

Part I. TRANSPARENCY

1. INTRODUCTION: OVERVIEW AND SCOPE

- .01 “Transparency” as the Promise of All Good Things**
- .02 Scope of this Chapter**

2. INFORMATION ABOUT AND PARTICIPATION IN GOVERNMENT PROCESSES

- .00 The Dearth of Legal Enforceability: The “Soft Law” of Codes of Conduct, Principles & Standards, and Codes of Procedure**
- .01 Official Information about Government Processes**
 - .021 The Commission**
 - .022 The European Parliament**
 - .023 The Council**
- .02 Obligations to Allow to Access to or Participation in Government Processes**
 - .021 The Commission**
 - .0211 Meetings**
 - .0212 “Consultation”**
 - .022 The European Parliament**
 - .023 The Council**
- .03 Information about Decisional Outcomes**
 - .031 The Commission**
 - .032 The European Parliament**
 - .0321 Explanation of Votes**
 - .0322 Handling of Petitions**
 - .033 The Council**
- .04 General Obligations to Respond to Queries**
 - .041 The Commission**
 - .042 The European Parliament**
 - .043 The Council**

1. INTRODUCTION: OVERVIEW AND SCOPE

.01 “Transparency” as the promise of all good things

As deployed in EU discourse today, “transparency” is a politico-legal concept of enormous sweep. It is a highly charged term in social debate and, because of its capaciousness, it can be (and is) used to advance almost any species of good-government proposal. Increasingly identified as the touchstone of legitimacy for the EU, it has become the shorthand for all the things that are needed “to reconnect Europe with its citizens and close both the physical and mental gap that makes it difficult for people to understand what Europe does and why it

matters.”¹

Specifically, at the present time a reasonably informed citizen of an EU country would have heard at least the following demands made in highly public fora under the rubric of transparency:

- § a simpler and more comprehensible structure for the EU itself, including new names for the various EU institutions that would clarify their functions in popular understanding (at least for Europeans) by paralleling the names of existing national government bodies;²
- § comprehensible and integrated fundamental documents (i.e., treaties and constitutions)
- § legislation that is consolidated, coordinated and readily accessible³
- § legislation and other official communications written in simple jargon-free understandable prose⁴
- § mandatory guidelines on how legislation ought be drafted, and/or technical legislation-drafting groups
- § official communications made in the official language(s) of every member state⁵
- § understand and accessible information about the *policy objectives* of EU decisionmaking⁶
- § understandable and accessible information about the *decisionmaking processes* of EU

¹ What is the Transparency Initiative?

http://europa.eu.int/comm/commission_barroso/kallas/transparency_en.htm (visited Nov. 9, 2005). See also Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Preamble ¶¶ 1-3, available at http://www.europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/1049EN.pdf.

² See, e.g., <http://www.euractive.com/cgiint.exe/2035284-65?714&1015=3&1014=eurogoal1> (visited July 13, 2004) (“Eurogoal would like to suggest that the biggest transparency problem is simply that citizens do not understand what the EU institutions are and do. The current names are at best obscure, and at worst misleading.”).

³ E.g., Commission of the European Communities, European Governance: A White Paper 10,23 (issued July 25, 2001), available at http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf [hereinafter “White Paper on Governance”]

⁴ E.g., White Paper on Governance, supra note at 10,11. See also Miriam Aziz, *Mainstreaming the Duty of Clarity and Transparency as part of Good Administrative Practice in the EU*, 10 Eur.L.J.282 (2004) (arguing “that there is a duty of clear and transparent language used both internally and externally in EU official communications ... based on the principle of ‘good administration’ contained in Article 41 of the EU Charter of Fundamental Rights”).

⁵ E.g., White Paper on Governance, supra note , at 11. Article 21 of the Treaty Establishing the European Community; Code of Good Administrative Behavior: Relations with the Public § 4 (adopted Sept. 13, 2000), available at http://www.europa.eu.int/comm/secretariat_general/code/index_en.htm [hereinafter “Code of Good Admin. Behav.”]

⁶ E.g., White Paper on Governance, supra note , at 28.

- institutions at all levels⁷
- § increased attention by EU institutions during the policymaking process to opinions of different stakeholders⁸
 - § greater role for lobbying groups
 - § information about the identity of
 - § codes of conduct for both staff and Members of the Commission⁹
 - § understandable and accessible information about the *outcomes* of EU decisionmaking¹⁰
 - § prompt communication about decisionmaking outcomes
 - § use of the most modern communication technologies, and in particular the Internet¹¹
 - § better managed official websites
 - § access to decisionmaking processes
 - § generic open meeting demands
 - § televised meeting demands
 - § demands for public minutes of meetings
 - § greater information from ministries and the Commission to Parliament
 - § in general, a simplified and improved regulatory environment¹²

Some of these demands are not generally understood as being within the scope of administrative law; indeed some are only tangentially connected with law of any sort.

