COGITATIO

Politics and Governance (ISSN: 2183–2463)
2017, Volume 5, Issue 3, Pages 62–74
DOI: 10.17645/pag.v5i3.975

Article

Transparency as a Platform for Institutional Politics: The Case of the Council of the European Union

Maarten Hillebrandt

Faculty of Sociology, University of Bielefeld, 33625 Bielefeld, Germany; E-Mail: maarten.hillebrandt@uni-bielefeld.de

Submitted: 31 March 2017 | Accepted: 12 June 2017 | Published: 25 September 2017

Abstract
The question of transparency is widely regarded as a thermometer of the relation between the Council of the EU and the public at large. Relatively little attention however has been devoted to the implications of transparency (i.e., access for the general public) for inter-institutional information politics, even when the limited evidence suggests that the connection is considerable. This article asks how EU actors use Council transparency as a platform and for what reason. It approaches transparency as a policy that is developed in three arenas: the internal, the external political, and the external judicial arena. The article finds strong evidence in support of the view that the Council's transparency policy played a central role in EU institutions' attempt to advance their information ambitions. By strongly engaging with the issue of transparency particularly the European Parliament and its members succeeded at expanding their institutional information basis in an area where their political grip was traditionally at its weakest: the Foreign Affairs Council. Acting in turn as a bargaining chip, a political lever, or an alternative to institutional information, the Foreign Affairs Council's transparency policy was thus clearly used to advance information agendas of oversight and legislative prerogatives.

Keywords
European Parliament; Foreign Affairs Council; parliamentary information; transparency

Issue
This article is part of the issue "EU Institutional Politics of Secrecy and Transparency in Foreign Affairs", edited by Vigjilenca Abazi and Johan Adriaensen (Maastricht University, The Netherlands).

1. Introduction

In 2012, an applicant filed a case before the General Court of the European Union to contest the Council's decision refusing access to parts of a document. The document was a Council opinion concerning the legal basis to be used for an agreement between the EU and the United States concerning the so-called Terrorist Finance Tracking Programme (SWIFT/TFTP) agreement, and the applicant, Sophie in 't Veld, a member of the European Parliament (MEP). Dissatisfied with the negotiation information received internally via the European Parliament (hereafter: Parliament), she decided to seek access to the document in question via the public route. When the General Court ruled in favour of most of In 't Veld's pleas, the Council appealed. An attendant at the public hearing of the appeal case describes the following exchange between the Council's legal counsel and a judge:

> [So] the Council said, like: 'It is very important that that piece stays secret, because it's very sensitive…'. Then one…judge asked: 'Yes, you say that secrecy is needed to…protect the negotiations…'—[and] then he clearly referred to ACTA [the Anti-Counterfeiting Trade Agreement]—'[But] hasn't it been shown that exactly a lack of transparency is a threat to those negotiations?' (respondent #1, interview April 17, 2014)

The Court of Justice subsequently upheld the initial judgment.

The above-described episode stands out for a number of reasons. Although the law on access to documents (Regulation 1049/2001) is intended for the broad public, it was used by an institutional actor. And while institutional arrangements are in place for MEPs to receive privileged information, In 't Veld still chose the public access route. Moreover, she apparently received wider

access as a citizen than the Council had initially been willing to grant her in her capacity as an MEP. Finally, both the applicant and the Court connected the issue of transparency (i.e., access for the general public) with the Parliament's need of information in order to exercise its right of assent (a matter of institutional politics). The question may well be asked what caused this seemingly unusual use of the transparency policy.

Up until now, transparency has been primarily regarded as a thermometer of the relation between the Council of the EU and the public at large (e.g. Curtin, 2013; Hillebrandt, Curtin, & Meijer, 2014; Maiani, Pasquier, & Villeneuve, 2011; Novak, 2013). Relatively limited attention has been devoted to the central role that instruments play for the creation of public access play in inter-institutional information politics. This is the case even when much evidence suggests that in practice transparency and inter-institutional information are connected in various ways (e.g. Bjurulf & Elgström, 2004; Reichard, 2013; Rosén, 2015). The fact that the Foreign Affairs Council (FAC) represents something of an outlier in the Council in terms of the stunted advance of transparency is partially explained by the traditional norm of limited transparency in the area of foreign policy (Curtin, 2013, p. 453; Hillebrandt, 2017; Puetter, 2014). Yet the Council's policy of limiting transparency in the area of foreign affairs makes it all the more puzzling that other institutions engage with it so extensively. The Parliament, which experienced its own information limitations in interactions with the Council, appears to have taken the lead in this regard (Curtin, 2013, p. 445).

Recent scholarship highlights the diverse range of informational arrangements that support inter-institutional coordination in the European Union (EU), and their shortcomings (see e.g. Abazi, 2016; Brandsma, 2013; Maurer, Kietz, & Völkel, 2005; Rosén, 2015). Some of this academic work makes reference to the transparency rules, yet it only does so in passing, maintaining the focus primarily on information required for parliamentary oversight. This article seeks to address this gap, offering a structured analysis of the manner in which transparency acts as a platform for institutional politics. In particular, it argues that the Council's transparency policy has offered other institutions, notably the Parliament, the means to exercise significantly more influence over the FAC than would otherwise have been possible. Transparency has been used in turn as a lever, a bargaining chip, or an alternative to institutional information in ways that structurally rebalanced the institutional information relation between the FAC and the Parliament, yet were largely unforeseen and unsolicited by the former. The article proceeds as follows. In the next section, the concept of Council transparency and its role in institutional information politics is theoretically developed. Section 3 offers an empirical account of the manner in which FAC transparency's three policy arenas enabled or constrained the use of transparency as a 'platform'. Section 4 analyses the observed interactions between transparency and institutional information politics in this account in light of the theoretical framework. Section 5 concludes.

2. Council Transparency: Public Affair…and Institutional Springboard

Transparency has been described as 'the ability to look clearly through the windows of an institution' (De Boer, 1998). In the EU context, reality is more complex: because of the many institutions, the public may find it easier to see through some of the EU's windows than others. A parallel dynamic occurs in the information relations between the EU's various institutions. Setting out from the institutionalist notion that 'information is power' (Hall & Taylor, 1996, p. 18), EU institutions are expected to develop information strategies in order to increase their influence on policy processes. Information struggles are likely to be most acute in the relations between institutions acting as accountability forums and those performing executive tasks (Abazi & Adriaensen, 2017, in this issue). Traditionally, the FAC makes up such an executive institution. As the Council's formation charged with foreign policy, it stands at the centre of strategic non-legislative decision making representing member states' common interests (Puetter, 2014). Its increasing engagement in the area of trade policy moreover has made the FAC's extensive reliance on secrecy a growing source of contestation (Leino, 2017). This ambiguous position of the FAC reflects in the first place on its transparency policy, but extends to the institutional environment within which it operates. While the transparency literature has explained the development of the policy public of access to Council documents with a considerable degree of detail (e.g. Bjurulf & Elgström, 2004; Hillebrandt et al., 2014), the role that this policy played in institutional politics, particularly that of the Parliament, has remained underexposed.

