



## EUROPEAN COMMISSION

*Brussels, 23.2.2018  
C(2018) 958 final*

*Dear Presidents, dear Chairs,*

*The Commission would like to thank the 26 Chambers that are signatories for their letter of 19 December 2017 concerning the transparency of the legislative process in the European Union. The Commission welcomes the initiative and has taken good note of the proposals contained therein.*

*Enhancing transparency is one of the top priorities of this Commission, as reflected in its Political Guidelines and put into practice through several initiatives.*

*This Commission has taken unprecedented steps to open up the preparatory legislative process and to make it more transparent. Our aim is not to impose policies but to prepare them inclusively, based on full transparency and engagement, listening to the views of those affected by legislation. Via the 'Contribute to Law-Making' web portal, citizens and interested actors can follow a legislative initiative from the first ideas, presented in a roadmap, to the final proposal adopted by the Commission and provide comments or contributions throughout the policy making process. This openness to external feedback and external scrutiny is a guarantee to ensure we get it right.*

*The Interinstitutional Agreement on Better Law-Making of 13 April 2016 extends our strive to enhance transparency in the legislative process to the interinstitutional phase. Notably, the Commission is developing, together with the European Parliament and the Council, a dedicated joint database on the state of play of legislative files, so as to facilitate traceability of the various steps in the legislative process. In September 2016, the Commission adopted a proposal for a revised interinstitutional agreement on a mandatory Transparency Register covering for the first time, besides the European Parliament and the Commission, the Council. Furthermore, as President Juncker undertook in his State of the Union speech of 13 September 2017, from now on, the Commission will publish in full all draft negotiating mandates it proposes to Council concerning the negotiation of international agreements.*

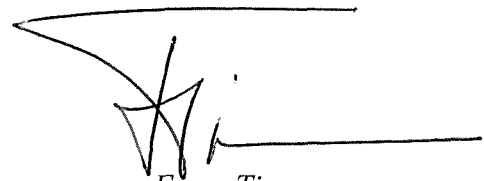
*These are only a few examples of the most important initiatives aiming at bolstering transparency and openness of the European Union's decision-making process.*

*As indicated in your letter, the actions proposed are first and foremost addressed to the Council of the European Union. The Commission encourages any efforts leading to greater transparency and will give its support to any measures which might be decided by the co-legislators in this respect.*

*As regards the proposals for recasting and 'Lisbonising' Regulation 1049/2001, which have been pending with the Council since 2012, the Commission has consistently demonstrated openness to a genuine discussion with both branches of the European Union legislature and will continue to do so.*

*The Commission looks forward to continuing the political dialogue with national Parliaments to advance further our common aim of bringing the European Union closer to its citizens.*

*Yours faithfully,*



*Frans Timmermans*  
*First Vice-President*

*Mr Malik AZMANI*  
*Chairman of the Standing Committee on European Affairs*

*cc. Ms Khadija ARIB*  
*President of the Tweede Kamer*

*Mr Bastiaan VAN APELDOORN*  
*Chairman of the Standing Committee on European Affairs*

*Ms Ankie BROEKERS-KNOL*  
*President of the Eerste Kamer*

*Mr Gediminas KIRKILAS*  
*Chairman of the European Affairs Committee*

*Mr Viktoras PRANCKIETIS*  
*President of the Seimas*

*Mr Peter LUYKX*  
*Member of the European Affairs Committee*

*Mr Siegfried BRACKE*  
*President of the Chambre des représentants*

*Ms Christine DEFRAIGNE*  
*President of the Sénat*

*Ms Izabela KLOC*  
*Chairwoman of the European Union Affairs Committee*

*Mr Marek KUCHCIŃSKI*  
*Marshal of the Sejm*

*Mr Jarosław OBREMSKI*  
*Deputy-Chair of the Foreign and European Union Affairs Committee*

*Mr Stanisław KARCZEWSKI*  
*Marshal of the Senat*

*Mr Paolo TANCREDI*  
*Vice-Chairman of the EU Policy Committee*

*Ms Laura BOLDRINI*  
*President of the Camera dei Deputati*

*Mr Vannino CHITI*  
*Chair of the Standing Committee on EU Policies*

*Mr Pietro GRASSO*  
*President of the Senato della Repubblica*

*Mr Angelos VOTSIS*  
*Member of the House Standing Committee of Foreign  
and European Affairs*

*Mr Demetris SYLLOURIS*  
*President of the Vouli ton Antiprosopon*

*Robin, Lord TEVERSON*  
*Chairman of the EU Energy and Environment Sub-Committee*

*The Lord Boswell of Aynho*  
*Chair of the European Union Select Committee  
House of Lords*