⁷ E.g., White Paper on Governance, *supra* note , at 4, 15-16

⁸ E.g., White Paper on Governance, *supra* note , at 4, 16-17; Towards a Reinforced Culture of Consultation and Dialogue – General Principles & Minimum Standards for Consultation of Interested Parties by the Commission, COM 704 final (adopted Dec. 11, 2002) [hereinafter “Minimum Standards for Consultation”], available at 3, 5

⁹ E.g., What is the Transparency Initiative? http://europa.eu.int/comm/commission_barroso/kallas/transparency_en.htm (visited Nov. 9, 2005). For the current codes, see Code of Conduct for Commissioners, SEC (2004) 1487/2, available at http://www.europa.eu.int/comm/commission_barroso/code_of_conduct/code_conduct_en.pdf; Code of Good Admin. Behav., *supra* note ; Minimum Standards for Consultation, *supra* note .

¹⁰ E.g., Code of Good Admin. Behav. §§ 3,4, *supra* note .

¹¹ E.g., White Paper on Governance, *supra* note , at 11. Hence, the EU’s official website, www.europa.eu.int, is described as one of the democracy-enhancing measures through which more effective information and communication about the EU institutions, policies, and processes will facilitate popular participation and, ultimately, “a sense of belonging to Europe.” *Id.*

¹² E.g., Report from the Commission on the application in 2002 of Regulation (EC) No, 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents/COM/2003/0216final*/ , EUR-Lex 52003DC0216 at 1, available at http://europa.eu.int/eur-lex/en/com/rpt/2003/com2003_0216en01.pdf.

B. Scope of this Chapter

This Chapter discusses the following aspects of transparency in the EU:

Section 2: Information about and Participation in Government Processes – what would be the EU analogs to GITSA and FACA, except that there really aren't any

- § Official obligations to provide information about government processes
- § Official obligations to allow public participation, although specific treatment of participation in rulemaking is covered in Chapter ** and party status and intervention in adjudication is covered in Chapter **.
- § Official obligations to provide information about decisional outcomes
- § General official obligations to respond to queries

Section 3: Access to Documents – the EU analog to FOIA

- § Regulation (EC) No. 1049/2001
- § Administrative provisions governing access
- § Exceptions
- § Review of decisions to deny access
- § Dissemination of information via the public register, internet and Official Journal
- § History of access in the EU (maybe)

Section 4: Data Protection – which has no US analog of comparable strength and breadth

- § Regulation (EC) No. 45/2001
- § Directive 95/46
- § Impact on transparency

2. INFORMATION ABOUT AND PARTICIPATION IN GOVERNMENT PROCESSES

2.00 The Dearth of Legal Enforceability: The “Soft Law” of Codes of Conduct, Principles & Standards, and Codes of Procedure

One aspect of the EU system that will strike many lawyers as unusual is its heavy reliance on documents denominated “codes of conduct” to do substantive work -- well beyond the traditional scope of professional ethics -- that in other systems would be accomplished through statute or regulation. The Code of Conduct for Commissioners, for example, undertakes to: articulate the “chain of responsibility” in the organizational hierarchy;¹³ define the responsibilities of the Cabinet¹⁴ and departments;¹⁵ and set basic operating procedures and delegate authority for various financial, human resources and other management functions.¹⁶

The responsibilities of Commission staff to provide information about government processes and to respond to public inquiries are specified in the Code of Good Administrative Behavior.¹⁷ To the extent that requests involve access to documents, Article 255 of the Treaty on the European Union¹⁸ and Regulation (EC) No. 1049/2001¹⁹ [“Access Regulation”] establish a legally enforceable right, the dimensions of which are discussed in Section 3 of this Chapter. Otherwise, however, complaints about the failure of Commission staff to provide information or respond to inquiries appear to be limited to internal Commission remedies or the Ombudsman.²⁰

¹³ Commission of the European Communities, Code of Conduct for Commissioners, SEC(2004) 1487/2 § 2.1.

¹⁴ Id. § 2.2.

¹⁵ Id. § 2.3.

¹⁶ Id. § 2.4.

¹⁷ Code of Good Administrative Behavior: Relations with the public O.J. (L 267) 20.10.2000.

¹⁸ “Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to ...principles and limits on grounds of public or private interest ... determined by the Council” Treaty Establishing the European Community, art. 255 §§ 1,2.

