

Making EU decisions more visible to the public: how transparency in the Council has developed since 2001

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A common criticism of the EU's legislative process is that decisions are often made behind closed doors, particularly when government ministers negotiate agreements in the Council of the European Union. [Jørgen Bølstad](#) and [James P Cross](#) present findings from a study on how transparency in the Council has developed since 2001, when formal rules were agreed to regulate the release of legislative records to the public. They note that while the transparency of Council decisions has clearly increased during this period, there is still ample room for improvement.



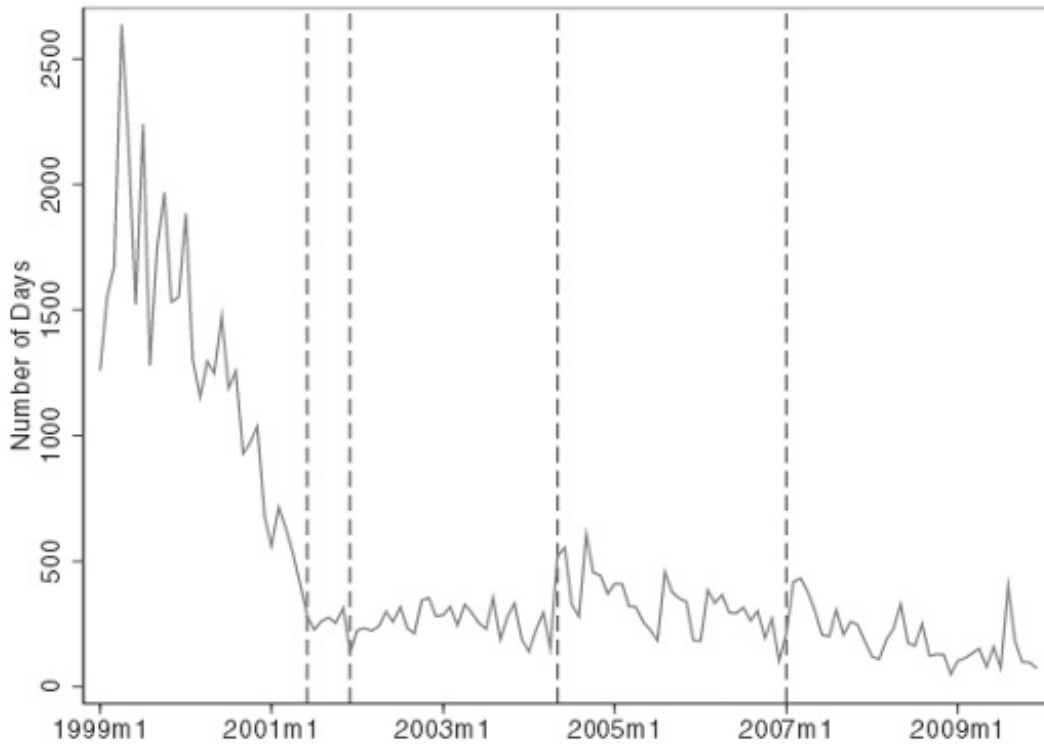
Questions relating to transparency and censorship in the legislative process of the European Union have been a central concern for EU legislators over the last few decades. Legislative transparency is attractive to policy practitioners, civil society, and the general public, as it is intimately connected with the opportunity to hold decision-makers to account for their negotiation behaviour and resulting decisions. However, existing research also suggests that transparency can make compromise decisions more difficult to reach. Much of the debate surrounding transparency in the EU has thus revolved around the trade-off between granting access to legislative records in order to legitimate decisions, and censoring them to protect the decision-making process.



The efforts to increase transparency culminated in 2001, when agreement was reached on formal rules regulating how legislative records are released to the public (Regulation (EC) number 1049/2001). This piece of legislation requires that all legislative records be fully released in a time-efficient manner unless they come under one of a series of exceptions outlined in article 4 of the regulation. These exceptions relate to a multitude of issues including the protection of private and public interests, and the protection of the integrity of the decision-making process. As such they provide significant opportunities for legislators to censor legislative records thought to be of a sensitive nature.