*Sir William CASH*  
*Chairman of the European Scrutiny Committee*

*The Rt. Hon. John BERCOW, MP*  
*Speaker  
House of Commons*

*Mr Martin KLUS*  
*Vice-Chairman of the European Affairs Committee*

*Mr Andrej DANKO*  
*President of the Národná Rada*

*Mr Václav HAMPL*  
*Chairman of the Committee on EU Affairs*

*Mr Milan ŠTĚCH*  
*President of the Senát*

*Mr Ondřej BENEŠIK*  
*Chairman of the Committee on European Affairs*

*Mr Radek VONDRÁČEK*  
*President of the Poslanecká sněmovna*

*Mr Stefan SCHENNACH*  
*Deputy Chair of the Committee on European Union Affairs*

*Mr Reinhard TODT*  
*President of the Bundesrat*

*Mr Marc ANGEL*  
*Chairman of the Committee on Foreign and European Affairs  
Defence, Cooperation and Immigration*

*Mr Mars DI BARTOLOMEO*  
*President of the Chambre des Députés*

*Mr Kamal Izidor SHAKER*  
*Chair of the Committee on EU Affairs*

*Mr Milan BRGLEZ*  
*President of the Državni Zbor*

*Ms Ioanneta KAVVADIA*  
*Vice-Chair of the Committee for European Affairs*

*Mr Nikos VOUTSIS*  
*President of the Vouli ton Ellinon*

*Mr Richárd HÖRCSIK*  
*Chairman of the Committee on European Affairs*

*Mr László KÖVÉR*  
*President of the Országgyűlés*

*Mr Kristian VIGENIN*  
*Chair of the Committee on European Affairs and Oversight  
of the European Funds*

*Ms Tsetska TSACHEVA*  
*President of the Narodno sabranie*

*Mr Erik CHRISTENSEN*  
*Chairman of the European Affairs Committee*

*Ms Pia KJÆRSGAARD*  
*Speaker of the Folketing*

*Mr Edward ZAMMIT LEWIS*  
*Chairman of the Foreign and European Affairs Committee*

*Mr Anġlu FARRUGIA*  
*President of the Kamra tad-Deputati*

*Ms Gabriela CREȚU*  
*Chairwoman of the European Affairs Committee*

*Mr Călin POPESCU-TĂRICEANU*  
*President of the Senat*

*Ms Regina BASTOS*  
*Chairwoman of the European Affairs Committee*

*Mr Eduardo FERRO RODRIGUES*  
*President of the Assembleia da República*

*Mr Jonas ERIKSSON*  
*Chair of the Committee on EU Affairs*

*Mr Urban AHLIN*  
*Speaker of the Riksdag*



**European Council**  
Cabinet of the President

SGS18/04290

Brussels, 16 -05- 2018

Dear Mr Azmani,

Thank you for your letter of 20 December 2017 to President Tusk, who asked me to reply on his behalf.

First of all, I would like to stress that the President strongly values the important input provided by COSAC, and shares the goal to make the EU more transparent for its citizens, as emphasised in your report.

The European Council is since the Lisbon Treaty established as an institution of the European Union (Article 13, Treaty on European Union,). It works according to the transparency rules as set out in the Lisbon Treaty, as openly and as closely as possible to citizens.

As reflected in its Rules of Procedure, the European Council has decided to apply to its documents the provisions concerning public access to Council documents set out in Annex II to the Rules of Procedure of the Council. As a consequence the European Council currently already applies the provision of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup> - and all the relevant case law - also in relation to requests for access it receives.

Article 15 of the Treaty on European Union, while stating that the European Council does not exercise legislative functions, contains provisions addressing its President, which has in particular the role of chairing it, ensuring the preparation and continuity of its work and presenting a report to the European Parliament after each of its meetings.

Arrangements for the preparation of the European Council meetings are provided for in Articles 2 and 3 of its Rules of Procedure.

Mr Malik AZMANI  
Chairman of the Standing Committee on European Affairs,  
House of Representatives of the Netherlands  
Postbus 20018  
2500 EA Den Haag, The Netherlands

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<sup>1</sup> OJ L 154, 31.5.2001, p. 43.

In keeping with the abovementioned provisions, preparatory documents, and in particular annotated agendas, are publicly available online. Invitation letters by President Tusk to the Members of the European Council ahead of their meetings are also published and made available on the European Council website. European Council meeting conclusions from 2004 onwards are available in the public register.

As for the national parliaments' scrutiny power vis-à-vis individual Members of the European Council, Member States are free to adopt the model which is the most suitable to their constitutional setting and parliamentary traditions.

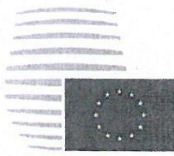
Finally, I would like to apologise for the late reply. This delay was partly due to the attempts to arrange for a personal meeting with the President, which unfortunately did not materialise in the end given diary constraints on our side.