¹⁹ Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission Documents, 2001 O.J. (L 145) 43.

²⁰ See §§ 2.01*, 2.03*, 2.04* infra.

[Query advisors and others whether Kingdom of Netherlands v. Council of European Union, discussed § 1.031 of Document Access Section can be extended beyond specifics of right of access to documents.]

Similarly, the Commission's obligations to permit participation in its policymaking – the “consultation process” – were intentionally embodied in a form understood not to create legally enforceable rights.²¹ The General Principles and Minimum Standards for Consultation of Interested Parties by the Commission²² are a Communication from the Commission rather than a “legally-binding instrument” as many commentators had recommended.²³ Again, except to the extent that other sources mandate an open, participatory process,²⁴ remedies for violations of this “soft law”²⁵ limited to internal Commission complaints and the Ombudsman.²⁶

Finally, the Council and the European Parliament, as well as the Commission, have each used their Rules of Procedure as a form in which to specify undertakings with respect to public access and participation.²⁷ Not surprisingly, these Rules contain no provision for private enforcement. Thus, to the extent that the undertakings they contain are not covered by the legally enforceable right to documents, or mandated by some provision of treaty or statute, the undertakings are not externally enforceable.

2.01 Official Information about Government Processes

2.011 The Commission

The following information about the Commission's processes is directly available on the Internet:²⁸

§ agendas for the Commission weekly meetings²⁹

²¹ See § 2.02*.

²² Commission of the European Communities, Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM(2002) 704 final (11.12.2002).

²³ Id. at 10.

²⁴ See, e.g., id at 10 (“a clear dividing line must be drawn between consultations launched on the Commission's own initiative prior to the adoption of a proposal, and the subsequent *formalized and compulsory decision-making process according to the Treaties.*”)(emphasis added).

²⁵ See the Chapter on Rulemaking § 1C at 14.

²⁶ See § 2.02* *infra*.

²⁷ Council Decision of 29 November 2001 amending the Council's Rules of Procedure, O.J. (L 313); Amendment to the Rules of Procedure: Access to European Parliament documents, O.J. (C 140 E/116) 13.6.2002; Commission Decision of 5 December 2001 amending its rules of procedure, O.J. (L 345) 29.12.2001[hereinafter “Commission Rule of Procedure Amendments”].

The European Parliament additionally adopted the Bureau Decision on Public Access to European Parliament Documents, O.J. (C 374/01) 29.12.2001.

²⁸ Commission Rule of Procedure Amendments, *supra* note , at 4-5.

²⁹ http://www.europa.eu.int/comm/secretariat_general/regdoc/liste.cfm?CL=en. “The Commission may

- § “ordinary minutes,” after approval³⁰
- § documents originating from third parties which the author has already disclosed, or consented to have disclosed
- § documents already disclosed via the Access Regulation
- § Commission documents published in the Official Journal of the European Communities³¹

Provided “they do not reflect opinions or individual positions”³² and do not fall within any of the exceptions to disclosure provided in the Access Regulation,³³ the following are at least listed in the Commission’s online Register of documents³⁴ and may be directly available through an electronic link³⁵:

- § preparatory documents submitted to the Commission for a proposal for an act of the Council, or the Council and the European Parliament, after the act has been adopted;
- § preparatory documents submitted to the Commission for a proposed act, communication, report or working document of the Commission, after the proposed action has been taken.³⁶

decide, by majority vote, to discuss a question which is not on the agenda ... [or] not to discuss an item on the agenda.” http://europa.eu.int/comm/secretariat_general/meeting/plus_info_reunion_en.htm. See also Rules of Procedure of the Commission, C(2000) 3614 art. 6, O.J. (L 308) 08/12/2000.

³⁰ See http://www.europa.eu.int/comm/secretariat_general/regdoc/liste.cfm?CL=en.

³¹ These documents fall into several categories identified by letters:

- COM: proposed legislation and other Commission communications to the Council and/or the other institutions, and their preparatory papers
- C : legal acts adopted by the Commission in the exercise of its own or delegated powers
- SEC: internal documents associated with the decision-making process and the general operation of Commission departments

According to the two most reports on compliance with the Access Regulations, it appears there is still not full direct access to all these documents from the Commission register. See Report from the Commission on the application in 2003 of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2004) 347 final, at 7 (30.4.2004)[hereinafter “April 30, 2004 Access Report”], available at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0347en01.pdf; Report from the Commission on the application in 2004 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, COM (2005) 348 final at § 2.1 (29.07.2005)[hereinafter “2005 Access Report”], available at [http://www.europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/rapport_2004/COM\(2005\)348-EN.pdf](http://www.europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/rapport_2004/COM(2005)348-EN.pdf). However, they can be accessed through Eur-Lex.