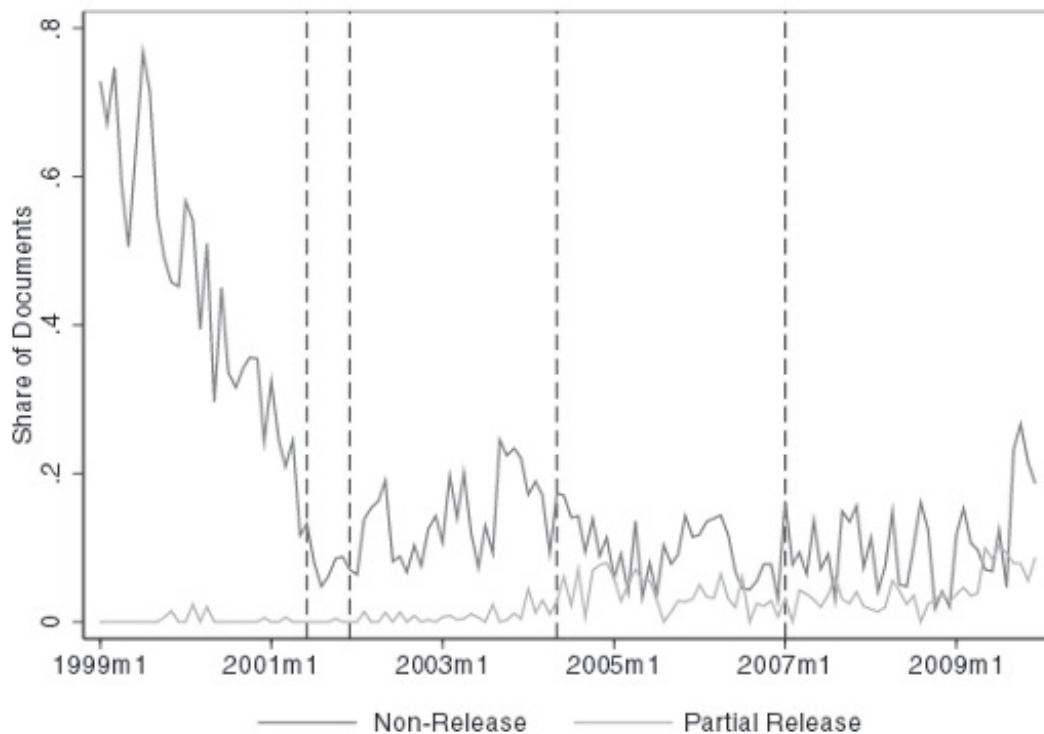
In a [recent study](#), we focus specifically on the impact of this transparency policy on the Council of the European Union (Council of Ministers). Our general approach to capturing transparency and censorship in the Council proceeds by considering the manner in which records pertaining to legislative decisions are released. In particular, we consider two distinct aspects of transparency and censorship in the Council: (a) the timeliness of record release, and (b) the manner in which censorship is applied to the records of interest, if it is indeed applied. Figures 1 and 2 below plot the variation in these variables between 1999 and 2009.

Figure 1: Lag in the release of EU documents to the public over time



Note: The plotted lag represents an average for the documents produced each month. The first two vertical lines show when the 2001 regulation regarding public access to EU documents was adopted and became applicable, the third line represents the first batch of the Eastern enlargement, while the fourth line represents the second batch.

Figure 2: Degree of public access to EU documents over time



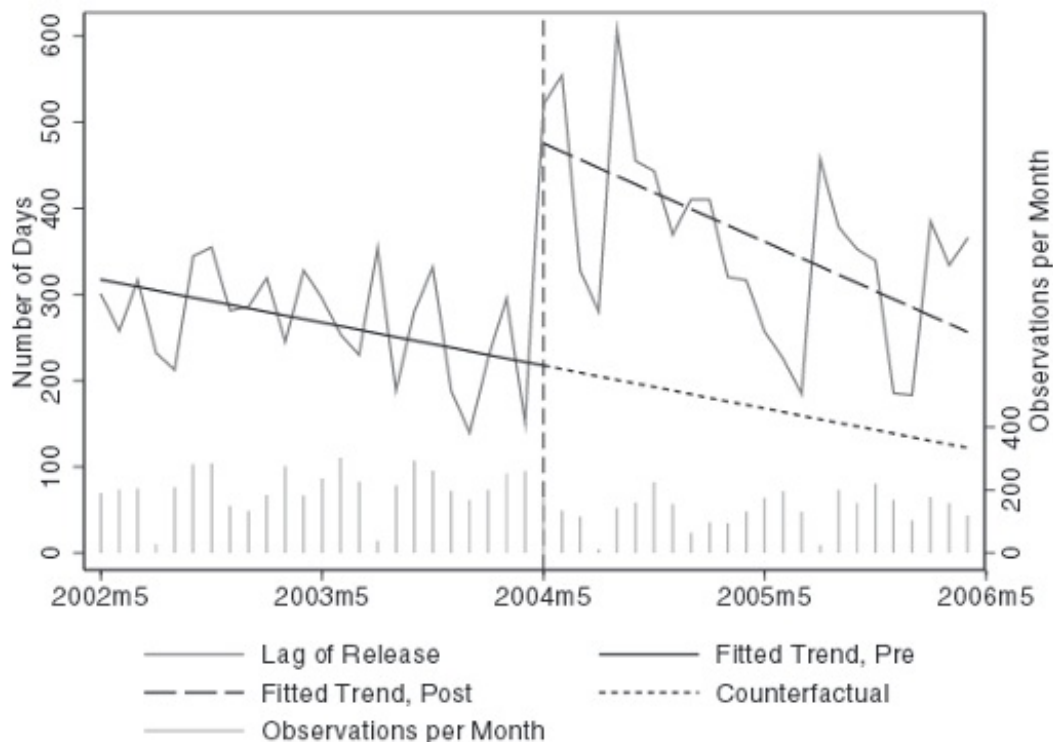
Note: The plotted lines represent the shares that each type of public release or non-release make up of the total number of documents produced each month. Documents that are neither partially released nor withheld from the public (non-release) are fully released. The vertical lines represent the same events as those in Figure 1.

