House of Commons

European Scrutiny Committee

# Transparency of decision-making in the Council of the European Union

## Second Report of Session 2016–17

HC 128

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## Second Report of Session 2016–17

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## The European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents.

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Committee reports are published on the Committee's website at www.parliament.uk/escom and in print by Order of the House.

Evidence relating to this report is published on the relevant inquiry page of the Committee's website.

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# Summary

Many UK laws and measures include obligations derived from EU law. We think it right that UK citizens should be able to understand how these laws are made. Our short inquiry considered how transparent the law-making process is, with a specific focus on decision-making in the Council, where UK Ministers meet with their counterparts from other Member States to adopt laws. The evidence we received emphasised the extent to which the Council and its preparatory bodies work by negotiation. While some witnesses called for greater transparency, others warned of the need to preserve the integrity of the decision-making process, and maintain a safe space for discussion and negotiation.

It is clear that we are not the only body concerned about the transparency of the EU legislative process. Not only is the European Ombudsman investigating the transparency of the negotiations between the Council and the European Parliament with the assistance of the European Commission ("trilogues"), the European institutions themselves have recently reached agreement on measures to improve transparency. We see the implementation of this new Interinstitutional Agreement on Better Law-Making to be an opportunity to take into account the issues that we have identified, including:

- consistent application of current transparency requirements at each stage of the decision-making procedure (working group, Coreper and Council) and across different Council configurations;
- timely provision of information on Member State positions throughout the negotiations, at each level of the Council, balancing accessibility of information with confidentiality provisions; and
- a clearer distinction between consideration of executive and legislative matters.

We consider that actions to improve the transparency and accountability of decision-making in the Council should be addressed not only centrally by the European institutions but by the Government and by the House of Commons as a national parliamentary chamber responsible for scrutinising the Government's position in the Council.

If the referendum results in a vote to remain in the European Union, it is likely that we will revisit proposals for scrutiny reform made in the last Parliament. As part of that process, we will explore further with the Government how the transparency of the EU legislative process might be improved, whether by changes in the Government's release of information, and by changes in the scrutiny system.

# 1 Introduction

> "The European project derives its legitimacy from democratic, transparent and efficient institutions." (European Council, 2001)[1]

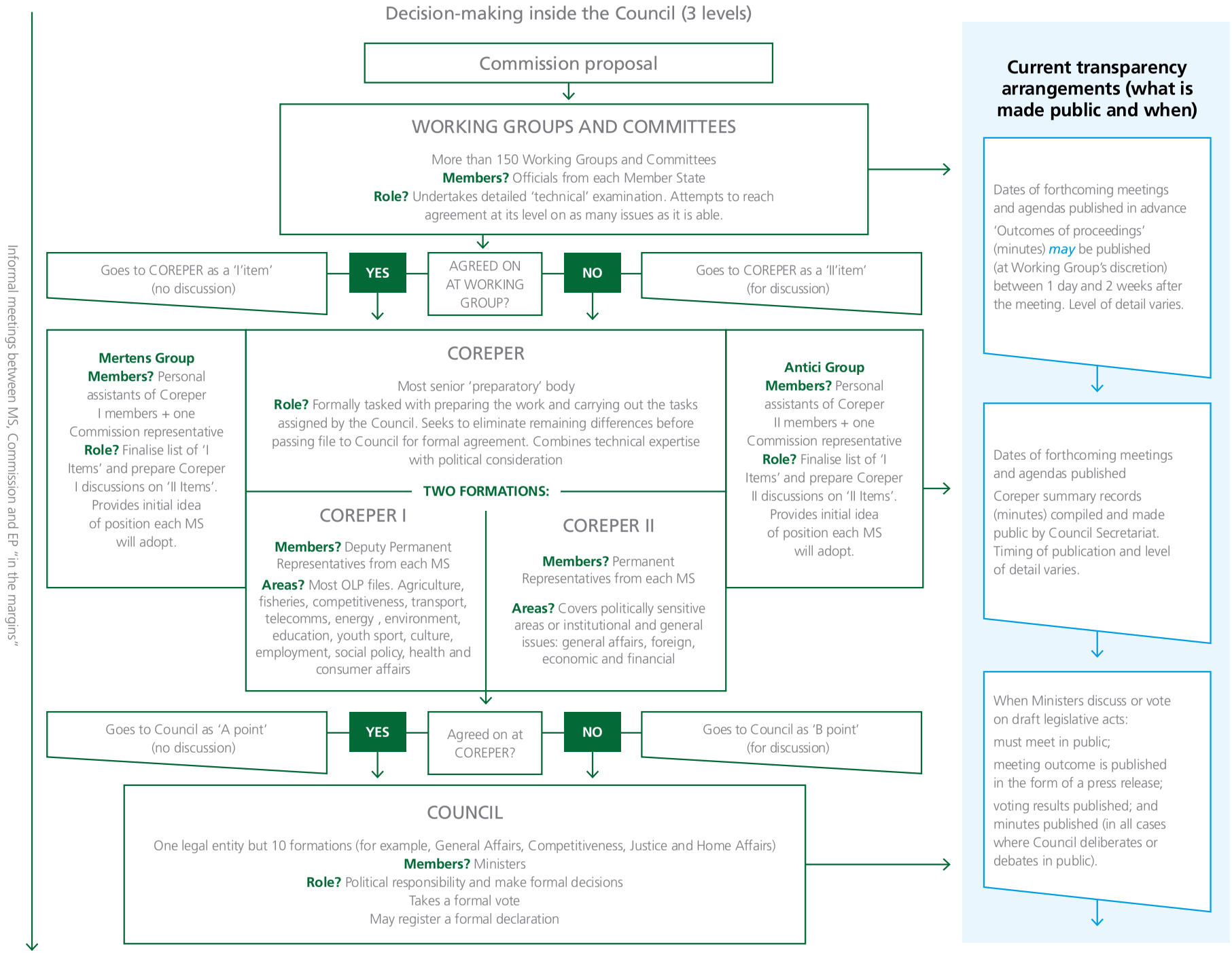
1. The transparency of EU law-making is of direct relevance to UK citizens given that, under Section 2 of the European Communities Act 1972, EU law must be applied in the UK. An EU regulation is of equal significance to a UK citizen as an Act of Parliament. We think it right that UK citizens be clear how the laws affecting them are made.

2. The extent to which UK law is affected by EU obligations is open to debate. In an attempt to help those wishing to comprehend the very different claims made, the House of Commons Library[2] calculated that, over the period 2010–13, the average number of EU-based UK measures was up to 59%.[3] The Library noted, however, that the limitations of data make it impossible to achieve an accurate measure[4] and that the proportions differ by year and by policy area.

3. The EU legislative system is very different from that of the United Kingdom.[5] In the United Kingdom, once agreement is reached on the principle of legislation in second reading, detailed amendments are considered in public both in committee and at report stage. It is clear exactly what amendments are being put forward, who supports them and, if the matter comes to a vote, how each Member voted. While there are subtle differences in procedure, this basically applies in each House. The arrangements for securing agreement from one House to amendments made in the other are similarly transparent. This is not to say there are no conversations behind the scenes, or there are never negotiations about wording designed to ensure an amendment gathers as much support as possible, but all crucial elements of the process are fully open.

