



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 18 November 2005**

**14495/05**

**POLGEN 39  
INF 184  
JUR 462**

**NOTE**

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from :            Presidency  
to :                Delegations

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Subject :        Transparency in the Council

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1.     The issue of increasing transparency in the Council is under close scrutiny from other institutions (notably the European Parliament) as well as from the media. In response, the current President of the European Council acknowledged in his speech before the European Parliament in June that there was a case for looking again at this issue.

**The current situation**

2.     The current provisions as well as the arrangements regarding their implementation are set out in a summary drawn up by the Council Secretariat and annexed to this document. It shows that existing measures and practices provide already set out clear guidelines for the management of transparency of the Council.
3.     In consultation with the incoming Presidency, the Presidency submits to COREPER the following options for increasing the level of transparency.

## **Option 1**

4. **The first option would widen the scope of public sessions to cover all stages of deliberations where the Council acts in a legislative capacity, except when the Council decides otherwise. This option would require amending the Council's Rules of Procedure.**
5. Under this option, it would become the norm for the Council to meet in public when acting in a legislative capacity (as defined in Article 7 of the Rules of Procedure). However a decision could be taken at any point (either by the Council itself or beforehand by COREPER) that a particular debate should not be held in public.
6. This option could include a provision allowing for Council agendas to be divided into legislative and non-legislative items in order to facilitate implementation. It could also be combined with a number of practical measures to facilitate access by the public to the Council's proceedings (see below).
7. A slightly less ambitious alternative under this option could be to open up all stages of Council deliberations but only when it is legislating under the co-decision procedure.

## **Option 2**

8. **The second option would be to agree a political declaration committing the Council to greater transparency within the existing Rules of Procedure.**

9. Under this option, the Council would agree to interpret the existing rules as widely as possible. This could take one or more forms.
- (a) The Council could interpret the term "final Council deliberations" in Article 8(1)(b) of the Rules of Procedure <sup>1</sup> as meaning that all deliberations under the co-decision procedure marked in the provisional agenda by an asterisk (i.e. on which a vote may be called) could systematically be public, instead of the Council's current practice of interpreting that provision as requiring an asterisk as well as the item on the agenda for "political agreement";
  - (b) The Council could also agree to hold more public debates on important new legislative proposals other than those covered by the co-decision procedure, perhaps through a commitment to hold a minimum number of debates per Council formation during each Presidency.

### **Supporting Measures**

10. Either of these options could (and perhaps should) be combined with more practical and innovative measures designed to facilitate access to the Council's proceedings. We might for example look again at making those debates which are public more readily accessible through better advertising and facilitating access to the press room. Steps have already been taken to broadcast the proceedings of public Council debates through video-streaming via the internet from the summer of 2006.
11. The Presidency suggests an early discussion of these options initially in the Antici Group.

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<sup>1</sup> Article 8(1)(b) provides that "the vote on legislative [co-decision] acts shall be open to the public, as well as the final Council deliberations leading to the vote and the explanations of voting accompanying it."

**Summary of the current provisions on transparency and implementation  
(Article 8 and Annex II Article 11 of the Council's rules of procedure)**

1. Co-decision	Implementation
<p><b>Initial phase:</b> Presentation by the Commission of its most important proposals subject to codecision and the ensuing debate in the Council (<b>Article 8 (1) (a)</b>). The list of such proposals is adopted by the GAERC at the beginning of each Presidency</p>	Cf. the list of such debates under the UK Presidency (doc. <b>10101/05 REV 1</b> )
<p><b>Final phase:</b></p> <ul style="list-style-type: none"> <li>• the formal vote on co-decided acts, as well as</li> <li>• the final Council deliberations leading to that vote (political agreement) (<b>Article 8 (1) (b)</b>)</li> </ul>	<p>Formal adoption as A items televised</p> <p>All deliberations leading to political agreement (marked by an asterisk and the terms "political agreement (public debate)") on the final act or common position are systematically televised.</p>
<p><b>Means of transmission/voting</b> Council deliberations shall be open to the public through transmission by audiovisual means. (<b>Article 8 (1), second subparagraph</b>).</p> <p>The outcome of voting shall be indicated by visual means (<b>Article 8 (1), second subparagraph</b>).</p>	<p>Currently by means of an overflow room open to the general public. As of second half of 2006, all public debates will be broadcast by video-streaming on the Internet.</p> <p>From November 2005 the outcome of the vote is indicated on a board in the meeting room of the Council visible on a television screen in the overflow room.</p>
2. Other legislative activity	Implementation
<p>The Council shall hold at least one public debate on important new legislative proposals other than co-decided acts. (Decision taken by Council or Coreper by qualified majority.) (<b>Article 8 (3)</b>).</p>	Cf. the list of public debates under the UK Presidency (doc. <b>10100/05</b> ).
3. Non legislative activity	Implementation
<p>Debate on the Council's annual operational programme and, if appropriate, on the Commission's annual programme (<b>Article 8 (2)</b>).</p>	A brief public debate took place on 31 January 2005 (Cf. doc. <b>5534/05</b> ). The Council also took note of the work programme drawn up by the new Commission.
<p>Other public debates may be held on important issues affecting the interests of the Union. (Decision taken by Council or Coreper by qualified majority.) (<b>Article 8 (3), second subparagraph</b>).</p>	Cf. the list of public debates under the UK Presidency set out in document <b>10100/05</b> . At Monday's Environment Council, Ministers held a public debate on "Better Regulation" (see doc. <b>13071/05</b> , p. 2 point 5)
4. Access to documents	Implementation
<p>The following documents are made directly accessible to the public:</p> <ul style="list-style-type: none"> <li>- provisional agendas for Council meetings and for its preparatory bodies<sup>3</sup> (<b>Art. 11(3)(b) and 11 (4)</b>)</li> <li>- in the legislative field, "I/A" and "A" item notes submitted to Coreper and/or the Council, as well as draft legislative acts, draft common positions and joint texts approved by the Conciliation Committee to which they refer (<b>Art. 11 (5)</b>)</li> <li>- documents regarding a legislative act after a common position has been adopted, a joint text has been approved by the Conciliation Committee or a legislative act has been finally adopted (<b>Art. 11 (6)</b>)</li> <li>- any other text adopted by the Council which is intended for publication in the Official Journal (<b>Art. 11 (3) (c)</b>)</li> </ul>	<p>Documents are made directly accessible to the public upon circulation via the public register of Council documents. Following a request for access to documents relating to ongoing legislative discussions, the General Secretariat releases the full content of the documents concerned<sup>1</sup> including the positions of delegations, <u>whilst withholding the identity of delegations</u> as regards their substantive positions<sup>2</sup>.</p> <p>Following final adoption of a legal act, <b>all</b> preparatory documents relating to this act, which are not covered by Article 4 (1), 4 (2) or 4 (3), second subparagraph are made available to the public (including identity of delegations).</p>

<sup>1</sup> Unless one of the exceptions laid down in Article 4(1), 4(2) or 4(3), 2d sub-para of Regulation No 1049/2001 applies.

<sup>2</sup> Cf. the Coreper decision of 6/8 March 2002, as reflected in documents 6898/02, p. 12, point 22, and document 10425/03.

<sup>3</sup> With the exception of the agendas of certain bodies dealing with military and security related issues.