Following an institutionalist perspective, this article sets out from the assumption that developing FAC transparency is perceived as a potential opportunity by the EU's primary political accountability forum, the Parliament, while being perceived as a risk by those institutions forming part of the executive branch, namely the European Commission (hereafter: Commission) and the European External Action Service (EEAS). As a result, the policy not only serves the public but also affects institutional dynamics. The central question in this article is how institutions use their involvement in matters of Council, more precisely FAC transparency policy for purposes of advancing or protecting their own information position. To this end, it is important to first outline the manner in which Council transparency policy functions, and what potential opportunities it affords as a springboard for institutional ambitions.

EU transparency has emerged as a distinct policy with a range of instruments, with public access to documents at its centre (Hillebrandt et al., 2014). An overarching

legal framework makes each institution—including the Council and, by default, its formation of the FAC—[1] responsible for the disclosure of documents that it holds. Transparency as a policy is constituted by its rules and practices. Access to EU documents is governed by a central legislative act, Regulation 1049/2001, which is specified and complemented by a number of lower-level rules. The totality of rules stipulates under what conditions and in what form the public gets access to FAC decision-making information (e.g., where and how documents are to be requested, how disclosure decisions can be appealed, etc.). These rules are subsequently implemented in practice.

Like other policies, transparency is not only constitutive, but also reflexive. The dynamics of rule-making and implementation may lead the FAC to develop coping strategies to maintain control over its information flows. When such coping strategies solidify into routines, these become informal norms regarding transparency (Helmke & Levitsky, 2004). Where rules exist, sooner or later actors will contest their interpretation before a court. In the case of the FAC, 16 cases were brought between 1994 and March 2017.[2] Relative to other Council policy areas, this number is very high, making up around 50 per cent of *all* cases to which the Council was a party (Hillebrandt, 2017, pp. 215–216, 219–220). While the influence of adjudication must ultimately be deduced from the specific content of the cases, these numbers do provide a first indication of the centrality of rule interpretation in the FAC (Derlén & Lindholm, 2014).

The various components of FAC transparency policy are shaped in three contexts of structured interaction, which are here referred to as 'arenas'. Each of these arenas presents institutional actors with a distinct set of opportunities and constraints for the advancement of their information position. A closer understanding of the decision-making dynamics in FAC transparency is therefore required to uncover the opportunity structure of institutional actors at particular points in time, and identify the motives guiding their actions in these episodes. Depending on the dynamics of the arena, transparency policy may offer institutions seeking more institutional FAC information a lever, a bargaining chip, or an alternative to existing institutional information structures, while institutions seeking to limit such information sharing may use it as either a brake or an obstacle requiring circumvention. Finally, arenas may also offer no platform for institutional politics at all.

The first arena is that of contestation *internal* to the FAC. In this arena, member states with opposing views on transparency confront each other over the adoption and implementation of internal transparency rules (e.g. Galloway, 2014). Member states have the final say in political decisions, however the Council secretariat staff, particularly when more senior, are able to press their mark on the decision-making process (Christiansen & Vanhoonacker, 2008). The implementation of the transparency rules remains entirely within the hands of Council officials and the secretariat staff (Bauer, 2004), who may end up aligning transparency rules with their working routines through informal norms (Novak, 2013). In short, the management of the internal administration remains a firm FAC prerogative, leading to the expectation that internal actors will seek to reduce institutional encroachment by treating transparency policy as a brake or alternatively, by circumventing the rules to limit the access of outsiders, including other institutions. At the same time, the rules are capable of creating rights for outsiders, a fact that extends to individuals from other EU institutions, who are enabled by the rules to request access to documents like any other EU citizen (Rossi & Vinagre e Silva, 2017, p. 45). As such, the transparency rules could come to form an alternative to institutional information channels in a policy area like foreign affairs, where such channels are limited.

In the second arena, the (Foreign Affairs) Council operates as a unitary actor facing *external* political contestation. Such contestation may take different forms. In legislative decision making, the Council shares rule-making powers with the Parliament, with the Commission holding the right of initiative. The adoption of Regulation 1049/2001 can thus be said to reflect a compromise between Council and Parliament positions that was accepted by the Commission (Bjurulf & Elgström, 2004). Inter-institutional manoeuvring of the Parliament is also described in terms of its pursuit of extended powers (Buitenweg, 2016; Rosén & Stie, 2017, this issue). The Parliament's legislative positioning on transparency might then be viewed as a means of expanding access to Council information, a search for negotiating collateral regarding (wider) parliamentary oversight arrangements, or a way of exercising public pressure on the FAC (Crisp, 2014; Rosén, 2015), turning transparency into respectively an instrument of inter-institutional policy, a bargaining chip, or a lever. Not only the Parliament seeks to influence the FAC's transparency policy; the Commission and the EEAS may in their turn be concerned that information (non-)disclosure by the FAC undermines their exercise of executive functions (Reichard, 2013, p. 328).

The third, *judicial* arena covers a type of contestation that is qualitatively different from the first two arenas. Here, contestation is structured along juridical lines. This means that it casts the (Foreign Affairs) Council against a litigant in front of the Court of Justice, in a legal conflict over the interpretation of formal transparency rules that spills over from the first or second arena. At an early stage, the legal avenue of adjudication was found to be available to applicants in spite of the

[1] Particular characteristics of transparency policy are generalisable to other EU institutions. Inside of the Council, the FAC forms only one out of several policy formations. However, as the focus in this article lies on FAC transparency, hereafter reference is made exclusively to the FAC unless further specification is required.

[2] Namely, 14 actions against Council decisions to refuse access, and 2 actions contesting the legality of an adopted legal act. March 2017 marks the time of this article's submission.

fact that the Treaty on European Union (TEU) explicitly excluded jurisdiction for the Court of Justice in Common Foreign and Security Policy (CFSP) matters (TEU, article 24(1), second indent). Other EU institutions may intervene in transparency cases to advocate their own interpretations of the rules in case, or bring an action contesting the legality of an act. Member states have the same prerogatives, meaning that conflicts in the judicial arena can also emerge from purely 'internal' FAC conflict, and 'mixed coalitions' (Hillebrandt et al., 2014, p. 12). The Court has a pertinent role in shaping the interpretation of the rules governing access to FAC documents given the large number of cases brought for adjudication,[3] its structuring capacity, and the finality of its rulings (Rossi & Vinagre e Silva, 2017). Needless to say, court judgments can lead to interpretations of the transparency rules that either enhance or limit other institutions' information position.