³² Commission Rule of Procedure Amendments, supra note , at 4.

³³ See Section 3.0 “Access to Documents: Exceptions.”

³⁴ http://www.europa.eu.int/comm/secretariat_general/regdoc/registre.cfm?CL=en. See generally Section 3:05 “Access to Documents: Dissemination of Information via the Public Register, Internet, Official Journal.” The fact that documents are mentioned in the register does not automatically make them accessible to the public. 2005 Access Report, supra note , at 37 .

³⁵ <http://europa.eu.int/eur-lex>.

³⁶ Commission Rule of Procedure Amendments, supra note , at 4. See generally Access Regulation, supra note , Art. 12(2),(3).

Also available on the Commission's website are the following:

- § the Commission's "Work Programme," which includes strategic objectives, legislative proposals, and non-legislative acts³⁷
- § White Papers: documents containing proposals for Community action in a specific area. These sometimes follow a "Green Paper," published to launch a "consultation process."³⁸ "While Green Papers set out a range of ideas presented for public discussion and debate, White Papers contain an official set of proposals in specific policy areas and are used as vehicles for their development."³⁹
- § studies carried out on behalf of the Commission by outside experts⁴⁰
- § extensive information about the Codecision procedure, including
 - § review of the procedure itself and the roles played by the Council, Parliament, and the Commission
 - § links to the relevant legal documents
 - § dossiers under consideration⁴¹
 - § dossiers completed⁴²
 - § timetables⁴³

Additional information about dossiers involved in the Codecision procedure can be found at PreLex,⁴⁴ which is both a procedural primer of the inter-institutional decision-making processes the Commission and the other institutions⁴⁵ and a database of documents which form part of

³⁷ http://www.europa.eu.int/comm/off/work_programme/index_en.htm;
http://www.europa.eu.int/comm/atwork/programmes/index_en.htm

³⁸ See § 2.02 infra.

³⁹ http://www.europa.eu.int/documents/comm/index_en.htm.

⁴⁰ 2004 Access Report, supra note , at 6.

⁴¹ These are broken down according to which stage they have reached:

- § awaiting first reading by the European Parliament
- § awaiting first reading by the Council, divided according to Council formations
- § awaiting second reading by the European Parliament

This listing is updated every month. See http://europa.eu.int/comm/codecision/pending/index_en.htm

⁴² These are broken down according to the stage at which they were completed:

- § first reading
- § second reading
- § conciliation

This listing is updated every six months. See http://europa.eu.int/comm/codecision/concluded/index_en.htm

⁴³ http://europa.eu.int/comm/codecision/calendar/index_en.htm

⁴⁴ <http://europa.eu.int/prelex/apcnet.cfm?CL=en#>.

⁴⁵ The primer is accessed by clicking on the "Description of the database" button under Pre-lex Help. This

those processes. It permits the user to follow Commission proposals (legislative and budgetary dossiers, conclusions of international agreements, etc.) and communications from their transmission to the Council or the European Parliament, and to access directly the electronic texts available (COM documents, Official Journal, Bulletin of the European Union, documents of the European Parliament, press releases, etc.).

At a separate portion of its website⁴⁶, the Commission provides both a primer on the comitology process (through a “Frequently Asked Questions” link) and a register and direct repository of the following information about the comitology process:

- § agendas of committee meetings
- § draft implementing measures
- § summary records of committee meetings
- § voting results of opinions delivered by a committee

The site covers materials since January 1, 2003 and does not contain materials not transmitted to the European Parliament.

The Register of Expert Groups lists formal and informal advisory bodies established either by Commission decisions or informally by the Commission services that assist the Commission and its services in preparing legislative proposals and policy initiatives.⁴⁷ The Register provides key information on those groups, such as the lead service in the Commission and the group's tasks, as well as the category of participants. The search function can find information on groups working in a given policy area. The Register also contains direct links to websites of those Commission departments who publish more detailed information on expert groups on their own websites on Europa.

The Code of Good Administrative Behavior directs staff to provide certain information about procedures:

- § “Where a member of the public requires information relating to a Commission administrative procedure, staff shall ensure that this information is provided within the deadline fixed for the procedure in question.”⁴⁸
- § “[M]easures notified to an interest party should clearly state that an appeal is possible [where Community law so provides] and describe how to submit it, (the name and office address of the person or department with whom the appeal must be lodged and the deadline for lodging it).

Where appropriate, decisions should refer to the possibility of starting judicial proceedings and/or of lodging a complaint with the European Ombudsman...”⁴⁹

opens a series of nested windows explaining steps in the decision-making processes.