4. At the outset of our inquiry, we were not able to find a clear explanation of the detail of the Council legislative process and the expectations about when and by whom information should be released. That has been remedied, in part, by the evidence we have taken, including the Government's memorandum.[6] We have compiled an overview of decision-making in the Council and current transparency arrangements, set out in Appendix 1. We hope that it is of some help in explaining the process. The flow chart below shows the Council decision-making process in detail.

1 Laeken European Council Declaration, 2001
2 House of Commons Library https://commonslibraryblog.com/2014/06/02/how-much-legislation-comes-from-europe/
3 This was calculated by dividing directly applicable EU regulations and EU-related UK Statutory instruments by the directly applicable EU regulations and all UK Statutory Instruments
4 For example, the calculations may include EU Regulations applicable to all Member States that have no effect in the UK, such as those relating to olive and tobacco farming, which would therefore artificially inflate the results. On the other hand, the calculations do not include 'soft law', such as guidelines, which may have been incorporated into UK law. Furthermore, the calculations do not consider the significance of any EU Regulation or EU related statutory instrument (implementing a Directive) which may be making minor, updating amendments or removing regulation.
5 For an explanation of how laws are made in the United Kingdom, see the UK Parliament website
6 Minister for Europe (TRA0003)


Decision-making inside the Council (3 levels)
Commission proposal
WORKING GROUPS AND COMMITTEES
More than 150 Working Groups and Committees
Members? Officials from each Member State
Role? Undertakes detailed 'technical' examination. Attempts to reach agreement at its level on as many issues as it is able.
Goes to COREPER as a 'I'item' (no discussion)
YES
AGREED ON AT WORKING GROUP?
NO
Goes to COREPER as a 'II'item' (for discussion)
Mertens Group
Members? Personal assistants of Coreper I members + one Commission representative
Role? Finalise list of 'I Items' and prepare Coreper I discussions on 'II Items'. Provides initial idea of position each MS will adopt.
COREPER
Most senior 'preparatory' body
Role? Formally tasked with preparing the work and carrying out the tasks assigned by the Council. Seeks to eliminate remaining differences before passing file to Council for formal agreement. Combines technical expertise with political consideration
TWO FORMATIONS:
COREPER I
Members? Deputy Permanent Representatives from each MS
Areas? Most OLP files. Agriculture, fisheries, competitiveness, transport, telecomms, energy , environment, education, youth sport, culture, employment, social policy, health and consumer affairs
COREPER II
Members? Permanent Representatives from each MS
Areas? Covers politically sensitive areas or institutional and general issues: general affairs, foreign, economic and financial
Antici Group
Members? Personal assistants of Coreper II members + one Commission representative
Role? Finalise list of 'I Items' and prepare Coreper II discussions on 'II Items'. Provides initial idea of position each MS will adopt.
Goes to Council as 'A point' (no discussion)
YES
Agreed on at COREPER?
NO
Goes to Council as 'B point' (for discussion)
COUNCIL
One legal entity but 10 formations (for example, General Affairs, Competitiveness, Justice and Home Affairs)
Members? Ministers
Role? Political responsibility and make formal decisions
Takes a formal vote
May register a formal declaration
Informal meetings between MS, Commission and EP "in the margins"
Current transparency arrangements (what is made public and when)
Dates of forthcoming meetings and agendas published in advance
'Outcomes of proceedings' (minutes) may be published (at Working Group's discretion) between 1 day and 2 weeks after the meeting. Level of detail varies.
Dates of forthcoming meetings and agendas published
Coreper summary records (minutes) compiled and made public by Council Secretariat. Timing of publication and level of detail varies.
When Ministers discuss or vote on draft legislative acts:
must meet in public;
meeting outcome is published in the form of a press release;
voting results published; and minutes published (in all cases where Council deliberates or debates in public).

5. As we discuss in this Report, while there is some transparency in EU law-making, much of the process depends on negotiation within the Council, or between the Council and the European Parliament with the assistance of the European Commission (the "trilogue" process). Often this negotiation is conducted by officials, working to ministerial instructions, either at Coreper, the Committee made up of Member State Ambassadors to the EU, or lower down, in working groups. Agreements will then be presented to Council for endorsement. Details of amendments proposed and rejected in such negotiations are not routinely made public by the Council itself, although individual governments may make information available to their parliaments and to their citizens.

6. There are nonetheless commitments to, and claims made for, transparency at EU-level in the Treaty, secondary legislation, the Council Rules of Procedure, rulings of the Court of Justice and the recently adopted Interinstitutional Agreement on Better Law-Making. We set out information on the current commitments in Chapter 2 and in Appendix 1. In its scrutiny reform inquiry in 2013,[7] our predecessor Committee explored concerns about the transparency of Council decision-making, relating particularly to the evolving positions of Member States on dossiers that are eventually agreed by consensus. Recent developments, some of which remind us of earlier commitments, have prompted us to review the state of play on this issue:

- The EU institutions recently concluded negotiations on a new InterInstitutional Agreement on Better Law-Making, which includes an agreement to "improve communication to the public during the whole legislative cycle" and to look at further ways to "facilitate the traceability of the various steps in the legislative process";[8]

- There is a new emphasis on the role of national parliaments in EU decision making; indeed the First Vice-President of the Commission includes "promoting a new partnership with national parliaments" among his responsibilities;

- The role of the EU is currently a focus of political debate, not just in the United Kingdom, but in other Member States, and the transparency and public accountability of the EU institutions need to be better understood;[9] and

- The European Ombudsman is undertaking an inquiry[10] into the transparency of "trilogues" (informal negotiations between the Council, Commission and European Parliament), to which we have submitted evidence.[11]

7 European Scrutiny Committee, Twenty-fourth Report of Session 2013–14, Reforming the European Scrutiny System in the House of Commons. HC Paper 109, para 99

8 European Parliament decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission, P8_TA-PROV(2016)0081, paras 38–39.

9 Wider Parliamentary interest in the issue has been demonstrated recently by the moving of a motion by Caroline Lucas MP to bring in a "Ten- Minute Rule Bill" on Transparency and Accountability (European Union). HC Deb, 3 May 2016, col 52

10 Ombudsman's inquiry on the transparency of trilogues.

11 Submission of the European Scrutiny Committee to the EU Ombudsman's Inquiry into Trilogues

## Our inquiry

7. We launched our inquiry on 24 March.[12] We held four oral evidence sessions and received two pieces of written evidence, including a submission from the Minister of Europe with whom it had proved impossible to schedule a meeting. We are very grateful to all those who contributed to our inquiry.

8. This inquiry was primarily a scoping exercise to identify key issues which we will consider further in the course of our regular scrutiny of the Government. It is focused on transparency in Council proceedings: while this sometimes entails discussion of the relationship between the Council and the European Parliament, this is incidental to our work.

9. In Chapter 2 of this Report, we set out the current principles and obligations applying to Council transparency. We go on to consider, in Chapter 3, how these are applied in practice. Finally, in Chapter 4, we consider our own role and that of the Government in improving Council transparency.