The three arenas provide an analytically rigorous overview of the manner in which change in the FAC's transparency policy enables or constrains institutional information politics (Table 1). In reality, policy dynamics are of course far less orderly and structured. Conflicts between institutions may be played out at various times in different arenas, or even in multiple arenas at the same time. Therefore, though analytically distinct, developments in each arena cannot be seen separately from the others. For example, when the FAC adopts internal rules, it must stay within the parameters of inter-institutionally agreed legislation, while its implementation of the rules may provoke court action. Similarly, contestation by external actors or court adjudication may cause the FAC to revise its internal rules or develop additional informal coping norms. As a consequence, FAC transparency and institutional information politics are closely interlinked. The following section traces the manner in which the three arenas of FAC transparency policy enabled or constrained other institutions' ambitions regarding their information position.[4]

3. FAC Transparency Policy: Development in the Three Arenas

A (Foreign Affairs) Council transparency policy[5] began to develop from 1993. It was shaped in different arenas of policy making, shaping transparency both constitutively and reflexively. This section offers an analytical description of the manner in which institutional actors were able to advance their information ambitions through their involvement in FAC transparency.

3.1. The Internal Arena: From Rupture to Closure

The attitude of the FAC towards transparency has traditionally been marked by 'exceptionalism' (respondent #13, interview September 12, 2014). From the beginning and throughout, the Council's transparency rules have included the protection of 'international relations' as a mandatory exception (Council, 1993, article 4(1), first indent; subsequently, European Parliament and Council, 2001, article 4(1), third indent). In practice, the FAC relies on this exception very frequently, resulting in an access refusal rate that far exceeds the Council average (Hillebrandt, 2017). The internal rules and their implementation soon cast member states against each other. Four member states (Denmark, Finland, the Netherlands and Sweden) frequently opposed what they considered to be a too narrow application of the transparency rules (Hillebrandt et al., 2014).

In 2000, the Council's new Secretary-General and High Representative for the CFSP Solana oversaw a major reform of the transparency rules. It was underpinned by an emerging awareness of the need for a strong security of information policy of which Solana was a strong proponent (respondent #17, interview November 11, 2014). As space precludes a detailed discussion of all changes, only the most important are mentioned here.[6] Importantly, the reformed rules placed CFSP and Common Security and Defence Policy (CSDP) documents outside of

Table 1. FAC transparency policy as a platform for institutional information politics.

Arena	*Policy component*	
	Constitutive (rules, practices)	*Reflexive (informal norms, court interpretation)*
Internal	Alternative (+), brake (−)	Circumvention (−)
External political	Alternative (+), bargaining chip (+), lever (+), brake (−)	No effect
External judicial	No effect	Alternative (+), brake (−)

[3] Over the years, a total of more than 200 transparency disputes were adjudicated by the Court of Justice, see Rossi and Vinagre e Silva (2017, p. 1).
[4] The empirical analysis is based on 20 expert interviews, a review of policy documents, EU rules and EU court judgments as well as quantitative datasets of administrative appeals in access to document requests (N = 348) and documents placed on the online register compiled by the author. Details concerning the interviews are provided at the end of the article.
[5] See footnote 1.
[6] See however Reichard (2013).

the scope of the transparency rules (Council Secretary-General, 2000),[7] and introduced the so-called 'orcon' principle, according to which classified documents supplied by third parties could not be disclosed without the originator's consent (Council Secretary-General, 2000, articles 2(1)(a), 3(1) and 4). Solana was supported in his efforts by the incumbent French Council presidency. Sweden, which held the next presidency, oversaw the reversal of the outright exclusion of CFSP/CSDP documents, but retained the 'orcon' principle in new internal security rules of 2001 (Council, 2001a).

After the adoption of Regulation 1049/01 (see next section), the rule framework around foreign policy 'exceptionalism' became further entrenched (respondents #15, interview September 12, 2014, and #17, interview November 11, 2014; Galloway, 2014), while internal political contestation declined. The Swedish rules of 2001 reversing the 'Solana Decision' were adopted with the requirement of only a simple majority of Council members, suggesting the emergence of a new political balance (United Kingdom Government, 2000a). The rules have thereafter remained in place with only minor (unrelated) adjustments (Council, 2011, 2013). The Decision of 2001 further foresaw in the establishment of a security committee and security office, both of which were in place by the end of the year (Council, 2001b, annex, part II, section 1). The progressive expansion of the security regime occurred largely outside of the member states' involvement, being instead overseen by top officials from Solana's cabinet (respondent #17, interview November 11, 2014).

Once by 2001 the 'exceptionalist consensus' in the FAC had been secured in the transparency rules, the incidence of member state dissent in access refusals plummeted. The (internal) depoliticisation of the transparency question went accompanied by a 'transparency ceiling'. As the numbers of FAC documents placed on the public register increased over time, the share of these that were *directly accessible* actually declined by over 10 percentage points between 2002 and 2014. A likely even larger number of documents is today not cited on the register, making it practically impossible for outsiders to know of their existence (Council, 2008, p. 1; Hillebrandt, 2017; respondents #10, interview September 10, 2014, and #18, interview December 9, 2014). The circulation of unnumbered and unregistered documents appears to be particularly prevalent in the area of trade policy (respondent #12, interview September 11, 2014).

3.2. The External Arena: Ever-Louder Knocking on the Door

In terms of institutional interference in the FAC's transparency policy, the Parliament largely set the tone. The Parliament's institutional information rights as laid down in the Treaties were initially rather limited (Reichard, 2013, p. 327), a situation that it was keen to change (Maurer et al., 2005; EP plenary, September 5, 2000, as cited in Rosén, 2015, pp. 389, 391). On several occasions, individual MEPs relied on public access to documents rules to bring attention to the FAC's secrecy or to provoke adjudication. In doing so, they were aided by their institutional platform. For example, MEP Hautala was only able to request access to a CFSP document because she had first learned about its existence from the Council's answers to her parliamentary question. The document in question had been discussed in an informal body and distributed via the closed-circuit diplomatic Coreu network (European Parliament, 1997, p. 48; respondent #18, interview December 9, 2014).