Yours sincerely,



Paweł GRAŚ  
Senior Political and  
Communications Advisor





Council of the  
European Union

SGS18/04380

Brussels,

22-05-2018

LT 128/18

Malik AZMANI, MP  
Chairman of the Standing Committee on European Affairs  
Postbus 20018  
2500 EA THE HAGUE  
NETHERLANDS

Sir,

Thank you for your letter of 20 December 2017, co-signed by representatives of 26 chambers of national parliaments, regarding transparency of the legislative process in the EU. The Council attaches great importance to legislative transparency and it takes careful note of the proposals expressed in your joint letter.

In that regard, the Council shares your objective to enhance the traceability and documentation of the legislative process and it is committed to ensuring transparent and effective law-making.

Indeed, many Council documents are already made public as soon as they are circulated to delegations. These are, for example: provisional agendas for Council meetings (in all formations), any texts adopted by the Council intended to be published in the Official Journal, cover notes and copies of letters concerning legislative acts, documents relating to agenda items included as legislative deliberations or marked "public deliberation" or "public debate", notes submitted to COREPER and/or to the Council for approval of draft legislative acts (I/A and A item notes) and of course the draft acts to which these notes refer.

Documents not falling within these categories are made public upon circulation following a decision by the originating department, whereby the prevailing principle is that enshrined in Regulation 1049/2001: *"legislative documents (...) should, subject to Articles 4 and 9, be made directly accessible."* It should be clear, however, that nor the Regulation, nor case law of the Court imposes an obligation on the Council to proactively and immediately publish all legislative documents.

It is also noted that the summary records of COREPER meetings are public and directly available in the public register, so the results of discussions on any legislative file dealt with at COREPER level can easily be retrieved. When the Council deliberates and votes on a draft legislative act, this is always public and video-streamed live from our website. After the adoption of the legislative act, documents are made public as soon as possible.

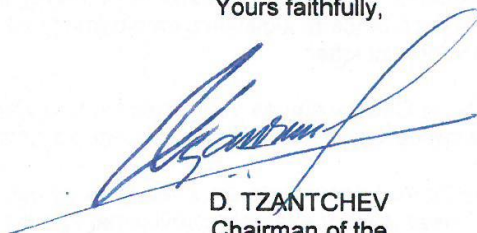
In addition to these existing measures, the Council has taken further initiatives to increase transparency in the legislative process.

Following the conclusion of the Interinstitutional Agreement on Better Law-Making in 2016, the Council is working with the European Parliament and the Commission on the establishment of a joint database on the state of play of legislative files. This future tool will provide easy access to comprehensive information, in an understandable and user-friendly manner, with direct links to existing repositories run by the individual institutions. This initiative will be an important tool to increase the accessibility of information and documents related to legislative files.

Furthermore, the Council is currently engaged in negotiations concerning the proposal of the Commission to establish a mandatory transparency register, which would now for the first time also include the Council.

In line with these ongoing initiatives and developments, the Council will continue its reflection on these topics and its efforts to increase the transparency of the EU legislative process and will keep you informed of its progress.

Yours faithfully,



D. TZANTCHEV  
Chairman of the  
Permanent Representatives Committee



**Eurogroup**  
The President

Lisbon, 3 October 2018

Mr. Malik Azmani, Chairman of the Standing Committee on European Affairs, House of Representatives of the Netherlands

Mr. Bastiaan van Apeldoorn, Chairman of the Standing Committee on European Affairs, Senate of the Netherlands

Mr. Erik Christensen, Chairman of the Standing Committee on European Affairs, Parliament of Denmark

Dear Sirs,

Thank you for your letter of 12 July and the attached documents containing the contribution and conclusions of the 59th COSAC meeting and the paper from the Dutch COSAC delegation on making the EU more transparent for its citizens, which I have carefully considered and which feed into the ongoing reflection on this matter.

You will appreciate that I am responding to your letter in my capacity of the President of the Eurogroup, and therefore am not in a position to comment on the proposals pertaining to the Council, the European Council or other EU institutions.

Regarding your suggestions on the application of transparency rules to informal bodies, let me describe some of the actions that have been undertaken in the Eurogroup in order to improve transparency and public access to documents submitted to it, as well as outline our intentions on this subject for the future.

Before doing so, allow me to recall the Eurogroup's status, as set out in the Treaties. The Eurogroup is an informal body in which the ministers of the euro area member states discuss matters concerning their shared responsibilities related to the euro. It is not an institution of the Union and does not have any tasks - legislative or other - assigned to it under the Treaties. This has as a consequence that the accountability for what is being discussed and agreed in the Eurogroup lies essentially at national level.