12 House of Commons, European Scrutiny Committee, Terms of Reference, Inquiry into *Transparency of EU Council decision making*

# 2 Transparency principles

## Current requirements

10. Under the Lisbon Treaty, there is a general obligation for all EU institutions to conduct their work as openly as possible, an obligation with which they are supposed to comply.[13] Legislative acts[14] should be considered by the Council and the European Parliament in public and they are under an obligation to ensure the publication of the documents relating to the legislative procedures.[15] The Council Rules of Procedure[16] require that certain other legally-binding rules should have their first deliberation in public.[17] They also provide for the advanced circulation of the provisional agenda of Council meetings to members of the Council, the Commission and national parliaments.[18]

11. Article 12(2) of the EU's Access to Documents Regulation[19] states that legislative documents should be made directly accessible unless one of the broadly-drafted exemptions applies. The institutions should refuse access to a document where disclosure would undermine the protection of:

a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State;

b) privacy and the integrity of the individual;

c) commercial interests, including intellectual property;

d) court proceedings and legal advice; or

e) the purpose of inspections, investigations and audits.

There is a further exclusion, designed to protect the EU institutions, covering documents prepared for institutional use, where a decision has not yet been taken. Such documents can be refused even after the decision has been taken "if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."

12. The recently agreed Interinstitutional Agreement on Better Law-Making includes various high-level commitments to transparency and to the co-legislators' (Council and European Parliament) exercise of their powers on an equal footing. However, the high-

13 Article 15(1) TFEU.
14 "Legislative acts" means EU legislation in which the EP has a major role in the legislative process
15 Articles 15(2) and 15(3) TFEU.
16 Decision 2009/937 of 1 December 2009 adopting the Council's Rules of Procedure
17 Decision 2009/937, Article 8.
18 Decision 2009/937, Article 3.
19 Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

level commitment to ensure the transparency of legislative procedures" is supported only by concrete commitments to provide greater information on the various steps in the legislative procedure rather than substantive information as to how the legislation is evolving and at whose behest.

## Interpretation of the requirements

13. The application of legislative transparency requirements has been a source of debate and challenge. In the *Access Info* case, an NGO, Access Info Europe, successfully challenged the Council's refusal to grant access to a legislative document including footnotes indicating the positions of individual Member States.[20] The Council had argued that the necessary room for manoeuvre "would be reduced if the identity of the delegations were disclosed too early in the procedure, in that it would have the effect of triggering pressure from public opinion, which would deprive the delegations themselves of the flexibility needed to ensure the effectiveness of the Council's decision-making process."[21] The Court of Justice rejected this argument, stating that "the requested documents could not be regarded as sensitive"[22] as there was not a genuine risk that fundamental interests might be harmed.

14. Significantly, the Court of Justice highlighted, in its *Turco* ruling concerning the extent of access to Council legal service opinions, the links between openness and public trust in decision-making, and set a high threshold for access [emphasis below added]:

> "[Openness] enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Those considerations are clearly of particular relevance where the Council is acting in its legislative capacity […]. Openness in that respect contributes to strengthening democracy by allowing citizens to scrutinise **all the information which has formed the basis of a legislative act**. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights."[23]

15. Despite these rulings, the Council's approach is that application of Treaty provisions on publicity of its meetings are restricted to documents that are submitted to the Council for preparation of its deliberation or vote.[24] In contrast, the European Parliament has raised concerns that the 'space to think' exception in Article 4(3) of the Access to Documents Regulation, concerning situations where the decision has not yet been taken, is outdated in respect of legislative matters.[25]

20 Case C-280/11 P Council v Access Info Europe
21 C-280/11 P, para 24
22 C-280/11 P, para 63
23 Joined Cases C-39/05 P and C-52/05 P *Turco v Council*
24 Paivi Leino, 'On knowledge as power: transparency of EU law-making procedures', EU Law Analysis, 10 January 2016.
25 European Parliament resolution of 14 September 2011 on public access to documents (Rule 104(7)) for the years 2009–2010, P7_TA(2011)0378, paras 14 and 25-29.

## Transparency of the Council acting as a legislator

16. The evidence revealed a difference of views on the status of the Council as a legislature (whether or not it should be considered on a par with the European Parliament and other national legislatures) and whether it should, or could, operate, at least in legislative mode, with a degree of greater transparency similar to that of the United Kingdom Parliament.

17. Professor Simon Hix, Harold Laski Professor of Political Science, London School of Economics, acknowledged that the Council had an executive role as well as a legislative role, but considered: "In a democratic system, we hold the executive branch to different standards of transparency than we do a legislative branch and legislative procedures."[26] He described the EU system as "a bicameral legislative process where the right of initiative is the Commission, and then we have two branches of the legislature: the Council when acting as a legislature and the European Parliament."[27]

18. On the other hand, the Rt Hon Sir Edward Davey, former UK Minister and Secretary of State, did not see the Council as part of a bicameral legislature alongside the EP.[28] This view was shared by Anne Lambert, former UK Deputy Permanent Representative to the EU (2003–2008).[29] Mr Andrew Lebrecht, former UK Deputy Permanent Representative to the EU (2008–2012), agreed:

> "The Council is not like a parliament. It is not directly elected like the European Parliament is or like the two Houses of Congress are. The members of the Council are all representatives of sovereign governments who are accountable to their national parliaments. In that context … the accountability and the transparency is primarily a matter for the British Minister who is in the Council or his representatives if it is in Coreper, back to the Government in London and from the Government in London to Parliament."[30]

### *Separation of the legislative and executive functions*

19. Professor Hix suggested that the distinction between the Council's legislative and executive functions should be clearer. The Council's Rules of Procedure state that agendas should be divided into two parts. The first part should be entitled "Legislative deliberations" and the second "Non-legislative activities".[31] Professor Hix argued that this was insufficient and that the Council should meet on different days or in different sessions when considering legislative and non-legislative matters respectively and that different sets of rules on transparency should apply.[32]

20. Dr Sara Hagemann, Assistant Professor, European Institute, London School of Economics, agreed "that, in certain settings, the Council will need to deliberate behind closed doors" but that there should be "full disclosure" when the Council is acting under the ordinary legislative procedure.[33]

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26 Q3
27 Q7
28 Q23
29 Q41
30 Q41
31 Council Rules of Procedure, Article 3(6)
32 Q15
33 Q15

## The desirability of transparency

21. Several witnesses considered that greater transparency would threaten the effectiveness or quality of decision-making. Sir Edward Davey said: "My general principle is that I am in favour of transparency" but "there are occasions … where that is inappropriate." He gave the controversial example of negotiations on the Transatlantic Trade and Investment Partnership (TTIP): "you would not necessarily want every bit of negotiation, deliberation and working group on the TTIP files … to be on camera. It is a question of what and when."[34] The Rt Hon Dame Margaret Beckett MP, former UK Minister and Secretary of State, commented that in the case of the Foreign Affairs Council: "if you tried to have full transparency on all of these delicate negotiations you would not necessarily make very much progress".[35] She also cited negotiations to reform the EU's sugar policy as an area on which progress would have been impossible in "full public gaze".[36] The Minister for Europe, The Rt Hon David Lidington MP, agreed that "transparency has to be balanced with the need for a degree of confidentiality in negotiations and careful handling of sensitive information."[37]

22. Isabel Winnwa, Doctoral Fellow, Bamberg Graduate School of Social Sciences, University of Bamberg, set out a number of potential disadvantages of more transparency, including the financial costs in providing more information and that it might constrain compromise, particularly on highly political sensitive issues.[38]