At the end of 2000 and beginning of 2001, the Parliament coupled its influence in the negotiations on the access to documents law foreseen by Article 255 of the Treaty Establishing the European Community (TEC) (Amsterdam version) to the parliamentary access question (Rosén, 2015, p. 389). It considered ongoing negotiations on an inter-institutional agreement (IIA) regarding parliamentary access to sensitive documents to progress insufficiently. Faced with a closed-rank Council majority, the Parliament's protest against the 'Solana Decision' remained ineffective (respondent #17, interview November 11, 2014; also Reichard, 2013, p. 331; United Kingdom Government, 2000b). Sustained pressure, however, eventually began to work (see next section). While the 'Solana Decision' was initially deemed to form the basis of the new Regulation on public access, only months later this position was revised (United Kingdom Government, 2000a, 2000b).

The Parliament's involvement as a co-legislator clearly strengthened its negotiating position, as it forced the Council to accept a 'grand bargain' that included, next to a compromise on Regulation 1049/01 regarding public access to documents, the prospect of parliamentary access to classified information in the short term (Bjurulf & Elgström, 2004; Reichard, 2013, p. 340; respondents #5, interview June 24, 2014, #8, interview September 4, 2014, and #18, interview December 9, 2014). The conclusion of an IIA on access to classified CSDP information eventually led the Parliament to tone down its advocacy of greater transparency, as its previous misgivings were now largely addressed (European Parliament and Council, 2002; Rosén, 2015, pp. 392–394; respondents #6, interview July 11, 2014, #11, interview September 11, 2014, and #13, interview September 12, 2014). A string of parliamentary access to CFSP information agreements subsequently ensued (European Parliament, 2010; European Parliament and Council, 2006; and most recently European Parliament and Council, 2014).

In recent years, the basic paradigm of 'exceptionalism' became again challenged where the Council initiates negotiations for international agreements. This is not in the last place due to the Parliament's growing Treaty

[7] Earlier rules on classified information laid down in Council Decision 24/95 kept classified documents within the scope of access to documents. See Council (1995), article 2.

powers in this area (respondents #6, interview July 11, 2014, #11, interview September 11, 2014, and #13, interview September 12, 2014). A new provision under the Treaty on the Functioning of the European Union (TFEU) article 218(6) now grants it the right of either consent or consultation in all international agreements except for those falling exclusively within the CFSP. Furthermore, in all international agreements, whether non-CFSP or CFSP, a revised provision entails that the Parliament 'shall be immediately and fully information *at all stages of the procedure*' (TFEU article 218(10), addition relative to the original Amsterdam TEC article 300(2) italicised). It soon transpired that the Parliament did not hesitate to vote down agreements when it was dissatisfied with either the negotiating outcome or process (respondents #11, interview September 11, 2014, #13, interview September 12, 2014).[8] This change in the institutional balance (along with widespread public protest) also proved capable of moving the Commission's generally reluctant position on transparency on at least one important occasion. In June 2013, the FAC debated the possibility of publishing the Transatlantic Trade and Investment Partnership (TTIP) negotiating mandate (a Council document). Eventually it maintained the document's classification level at 'restreint' (respondents #3, interview June 3, 2014, and #17, interview November 11, 2014). However, after a group of over 250 NGOs in May 2014 submitted a petition calling on the EU to increase transparency of the TTIP process, the Commission joined the chorus of critics (Abazi & Adriaensen, 2017, in this issue). In October 2014 the Council gave in and disclosed the document (Crisp, 2014; Quintanilla, 2014).

Other executive bodies have aligned with the FAC's 'exceptionalist consensus'. For example High Representative (HR) Ashton, who in December 2009 was appointed as an independent actor at the head of the EEAS, prioritised the protection of member state and third party intelligence, although with certain institutional innovations (respondents #4, interview June 4, 2014, and #17, interview November 11, 2014). For senior CFSP meetings in the Council, a routine was developed by which the Council Secretariat submitted a very summary draft agenda, while the EEAS in parallel submitted an annotated agenda directly to the member states, preventing outsiders from having references to the document's underlying agenda items (respondent #12, interview, September 11, 2014). The EEAS has also championed regular informal contact with individual member states to limit information flows (respondents #10 interview September 10, 2014, #12, interview September 11, 2014). Ashton largely followed the line of her predecessor in this regard. For example, Solana personally committed to a revision of the transparency rules towards NATO before the FAC had taken a decision on the matter (Reichard, 2005, p. 333). The introduction of the 'orcon' principle paved the way for an eventual EU-NATO intelligence agreement (EUR-Lex, 2003). In the years thereafter, the Council adopted similar agreements with over 20 other third parties, including Ukraine, Turkey, and the UN (Council Secretariat, 2007; Galloway, 2014, p. 678). The resultant rise of orcon-protected documents has vastly increased the power of these parties over FAC transparency.[9] In spite of constitutional guarantees protecting the principle of transparency (EUR-Lex, 2011, Article 4(2)), powerful intelligence partners such as the United States exercise a *de facto* veto over disclosures concerning documents to which it was a party (respondent #1, interview April 17, 2014; also respondent #6, interview July 11, 2014).

3.3. The Judicial Arena: Many Public Interests

In a relatively high number of cases, disputes over FAC transparency, not in the last place concerning political differences, ended up in the judicial arena. This is to an important part due to the strongly legal orientation of EU transparency, which affords wide opportunities for external parties to litigate (Rossi & Vinagre e Silva, 2017).

The judicial arena stands out as the arena in which the FAC has the weakest position. In contrast to the other arenas where it enjoys respectively policy autonomy or blocking power, in the judicial arena, the Court of Justice has the final word. This observation is not as self-evident as it may seem. The Council initially took the position that the jurisdictional exclusion of the Court in CFSP matters also applied to the question of access to documents in this area (TEU, Maastricht version, article L; later TEU, Amsterdam version, article 46). When MEP Hautala in 1998 brought a case before the Court of First Instance (CFI)[10] to seek annulment of the Council's access refusal (see previous section), the question of jurisdiction became a point of law for the Court itself to answer (*Hautala v. Council*, 1999, upheld upon appeal in *Council v. Hautala*, 2001). As many as six out of fifteen member states intervened,[11] revealing a deep rift on this matter within the FAC itself (Swedish Government, 1998). The Court affirmed its jurisdiction and struck down the Council refusal decision on grounds of proportionality. At the same time, it established that it should not go beyond a limited review that largely agreed with the Council's 'exceptionalist consensus' (*Hautala v. Council*, 1999, para. 72; also Heliskoski & Leino, 2006, pp. 761–765). Consequently, after the Hautala case no member state considered it necessary to intervene in an FAC-related transparency case.