⁴⁶ http://www.europa.eu.int/comm/secretariat_general/regcomito/registre.cfm?CL=en

⁴⁷ See http://www.europa.eu.int/comm/secretariat_general/regexp/index.cfm?lang=EN.

⁴⁸ Code of Good Administrative Behavior, *supra* note , § 2.

⁴⁹ *Id.* § 3.

The Code is formally binding on “all staff covered by the Staff Regulations and the other legal provisions on relations between the Commission and its staff that are applicable to officials and others servants of the European Communities.” However, it also directs that “persons employed under private law contracts, experts on secondment from national civil services and trainees etc., working for the Commission” ought to be “guided by it in their daily work.”⁵⁰ Enforcement is by complaint filed either with the Commission or with the Ombudsman.⁵¹

2.012 The European Parliament

The following information about Parliament is available on its website, Europarl⁵²

- § Calendar and agendas of meetings: All meetings for the full Parliament, with details of room, building and place of work and timetable, plus long-term calendar for certain bodies.
- § For committees, delegations : agendas will remain available for approximately three months
- § Monthly activities Bulletin and weekly Calendar of all committee meetings
- § Draft committee reports and opinions⁵³
- § Reports adopted in committee and tabled for adoption in plenary
- § Part-session minutes: A provisional version is published prior to their approval in plenary, and is later replaced by the final version published in the Official Journal.
- § Attendance and results of roll-call votes
- § Texts adopted in plenary: Opinions of Parliament, legislative resolutions, resolutions, decisions on common positions and joint texts, own-initiative resolutions, budgetary resolutions, etc.
- § Consolidated legislative documents for the codecision procedures
- § Written declarations

⁵⁰ Id. p. 3.

⁵¹ Id. § 6. If filed with the Commission, it is to be investigated by the relevant Head of Department or Director-General, who is to send a written response within two months. If the complainant is still unsatisfied, s/he may ask the Secretary-General to review the matter within one month of receiving the answer; the Secretary-General is to reply to this within a further month. Id.;

http://www.europa.eu.int/comm/secretariat_general/code/index_en.htm.

⁵² http://www.europarl.eu.int/guide/search/docsearch_en.htm. See Bureau Decision on Public Access to European Parliament Documents, O.J. (C 374/01) 29.12.2001.

⁵³ From about one week prior to committee meetings, all documents on the agenda are published on Europarl under the heading “Meeting documents” for each committee.

- § Parliamentary questions
- § questions for oral answer (about 600 per year) receive answers in plenary from the Commission and Council. These replies are found in the verbatim report of proceedings. (See below)
- § questions for written answer (about 4.500 per year) are accompanied by the replies of the institution addressed.
- § Studies and publications produced by Parliament: Research and Fact Sheets
- § Mail incoming to, and outgoing from, Parliament and its President⁵⁴

In addition, a transcript of Parliament's debates in plenary is available on Europarl in the original language of the speakers and, after translation, in all the Union's working languages.⁵⁵ A webstreaming link⁵⁶ allows viewing of plenary debates in real time.

Parliament also provides an extensive online information and research service about all legislative, budgetary or non-legislative procedures on which it must be officially consulted or on which it has decided to draw up an own-initiative report. The Legislative Observatory (OEIL) is structured as of a series of “procedural files” listing all the documents and key events relating to a given procedure and the players involved at each stage. Each “procedural file” allows the user to monitor the progress of the matter, find out what stage it has reached, and to forecasts the stages to come and future deadlines. The “file” also contains summaries of the main stages based on the relevant documents or events related to the procedure, and in many cases links to the documents themselves. Specially, it covers:

- § codecision, consultation and assent procedure
- § budgetary and discharge procedures
- § own-initiative reports
- § appointments, waivers of immunity and changes to the Rules of Procedure
- § resolutions on topical and urgent subjects adopted by Parliament
- § plus the documents forwarded for information from the Commission during the last 9 months⁵⁷.

OEIL contains files on both pending and completed procedures since July 1994, and is updated daily.⁵⁸

⁵⁴ <http://www.europarl.eu.int/registre/recherche/ListeDocuments.cfm#>.

⁵⁵ “The original-language texts are generally published the day after the debate. Provisional translations are published at the same location approximately four weeks later: these translations are subsequently replaced by the final version, which is also published in an Annex to the Official Journal.”
http://www.europarl.eu.int/guide/search/docsearch_en.htm#agendas.

⁵⁶ http://www.europarl.eu.int/eplive/public/default_en.htm?language=EN.

⁵⁷ See <http://www.europarl.eu.int/oeil/index.jsp> at FAQs.

