



Time for the EU Council to become more transparent!

The EU treaties guarantee the right of public access to documents and EU institutions are more transparent than many national governments and parliaments, yet not all institutions live up to their legal obligations and citizens tend to perceive EU institutions as more distant than other levels of government. The Greens have long been fighting for more transparency. We have to step up this fight now that anti-EU populists exploit those weaknesses to blame the EU for all evils. One of the biggest problems with democracy in the EU is the lack of transparency and accountability of national governments assembling in the Council as co-legislator. While the European Commission broadly consults the public for drafting legislation, and the European Parliament debates and decides in public, including its committee meetings, the representatives of Member States in the Council Working Groups negotiate draft EU laws for years without citizens knowing what the governments' positions are or if they are blocking progress. The Council often does not even record what positions Member States take.

This means that the public, Members of the European Parliament and sometimes even national parliamentarians are kept in the dark with regard to their respective governments' position and have to be content with rumours and leaks. Therefore, most national parliamentarians can hardly control their government when they decide on EU laws. Leaks are not a good substitute for transparency – they are often selective, and therefore favour lobby organisations close to a government and rich enough to employ more Brussels representatives. Often times, lobbyists of strong interest groups will get hold of a proposal before elected representatives or lobbyists of smaller interest groups do. Thus, the Greens demand the publication of the discussions in order to inform the EU citizens. Furthermore, it would be beneficial for the transparency to invite as observers a couple of EP members to these Council Working Groups.

And the fact that all negotiators know the various positions of the Parliament's political groups, while the positions of the Member States are secret creates an un-level playing field which the Council can use against Parliament to split it during negotiations.

This is not only bad practice, but also contributes to real political problems. Important issues such as tax justice, consumer protection and environmental protection suffer from blockades in the Council. If those guilty of hampering progress had to explain their position to the public these blockades would be easier to lift. At the very least, the public would know what their governments are doing and be able to hold them accountable for their actions. Individual ministers and Parties would be held accountable. Blaming the "EU" or "Brussels" would become less easy as bureaucrats would have to face public scrutiny.

The lack of transparency in the Council has recently been highlighted by the European Ombudsman and several national parliaments. The Ombudsman, Emily O'Reilly, conducted a detailed inquiry and concluded that the lack of transparency in the Council undermines citizens' rights to hold their elected representatives to account and constitutes maladministration. The Greens await with interest the Council's reaction to this severe report.

There are laws governing transparency in the EU and the Council needs to start applying the Transparency Regulation 1049/2001 properly and bring its practice in line with Article 15:3 of the Treaty, and the ECJ case law. There are exceptions to the right of public access that have been made possible through the transparency regulation. However, these exceptions should not be used as an excuse for not adhering to the law.



Many things need to be improved. One example is that documents are often kept from the public by being marked LIMITE – the Council seems to have adopted a practice of erring on the side of secrecy. The Ombudsman notes that 84% of the documents in active legislative files that citizens asked to see in 2015 were released. Out of 321 documents relating to the General Data Protection Regulation, 310 were released to the public while negotiations were ongoing.

The Ombudsman proposes that the Council should systematically record the identity of Member States taking positions during discussions on draft legislation and make these proactively available to the public in a timely manner. For their part, the Greens ask the Council to make every decision public, without undue delay, after the conclusion of the discussions.

This call has already been supported by a large number of national parliaments. The European Green Party welcomes the growing pressure for reform. EU citizens deserve a democracy that is transparent.

We welcome the judgement by the EU's General court of 22 March 2018 in the case de Capitani vs Parliament that citizens have the right to access Trialogue meeting documents including intermediary compromises even while the negotiations are ongoing. We urge the European institutions to implement this judgement immediately.

We want to close important loopholes of transparency in EU-decision making. Informal bodies, in particular the Eurogroup, should become fully transparent and be submitted to the Council's rules of procedure. Transparency needs proper voting procedures, publication of minutes and results. For the same reasons, intergovernmental structures such as the European Stability Mechanism (ESM) must be deeply reformed and fully integrated into EU law and become fully accountable to the Parliament.

Therefore, the European Green Party demands:

1. We call for the Council to systematically record the positions each of Member State takes in preparatory bodies such as Council Working Groups.
2. We call for the Council to make legislative documents public without delay.
3. We call on bodies such as the Eurogroup to apply the transparency regulation internally.
4. We call on the EU institutions and national governments to fully apply the EU's General court judgment de Capitani v Parliament of 22 March 2018 and also to publish all legislative documents including those from Trialogues pro-actively.¹

¹ **Background:**

Paper from the Dutch COSAC delegation on EU transparency "Opening up closed doors: Making the EU more transparent for its citizens" <https://www.tweedekamer.nl/downloads/document?id=ba9c246b-7cb6-444d-9c50-089dc0840dd3&title=Opening%20up%20closed%20doors%3A%20making%20the%20EU%20more%20transparent%20for%20its%20citizens.%20Paper%20from%20the%20Dutch%20COSAC%20delegation%20on%20EU%20transparency.%20To%20be%20presented%20at%20the%20COSAC%20panel%20%22Bringing%20Europe%20closer%20to%20its%20citizens%22%20Tallinn%2C%2026-28%20November%202017.pdf>

Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process: <http://europa.eu/!mK88bp>