The Court's ruling in the Hautala case set the tone for a string of remarkably restrained judgments on FAC transparency. In *Kuijer I v. Council* (2000), concerning

[8] As was the case, inter alia, in 2010 with the SWIFT/TFTP and in 2012 with the ACTA.

[9] A rough estimate on the basis of Bunyan (2014, pp. 3–4) suggests that the proportion of third-state documents classified restreint might be as high as 80 per cent or more.

[10] The CFI was later renamed General Court by the Lisbon Treaty.

[11] Namely France and Spain in support of the Council and Denmark, Finland, Sweden and the United Kingdom in support of Hautala.

a CFSP report on asylum policy, *WWF EPP v. Council* (2007), concerning documents about WTO negotiations, and *Besselink v. Council* (2013), related to a draft mandate for negotiations on EU accession to the European Convention for the Protection of Human Rights, the Court systematically reaffirmed its 'hands-off' approach towards the Council's application of mandatory exception grounds of the access regulation resulting in a limited, strictly procedural review as established in *Hautala*. Particularly relevant is the Sison case (*Sison v. Council*, 2005, and appeal, *Sison v. Council*, 2007; see also Abazi & Hillebrandt, 2015, p. 835; Heliskoski & Leino, 2006, p. 753), in which the Court arguably went beyond the CFSP's original 'exceptionalist consensus' in protecting FAC confidentiality, by finding that the Council was justified in providing only a very brief explanation of this refusal (*Sison v. Council*, 2007, para. 82). This raised questions about the Court's permissive attitude towards the Council's seemingly arbitrary application of the international relations exception (Heliskoski & Leino, 2006, p. 756).

Although the Court played a modest role in demarcating the interpretative room for the Council's transparency rules, external actors within the EU institutional system saw chances to use litigation as a pressure instrument. The negotiations around Regulation 1049/01 and the IIA on parliamentary access to CSDP documents cannot be fully understood without this pressure. Soon after the adoption of the 'Solana Decision' in 2000, both member states and the Parliament began proceedings against this Decision (respectively *Netherlands v. Council*, case dropped, with interventions by Finland and Sweden, and *European Parliament v. Council*, case dropped). Both cases were clearly instigated with the primary objective of creating leverage over the Council in subsequent negotiations. This is evidenced by internal doubts about the cases' viability, and the fact that the cases were withdrawn once the desired result was in sight (respondent #6; Rosén, 2015, p. 391). In the case of the Parliament, the focus was foremost on its institutional access and only indirectly on the transparency policy as such. This explains why it initiated new proceedings over the transparency rules *after* Regulation 1049/01 was adopted, only to drop the case after an IIA was concluded (European Parliament, 2001, point 6; Rosén, 2015, p. 393).

In recent years, the Court has proven to be more receptive to parliamentary pressure on the FAC. This is epitomised by the In 't Veld case law which gave way to a rather transparency-friendly doctrinal development (*In 't Veld v. Council*, 2012, and appeal, *Council v. In 't Veld*, 2014, described in section 1 above). The Court's review of the Council's refusal to grant access in this case revealed a more transparency-friendly attitude than in earlier foreign policy-related cases against the Council. This change in position is likely to have been influenced by the Court's growing support for strengthening the Parliament's right of institutional access, as evidenced in a judgment related to another CFSP-related international agreement handed down shortly before.[12] The Court still followed the review criteria set out in *Hautala*, but interpreted them more strictly than it had done up until then, insisting that the harm which would be caused by disclosure must be 'reasonably foreseeable and not purely hypothetical', and that to this end, such foreseeable harm must be set out in a sufficiently concrete manner. This new interpretation strengthened Court review of the international relations exception in all but name (Abazi & Hillebrandt, 2015, p. 839). Departing from its lenient position in *Sison* (2007), the Court insisted that in spite of the Council's wide discretion to determine harm to the protected interest, it 'remained obliged' to explain the risk of harm in sufficient detail (Abazi & Hillebrandt, 2015, p. 837).

4. Institutional Information: (How) Does Transparency Make a Difference?

The empirical account of the other EU institutions' relation to the FAC's three policy arenas reveals that transparency forms an important platform upon which institutional information politics is played out. Particularly the Parliament actively engaged in the FAC's transparency policy in response to new executive structures, while the policy offered the Court a growing role as arbiter of institutional interactions. Against this stood increasingly unsuccessful attempts by the Council, the EEAS and the Commission to resist the expansion of information sharing both with the Parliament and with the public at large. Through its engagement with the FAC's transparency policy, the Parliament thus managed to expand its information base. Expanded institutional information however did not necessarily promote further transparency: both the 'orcon' principle and IIAs conspired against public access, in favour of closed-door parliamentary access.

4.1. New Executive Structures and a Growing Role for the Parliament

Transparency policy in the FAC has been to a large extent structured by the post-Maastricht policy terrain of the CFSP, and it was in this context that the Parliament eventually began to use transparency policy as a platform for expanding its information base. In doing so, it was confronted with the Council's CFSP institutional architecture which was designed to 'brake' the influence of transparency in this area. As the FAC turned into an intelligence actor, third parties (e.g. NATO, the United States) became stakeholders in the discussion in their capacity of intelligence-sharer. The FAC had an interest in offering strong guarantees of non-disclosure where these parties' or member states' intelligence was concerned, and consequently leaned strongly towards secrecy in this matter, to the point where this acute awareness turned into transparency circumvention. The other executive actors

[12] The case *European Parliament v. Council* ('*Mauritius*'), was delivered on June 24, 2014, 9 days before *Council v. In 't Veld* (2014).

(EEAS, Commission) followed this line. In this regard, the change, in 2009, of the HR from a Council insider to an outsider was far from a hard transition.

Nevertheless, initially the FAC was internally divided about the consequences of the 'exceptionalist consensus' for transparency, which was most acutely visible in the 'policy battle' over the reform of the classification rules in 2000. By connecting the issue of transparency with that of parliamentary oversight, the Parliament managed to use this conflict to its institutional benefit, stepping up its demand for greater information and oversight rights in the CFSP when this area began to expand in the early 2000s. In doing so, it used its opposition against the classification rules and elements from the transparency act for political leverage and bargaining chips. Interestingly, the Parliament did not hesitate to initiate court cases primarily to create further leverage. Meanwhile individual MEPs resorted to the public access rules as an alternative to the underdeveloped institutional channels.