⁵⁸ Detailed information on conducting searches can be found in the FAQs on the site.

2.013 The Council

The Council's website is the least comprehensive, the least communicative as an educational resource about government procedure, and the least user-friendly. It makes directly accessible:

- § agendas of the Council and its various configurations⁵⁹ and "other preparatory bodies"⁶⁰
- § minutes concerning the adoption of legislative acts, and minutes in general⁶¹
- § monthly summaries of the Council's legislative and nonlegislative acts⁶²
- § press releases issued after each Council meeting, and miscellaneous others
- § Presidency Conclusions⁶³
- § Common Foreign Policy & Security Statements⁶⁴

There is virtually no attempt to explain the significance of many of these items, or to detail the process by which they come into existence. Some subject specific data bases exist (e.g., Justice & Home Affairs; Cooperation in Science & Technical Research [COST]) but no documentation explains their content.

The Council has also undertaken⁶⁵ to make available the following, although it is not obvious that these are accessible through the website, or even how one finds references to them in the Council's Register in order to request hard copies from the General Secretariat:

⁵⁹ The list of Council configurations is Annex 1 to its rules of procedure. Council Decision of 22 March 2004 adopting the Council's Rules of Procedure, O.J. (L 106/22) 15.4.2004.

⁶⁰ http://ue.eu.int/cms3_applications/showPage.asp?id=550&lang=en&mode=g.

⁶¹ http://ue.eu.int/cms3_fo/showPage.asp?id=552&lang=EN&mode=g. For the significance of the distinction between legislative acts and other act for purposes of the minutes, see Section 2.033 infra.

⁶² "The Council acts in its capacity as legislator when it adopts, on the basis of the relevant provisions of the Treaties, legally binding standards in or for Member States by means of regulations, directives, framework decisions or decisions. Internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations and non-binding acts such as conclusions, recommendations or resolutions are not regarded as legislative acts." http://ue.eu.int/cms3_fo/showPage.asp?id=551&lang=EN&mode=g

⁶³ http://ue.eu.int/cms3_fo/showPage.asp?id=551&lang=EN&mode=g.

⁶⁴

http://ue.eu.int/cms3_applications/applications/newsRoom/loadBook.asp?BID=73&LANG=1&cmsid=359

⁶⁵ Council Rules of Procedure, supra note , Annex II, art. 1; Council Decision of 29 November 2001 amending the Council's rules of procedure 2001/840/EC, art. 11 § 5, O.J. (L 313/40) 30.11.2001. The Council's 2004 report on compliance with the Access Regulation states that "all non-sensitive documents submitted to the Council or to one of its preparatory bodies which are to serve as a basis for deliberations, could influence the decision-making process or reflect the progress made on a given subject are automatically listed in the register." Council Annual report on access to documents – 2004 at 8 (May 2005), available at <http://ue.eu.int/uedocs/cmsUpload/new08896.en05INT.pdf>.

- § cover notes and letters concerning legislative acts addressed to the Council by other EU institutions or bodies, or by a Member State so long as the State does not object on grounds that it reflects the individual position of that state’s delegation in the Council
- § notes submitted to Coreper⁶⁶ and/or to Council for approval, as well as the draft legislative acts to which they refer,

Its Rules of Procedure also provide that the following “may” be made public:

- § information notes, reports, progress reports and reports on the state of discussion in the Council or one of its preparatory bodies which do not reflect individual positions of delegates, except Legal Service opinions and contributions.⁶⁷

2.02 Obligations to Allow to Access to or Participation in Government Processes

Unlike the Access Regulation with respect to documents,⁶⁸ there is no overarching legal norm that provides public access to meetings of the EU governing institutions or that affords participation rights in policymaking processes. Opportunities for access and participation vary considerably depending on institution and context.

2.021 The Commission

2.0211 Access to Meetings

Meetings of the Commission, which occur weekly in addition to special sitting, are not public and its discussions are confidential.⁶⁹ Minutes of the meetings are available on the Commission’s website about one week later, “[w]ith a few exceptions.”⁷⁰

2.0212 “Consultation”

[to be described to extent not covered in Rulemaking]

⁶⁶ Coreper, the French acronym by which the Permanent Representatives Committee is known, consists of the Member States’ ambassadors (the “Permanent Representatives”) and is responsible, at a stage involving preliminary negotiations, for assisting the Council in dealing with the items on its agenda (proposals and drafts of instruments put forward by the Commission). It is both a forum for dialogue among the Permanent Representatives, and between them and their respective national capitals, and a body which exercises political control by laying down guidelines for, and supervising, the work of the expert groups. Coreper I, consists of the Deputy Permanent Representatives, while Coreper II consists of the Permanent Representatives themselves.

http://www.europa.eu.int/scadplus/glossary/coreper_en.htm.