The Eurogroup has taken a number of initiatives which aim at improving citizens' understanding of what is being done at its meetings.

First, it was decided in March 2016 that documents submitted to the Eurogroup would, as a rule, be published, unless there were well-founded objections such as i) documents which are still work in progress and/or subject to further substantial changes; ii) documents containing confidential or market-sensitive information; and iii) documents for which the author institution objects to their publication.

Since the introduction of the Eurogroup's transparency regime, the Eurogroup has published on its website not only the annotated agendas and summing-up letters of all its meetings, but also other meeting documents.

In particular, in June 2017, the Eurogroup agreed that, from then on, documents presented in the Eurogroup, notably the Commission notes prepared for the thematic discussions on growth and jobs, would be made publicly available ahead of the Eurogroup meetings, unless the objections to publication on which the Eurogroup agreed on in March 2016 applied. This rule would also apply to documents such as the post-programme surveillance reports.

When a request is received for access to a particular document held by the General Secretariat of the Council and linked to the Eurogroup's activities, such a request is processed in line with the substantive and procedural framework set out in Regulation 1049/2001. This process requires that we seek the consent of the author of the document in question. A large share of the Eurogroup documents is prepared by the European Commission and the European Stability Mechanism (ESM).

Moreover, when it comes to documents held only by national delegations, requests for access to these have to be handled in accordance with the relevant national legislation on transparency. Requests for public access to such documents should be directed to the relevant national authorities.

Finally, allow me to reiterate the commitment of the Eurogroup to transparency, despite the fact that the Eurogroup is not an EU institution but an informal gathering of the ministers of finance of the member states of the euro area.

I am confident that the initiatives which we started to implement in 2016 go a long way towards addressing the information needs of national parliaments and European citizens alike and hence contribute to improved scrutiny and transparency of our work. This does not stop us from further improving, where needed, and that is precisely what has happened recently.

Only last June we started publishing the list of attendees of Eurogroup meetings, bringing that practice in line with the Council. It is not only an issue of publication, but also dissemination, which is why we are today more active on social media, as well to inform about Eurogroup meetings and its agenda items.

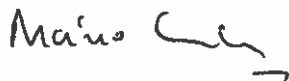
At our Eurogroup meeting in Vienna last September, I announced the decision to look into our transparency practices, namely the initiative taken a couple of years ago, to see if there was anything we should improve.

Once this work is completed, I would be happy to share the results with you.

In addition, earlier this year I have initiated the practice of opening the Eurogroup to the views of renowned experts from academia and civil society to lay the ground for discussing topics that are strategic to our policy making. Their presentations have also been made public.

Lastly, I remain committed to a good dialogue and information sharing with the European Parliament. At our Vienna gathering, upon my initiative, the Chair of the Economic and Financial Affairs Committee of the European Parliament was invited - for the first time ever - to attend a session of the Eurogroup. This is in addition to the President of the Eurogroup's regular hearings in the European Parliament, notably at the ECON Committee, for an 'economic dialogue' on the Eurogroup's work and policy priorities, and also in addition to the participation in a conference in the European Inter-parliamentary week at the European Parliament's premises.

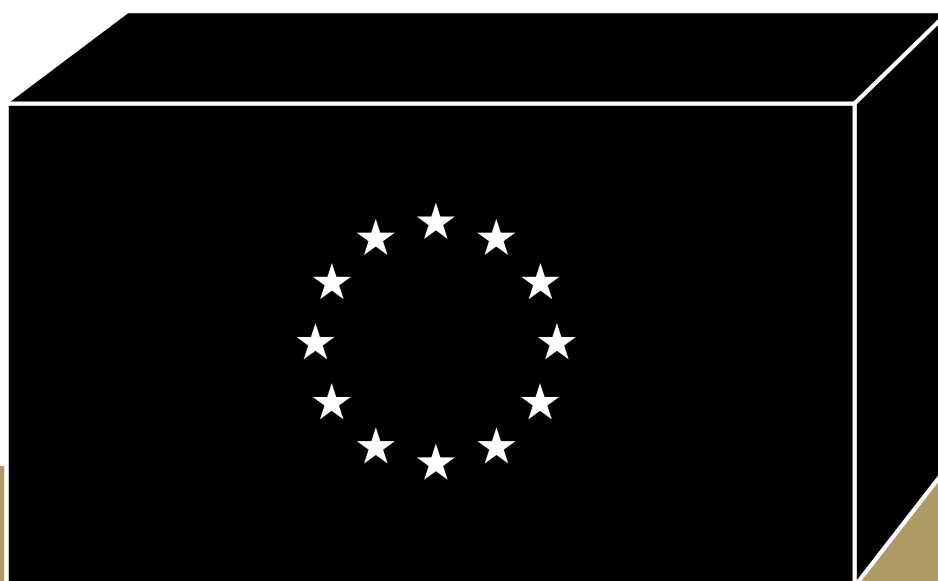
Yours sincerely,



Mário CENTENO  
President of the Eurogroup



Staten-Generaal



# Opening up closed doors: Making the EU more transparent for its citizens

Paper from the Dutch COSAC delegation on EU transparency  
To be presented at the COSAC panel “Bringing Europe closer to its citizens”

