Transparency in the Council of Ministers

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What do we mean by transparency?

- “The availability of regime-relevant information” (Mitchell 1998)
- Ideal level of transparency allows outsider to see
  - What was said
  - Who said it
  - When it was said
  - Why it was said
  - Where information on the above can be found

- Transparency is a **prerequisite** for accountability, but does not guarantee it (Naurin 2007)
Current transparency regulation ((EC) No. 1049/2001)

- Release all records in a timely fashion...
- Article 4: Exceptions if there is a risk to
  1. Public interest as regards:
     - Public security
     - Defence and military matters
     - International relations
     - Financial, monetary or economic policy
  2. Privacy and the integrity of the individual
  3. Commercial interests of a natural or legal person, including intellectual property
  4. Court proceedings and legal advice
  5. Inspections, investigations and audits
  6. The institution’s decision-making processes
How has this regulation been applied over time?

Figure 1: Share of Council records not released and partially released over time (Cross & Bølstad 2015)
How has this regulation been applied over time?

Figure 2: Average number of days between document drafting and public release (Cross & Bølstad 2015)
Has 1049/2001 increased Council transparency in practice?

- We have more information compared to the pre-2001 period
- BUT...
  - Records are **not** supplied in a timely manner
  - Records often fail to link positions taken to individual delegations, if positions are recorded at all
  - Finding relevant records in the document register can be difficult
Comments on the Ombudsman’s recommendations

- Most of these issues are flagged
  - Records tend to be released after negotiations conclude
  - More or less default use of ‘LIMITE’ status
  - Inconsistent recording of delegation positions
  - Byzantine document register

- Ombudsman recommendations
  - Record delegation positions systematically
  - Develop clear public criteria for use of ‘LIMITE’ status
  - Review ‘LIMITE’ status before negotiations conclude

- Would these recommendations improve the situation?
  - Positive and negative effects (Cross 2013; Naurin 2007)
More transparency

- Positive effects
  - Transparency $\rightarrow$ Potential for publicity $\rightarrow$ Potential for accountability
  - Potential for democratically legitimate decisions
  - More credible policy positions

- Negative effects
  - Transparency $\rightarrow$ Potential audience $\rightarrow$ Incentives to grandstand
  - Compromise difficult
  - Real negotiations happen outside the room
Less transparency

- **Positive effects**
  - No transparency $\rightarrow$ No potential audience $\rightarrow$ Fewer incentives to grandstand
  - Easier to compromise
  - Better quality deliberations

- **Negative effects**
  - No transparency $\rightarrow$ No potential publicity $\rightarrow$ No accountability
  - Less democratically legitimate decisions
  - Less credible positions
Conclusions

- Is the Council transparent enough?
  - Almost certainly not

- Should increased Council transparency be pursued?
  - Trade offs involved
  - Depends on your perspective

- Transparency on its own is not the solution to the democratic deficit faced by the EU
Works cited