The Parliament's involvement in FAC transparency policy must thus be viewed as part of a wider struggle for the expansion of its information base, in support of its rights of oversight in the areas of CFSP and international agreements negotiations. This reading is confirmed by several actions. For example, the Parliament linked its colegislative role in the Regulation 1049/01 negotiation to the issue of special information rights in the area of the CSDP as a package deal, thereby creating synergies that the Council majority preferred to avoid. It eventually secured an IIA granting privileged access in 2002, which was expanded in subsequent agreements with the Council.

Several years later, as the Parliament's role in the field of international negotiations was strengthened by the Lisbon Treaty, it again sought a revision of the 'exceptionalist consensus'. The Parliament's willingness to play institutional 'high game' was underlined by its decision to vote down two international agreements and by In 't Veld's transparency litigation in relation to one of these. This strategy, carried by the public controversy of the proposed agreements and extended into the judicial arena (see next section) now created political leverage over the Commission, which led the international negotiations on behalf of the EU. Aware of the increasing shadow cast by the Parliament as a channel of public discontent and the risk emanating from perceived secrecy, the Commission shifted its position on transparency in the TTIP negotiations, stepping up its own disclosure and calling upon the FAC to do the same (Coremans, 2017, in this issue). Thus, the Parliament successfully fomented its role in institutional politics by coupling the issues of transparency and institutional information politics.

While the Parliament's involvement in FAC transparency strengthened its hand in terms of its access to FAC information, this did not necessarily lead to an improvement in terms of transparency. After a settlement was reached in 2002 that brought classified documents formally under the access rules and created parliamentary rights of access to classified CFSP information, the Parliament removed its pressure, suggesting that expanded (privileged) information had been the Parliament's main concern from the start. In the years thereafter, no noticeable improvement could be observed in the disclosure of FAC documents or the registration of 'orcon' or otherwise classified documents, in spite of both practices being the norm under the transparency rules (Hillebrandt, 2017, pp. 193, 229–230). The Parliament's newly gained access thus formed a compromise solution that had minimal impact on FAC transparency policy itself.

4.2. The Court of Justice as Arbiter of Institutional Interactions

The role of the Court in institutional politics is more complex to gauge. As it is unable to determine either the timing, the volume or the nature of disputes, its role remains largely passive. This passive role was most extremely apparent where actors used the judicial arena in order to create leverage in their negotiations with the Council, even without the Court's interference. This occurred in actions brought by the Netherlands (supported by Finland and Sweden) in 2000 and the Parliament in 2000 and 2001. These actions were initiated for strategic reasons, likely without the intention of being seen through (and subsequently withdrawn), instrumentalising the judicial arena of FAC transparency policy beyond what was theoretically expected.

In the majority of cases however litigation led to a judgment, giving the Court the opportunity to intervene as a 'gatekeeper' of the interpretation of the transparency rules pertaining to the FAC.[13] As an alternative to institutional information channels, transparency court actions were highly successful. Both litigating MEPs were given wider access through the courts' interventions (though with a delay of years), a considerably higher rate than that of 'ordinary' applicants.[14] Against this stood the Council's efforts at 'braking' these outsiders' access, which were increasingly unsuccessful.

Although the judicial arena thus accorded external actors relatively good chances for challenging FAC secrecy, this does not in itself indicate the Court's influence as an institution.[15] Indeed, it generally followed a rather restrictive procedural interpretation of its role, on the ground that the Council acting as an executive body should be allowed wide discretion. The Court did however exercise a significant influence on the interpretation of the FAC's transparency rules in two important areas.

[13] The Court's interventions were similar to transparency cases in other Council formations in this respect.

[14] A total of 5 out of 9 litigants were given wider access through the courts' interventions (though often with a delay of years). This represented two-thirds of all FAC transparency cases, a proportion that increases to over three-quarters when only final rulings in appeal cases are counted.

[15] This stands in contrast to the Court's influence more generally, where the Court has considerably shaped the interpretation of Regulation 1049/01, cf. Rossi and Vinagre e Silva (2017).

First, it opened the door to the reliance on transparency as an alternative channel for institutional access, by both declaring the transparency rules applicable to the CFSP, and itself competent to adjudicate on potential legal disputes in this policy area. This was an interpretation of the rules that severely undermined attempts by the Council to put a brake on any spill-over effects. Second, in *In 't Veld*, it interpreted the criteria applying to mandatory exception grounds to be stricter than had hitherto been the case, thereby setting the bar higher for future access applications. In doing so, the Court incidentally supported the Parliament's judicial pressure on the FAC to offer wider parliamentary information in international negotiation processes (as expressed in the *Mauritius* case).

The Court's involvement may be seen as contributing simultaneously to the advancement of transparency and of parliamentary oversight, particularly as regards international agreements. By restricting the Council's ability to withhold information from the public, both the public debate and the parliamentary control required for a functioning democracy are enhanced. At the same time, it remains to be seen how the Court's rulings in this regard will play out. For the moment, it appears that particularly the Parliament has strengthened its (privileged) information position under article 218(10) by demonstrating its leverage as a blocking power.

5. Conclusion

The FAC has since long practiced a policy of transparency, which is generally regarded as a means to improve its relation with the general public. Less attention has been devoted to the policy's role in institutional politics. This article has sought to address this gap, by highlighting the ways in which institutional actors have engaged with FAC transparency in order to advance their ambitions regarding institutional information. It finds ample evidence in support of the view that institutional information politics was repeatedly played out in the FAC's transparency policy. A particularly large role in this regard is reserved for the Parliament, the Court, and strategic partners in intelligence exchange.

The role of FAC transparency as a platform of institutional politics is notable at various levels cross-cutting the three arenas. Whereas the Council initially sought to restrict outsiders' access to its foreign policy-related information through internal rules, the Parliament's co-legislative role concerning transparency made this braking strategy increasingly unsuccessful. Not only did the Parliament use the legislative process as a lever to establish minimal transparency standards for the FAC; it also used its legislative role as a bargaining chip to ensure its first rule-based access to CSDP documents within a reasonable timeframe. In terms of rule interpretation, the Court ensured the possibility of judicially enforceable FAC transparency, by finding itself competent to rule on access to CFSP documents cases and, in *In 't Veld*, interpreted the Council's duty of justification of an access refusal in a way that *de facto* increased the overall threshold for withholding information regarding international negotiations. In 't Veld MEP's decision to bring a case was directly related to the Parliament's effort to ensure better information and influence over the FAC's formulation of international negotiations policy. Yet the Parliament also did not hesitate to begin judicial proceedings merely as a way of creating leverage in ongoing negotiations.