Tallinn, 26-28 November 2017

In a representative democracy citizens have the right to know whether their legislators voted in favour of or against a law or proposal. Citizens have the right to know what the available policy options are. Both transparency and accessibility of documents are therefore essential.

The EU Council is a legislator. Members of national parliaments have insufficient access to documents and voting records, including informal voting records, to be able to oversee and scrutinize their governments' actions. For citizens, it is even harder to gain access to documents, to acquire knowledge of their government's actions or to understand the process by which parliaments make decisions. Therefore, our democracy is imperfect. If our citizens don't have access to what is going on in their government, how can they possibly cast an informed vote?

Transparency is essential to making democracy meaningful. Without transparency, there can be no public space in which citizens, stakeholders and media can deliberate and thus participate in decision making. Transparency can be a means to bring the EU closer to its citizens. In this position paper, we argue that the EU currently does not live up to this democratic standard and that the Council, in particular, regularly violates EU transparency regulations. If we want to continue influencing EU decision making on behalf of our electorate, we, members of the national parliaments within the EU, should take action.

**We propose the Council adopt the following measures:**

1. Legislative Council documents must systematically be made public without delay.
2. The Council must adopt more specific and detailed rules regarding reporting on legislative deliberations.
3. Informal but influential bodies must be formalized and, at the very least, start applying the Transparency Regulation internally, as foreseen in article 15(3) TFEU.
4. The negotiations on the Transparency Regulation must be reopened in order to align the regulation with the expanded requirements under article 15(3) TFEU.

**We propose pursuing the following course of action:**

- We request the Council and other bodies like the Eurogroup and the EU-27 adopt the concrete measures listed above in a joint letter of participating COSAC delegations.
- We open a parliamentary debate on these measures with our national governments at home or adopt a corresponding resolution.
- We return to the issue of transparency at the next plenary COSAC to assess our progress.

**The lack of transparency in the EU**

There are many examples of EU legislation and other decisions adopted by the Council in a non-transparent fashion which have significant implications for member states and their citizens. As the three examples below clarify, this concerns decisions made by member states both inside and outside the formal Council framework.

- The EU budget for 2017, which entails expenditures of up to €157 billion, was presented by the European Commission in June 2016. The Council's Budget Committee examined the text in June and July 2016 and the final text was approved on 20 July 2016. This text was subsequently adopted by the Council by written vote in September 2016. During this speedy negotiating process, no documents were made available containing either information on the issues debated between member states or on their points of divergence. The negotiations with the European Parliament were also conducted swiftly and the budget was ready to be published in the Official Journal by December 2016. National parliaments were given no real opportunity to have their say on the allocation of the EU's resources.

- The various bail-out mechanisms created in the course of the European sovereign debt crisis, such as the EFSF (European Financial Stability Facility) and the ESM (European Stability Mechanism), are further examples of non-transparent decision making. These mechanisms are intergovernmental by nature but only partly so in practice, because much of the decision making takes place in the Eurogroup and the European Commission. Although national parliaments were aware of the possible risks to national budgets when they signed up for these mechanisms, the actual budgetary risks are determined by individual loans and reform programmes that are approved by the Eurogroup and monitored by the European Commission and others, but are outside the direct scope of influence of national parliaments. As the Dutch and European Courts of Audit have pointed out on various occasions, Eurogroup decision making is notoriously opaque, not only in relation to the bail-out funds, but in general.
- A third noteworthy example is the Brexit negotiations. No formal framework applies in the EU-27. Even though Parliaments will have to ratify a settlement of future relations with the UK, they can follow the negotiations with great difficulty. Understanding a government position in the informal discussion is often impossible. The EU does not actively involve national parliaments in the input for the negotiation rounds, and the results are only communicated in a terse manner. Therefore, for parliaments it is hard to follow the progress of the negotiations, let alone influence them.

### **Why transparency matters to us**

As the above examples show, the decision making of member states, both inside and outside the formal Council framework, tends to be particularly opaque. This lack of transparency is a violation of article 15(3) TFEU and keeps citizens and their representatives far from decision making in the EU.<sup>1</sup> Too often, this has resulted in EU policies that citizens do neither understand nor consider to be legitimate.