⁶⁷ Id. art 11 § 4.

⁶⁸ See Section 3 *infra*.

⁶⁹ Rules of Procedure of the Commission, art. 9, O.J.(C(2000) 3614) 12.08.2000.

⁷⁰ http://europa.eu.int/comm/secretariat_general/meeting/index_en.htm. See text accompanying note *supra*.

.022 The European Parliament

Debates in Parliament are public and committees normally meet in public.⁷¹ Normally, voting is public and may be by roll-call “if requested in writing by a political group or at least thirty-seven Members the evening before the vote unless the President sets a different deadline.”⁷² However, voting can be by secret ballot on request of at least one-fifth of the Members, and such request takes precedence over a roll-call request.⁷³

.023 The Council

The Council’s meetings are restricted to members of the Council and the officials who assist them, and members of the Commission and the officials who assist them,⁷⁴ with the following exceptions:

- § Deliberations on acts adopted in accordance with the co-decision procedure (Art. 251 TEC): These are open to the public, and are broadcast on closed circuit television at locations announced on the Council’s website.⁷⁵ The site also contains a list of measures that fall into this category, with the dates on which the meeting will occur and the particular Council configuration involved.⁷⁶
- § One public policy debate annually, convened by the General Affairs and External Relations Council, on the Council’s annual operational program and, “if appropriate,” on the Commission’s annual work program.⁷⁷
- § At least one public debate on “important new legislative proposals” (other than those adopted through the co-decision procedure) on a decision taken by the Council or by Coreper acting by qualified majority.⁷⁸

2.03 Information about Decisional Outcomes

2.031 The Commission

⁷¹ European Parliament, Rules of Procedure 16th ed. Rule 96, O.J. (L 004) 15.02.2005. Observation is limited to admission to the galleries and is only by admission card issued by the President or Secretary-General of Parliament. Rule 137.

⁷² Id. Rule 160, 159.

⁷³ Id. Rule 162.

⁷⁴ Council Code of Procedure, *supra* note , art. 5, 8 Members of the European Central Bank may also attend in cases where it exercises its right of initiative. Id. art. 5 ¶ 2.

⁷⁵ See http://ue.eu.int/cms3_fo/showPage.ASP?id=313&lang=en&mode=g. See generally Council Code of Procedure, *supra* note , art. 8 ¶ 1.

⁷⁶ E.g., <http://register.consilium.eu.int/pdf/en/05/st10/st10101-re01.en05.pdf> (List of legislative proposals approved by co-decision for deliberation of the Council open to the public under the United Kingdom presidency).

⁷⁷ Council Code of Procedure, *supra* note , art. 8 ¶ 2.

⁷⁸ Id. art. 8 ¶ 3.

The Code of Good Administrative Behavior articulates a “Duty to Justify Decisions” as follows:

A Commission decision should clearly state the reasons on which it is based and should be communicated to the persons and parties concerned.

As a general rule full justification for decisions should be given. However, where it may not be possible, for example because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of individual decisions, standard replies may be given. These standard replies should include the principal reasons justifying the decision taken. Furthermore, an interested party who expressly requests a detailed justification shall be provided with it.⁷⁹

In addition, several of the sources of information about the Commission’s processes described in Section 2.011 above will provide information about decisional outcomes.

2.032 The European Parliament

2.0321 Explanation of Votes

Rule 163 of Parliament’s Rules of Procedure permits a Member to give an oral explanation of no more than one minute, or a written explanation of no more than 200 words, of his or her final vote on any subject submitted to Parliament except procedural matters.

2.0322 Handling of Petitions

Any citizen of the EU or any natural or legal person residing or having its registered office in a Member State has a right to petition Parliament on a matter within the EU’s fields of activity that affects him, her, or directly.⁸⁰ Complying petitions must be entered in a register, and forwarded by the President of Parliament to the Committee on Petitions. That Committee may:

- § ask the Commission to conduct a preliminary investigation and provide information regarding compliance with the relevant Community legislation
- § refer the petition to other committees for information or further action, or to the Council
- § in exceptional cases, submit a report to Parliament to be voted upon in plenary, or conduct a fact-finding visit
- § seek to cooperate with national or local authorities in Member States to resolve the issue

⁷⁹ Code of Good Administrative Behavior, supra note , § 3.

⁸⁰ Parliament Code of Procedure, supra note , Rule 191, § 1.