23. On the other hand, some witnesses linked public accountability and trust in EU decision-making to strong transparency, as they were in the *Turco* case (see para 14). Dr Hagemann told us: "Transparency can have the advantage that, from one meeting to another, for example, it is very clear who was on each side or who had which proposals for amendments."[39] Isabel Winnwa considered that transparency would "lessen the impression of the general public and national stakeholders that governments are deciding above their heads" and "ultimately strengthen the public's faith in the EU and demonstrate the value of EU decision-making".[40]

24. Witnesses also debated the extent to which more transparency would increase public awareness. Dr Hagemann and Dame Margaret Beckett considered that there was likely to be little interest among the public in getting insight into the deliberations at the level of working groups, which are largely technical, but that there could be some merit for researchers and other interested parties in greater transparency of that stage of the process.[41]

34 Q27
35 Q93
36 Q94
37 Minister for Europe (TRA0003)
38 Isabel Winnwa (TRA0002)
39 Q12
40 Isabel Winnwa (TRA0002)
41 Qq 9 [Dr Hagemann], 112 [Dame Margaret Beckett]

## Conclusion

25. **We note the range of views on the status of the Council as a legislative body, or as an executive Cabinet, or as a vehicle for multinational negotiations. In addition we note there are a range of views on the desirability or efficacy of transparency. It is nevertheless the case that, since 2009, there has been a change in the culture under which these negotiations take place, and there have been improvements in the way information about Council decisions has been made public. The European Union and its Member States have already committed in a variety of ways and at different times to the principle of transparency, although such transparency may not be delivered in practice.**

# 3 Transparency in practice

## Information about decision-making inside the Council

26. A process can be seen as opaque or secret simply because it is not well understood. Ms Lambert agreed that lack of understanding may indeed contribute to the perception that Council decision-making is non-transparent, and said: "Everybody needs to do their best to explain it a bit more."[42] She pointed out that "multinational negotiations are almost by definition more complicated than the British parliamentary system with limited parties."[43]

## Transparency of the pre-Council stage

27. While all legislation must be formally agreed by the Council, the great majority of legislation is agreed without any debate at all at Ministerial level, having been previously negotiated by officials in the Council's preparatory bodies, working groups and Coreper, working to instructions from their respective Ministers. It has been estimated that most decisions (around 70%) are in practice made before reaching the Council level and are proposed by Coreper for adoption as 'A' items. [44]

### *The role of preparatory bodies*

28. Ms Lambert stated that UK Permanent Representation to the EU (UKRep) officials act "totally within the mandate" conferred on them by Ministers.[45] Mr Lebrecht identified chains of "accountability […] from Brussels [UKRep] to Government to Parliament".[46] This was supported by Dame Margaret Beckett, who considered that UKRep officials were "meticulous" about keeping Ministers informed on negotiations.[47] The Rt Hon Owen Paterson MP, former UK Minister and Secretary of State, disagreed, recalling an instance where an official appeared to come under pressure to take a position that differed from the ministerial instruction.[48] He added that, in his experience as a Minister in Council, "a vast amount of points were decided 'off piste'" in Coreper.[49]

29. Dr Hagemann considered that the new Council Rules of Procedure and more formalised voting were increasing the extent to which matters came to Council:

> "[the consequence of] the fact that more issues have to be recorded and taken by vote in the Council is that the ambassadors or the permanent representatives have said that they see more final decisions being pushed to Ministerial level. Whereas before there was an impression, at least, that most decisions were simply nodded through by the Ministers but the real negotiations happened between the ambassadors, that is not necessarily the case any longer."[50]

42 Q87
43 Q88
44 Bjørn Høyland and Vibeke Wøien Hansen (2010), 'Voting in the Consensual Council of Ministers', June 2010. Other estimates range from two-thirds to 90%.
45 Q42
46 Q44
47 Q107
48 Q25
49 Q21 "A" points are agreed without debate, unless someone objects
50 Q6

30. Dr Hagemann confirmed that, when acting in its legislative role, the Council meets in public and the votes of all those present are placed on the public record:

> "It is an important development that we have the records. For example, last week there were a number of Council meetings. You can go in and get the vote sheets. All the Governments have their positions recorded. Last week for example, quite a number of the Governments had concerns with some of the proposals that went through and therefore explained their positions in the voting, in what we call the public statements. That is an important development in terms of transparency. It is not necessarily the case that we are seeing more disagreement than previously, but we now have it on record. Whether this is a good or bad thing is, of course, something that can be discussed, but it certainly means that we are able to get the information about what Governments have actually voted on."[51]

31. Nonetheless, it appears that Coreper's role in trilogue negotiations, without formal recourse to the Council of Ministers, has intensified in the light of the increase in the number of informal first reading agreements[52] between the Council and the European Parliament (EP).[53] The Government's evidence indicates that this may be the case, and that the development can have an impact on the transparency of negotiating positions:

> "There are criticisms that the OLP[54] lacks transparency, particularly as a result of the increasingly common use of informal trilogues. Where the Presidency decides to negotiate with the EP on the basis of a General Approach agreed at Council, the basis for negotiations is clear. … Where the Presidency decides instead to secure a mandate for trilogues from Coreper, the document is not public."[55]

In contrast, the European Parliament always publishes its mandates for trilogue negotiations, however those are arrived at.

32. We note that the Council Rules of Procedure focus on transparency at the 'final' stage in the decision-making—the Council, when it is acting in a legislative capacity—and that transparency requirements for the preparatory bodies are less extensive. The Council Rules of Procedure state that working groups and Coreper may publish their agendas in advance, along with other documents, such as information notes, reports, progress reports and reports on the state of discussions which do not reflect individual positions of delegations. In practice, the timing, content and availability of such documents is not consistent across each preparatory body and is discretionary. Furthermore, non-disclosure solely on the ground that it revealed the individual positions of Member States is not in conformity with the ruling of the Court of Justice in *Access Info* (see para 13).

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51 Q6

52 85% of Ordinary Legislative Procedure files were concluded at first reading during the 2009–14 European Parliamentary term (European Parliament, Conciliation and Co-decision website)

53 There appears to be increased recourse to Coreper 'agreements', without formal sign-off by the Council, particularly in agreeing a General Approach for negotiations with the EP. See, for example, Council press release of 6 April in which Coreper "agreed, on behalf of the Council" its negotiation position on the proposed Regulation on the European Border Guard; the European Fisheries Control Agency (EFCA) and the European Maritime Safety Agency (EMSA).