Parliaments are expected to oversee and scrutinize the Council's actions on behalf of their constituents. Without proper insight into the Council's thinking, we cannot perform this task. Instead, we are continually confronted with done deals. If parliaments allow themselves to be sidelined like this, they risk losing their relevancy as representative bodies in the context of EU decision making. This has become all the more urgent as the European Council recently announced its intention to create a new dynamic in EU decision making through high-level informal summits of member states. The aim is to speed up the process and to overcome differences. It is up to us, the parliaments responsible for monitoring the national governments, to make sure this new dynamic is performed in a democratic and transparent manner.

Indeed, precisely because of our role of overseeing and scrutinizing the Council's actions, we are in the best position to act. Members of national parliaments can demand that our governments maintain a solid commitment to transparency in their dealings with each other. Together with the European Parliament, we can generate a strong force for greater transparency and democracy. The European Parliament and many other actors, including the courts, the European Ombudsman, academics and civil society organisations, have been working for a long time to achieve a greater degree of Council transparency. We propose the COSAC now join them by jointly submitting the following concrete measures to the Council.

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<sup>1</sup> Article 15(3) TFEU reads as follows: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph."

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph."



## 1. Legislative documents must systematically be made public without delay.

Regulation 1049/2001 (the “Transparency Regulation”)<sup>2</sup> requires that all Council documents are made public immediately, unless one of the exemptions listed in that regulation applies. Only in this case, a document can be withheld from publication. The *limité* label the Council often applies is not listed as an exemption and, in principle, should not be applied to legislative documents at all. However, the Council has turned the Transparency Regulation around: according to the Council’s internal guidelines and rules of procedure, documents will not be made public unless it is clear that no refusal ground applies.<sup>3</sup> This has led to the disproportionate practice of withholding information from the public and representative bodies. In 2016 alone, over 4,500 legislative documents were produced by Council preparatory bodies. Of these, 2,500 (60%) were not made public or only after negotiations had been finished. In contrast, 1,800 of those 2,500 *limité* documents were released after access-to-information requests from citizens.<sup>4</sup> In other words, it appears that the Council is too quick to label documents as *limité* and, when asked to reconsider, often has to change its initial decision to withhold documents from the public eye. The *limité* label has become a tool to delay publication of documents until an internal discussion has been neutralised.

According to legal advice from the lawyer of the Dutch parliament,<sup>5</sup> the Council’s handling of documents is in violation of EU law and the European Court of Justice’s judgments.<sup>6</sup> In the Access Info case, the CJEU was of the opinion that documents that are part of the normal legislative process, including various proposals for amendment or redrafting made by the member states, could not be regarded as “sensitive” “by reference to any criterion whatsoever”.<sup>7</sup> Therefore, institutions cannot refuse access to documents on the basis of Article 4(3) of Regulation (EC) No 1049/2001 by relying on the “sensitivity” of such documents.

To comply with the legal framework, the Council must assess on a document-by-document basis whether an exemption applies and clearly motivate an exception when it denies access to documents. This must be done immediately upon circulation of a legislative document among delegations and not only after negotiations have been finished. The Treaty of Lisbon, the Transparency Regulation and the case law of the European Court of Justice require that wide access must be granted to the public especially when it comes to legislative documents.

Therefore, we call upon the Council to start applying the Transparency Regulation as intended and in line with the Court’s case law. This means that within the Council, routine procedures and working methods must be established to carefully assess whether a new document should be made available to the public immediately or whether one of the refusal grounds mentioned in the Transparency Regulation applies. This assessment must be made on a document-by-document basis and directly upon circulation among Member State governments. This means legislative documents must be directly available at all times, unless one of the exceptions enumerated in the Transparency Regulation needs to be applied. The Council should also broaden the definition of “legislative document” in order to include presidency conclusions, state-of-play documents and multi-column texts.

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- 2 Regulation 1049/2001 of the European Parliament and the Council of 30.05.01 regarding public access to European Parliament, Council and Commission documents, OJEU, 31.05.01, L 145/43.
  - 3 Guidelines for handling of documents internal to the Council, Council document of 09.06.11, no. 11336/11 and Council Decision of 01.12.09 on the adoption of the rules of procedure, OJEU L 325/25 of 11.12.09.
  - 4 See council document 7903/17 of 12 May 2017, 15th annual report on the implementation of regulation 1049/2001.
  - 5 See: [www.houseofrepresentatives.nl/news/internal-eu-council-documents-often-wrongly-undisclosed](http://www.houseofrepresentatives.nl/news/internal-eu-council-documents-often-wrongly-undisclosed)
  - 6 Inter alia: CJEU, C-350/12P, Council / In 't Veld, ruling of 03.07.14, ECLI:EU:C:2014:2039, par. 48; CJEU C-280/11P, Council/ Access Info Europe, ruling of 17.10.13, ECLI:EU:C:2013:671, par. 28; CJEU C-506/08P, Sweden / MyTravel and Commission, ruling of 21.07.11, ECLI:EU:C:2011:496, par. 73; CJEU, joined cases C-514/07P, C-528/07P and C-532/07P, Sweden and others / API and Commission, ruling of 21.09.10, ECLI:EU:C:2010:541, par. 69; CJEU, joined cases C-39/05P and C-52/05P, Sweden and Turco / Council, ruling of 01.07.08, ECLI:EU:C:2008:374, par. 33.
  - 7 See paragraph 63 of the Access Info Judgment.