The institutions' influence on transparency implementation is less apparent. On the whole, the FAC retained firm control over the internal process of document disclosure. While the transparency regime indeed offered MEPs an alternative route to the information that they were seeking, there is scarce evidence that the FAC sought to de-escalate individual information requests in order to avoid a court ruling on transparency. At the same time, EU institutions were generally either unable or unwilling to overturn the informal norm of shielding third-party intelligence from the transparency rules, thereby attempting to circumvent the pressures of institutional politics. On this matter, the HR, the EEAS and the Commission supported the FAC in prioritising the wishes of third parties and member state over the transparency rules, although the TTIP mandate episode reveals that support for the latter was, at least discursively, limited.

From a constitutional perspective, the findings in this article offer a mixed picture. The FAC generally interacted with the public and EU institutions on the basis of a self-identity as an executive actor engaged in the creation of both European policy and the coordination of national policies. This perception, particularly dominant in CFSP decision making, led to the reliance on a 'exceptionalist consensus': where the executive develops a foreign policy in the interest of the community, both the public and the Parliament must allow it wide discretion to operate in secrecy. Here, the Parliament used transparency policy as a platform to contest this view and to enhance its information position. As the FAC became increasingly engaged in concluding international agreements, particular in the (quasi-legislative) area of trade policy, the 'exceptionalist consensus' became more frequently challenged. There, the Parliament's insistence on more elaborate oversight and the Court's support for this position clearly relied on the FAC´s transparency policy both as an alternative to institutional information and a political means of generating visibility. The Parliament's increased involvement led to two parallel 'substitution processes': the introduction of (closed-door) parliamentary information as a substitute for transparency on the one hand, and that of information giving as a substitute for accountability on the other. Both developments are constitutionally problematic, as (closed-door) parliamentary oversight cannot replace the constitutional principles of transparency and accountability.

The findings presented in this article come with a disclaimer. While strong evidence is found of a central role for the FAC's transparency policy as a platform through which institutional information relations

are shaped, it is not fully clear to what extent the policy forms either a necessary or a sufficient condition for the developments described. Further research is therefore needed to clarify the FAC transparency policy's interaction with other factors in the wider constellation of institutional dynamics.

Acknowledgments

The author gratefully acknowledges the useful feedback received from the peer reviewers and the editors of this thematic issue.

Conflict of Interests

The author declares no conflict of interests.

References

Abazi, V. (2016). European Parliamentary oversight behind closed doors. *Cambridge Journal of Comparative and International Law*, *5*(1), 31–49.

Abazi, V., & Adriaensen, J. (2017). Allies in transparency? Parliamentary, judicial and administrative interplays in the EU's international negotiations. *Politics & Governance*, *5*(3), 75–86.

Abazi, V., & Hillebrandt, M. (2015). The legal limits to confidential negotiations: Recent case law developments in Council transparency: Access Info Europe and In 't Veld. *Common Market Law Review*, *52*(3), 825–846.

Bauer, M. (2004). Transparency in the Council. In M. Westlake & D. Galloway (Eds.), *The Council of the European Union* (pp. 367–388). London: Harper.

Besselink v. Council, Case T-331/11 (2013, September 12).

Bjurulf, B., & Elgström, O. (2004). Negotiating transparency: The role of institutions. *Journal of Common Market Studies*, *42*(2), 249–269.

Boer, M. de (1998). Steamy windows: Transparency and openness in justice and home affairs. In V. Deckmyn & I. Thomson (Eds.), *Openness and transparency in the European Union* (pp. 91–105). Maastricht: European Institute of Public Administration.

Brandsma, G. J. (2013). Bending the rules: Arrangements for sharing technical and political information between the EU institutions. *European Integration Online Papers*, *17*(8), 1–22.

Buitenweg, K. (2016). *The European Parliament's quest for representative autonomy*. (Unpublished doctoral dissertation.) University of Amsterdam, Amsterdam, the Netherlands.

Bunyan, T. (2014). Statewatch analysis: Constructing the secret EU state: 'Restricted' and 'Limite' documents hidden from view by the Council. *Statewatch*. Retrieved from http://www.statewatch.org/analyses/no-240-restricted-documents.pdf

Christiansen, T., & Vanhoonacker, S. (2008). At a critical juncture? Change and continuity in the institutional development of the council secretariat. *West European Politics*, *31*(4), 751–770.

Coremans, E. (2017). From access to documents to consumption of information: The European Commission transparency policy for the TTIP negotiations. *Politics & Governance*, *5*(3), 29–39.

Council. (1993, December 20). *Decision on public access to Council documents* (93/731/EC). Brussels: Council of the European Union.

Council. (1995, January 30). *Decision of the Secretary-General of the Council on measures for the protection of classified information applicable to the General Secretariat of the Council* (24/95). Brussels: Council of the European Union.

Council. (2001a, March 19). *Decision adopting the Council's security regulations* (264/01). Brussels: Council of the European Union.

Council. (2001b, November 29). *Decision amending the Council's rules of procedure* (840/01). Brussels: Council of the European Union.

Council. (2008, December 4). *Staff note: Reminder of the instructions on the production and distribution of documents—Rules applicable to meeting documents* (200/08). Brussels: Council of the European Union.

Council. (2011, March 31). *Decision on the security rules for protecting EU classified information* (2011/292/EU). Brussels: Council of the European Union.

Council. (2013, September 23). *Decision on the security rules for protecting EU classified information* (2013/488/EU). Brussels: Council of the European Union.

Council Secretariat. (2007). *Information note: Exchange of EU classified information (EUCI) with third countries and organisations* (7778/07). Brussels: Council of the European Union.

Council Secretariat. (2008). *Staff note: Reminder of the instructions on the production and distribution of documents—Rules applicable to meeting documents* (200/08). Brussels: Council of the European Union.

Council Secretary-General. (2000, July 27). *Decision on measures for the protection of classified information applicable to the General Secretariat of the Council*. Brussels: Council of the European Union.

Council v. Hautala, Appeal case C-353/99P (2001, December 6).

Council v. In 't Veld, Appeal case C-350/12P (2014, July 2).

Crisp, J. (2014, October 9). TTIP negotiating mandate finally declassified. *Euractiv*. Retrieved from http://www.euractiv.com/sections/trade-industry/ttip-negotiating-mandate-finally-declassified-309073

Curtin, D. (2013). Official secrets and the negotiation of international agreements: Is the EU executive unbound? *Common Market Law Review*, *50*(2), 423–458.

Derlén, M., & Lindholm, J. (2014). Goodbye van Gend en Loos, Hello Bosman? Using network analysis to mea-

sure the importance of individual CJEU judgments. *European Law Journal*, *20*(5), 667–687.