54 Ordinary Legislative Procedure — see Appendix 1

55 Minister for Europe (TRA0003)

## Transparency of final decisions reached by the Council

### *Differences in application of the rules across different Council formations*

33. Dr Hagemann told us that the Council Rules of Procedure, revised in 2009, had increased transparency but that they were applied inconsistently. She noted that some Council configurations—such as Justice and Home Affairs and General Affairs—"have had a culture of traditional diplomacy". As a result, they "very much still operate in that atmosphere of negotiations rather than sticking to the formal rules."[56] She considered that the Council Secretariat would like to see stricter implementation "of the internal rules of procedure as they are already written, such that the voting records are followed and the procedures are followed in greater detail."[57]

34. These differences may arise because, as is clear from the accounts of those directly involved in negotiations, different Council configurations approach their legislative role in different ways. Mr Lebrecht noted that the Environment Council tended to give a broad negotiating steer to Coreper while the Agriculture and Fisheries Council tended "to get more into the detail than some other Councils."[58] Sir Edward Davey, who had sat on the Environment Council, agreed that Ministers in that Council "tended to focus on big policy issues".[59]

### *Impacts of decision-making by consensus*

35. Professor Hix noted that the majority of decisions are taken by consensus,[60] which in his view has a number of inadequacies for the transparency and accountability of decisions taken by the Council:

> "it suggests that a decision is made in the shadow of a vote when discussions are going on in Coreper, working groups or even at the Council level and they have done a tour of the table. If it is clear that there is a qualified majority in favour of the outcome, the representatives of the member states on the minority side decide not to formally vote against; they either go with consensus or abstain. Under QMV,[61] abstention does not count as a vote against."[62]

36. Professor Hix argued that consensus obscures differences of opinion between Member States and that amendments proposed should be available to the public, as they are in the European Parliament.[63] Mr Lambert and Ms Lebrecht, however, warned that—given the pace of negotiations—it would be impractical for any amendments tabled in preparatory groups to be made public at the time they are proposed.[64]

56 Q6
57 Q11
58 Q52
59 Q19
60 In evidence to our Scrutiny Reform inquiry in 2013, Professor Hix indicated that, historically, 90% of decisions in the Council were agreed by consensus. A recent Votewatch report indicates that this figure—which is constantly changing—fell to nearly 50% in 2015
61 Qualified Majority Vote (55% of member states, representing at least 65% of the EU population)
62 Q1
63 Q2
64 Qq 73 [Ms Lambert], 79 [Mr Lebrecht]

37. Mr Lebrecht noted that successful blocking minorities did not show up in the voting statistics, as the legislation was ultimately not adopted:

> "Certainly during my time [as Deputy Permanent Representative], I can name three very big negotiations where we pulled together a blocking minority and held it to stop those dossiers getting through. Those dossiers do not appear in the statistics because they were not adopted, so by definition they do not appear. Actually, they were very good examples of the UK working with allies to stop something going through."[65]

38. Both Mr Lebrecht and Ms Lambert argued that the desire to reach consensus facilitated better policy outcomes. Ms Lambert explained:

> "That is because the Presidency's wish to get you as part of the consensus means that you can get improvements to the text. You use that leverage to get some improvements to the text that you might want. I cannot recall, during my time, that the UK ever voted in favour unless it got sufficient improvements to the text. You do not always get everything you want—it is a negotiation—but the consensus is actually helpful to get a better policy outcome."[66]

39. Mr Lebrecht considered that, in the absence of compromise, the UK "would not get…Europe-wide legislation that reflects what we want" and that as a negotiator he "safeguarded what Government really thought was important".[67] Dame Margaret Beckett said that she had never agreed to a measure that she thought "on balance was in any way against the interest of our country or of the relevant interests within our country"[68] and noted that QMV had allowed the Government to advance its interests, including Single Market legislation.[69]

40. Mr Paterson was more critical of the negotiation process, describing it as one of "trying to stop really bad things happening and damage reduction." He pointed to the Common Agricultural Policy reform negotiations as an example where, in order to secure the package as a whole, both the UK and Germany "had to accept something that neither of us really wanted."[70]

### *Informal decision-making*

41. Mr Paterson highlighted the importance of informal meetings in determining Council decisions:

> "The real meetings of the Council were the bilateral meetings. I would go off with the German Minister or the French Minister and sort things out in private, or we would have a meeting with one or two others to go and see the Commissioner. Obviously, none of that was minuted at all."[71]

65 Q48
66 Q50
67 Q82
68 Q103
69 Q105
70 Q36
71 Q30

42. Mr Lebrecht told us that success in negotiations depended on the ability to build alliances.[72] Sir Edward Davey also commented that "the way to do European politics is to build relationships." He cited the example of "the like-minded group for growth", which he created while a Minister at the Department for Business, Innovation and Skills. He explained that it led to progress "on a number of growth items—for example, the EU-Korea FTA (Free Trade Agreement), deregulation, energy and the digital single market—because we were caucusing and we were making coalitions, which Britain was leading."[73] Mr Paterson confirmed that he also "made a real point of working with allies on all sorts of different issues", such as the EU's response to the horsemeat crisis.[74] Mr Lebrecht emphasised the importance of alliance-building in order also to block measures as well as to advance UK interests.[75]

43. While alliance-building can be used to advance the UK's national interests, it is also possible for others to build alliances counter to that interest. Mr Paterson warned of the danger of being on the losing side of alliance-building: "if you fail, the legislation is then imposed upon you."[76]

### *Use of public statements*

44. Dr Hagemann considered that, following the adoption of new Rules of Procedure in 2009, there is evidence of an increased willingness to acknowledge and formally record differences of opinion (often done through so called "minute statements" as well as to vote against a proposal):

> "[…] when votes are taken, Acts are adopted more readily when a sufficient majority has been found, not necessarily when everyone is on board. Yes, that means that some governments may not see all their concerns being addressed in the final text of the Act, but this formalisation has … meant that some governments are more ready to put on record their policy statements, as well as a vote against the majority. They are coming out more explicitly as having concerns or outright disagreement with a text. Previously, they may not have felt that they needed to express that disagreement but had gone along with what the majority consensus resulted in."[77]

45. Dr Hagemann contrasted the approach of the British and French governments. While the UK was more ready to vote against[78] a proposition or abstain, occasionally submitting statements to explain its position, France often made use of public statements but rarely expressed its concerns through its vote.[79]

72 Q79
73 Q25
74 Q31
75 Q48
76 Q24
77 Q6
78 According to a recent Votewatch report, the UK was on the losing side (including abstentions) 12.3% of the time over the period 2009–15 (81 occasions) and on the winning side 86.7% of the time (810 occasions). In the remaining instances, it would have opted-out. British opposition to EU policies occurred especially on budget, foreign policy and foreign aid issues, on which there were more votes than in other areas. Nevertheless, the UK was not the most oppositional government in votes on internal market, legal affairs, transport, environment, employment, trade and fisheries.
79 Q9

46. The Fourth Money Laundering Directive (see Box 1) is an example of such statements being used. The Directive was eventually adopted by consensus, but differences of opinion underlying the final consensus vote were recorded in public Declarations by four Member States (Austria, Czech Republic, France and the UK).

**Box 1: Fourth Money Laundering Directive**

The Fourth Money Laundering Directive[1] was proposed by the Commission in February 2013 and adopted by the Council and European Parliament in May 2015. Its main objective is to further strengthen the EU's system for prevention of money laundering and terrorist financing.

