

Meijers Committee

standing committee of experts on international immigration,
refugee and criminal law

To His Excellency Nuno Brito
p/a Secretary Ms Maria do Sameiro Laukens
By email

Date 7 January 2020

Reference CM2101

Subject Letter to the Portuguese Presidency of the Council of the European Union
concerning steps towards the improvement of decision-making transparency

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experts on
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Visiting address
Surinameplein 122
1058 GV Amsterdam

Ph (+31) 020 362 0505

W www.commissie-meijers.nl

E post@commissie-meijers.nl

Dear Ambassador,

Please allow me to first of all wish all the best for this new year, and for the Portuguese Presidency of the Council of the EU that has commenced last week.

As regards the latter, I direct myself to you in the capacity of Chair of the Standing Committee of Experts on International Migration, Refugee and Criminal Law (the 'Meijers Committee'), with a number of recommendations for steps towards the improvement of decision-making transparency.

As you know, the transparency of decision making, both concerning legislative and non-legislative procedures, forms a cornerstone of the democratic system of the European Union, as set out in the European Treaties, laid down in Regulation 1049/2001 concerning access to the documents held by the European Institutions and numerous other provisions, and recognised on various occasions by the Court of Justice of the European Union. As the Council plays a central role in many of the Union's decision-making processes, its adherence to the law and principle of transparency are fundamental to its successful implementation. For this reason, the Meijers Committee has since long monitored developments related to Council transparency, on various occasions offering suggestions for improvement.¹

In this regard, the Meijers Committee is pleased to observe certain notable improvements that have taken place in recent years, including efforts to shorten the application of the so-called 'limite' label championed by the 2016 Dutch Presidency, to expand proactive disclosure of legislative documents begun under the 2019 Finnish Presidency, and to adopt new, updated internal guidelines concerning document disclosure concluded by the 2020 German Presidency.

¹ See, most recently, Note CM2004 (May 2020), 'Note on steps to take towards the improvement of the transparency of Council decision making during the upcoming EU Presidency of the Federal Republic of Germany', and CM1911 (November

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Nevertheless, efforts to improve the transparency of Council procedures remain a work in progress, partially prompted by unforeseen circumstances such as the Corona pandemic which has necessitated significant changes in the Council's conduct of business, partially due to aspects that are left unfinished by previous presidencies or which require constant attention to ensure continuity. In particular, the Meijers Committee would like to bring to attention the following matters.

1. Ensuring the upholding of transparency standards during the exceptional situation triggered by the Covid-19 pandemic

The Covid-19 pandemic created a necessity for the Council to change its organisational arrangements, shifting to a large extent to the conduct of distance meeting using online tools. At the same time, these changes in arrangements cannot be allowed to undermine established standards of decision-making transparency. To this end, the European Ombudsman, particularly alerted by the Council's decision to temporarily derogate from its Rules of Procedure, in July 2020 opened an own-initiative inquiry into this matter. The outcome of this inquiry is due to appear soon. We call upon the Portuguese Presidency to engage with the Ombudsman's forthcoming recommendations in a spirit of good faith and cooperativeness, at all times keeping in mind the public's interest in the widest possible access to documents and information. In this context, the Meijers Committee would expect limitations of normal access to documents standards to be a rare and well-reasoned occurrence, particularly given the –for the moment– indefinite nature of the current situation. Specifically, we call upon the Portuguese Presidency to ensure that document drafting standards and public disclosure standards are upheld in conformity with EU transparency law and principles of good administration.

2. Completion of transparency-improving measures that have already been agreed upon

A number of decisions related to decision-making transparency have been immanent for some time. In these cases, the decision has already been taken, but requires follow-up that is regrettably not forthcoming. This is the case with the revision of Regulation 1049/2001 concerning access to the documents of the European Institutions. With the entry into force of the Lisbon Treaty, its scope was expanded beyond the three core European Institutions to include access to all of the Union's institutions, bodies, offices, and agencies.² Sadly, disagreement between the legislative institutions has meant that the required revision to align Regulation 1049/2001 with these new Treaty requirements has been stalled for 12 years now, culminating in the Commission's decision, last year, to withdraw the proposal altogether. Nevertheless, de minimis 'Lisbonisation' of Regulation 1049/2001 remains a necessity to restore its conformity with Treaty law. In our [note of last year](#), we pointed out to the incoming German Presidency that an altered political situation may now have created the possibility for

2019) 'Note on the Transparency of EU decision making following the "Seminar on the Future of EU Transparency', which can be accessed via <https://www.commissie-meijers.nl/en/comments>.

² TFEU article 15(3), first paragraph.

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such de minimis Lisbonisation of Regulation 1049/2001. Regrettably but understandably, the German Presidency was overtaken by other urgent tasks. With the budget negotiations for the MFF and Coronafund now concluded, the Portuguese Presidency is well-positioned to give new impetus to this process, by engaging the Commission and the European Parliament in a dialogue to launch a new revision proposal.

Similarly, the Portuguese Presidency could take steps to finalise the 'one-stop shop' legislative observatory. Agreed upon by the legislative institutions in an Interinstitutional Agreement (IIA) at the end of the 2016, communication on the progress of this instrument has stalled since then, reflecting poorly on the Institutions' professed commitment to enhancing the transparency of the EU legislative process. The Meijers Committee understands that work on the portal has progressed far already. We therefore urge the Portuguese Presidency to intervene to ensure the long-overdue launch of the one-stop shop legislative observatory at the earliest possible time.

3. Continuation of commitments and efforts set in motion by previous presidencies

As stated above, a number of steps taken by recent Presidencies must also be commended for improving the public visibility and legibility of Council decision making. Particularly, a series of measures introduced by the Finnish Presidency of 2019 deserve mention in this respect. The Finnish Government began an experiment with the wider and earlier publication of documents related to legislative negotiations, including during the trilogue stage, subsequent Presidencies have thereafter continued this policy as a best practice. These standards of disclosure, while certainly beneficial to the public's right of access, require the constant impetus and goodwill of new incoming Presidencies. The Meijers Committee therefore appeals to the Portuguese Presidency to continue to oversee the widest and earliest possible proactive disclosure of legislative documents, as laid down in article 12(2) of Regulation 1049/2001.

The same goes for the transparency of lobbying in the Council context. The German Presidency deserves praise for, after many years of difficult negotiations, bringing the Council into the orbit of the IIA on lobby transparency. However, the Council and its members must now prove their commitment in practice to lend long-term public credibility to this agreement, as is demonstrated by a recent letter regarding this matter to the incoming Portuguese Presidency, signed by 64 civil society organisations.³ Several member states have already committed to enhancing lobby transparency ahead of the conclusion of the IIA, by adopting lobby registers of their Permanent Representations. The Finnish Presidency has moreover created a new precedent for incoming Council Presidencies to also disclose their meetings with lobbyists.

³ <https://corporateeurope.org/en/Portuguese-eu-presidency>

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The Meijers Committee is pleased to see that the Portuguese Presidency honours this best practice by establishing a register of its own, and encourages the Portuguese Presidency to maintain this register upon termination of its role, and to endeavour future presidencies to follow its example.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A.B. Terlouw'.

Prof. dr. A.B. Terlouw
Chairwoman