A number of conclusions can be drawn from these figures. First, the introduction of regulation 2001/1049 had a major impact on the amount of information available about Council negotiations. Before its introduction, the standard approach was to avoid releasing documents relating to negotiations and for a significant delay to exist in the release of records if they were to be released, while after its introduction, most documents were eventually released to the public and the average release time was significantly reduced. Furthermore, transparency has gradually increased over the period, at least in terms of the timeliness of record release. Regulation 1049 has thus been very successful in its stated aim of increasing legislative transparency.

However, when one delves deeper into how these records are released to the public, a more mixed picture of legislative transparency emerges. Questions still arise about whether records are made available to the public in a time-efficient manner. The timing of the release of records is important, as it relates to outsiders' ability to observe negotiations before a decision has been reached. Figure 1 illustrates that although there have been significant reductions in the time taken for process-related records to enter the public database, at the end of our series there was still an average lag of 123 days, which in many cases may be enough time to reach compromise decisions.

Furthermore, despite the broader trends in decreasing censorship, two distinct structural breaks were identified in our time series, due to the enlargement rounds in 2004 and 2007. The first and most ambitious enlargement caused a significant increase in the delay of record release, as shown in Figure 3 below, and it also increased the levels of censorship applied to released records. The smaller enlargement in 2007 triggered a lesser, but still significant increase in the lag of release.

Figure 3: Impact of the 2004 enlargement on the lag of release to the public



Note: The plotted lag of release represents an average per month. The fitted lines are weighted by the number of documents contributing to each monthly average; months with few observations are given less weight and may appear as outliers.

We argue that two related mechanisms are likely to cause censorship following enlargements. The first is increased conflict due to greater preference heterogeneity, calling for censorship to facilitate the search for compromises. A sharp discontinuity in the length of legislative negotiations after the 2004 enlargement is consistent with the notion that substantive conflict increased, but our analysis offers little support for the idea that this explains the increase in censorship.

Furthermore, an increase in preference heterogeneity should have lasting effects, as preferences change slowly, while the enlargement effects appear to be short-lived. This is more consistent with our other proposed mechanism: newer member states took time to adjust to the norms of consensus in the Council, leading the Secretariat to censor records to protect the decision-making process and supply the necessary space for new member states to adapt. Overall, the evidence appears to be mostly consistent with the latter mechanism, although both may have been at work.

To conclude, our results show that while there have been important increases in transparency in the Council, further improvements are possible, which is something for legislators to keep in mind when negotiating the proposal introduced by the Commission in 2008 to reform the EU's transparency policy. The inherent trade-off between increasing transparency on the one hand and the adverse effects that these efforts can have on the negotiation process on the other should be a central concern in these negotiations.

Judgements have to be made over what the appropriate levels of transparency are, and, given differing national-level approaches to transparency in politics (compare, for instance, the rather secretive French approach to politics and the more open Scandinavian approach), these questions are sure to engender much controversy. We leave answering these questions to the policy-makers, but hope that our analysis can inform the ongoing debate by showing how legislative transparency has developed in the wake of the 2001 regulation.

For more information on this topic, see the authors' recent article in [European Union Politics](#)

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interactions within the Council of Ministers during the legislative process.

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