A timeline of notable developments in the Council is set out below:

- 8 November 2013: UK circulated an "issues paper" for discussion in Coreper and in Council[2] and subsequently wrote to the President of the European Council.[3]
- 13 June 2014: Coreper agreed a General Approach (a preliminary agreement used as the basis for negotiations with the EP). Four Member States tabled Statements highlighting specific concerns.[4]
- 20 April 2015: Council adopted its position following the successful conclusion of negotiations with the EP. While all Member States voted in favour,[5] four Member States submitted Declarations setting out their concerns.[6]

Source: House of Commons European Scrutiny Committee

1 Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

2 http://data.consilium.europa.eu/doc/document/ST-15954–2013-INIT/en/pdf

3 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258997/PM-letter-tax-evasion.pdf

4 http://data.consilium.europa.eu/doc/document/ST-10973–2014-ADD-1/en/pdf

5 http://data.consilium.europa.eu/doc/document/ST-8074–2015-INIT/en/pdf

6 http://data.consilium.europa.eu/doc/document/ST-5748–2015-ADD-2/en/pdf The Austrian Declaration included: "Austria remains highly critical of the current wording of Article 30 and does not support it. However, in order not to jeopardize an otherwise reasonable compromise text, Austria can accept the political compromise." The Czech Republic declared its understanding that Member States would only be required to specify a minimum time limit for the retention of records on criminal activities, and not a maximum limit. The UK identified its ongoing concerns in relation to Politically Exposed Persons and the registration of trusts, and it set out its position that the UK's Justice and Home Affairs opt-in applied and therefore that a JHA legal base should be applied. In the light of the terrorist attacks in January 2015, France called for further action to be taken in order to enhance the efficiency of the adopted rules.

## Public access to information

47. The information the Council makes available is, as we have seen, discretionary and limited. Isabel Winnwa considered that 'process' transparency (during Council negotiations) is "quasi non-existent" for the public, as it "does not know what happens inside the negotiations, unless government representatives explicitly communicate it or something is leaked by the media" and limited for academics, given restrictions on access to documents:

> "… often, the only way to get access to process information is to interview the actors involved. Documents such as position papers or detailed minutes are difficult if not impossible to get. Information on particular national delegations is generally masked."[80]

80 Isabel Winnwa (TRA0002)

48. More information is given about the decisions which are finally reached by Council. Isabel Winnwa told us: "Council is moderately transparent with regard to its outcomes: legislation is published in the Official Journal and selectively communicated in national media or by national governments" However, her view was that "minutes or protocols are seldom made available and are often incomplete".[81]

## Conclusions

49. **It is clear from our evidence that there are real and significant tensions between the Council's role as a forum in which Ministers from the Member States meet to decide or coordinate policies (a role which can be seen as analogous to that of the Cabinet) and its role in deliberating on, and adopting, legislative acts and laws in which it is conducting a role which is parliamentary in nature. It is also clear that the need to negotiate the interests of twenty–eight different Member States raises issues about transparency which are fundamental to the UK's national interest and that there should be more transparency as regards the information provided by the Council and its working groups.**

50. **We share some of the concerns expressed to us about legislative acts ultimately adopted by consensus, which have not been debated in public by Ministers in the Council or where differences in individual Member States' positions have not been recorded (for example, through the use of minute statements). In such cases, it is difficult to assess which amendments to the original Commission proposal have been 'won' in the national interest or 'lost'. More transparency, particularly at the level of the preparatory bodies, might help to lift the lid on decision-making in the Council and reveal the extent to which legislation is simply nodded through by Ministers after negotiation by officials. There is scope for UK Ministers to provide Parliament with more information about, and explanation of, the actions they have taken on the UK's behalf during this process.**

51. **If properly implemented, the high level commitment to transparency set out in the new Interinstitutional Agreement on Better Law-Making will be an opportunity to address the following issues:**

- **Consistency of the application of current transparency requirements at each stage of the decision-making procedure (working group, Coreper and Council) and across different Council configurations. This could include best practice guidance on the timing, content and distribution or public accessibility of provisional agendas and minutes of meetings, particularly at working group and Coreper levels;**
- **Establishing mechanisms to ensure the timely provision of information on Member State positions throughout the negotiations, at each level of the Council (working group, Coreper and Council), which balance accessibility of information—in line with the rulings of the Court of Justice—with confidentiality provisions; and**
- **A clearer distinction between consideration of executive and legislative matters.**

81 Isabel Winnwa (TRA0002)

52. **For our part, we will monitor in the course of our regular scrutiny how well existing requirements are being met. Given the importance of the impact of EU legislation on citizens, we urge the Government to ensure the application of the transparency requirements to every ordinary legislative act.**

# 4 Role of Government and Parliament

**Box 2: Role of the House of Commons European Scrutiny Committee**

The Committee assesses the legal and/or political importance of draft EU legislation deposited in Parliament by the Government. This amounts to around 1,100 documents a session. The Committee receives an Explanatory Memorandum on each document from the relevant Minister. It then looks at the significance of the proposal and decides whether to clear the document from scrutiny or withhold clearance and ask questions of the Government. All documents deemed politically or legally important are reported on in the Committee's weekly Reports.

Source: House of Commons European Scrutiny Committee, "Role of the Committee"

53. While there may be a lack of central information about Council processes, national parliaments can shed light on their own government's positions. For example, both the House of Commons European Scrutiny Committee (see Box 2) and the House of Lords European Union Committee publish reports and correspondence between the Committees and Ministers. The Government's Explanatory Memorandum on each document and subsequent correspondence from Ministers are all published online by the Cabinet Office.[82]

54. Dr Hagemann observed that "the governments that have parliaments with strong committees scrutinising their behaviour in Council […] tend to vote no or submit formal statements much more than governments that have less strong parliaments."[83]

55. The Minister for Europe considered "national parliamentary scrutiny of EU legislation to be a key element of transparency and democratic accountability" and that there is "a need to balance efficient and fit for purpose decision-making with democratic legitimacy, including in the form of parliamentary scrutiny."[84]

56. In terms of the efforts made by Government to assist Parliament in its scrutiny, the Minister highlighted:[85]

- Reductions in scrutiny overrides;[86]
- Government reminders to the EU institutions and other Member States of the scrutiny obligations, with frequent pauses or deceleration of decision-making to enable Parliament to be fully engaged;
- Its recent success in negotiating a mechanism for national parliaments to work together to block Commission legislative proposals on subsidiarity grounds;
- Encouragement to the EU institutions to engage directly with national parliaments; and

82 http://europeanmemoranda.cabinetoffice.gov.uk/
83 Q9
84 Minister for Europe (TRA0003)
85 Minister for Europe (TRA0003)
86 Instances in which the Government agrees to an EU proposal which is still under scrutiny by this Committee or its Lords counterpart

- A commitment to work closely with the Council Secretariat and Presidency "to reinforce messages on how the Council can best accommodate the UK's and others' national scrutiny processes to guarantee that national parliaments can exercise their role as laid out in the Treaties in a full and meaningful way."

57. Dame Margaret Beckett considered that Ministers could be more open with Parliament both before and after Councils on the decisions taken.[87] We note that, while welcome in themselves, the Government's commitments do not directly address the issue of transparency. The Government could do far more to ensure that the information it provides to us helps both us, and the general reader, to understand the Government's position on particular pieces of European legislation.

