extend the deadline to reply to your request by 15 working days" (etc.). It would help if there was a transparent policy as to what can be released or not so everyone would know. At the moment it is quite an opaque system. And of course even worse if we are talking about trilogue documents, which are not released at all and kept totally secret.

The website is not structured logically which makes finding documents even harder.

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

First of all, it should not be necessary to request specific documents. All documents of the Council should be publicly available, accessible, and within a strict deadline following the meeting. Otherwise it is impossible to receive up-to-date information and it seems like civil society and citizens are left in the dark on purpose.

Some documents, e.g. related to trilogue negotiations, are not published at all, which is a huge problem and makes it almost impossible to work constructively and pro-actively with the Council preparatory bodies and the Member States.

It should also be indicated which service of the Council’s secretariat and within the preparatory body is responsible so that they can be contacted in case of questions.



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.

If you are following a specific legislation proposal, all documents are of interest, the detail depends on how much progress is made. If there are big issues of disagreements stopping progress it is important to know what and which Member States causes them. If there is progress made it is good to have access to the amended text documents and not just a “cleaned up version”.

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

We are not aware of these files.

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.

No, all documents and information should be available. The discussions in the working parties are important to see if progress has been made so they need to be detailed and up-to-date; the discussions in Coreper are of course also important because they are more political and indicate the positions of the different Member States.

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?

All documents should be available to the public. If there are nevertheless certain restrictions, those have to be duly justified and the policy for gaining access to those also has to be clear and as transparent as possible. Users should not be requested to register and the “on demand” documents should be kept to an absolute minimum.



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?

To have access to the Member States' position is essential for the democratic process. It is often said on national level, that "the EU decides". But if Member States are negotiating and taking positions in a legislative process the citizens need to know their governments' positions. And it would strengthen democracy if the positions were more transparent.

Furthermore, it seems like Member States also like to "blame" each other if there is no progress being made in the adoption of a file – from the point of view of Civil Society it is very difficult to verify what is really happening since the positions are not published. Therefore, the work of the Council is often not accountable.

Publication of the written positions as well as live-streaming or recording the working party and Coreper meetings would improve transparency and trust in the EU institutions as a whole, as it is done already systematically in the European Parliament. Of course, attention should be paid to making the documentation and media fully accessible to persons with disabilities.

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.

The general issue of accessibility of the Council's website and documents for persons with disabilities should be tackled as a priority issue. When the European Blind Union (EBU) did the "Access Denied" report in 2014, the Council's website was by far the worst of the three EU institutions tested. We are aware that since a couple of years the new Council website is more accessible to people with disabilities, but the improvements might disappear if the uploaded content is not accessible or the web editors do not receive regular training.

Conclusion



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Should you have any problems in accessing the documentation, please contact the EDF Secretariat. (Tel: +32 (0) 2 282 46 00, Email: info@edf-feph.org).



Funded by
the European Union