§ take any other action considered appropriate to try to resolve an issue.⁸¹

The petitioner must be informed, when a decision is reached, of the outcome and its reasons.⁸² The Committee must inform Parliament every six months of the outcome of its deliberations, as well as of the measures taken by the Council and the Commission on petitions referred to them.⁸³

2.033 The Council

Article 207 (3) of the Treaty of the European Community provides that when the Council is acting in its legislative capacity, “the results and explanations of votes as well as statements in the minutes shall be made public.” The Article directs the Council to define when it is to be regarded as acting in its legislative capacity, which it has done as follows:

The Council acts in its legislative capacity... when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions).⁸⁴

The required explanations and statements are published as addenda to the draft minutes.⁸⁵ The monthly summaries⁸⁶ published by the General Secretariat list the legislative and non-legislative acts of the Council. The minutes⁸⁷ of a Council meeting summarize the decisions taken and occasionally the content of the discussions held during that meeting, and generally contain three points concerning each item on the agenda:

- § indication of the documents submitted to the Council;
- § decisions taken or conclusions reached by the Council;
- § statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

Additional information on the meetings can be found in the press releases issued by the General Secretariat after each Council meeting.⁸⁸

2.04 General Obligations to Respond to Queries

⁸¹ <http://www.europarl.eu.int/parliament/public/staticDisplay.do?id=49&pageRank=4>

⁸² Id.; Parliament Code of Procedure, supra note , Rule 192 § 7.

⁸³ Parliament Code of Procedure, supra note , Rule 192 § 6.

⁸⁴ Council Code of Procedure, supra note , art. 7.

⁸⁵ http://ue.eu.int/cms3_applications/showPage.asp?id=552&lang=en.

⁸⁶ See Section 2.021 supra.

⁸⁷ Id.

⁸⁸ http://ue.eu.int/cms3_fo/showPage.asp?id=552&lang=EN&mode=g.

2.041 The Commission

According to the Code of Good Administrative Behavior, “The Commission is committed to answering inquiries in the most appropriate manner and as quickly as possible.”⁸⁹ Specifically, correspondence is to be answered within fifteen working days from the date of receipt by the responsible department; if this isn’t possible – because, for example, the reply requires translation or interdepartmental consultation – staff should send a reply indicating a date by which the addressee may expect to be sent a reply in the light of this additional work, taking into account the relative urgency and complexity of the matter.”⁹⁰

In addition to the substantive response, “[t]h reply should identify the person responsible for the matter and state how he or she may be contacted.”⁹¹

Telephone inquiries are to be answered “as promptly as possible.”⁹² Staff “shall provide information on subjects for which they have direct responsibility and should direct the caller to the specific appropriate source in other cases. If necessary, they should refer callers to their superior or consult him or her before giving the information.”⁹³

Email inquiries follow the telephone guidelines unless “the e-mail message is, by its nature, the equivalent of a letter” in which case it follows the correspondence guidelines.⁹⁴

Response to requests for documents must generally occur in 15 days. See Section 3 “Access to Documents.”

2.042. The European Parliament

The Correspondence with Citizens Unit of Parliament maintains an electronic mailbox, accessible through the Europarl website, for submission of “questions, requests for information and proposals to the European Parliament.”⁹⁵ An electronic acknowledgment is triggered by successful submission. According to the site, “Answers will be sent within a reasonable

⁸⁹ Code of Good Administrative Behavior, *supra* note , at § 4.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* Staff are directed to identify themselves or their department when answering the telephone. *Id.*

⁹³ *Id.* “ When enquiries concern areas for which staff are directly responsible, they shall establish the identity of the caller and check whether the information has already been made public before giving it out. If this is not the case, the member of staff may consider that it is not in the Community interest for the information to be disclosed. In this case he or she should explain why they are unable to disclose it and refer in appropriate cases to the obligation to exercise discretion as laid down in Article 17 of the Staff Regulations.” *Id.* Staff may request confirmation in writing of inquiries made by telephone. *Id.*

⁹⁴ *Id.*

⁹⁵ <http://www.europarl.eu.int/parliament/public/staticDisplay.do?id=48&language=EN>. It also links to EuropeDirect, a portion of the Europa site which, among other things, provides an electronic mailbox with a submission form. http://europa.eu.int/europedirect/index_en.htm

period.”⁹⁶ If the query can’t be answered readily because, e.g, it covers a complex subject, “a holding letter will be sent immediately by e-mail.”⁹⁷

2.043 The Council

[If the Council has rules, procedures, guidelines or undertakings on this topic – or even an area on its website beyond a list of contact information – I have been unable to find it. Can anyone help?]

⁹⁶ Id.

⁹⁷ Id.