58. It will be seen from our Reports that the Committee regularly presses the Government to release more information than it initially makes available and expresses almost on a weekly basis its frustration at the tardiness and incompleteness of Ministerial responses and the failure to secure time for recommended debates either in Committee or on the floor of the House. A recent example was our scrutiny of the Commission's proposal for a Directive on the accessibility of public sector bodies' websites.[88] This proposal first emerged in 2012, but negotiations did not get going properly until autumn 2015. It was not until March 2016, however, that the Minister for the Cabinet Office and Paymaster General, Matthew Hancock, told us that negotiations had been kick-started and that a mandate had already been agreed by Coreper in December 2015 to begin trilogue negotiations with the European Parliament. Following our prompting, the Minister has provided us with more timely and comprehensive updates.[89]

59. This iterative process means that while our scrutiny of proposals is, in one sense, transparent, in that it is published promptly and in full, the outsider needs to trace multiple documents to get a clear view of our scrutiny of the Government's position on a particular dossier. Once negotiations have begun, there are often delays in providing information—we regularly receive information after negotiations have taken place, making scrutiny difficult.

60. Our witnesses suggested improvements in the House of Commons scrutiny system, which included:

- Increasing the number of debates in the House on European issues;[90]
- Closer involvement of the Departmental Select Committees;[91]
- More scrutiny of the government's negotiating position, and the relationships it was building to secure its aims;[92]
- Requesting more comprehensive explanations from Ministers on developments in Council[93]; and
- Requesting explanations of votes in Council.[94]

87 Qq 111, 114.
88 COM(2012) 721
89 Thirty-third Report HC 342-xxxii (2015–16), chapter 4 (11 May 2016)
90 Q90 [Mr Lebrecht]
91 Q18 [Professor Hix]
92 Qq 9 [Dr Hagemann], 34 [Sir Edward Davey]
93 Senior European Experts, Democratic Accountability in the EU, October 2015
94 Q53 [Ms Lambert]

61. In the last Parliament the Committee looked at the scrutiny system, and our witnesses' recommendations recall many of the recommendations in that Report. We have already been working to increase the awareness of EU legislation in departmental committees, and have been pressing the Government to schedule the serious backlog of debates in the House on European documents that we have recommended for debate. We will return to this matter once the referendum is over.

## Conclusions

62. **Regardless of any progress made by the Council in improving the transparency, accountability and efficiency of EU legislative processes, we consider that the Government could and should take action itself to make more information available to Parliament and to the public. At the European Union level, it could take the lead in making public statements of the reason for its vote more frequently.**

63. **We accept that Parliament could take a lead in increasing the transparency of negotiations and decisions taken by the Council. That will only succeed if the Government matches its own commitments to support the scrutiny system by providing complete and timely information and scheduling debates when they are still timely.**

64. **Transparency is not simply a matter of making information available, but of ensuring it is usable. In taking forward our 2013 Scrutiny Reform Report recommendations, we will reflect further on improvements that we might make to our own procedures and to the usability of the information we make available.**

65. **In particular, we commend for further careful consideration the changes suggested by our witnesses and detailed in Paragraph 60.**

# Conclusions

## Transparency principles

1. We note the range of views on the status of the Council as a legislative body, or as an executive Cabinet, or as a vehicle for multinational negotiations. In addition we note there are a range of views on the desirability or efficacy of transparency. It is nevertheless the case that, since 2009, there has been a change in the culture under which these negotiations take place, and there have been improvements in the way information about Council decisions has been made public. The European Union and its Member States have already committed in a variety of ways and at different times to the principle of transparency, although such transparency may not be delivered in practice. (Paragraph 25)

## Transparency in practice

2. It is clear from our evidence that there are real and significant tensions between the Council's role as a forum in which Ministers from the Member States meet to decide or coordinate policies (a role which can be seen as analogous to that of the Cabinet) and its role in deliberating on, and adopting, legislative acts and laws in which it is conducting a role which is parliamentary in nature. It is also clear that the need to negotiate the interests of twenty–eight different Member States raises issues about transparency which are fundamental to the UK's national interest and that there should be more transparency as regards the information provided by the Council and its working groups. (Paragraph 49)

3. We share some of the concerns expressed to us about legislative acts ultimately adopted by consensus, which have not been debated in public by Ministers in the Council or where differences in individual Member States' positions have not been recorded (for example, through the use of minute statements). In such cases, it is difficult to assess which amendments to the original Commission proposal have been 'won' in the national interest or 'lost'. More transparency, particularly at the level of the preparatory bodies, might help to lift the lid on decision-making in the Council and reveal the extent to which legislation is simply nodded through by Ministers after negotiation by officials. There is scope for UK Ministers to provide Parliament with more information about, and explanation of, the actions they have taken on the UK's behalf during this process. (Paragraph 50)

4. If properly implemented, the high level commitment to transparency set out in the new Interinstitutional Agreement on Better Law-Making will be an opportunity to address the following issues:

    - Consistency of the application of current transparency requirements at each stage of the decision-making procedure (working group, Coreper and Council) and across different Council configurations. This could include best practice guidance on the timing, content and distribution or public accessibility of provisional agendas and minutes of meetings, particularly at working group and Coreper levels;

- Establishing mechanisms to ensure the timely provision of information on Member State positions throughout the negotiations, at each level of the Council (working group, Coreper and Council), which balance accessibility of information—in line with the rulings of the Court of Justice—with confidentiality provisions; and

- A clearer distinction between consideration of executive and legislative matters. (Paragraph 51)

5. For our part, we will monitor in the course of our regular scrutiny how well existing requirements are being met. Given the importance of the impact of EU legislation on citizens, we urge the Government to ensure the application of the transparency requirements to every ordinary legislative act. (Paragraph 52)

## Role of Government and Parliament

6. Regardless of any progress made by the Council in improving the transparency, accountability and efficiency of EU legislative processes, we consider that the Government could and should take action itself to make more information available to Parliament and to the public. At the European Union level, it could take the lead in making public statements of the reason for its vote more frequently. (Paragraph 62)

7. We accept that Parliament could take a lead in increasing the transparency of negotiations and decisions taken by the Council. That will only succeed if the Government matches its own commitments to support the scrutiny system by providing complete and timely information and scheduling debates when they are still timely. (Paragraph 63)

8. Transparency is not simply a matter of making information available, but of ensuring it is usable. In taking forward our 2013 Scrutiny Reform Report recommendations, we will reflect further on improvements that we might make to our own procedures and to the usability of the information we make available. (Paragraph 64)

9. In particular, we commend for further careful consideration the changes suggested by our witnesses and detailed in Paragraph 60. (Paragraph 65)

# Appendix 1: The dynamics and transparency of decision-making in the Council

## The role of the Council

1) The Council of the European Union (the "Council") is the institution representing the 28 Member State governments of the EU. The Council negotiates and adopts legislation. In most cases, it does so together with the European Parliament (EP) through the ordinary legislative procedure (OLP), formerly 'codecision'.[1]

2) Under the OLP, once a Commission proposal for legislation has been received by the Council, the text is examined simultaneously by the Council and the EP, which is known as a 'reading'. A measure can be adopted at any of up to three readings in the legislative process once agreement has been reached between the Council and the EP. At any stage, informal trilogue discussions can take place between the Council and the EP, with the support of the Commission, with a view to consensus at the next formal legislative stage.

3) The Council usually adopts a 'general approach' which acts as a statement of the Council's informal agreed position on a proposal and can also be a mandate for trilogue negotiations. It is not a formal Council step in the legislative process.