## **2. The Council must adopt more specific and detailed rules regarding reporting on legislative deliberations.**

At the moment, several types of legislative documents exist and those available vary in their informational content. For example, individual Member State positions are frequently not recorded in working party reports and presidency notes. In other words, even if the Council started applying the transparency legal framework as intended, the transparency of Council deliberations would not necessarily increase. On the contrary, if the Council was forced to publish them more often, the risk would be that less information is recorded in official documents. This can be prevented by formulating standards on reporting on deliberations. Without such flanking measures, the democratic right of citizens to follow the evolution of discussions on legislative proposals within the Council in a timely manner, would still be hampered even if wider access to these documents were granted.

To solve this problem, we call upon the Council to standardize the reporting on Council meetings and preparatory Council meetings in the field of legislation and to establish these standards in its rules of procedure. This means that a comprehensive agenda must be distributed for each meeting in which legislation is discussed. Furthermore, the minutes of the meetings must provide details on the discussed files, the points of discussion, the submission by the member states and any voting results, either formal or interim/informal, even if no progress was made. Additionally, the legislative process could further be enhanced by regular public exchanges of views at COREPER or at a ministerial level, for instance every three months or after every five working-group meetings. Adopting these rules will be the first step in making the Council more transparent for national parliaments.

## **3. Informal but influential bodies must be formalized and, at the very least, start applying the Transparency Regulation internally.**

The documents of high-level and informal organs such as the European Council, the Eurogroup, the Euro Summit and the EU-27, which are circulated prior to meetings, are usually labelled as informal. This means the Transparency Regulation does not apply to those documents. Consequently, access to such documents cannot easily be obtained relying on these rules. This is at odds with the treaties and particularly with article 15(3) TFEU that prescribes that the EU institutions, bodies and organs shall conduct their work as openly as possible and develop provisions in their rules of procedure on transparency and that citizens shall enjoy access to documents.

A solution is to call upon these bodies to start applying the Transparency Regulation and to develop rules of procedure that are in line with the standards developed in EU legislation and case law. This would still allow for confidentiality when the exemption grounds of article 4 of the transparency regulation apply. For example a document shall not be disclosed if necessary to protect financial, monetary or economic policies (article 4(1) Regulation 1049/2001) or if it would seriously undermine the institution's decision making process, unless there is an overriding public interest in disclosure (article 4(3)). This will enhance transparency in a proactive and voluntary manner and at the same time leave room for these bodies to refuse access to documents on the grounds listed in the Transparency Regulation.

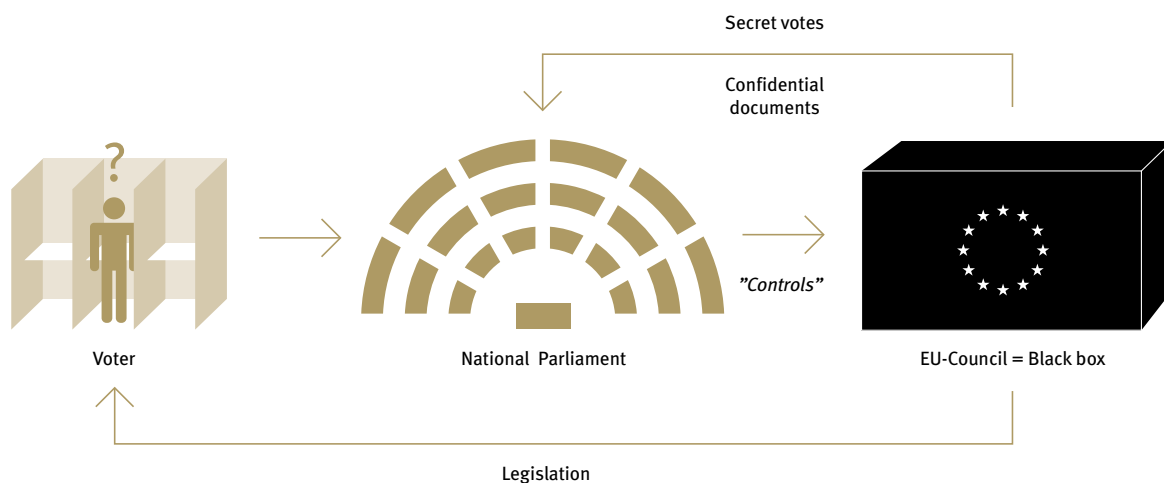
#### 4. The negotiations on the Transparency Regulation must be reopened in order to align the regulation with the expanded requirements.

