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COVER NOTE

From: General Secretariat of the Council
date of receipt: 28 July 2020
To: Delegations

Subject: Ombudsman Own Initiative inquiry 01/4/2020/TE
- Transparency of Council decision making during the COVID-19 crisis

Delegations will find in the Annex a copy of a letter sent by the European Ombudsman to the Secretary General of the Council concerning an own initiative inquiry on the Transparency of Council decision making during the Covid-19 crisis.

Personal data have been blacked out.



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jeppe Tranholm-Mikkelsen
Secretary-General
Council of the European Union

jur.ombudsman@consilium.europa.eu

Strasbourg, 27/07/2020

OI/4/2020/TE

Subject: Transparency of Council decision making during the COVID-19 crisis

Dear Mr Tranholm-Mikkelsen,

I recently welcomed¹ the steps taken by the Council to publish proactively additional legislative documents. These improvements should make it easier for the public to have say in EU law making, which is an important democratic right.

The Council, alongside the other main EU institutions, is currently deciding on measures of the greatest importance in response to the COVID-19 crisis. For the public to hold the EU institutions and their national governments to account, and to participate to the greatest extent possible in the EU's democratic process, these decisions need to be made in a transparent manner.

The Council has decided to derogate, temporarily, from its Rules of Procedure in order to continue its work in these exceptional circumstances. I understand that the General Secretariat of the Council circulated an internal note, in which it sets out, in detail, how the Council is functioning under the terms of this derogation.

While I recognise the need for the Council to adapt its decision-making process in the current situation, the highest standards of transparency must be maintained, not despite the crisis, but precisely because of the crisis and the important decisions that are being taken in this period.

¹ <https://www.ombudsman.europa.eu/en/press-release/en/130298>



A preliminary assessment of the Council's current working methods raises several concerns about transparency, which are set out in further detail in the questions below. Please note that the primary concern is that the current arrangements seem to result in less transparent decision making due to less documentation being available than under normal circumstances. In order to proceed further with my inquiry,² it is necessary for my Office to review certain documents and to meet with Council representatives.

I would therefore be grateful if a meeting could be arranged between my inquiry team and Council staff, in order to better understand the transparency arrangements in place during the COVID-19 crisis, in particular as regards the documentation available on the Council's decision-making process.

During that meeting, I would appreciate if you could arrange for my staff to inspect³ the following documents:

1. Files relating to the adoption of five acts adopted via written procedure during the COVID-19 crisis. These five files should include the following two acts:
 - Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak (interinstitutional code: 2020/0057)
 - Regulation (EU) 2020/696 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (interinstitutional code: 2020/0069)

The remaining three files could be chosen by the Council and may contain COVID-19-related or unrelated acts, of legislative and non-legislative nature.

2. Document ST 6934 2020 INIT, entitled "*Exceptional measures on the continuation of decision making in the Council*", of 19 March 2020.
3. Documentation available on the operation of three working parties, including agendas, meeting minutes, records of informal meetings of tele- or videoconferences and outcomes of written consultations by email, in the time period from 1 January 2020 to 30 June 2020.

² Beyond inquiries into specific complaints, the European Ombudsman also has the power to carry out investigations on her own initiative. Strategic inquiries look into wider systemic issues affecting the EU administration:

³ Information gathering and inspections of documents are carried out on the basis of Article 3(2) of the Statute of the European Ombudsman (<http://www.ombudsman.europa.eu/en/resources/statute.faces#hl2>) and Article 4 of the European Ombudsman's Implementing Provisions: <http://www.ombudsman.europa.eu/en/resources/provisions.faces#hl3>.



The three working parties could be chosen by the Council and should contain working parties that have (and have not) had 'essential meetings'.

Information or documents that your institution considers to be confidential will not be disclosed to any other person without the prior agreement of the Council. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended⁴.

To obtain a complete overview of how the Council is functioning during this period, it would also be helpful, during the inspection meeting, to explore the matters set out below. The Council may also wish to follow up with a written reply on some or all of these matters after the meeting:

1. The internal note circulated by the General Secretariat, which sets out the functioning of the Council's decision-making process during the COVID-19 crisis, is not publicly available. Please set out the reasons behind the decision to keep this note 'internal'.
2. In line with the Council's decision temporarily to derogate from its Rules of Procedure, no formal Council meetings are currently being held. However, ministers are able to meet in informal ministerial meetings held through video- or teleconference.
 - Are agendas of such informal meetings made publicly available? If so, when and in what form?
 - Is it possible for the public to access records of such informal meetings and, if so, how?
3. I understand that Council working parties, whose meetings are not considered essential, continue to work without, however, organising physical meetings.
 - Is it possible for the public to access records of working party meetings or consultations that are not physical in nature? Please explain by setting out the type of document that is used for these purposes and whether the public would be able to find such records in the Council register of documents.
 - Please give an overview of how often working parties, without physical meetings, found agreement on legislative acts between 23 March 2020 and 30 June 2020?

⁴ In accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces>



It would be helpful if the meeting could be organised to take place in the **second half of September 2020**. Should your staff require any further information or clarifications concerning the inquiry, they can contact my Strategic Inquiries Unit ([REDACTED] or [REDACTED]).

Yours sincerely,

Emily O'Reilly
European Ombudsman