## The three levels of decision-making in the Council

4) OLP proposals usually pass through three levels of decision-making within the Council: Working Group, Permanent Representatives Committee (Coreper) and Council (relevant configuration), set out below.

5) The 'mechanics' of decision-making are complex and not necessarily linear. Proposals can go up and down the chain (for example, can be referred back to the Working Group by Coreper for further consideration) until decisions are reached.

### *Level 1: Working Groups and Committees (technical preparatory bodies)*

6) The proposal is, as a general rule, first discussed at a technical level by specialised Working Groups or Committees, comprised of officials from the Member States and the Commission. There are more than 150 Working Groups and Committees. Officials will seek to resolve as many (generally technical) outstanding issues on a file before passing it 'up the chain' to the next level of decision-making in the Council. The Presidency of the Working Group decides when to move the file to Coreper and will send proposals to Coreper as 'I' or 'II' items:

- 'I' items have generally been settled by Working Group and will generally not be discussed by Coreper (and then pass to the Council as an 'A' Point). Items which have not been resolved will be put on the Coreper agenda as an II item for discussion.

1 OLP is used in around 85 policy areas, where the EU has exclusive or shared competence with the Member States, including energy, the environment and consumer protection and the internal market.

- Items can pass straight to Coreper without substantive discussion at Working Group level if too contentious for technical discussions or have wider implications (for example, read-across to the progress of other files).

### *Level 2: Coreper (senior preparatory body)*

7) Coreper is the most senior preparatory body, comprised of Permanent Representatives (Ambassadors to the EU and their deputies).

8) Coreper's main tasks are preparing and coordinating the work of the Council. It has two formats:

- Coreper I, which is attended by Deputy Permanent Representatives and handles most OLP dossiers; and
- Coreper II, which is attended by the Permanent Representatives and handles the most politically sensitive issues or ones of an institutional or general nature.

9) Coreper combines technical expertise with political considerations and attempts to achieve agreement on dossiers at its level, 'freeing up' time for the Council to focus on the most controversial aspects of a dossier. It seeks to resolve remaining differences on proposals that have been presented to it (from Working Groups) as 'II' items (for discussion).

10) The Presidency of Coreper decides when to advance dossiers to the Council. It will present proposals as 'A' or 'B' points on the Council agenda:

- 'A' points, which have been agreed by Coreper (or previously by Working Group if it comes to Coreper as an 'I' item) and will generally be 'signed off' by the Council without debate (although Coreper's decisions can be called into question by the Council).
- 'B' points, which have not been agreed in Working Groups or in Coreper. They are generally the most contentious dossiers (for political or technical reasons), requiring debate and resolution at Ministerial level.

11) It has been estimated that most decisions (around 70%) are in practice made before reaching the Council level and are proposed by Coreper for adoption as 'A' items. [2]

### *Level 3: Council (Ministers)*

12) The Council has various configurations (such as General Affairs, Economic and Financial and Competitiveness), which the responsible Minister from each Member State will attend. Legally speaking, however, it is one entity, meaning that any of its ten configurations can adopt an act.

13) Discussions among Ministers within the Council are limited to the most politically sensitive issues or issues that have not been resolved at 'lower' levels, by the preparatory bodies of the Council (see above).

2 Bjørn Høyland and Vibeke Wøien Hansen (2010), "Voting in the Consensual Council of Ministers", June 2010. Other estimates range from two-thirds to 90%.

## Transparency arrangements at each level of the Council

14) This section summarises what information is made publicly available and when.

### *Level 1: Working Group (technical preparatory bodies)*

- Dates of forthcoming meetings are published in advance.
- Agendas are published in advance. These generally provide a very high level indication of what is to be covered.
- A record or minutes of the meeting (known as 'outcomes of proceedings') may be published. It is up to Working Groups to decide whether they wish to draw up minutes of their meetings. If they do, these are compiled by Council Secretariat and may take up to two weeks to go up on the Council website. The detail of these outcomes of proceedings varies. Some may indicate Member States' positions.

### *Level 2: Coreper (senior preparatory body)*

- Dates of forthcoming meetings are published.
- Agendas are published in advance, setting out what files are to be considered under Part I (no discussion) and Part II (for discussion). As a general rule, they provide little to no detail on the specific points to be discussed under Part II or why.[3]
- Summary records or 'outcomes of proceedings' are published; these generally take two to three weeks to be made public and tend to be very high level, providing little to no detail of the discussions or the positions of Member States. Official statements (by Member States or the Commission) must, however, be published in full.[4]

### *Level 3: Council (Ministers)*

- Ministers must meet in public when they discuss or vote on draft legislative acts.
- The minutes of public meetings are published and include votes on draft laws, as well as explanations of votes and statements made by Member States.
- Voting results are automatically made public when the Council acts in its capacity as legislator. If a Member State wants to add an explanatory note to the vote, this note will also be made public, if a legal act is adopted. In other cases, when explanations of votes are not automatically published, it can be made public on the request of the author.
- This information is also published in a monthly summary of Council acts.

3 See Provisional Agenda for Coreper meeting on 13 April 2016, as an example.

4 See, as an example, Summary Record of Coreper I meeting on 16 March (published on 5 April).

# Formal minutes

## Thursday 19 May 2016

Members present:

Sir William Cash, in the Chair

| | |
|---|---|
| Peter Grant | Stephen Kinnock |
| Kate Hoey | Craig Mackinlay |
| Kelvin Hopkins | Mr Jacob Rees-Mogg |
| Calum Kerr | Heather Wheeler |

Draft Report (*Transparency of decision-making in the Council of the European Union*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 65 read and agreed to.

A paper was appended to the Report.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered,* That the following written evidence relating to the Transparency of decision-making in the Council of the European Union be reported to the House for publication on the internet:

Rt Hon David Lidington MP, the Minister for Europe

Dr Isabel Winnwa, the Bamberg School of Social Sciences

[Adjourned till Wednesday 25 May at 1.45pm.

# Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

| Wednesday 20 April 2016 | *Question number* |
|---|---|
| **Dr Sara Hagemann,** Assistant Professor, European Institute and **Professor Simon Hix,** Harold Laski Professor of Political Science, London School of Economics | Q1–18 |
| **Rt Hon Sir Edward Davey,** formerly Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills (2010–12), Secretary of State for Energy and Climate Change (2012–15), and **Rt Hon Owen Paterson MP,** formerly Secretary of State for Northern Ireland (2010–12), Secretary of State for Environment, Food and Rural Affairs (2012–14) | Q19–40 |
| **Wednesday 27 April 2016** | |
| **Andrew Lebrecht,** former UK Deputy Permanent Representative to the EU (2008–12), and **Anne Lambert,** former UK Deputy Permanent Representative to the EU (2003–08) | Q41–92 |
| **Wednesday 4 May 2016** | |
| **Rt Hon Dame Margaret Beckett MP** | Q93–116 |

# Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

TRA numbers are generated by the evidence processing system and so may not be complete.

1 Isabel Winnwa (TRA0002)

2 Minister of Europe (TRA0003)

# List of Reports from the Committee during the current Session

All publications from the Committee are available on the publications page of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2016–17

| | | |
|---|---|---|
| First Report | Documents considered by the Committee on 19 May 2016 | HC 71-i |