In 2008, the European Commission proposed to amend the current Transparency Regulation. The European Parliament adopted its position on that proposal in 2011. However, the Council has not agreed on a negotiation mandate to date, thus effectively blocking negotiations.

We call upon the Council to reopen the negotiations on the Transparency Regulation and to establish a general approach in the near future, so that the inter-institutional negotiations may start. This general approach should at least align the Transparency Regulation with the expanded requirements under article 15(3) to encompass all of the EU's bodies, offices and agencies. However, this should not obstruct the rights granted by the current Transparency Regulation and its case law.

#### **Balancing effectiveness and transparency**

- As the Transparency Regulation also recognizes, confidentiality is sometimes needed in order to avoid blocking ongoing negotiations. We agree that some space to think freely may help parties with diverging views to reach a compromise. However, the current Council rules and practices go too far in protecting their interests at the expense of citizens' democratic rights. It should be underlined that we are not advocating total transparency; we just ask for a better anchoring of the principle of transparency that has already been recognized by the EU since the Amsterdam Treaty. The present situation is in violation with the Treaty of Lisbon and the Court of Justice's case law. We thus ask the Council to change its internal guidelines and practices in order to comply with the law. We do not advocate more transparency regarding the real sensitive issues. The present exceptions for issues like national security and defence matters should stay in place. We mainly focus on the legislative deliberations within the Council and the policy discussions, including economic policy discussions, taking place in high-level informal groups. We are calling on the Council and its preparatory bodies to start behaving like a proper legislature when acting in their co-legislative role.
- Another argument against imposing stricter transparency obligations on a deliberative forum is that it can cause the real negotiations and deal making to move elsewhere (see also point 2). Indeed, a change of the formal rules will probably only work accompanied by a change of mind and a change of culture. It is impossible to force these changes, but this should not prevent us from demanding better rules on transparency. Furthermore, we are convinced that a broadly shared call from national parliaments with pinpointed demands will make clear to the Council that it is high time the Council started taking transparency seriously and made transparency a part of its DNA.
- Lastly, we recognize that in this position paper we mainly focus on the Council. We are open to any pressing transparency issues regarding other EU institutions and to devising a way to address them. We focus on the Council for two reasons: national parliaments scrutinize their governments actions in the Council and there is a lot of room for improvement in terms of transparency in the Council.



**Infographic 1**

**Imperfect democracy:** *how can citizens cast an informed vote, if they don't know how their governments operate in the EU?*

### The way forward

We propose pursuing the following course of action: at the coming meeting of the COSAC in Tallinn, we will present this paper in greater detail during the panel discussion on the EU and the role of citizens. During the meeting, a letter addressed to the Council will be available for delegations to sign. This letter will contain an invitation to the Council to adopt the measures stated above. We also call upon the COSAC delegations to table the issue of transparency in their own parliaments in a way they see fit, for example by organizing a debate with their governments or by adopting a resolution. Lastly, we propose returning to the issue at the next COSAC plenary meeting in Bulgaria to assess our progress.

The case for more transparency has frequently been made by individual member states within the Council and some steps in the right direction have been taken over the past years. Notably, in 2015, Denmark, Estonia, Finland, The Netherlands, Slovenia and Sweden jointly submitted a series of proposals to enhance the transparency of the Council. Furthermore, the inter-institutional agreement on better law making has a promising paragraph on transparency. The European Parliament has frequently championed the issue, and the European Ombudsman has issued recommendations on trilogues and is currently investigating the Council's transparency.<sup>8</sup>

These developments are very welcome, but they fail to address some of the core issues that we address in this paper. Real change is needed as the current lack of transparency lead to a real lack of democratic accountability in the European Union. Members of the national parliaments have both the interest and the influence to open up closed doors and make the EU more transparent for themselves and the citizens.

<sup>8</sup> [www.ombudsman.europa.eu/en/cases/caseopened.faces/en/59816/html.bookmark](http://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/59816/html.bookmark)

## Colophon

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### Publication

House of Representatives of the Netherlands

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Plein 2, The Hague

### Postal address

P.O. Box 20018, 2500 EA The Hague, The Netherlands

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November 2017