Ombudsman’s strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU

2018/2096(INI) - 17/01/2019 - Text adopted by Parliament, single reading

The European Parliament adopted by 479 votes to 18, with 81 abstentions, a resolution on the Ombudsman’s strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU.

Following the inquiry into transparency, the Ombudsman found that the Council’s lack of transparency regarding public access to its legislative documents and its current practices with regard to transparency of its decision-making process – specifically during the preparatory stage at Coreper and working group level – constitute maladministration.

On 9 February 2018, the Ombudsman made six suggestions for improvements and three specific recommendations to the Council regarding transparency of its preparatory bodies, and asked the Council for a reply. The Council did not reply to the recommendations contained in the Ombudsman’s report within the legally prescribed timeline of three months, and, the Ombudsman decided not to grant the Council any extensions beyond this deadline, and submitted the report to Parliament.

Addressing the democratic deficit

Recalling the current criticism of the European Union for its democratic deficit, Members stressed that the fact that one of its three main institutions takes decisions without the transparency expected of a democratic institution is detrimental to the European project.

Members shared the Ombudsman's view that the Treaties impose a legal obligation to ensure that citizens are able to understand, follow in detail and participate in the legislative process, which is essential for the establishment of a modern democratic system.

Improving transparency

Parliament stated that the decision-making process at European level should be fully democratic and highly transparent in order to increase citizens' trust in the European project and the EU institutions, especially in the run-up to the European elections in May 2019.

A high level of transparency of the legislative process is essential to enable citizens, media and stakeholders to hold their elected representatives and governments accountable but also act as a safeguard against the spread of speculation, fake news and conspiracy theories

Preparatory meetings

Members deplored that, unlike committee meetings in Parliament, meetings of preparatory bodies and the majority of debates in the Council are held behind closed doors, that a large proportion of documents relating to legislative files are not published proactively by the Council and that documents relating to legislative dossiers distributed in its preparatory bodies are systematically classified under the marking 'LIMITE'.

Parliament stated that citizens, media and stakeholders must have access by appropriate means to the meetings of the Council and its preparatory bodies, including via live- and webstreaming, and that the minutes of these meetings should be published in order to ensure a high level of transparency in the legislative process.

The resolution stressed that the lack of information prevents national parliaments from monitoring government action in the Council. It also leads to an imbalance in the information available and thus gives the Council a structural advantage over Parliament.

Members also wanted a high level of transparency to be applied to trilogues, which have become commonplace in reaching agreements on legislative dossiers.

Informal bodies

Parliament criticised the practice of pre-determining far-reaching economic and financial decisions in informal formats such as the **Eurogroup** and the Euro Summit. It insisted that EU legislation on transparency and access to documents should be applied to informal bodies and preparatory bodies within the Council, in particular the Eurogroup. It requested that the Eurogroup be fully formalised during the next revision of the Treaties in order to guarantee proper public access and parliamentary scrutiny.

Recommendations to the Council

Members fully endorsed the European Ombudsman's recommendations to the Council and urged the Council – as a minimum – to take all measures necessary to implement as swiftly as possible the recommendations of the Ombudsman, namely:

- to systematically record the identity of Member State governments when they express positions in Council preparatory bodies;

- to develop clear and publicly available criteria for how it designates documents as 'LIMITE', in line with EU law;

- to systematically review the 'LIMITE' status of documents at an early stage, before the final adoption of a legislative act, including before informal negotiations in trilogues, at which point the Council will have reached an initial position on the proposal.

Parliament reiterated its call for the improvement of the exchange of documents and information between Parliament and the Council and for access to be granted to representatives of Parliament as observers to meetings of the Council and its bodies, in particular in the case of legislation, in a way equivalent to which Parliament grants the Council access to its meetings.

The Council is invited to:

- align its working methods with the standards of a parliamentary and participatory democracy, as required by the Treaties, rather than acting as a diplomatic forum;

- transform itself into a real legislative chamber in order to create a genuine bicameral legislative system involving the Council and Parliament, with the Commission acting as the executive;

- use qualified majority voting and refrain, as far as possible, from taking decisions by consensus and therefore without a formal public vote.