EUR-Lex. (2003, March 27). *Agreement between the European Union and the North Atlantic Treaty Organisation on the security of information*. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22003A0327(01)

EUR-Lex. (2011). *Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union*. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42011A0708(01)

European Parliament. (1997). *Written question* (P-3219/96). Brussels: European Parliament.

European Parliament. (2001, June 28). *Conference of the Presidency minutes*. Brussels: European Parliament.

European Parliament. (2010). *Annex to legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service, Declaration by the High Representative on accountability*. Brussels: European Parliament.

European Parliament and Council. (2001, May 30). *Regulation regarding public access to European Parliament, Council and Commission documents* (1049/2001/EC). Brussels: Council of the European Union.

European Parliament and Council. (2002, November 20). *Inter-institutional Agreement concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy* (OJ 2002/C298/01). Brussels: Council of the European Union.

European Parliament and Council. (2006, June 14). *Inter-institutional Agreement on budgetary discipline and sound financial management* (2006/C 139/01). Brussels: Council of the European Union.

European Parliament and Council. (2014, March 12). *Inter-institutional Agreement concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy* (2014/C 95/01). Brussels: Council of the European Union.

European Parliament v. Council, Case C-387-00 (case dropped).

European Parliament v. Council, Case number unknown (case dropped).

European Parliament v. Council, Case C-658/11 (2014, June 24).

Galloway, D. (2014). Classifying secrets in the EU. *Journal of Common Market Studies*, *52*(3), 668–683.

Hall, P. A., & Taylor, R. C. R. (1996). *Political science and the three new institutionalisms*. Paper presented at the MPIFG Scientific Board's meeting.

Hautala v. Council, Case T-14/98 (1999, July 19).

Heliskoski, J., & Leino, P. (2006). Darkness at the break of noon: The case law on regulation no. 1049/2001 on access to documents. *Common Market Law Review*, *43*(3), 735–781.

Helmke, G., & Levitsky, S. (2004). Informal institutions and comparative politics: A research agenda. *Perspectives on Politics*, *2*(4), 725–740.

Hillebrandt, M. (2017). *Living transparency. The development of access to documents in the Council of the EU and its democratic implications*. (Unpublished doctoral dissertation.) University of Amsterdam, Amsterdam, the Netherlands.

Hillebrandt, M. Z., Curtin, D., & Meijer, A. (2014). Transparency in the EU Council of Ministers: An institutional analysis. *European Law Journal*, *20*(1), 1–20.

In 't Veld v. Council, Case T-529/09 (2012, April 25).

Kuijer v. Council, Case T-188/98 (2000, April 6).

Leino, P. (2017). The principle of transparency in EU External Relations Law—Does diplomatic secrecy stand a chance of surviving the age of twitter? In M. Cremona (Ed.), *Structural principles in EU external relations law*. London: Hart.

Maiani, F., Pasquier, J. P., & Villeneuve, M. (2011). *'Less is more'? The Commission proposal on access to documents and the proper limits of transparency* (Working Paper). Lausanne: IDHEAP.

Maurer, A., Kietz, D., & Völkel, C. (2005). Interinstitutional agreements in the CFSP: Parliamentarisation through the backdoor? *European Foreign Affairs Review*, *10*(2), 175–95.

Netherlands v. Council, Case C-369/00 (case dropped).

Novak, S. (2013). The silence of ministers: Consensus and blame avoidance in the Council of the European Union. *Journal of Common Market Studies*, *51*(6), 1091–1107.

Puetter, U. (2014). *The European Council and the Council. New intergovernmentalism and institutional change*. Oxford: OUP.

Quintanilla, P. B. (2014, May 26). Civil society calls for full transparency about EU–US trade negotiations. *Access Info Europe*. Retrieved from http://www.access-info.org/eut/12547

Reichard, M. (2013). *The EU–NATO relationship: A legal and political perspective*. Aldershot: Ashgate.

Rosén, G. (2015). EU confidential: The European Parliament's involvement in EU security and defence policy. *Journal of Common Market Studies*, *5*(2), 383–398.

Rosén, G., & Stie, E. (2017). Not worth the net worth? The democratic dilemmas of privileged access to information. *Politics & Governance*, *5*(3), 51–61.

Rossi, L., & Vinagre e Silva, P. (2017). *Public access to documents in the EU*. Oxford and Portland, OR: Hart.

Sison v. Council, Joined cases T-110/03, T-150/03 and T-405/03 (2005, April 26).

Sison v. Council, Appeal case C-266/05P (2007, February 1).

Swedish Government. (1998, September 14). *Regeringskansliet, Utrikesdepartmentet, Interventionsinlaga i Mål T-14/98, Heidi Hautala mot Rådet*.

United Kingdom Government. (2000a, August 14). *Explanatory memorandum, proposal for amendments to the 1993 Council Decision (93/731/E2) and the 1999 Decision (2000/23/E2)*.

United Kingdom Government. (2000b, November 7). *Letter to the Parliament Select Committee on EU*.

WWF EPP v. Council, Case T-264/04 (2007, April 25).

About the Author

Maarten Hillebrandt is a postdoctoral researcher at the University of Bielefeld, Germany, where he participates in an ORA-funded international comparative project on Quantification, Administrative Capacity and Democracy. His research interests include the procedural regulation of public authorities, the Council of the EU, and EU democracy. Dr. Hillebrandt has previously published on the subject of (EU) transparency in various journals including the *European Law Journal*, the *International Review of Administrative Sciences* and the *Journal of European Integration*.

Annex

Interviews

Interview number	*Role interviewee*	*Date interview*
1.	Member of the European Parliament	17 April 2014
2.	Member, Brussels-based NGO	14 May 2014
3.	Staff member, Council Secretariat	3 June 2014
4.	Academic, specialist CFSP	4 June 2014
5.	Former senior member state representative, Brussels delegation	24 June 2014
6.	Staff member, national ministry of foreign affairs	11 July 2014
7.	Former member state representative, Brussels delegation	8 September 2014
8.	Former member state representative, Brussels delegation	4 September 2014
9.	Member state representative, Brussels delegation	10 September 2014
10.	Staff member, EEAS	10 September 2014
11.	Senior staff member, European Parliament Secretariat	11 September 2014
12.	Staff member, Council Secretariat	11 September 2014
13.	Senior staff member, Council Secretariat	12 September 2014
14.	Member state representative, Brussels delegation	12 September 2014
15.	Staff member, Council Secretariat	12 September 2014
16.	Senior staff member, Council Secretariat	12 September 2014
17.	Former staff member, HR's cabinet	11 November 2014
18.	Member of the European Parliament	9 December 2014
19.	Staff member, Council Secretariat	12 September 2014
20.	Member state representative, Brussels delegation	11 November 2014