

Openness and secrecy in the EU institutions: lessons from the EU sugar regime

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Introduction

Any study of the European Union notes that the Council of Ministers conducts much of its business in closed rather than open session. A rhetorical flourish compares the EU with North Korea and Cuba for this aspect of the way in which it takes its decisions.

With a view to changing this, the European Constitutional Treaty of 2004 contained a provision whereby 'The Council shall meet in public when it deliberates and votes on a draft legislative act'.¹ However, rejection of the Constitutional Treaty in two referendums has postponed indefinitely the implementation of this proposal. By way of replacement, it was agreed during the UK presidency in the second half of 2005 that more Council business should be conducted in public² and discussion continues on alternative ways of making the work of the Council more transparent still.

As a contribution to this discussion, this Policy Brief considers an illustrative case, the recent revision of the European Union's sugar regime. In the latter half of 2005, the revision of the regime was the subject of intense debate within the European Parliament and the Council of Ministers. The European Parliament conducted its side of the discussion wholly in public; the Council largely in secrecy. The contrast between the two approaches is both striking and illuminating.

The EU sugar regime: background

The EU sugar regime is a central part of the Common Agricultural Policy but, unlike most other parts of the CAP, had largely avoided reform during the last two decades. It is based on a system of production quotas, import tariffs and minimum prices charged to consumers rather than on the extensive intervention or price support that applies to other arable crops. Its demands on the EU budget have hence been lower than those made by other agricultural sectors. This explains why, historically, political pressure for reform has been modest. However, by 2005 the need for change was inescapable, and the reform proposal for the regime was a major part of the agenda of the UK presidency in the second half of that year.

The sugar industry, reformed or not, is an important part of the European economy. Tens of thousands of people are employed growing and refining sugar beet, and hundreds of thousands of jobs depend on turning it into food and drink for millions of European consumers. Sugar is also important for the economies of some of the poorest countries in the world, which depend upon the EU as a valuable market for their exports of sugar cane. As a result, the sugar regime also contributes to shaping the EU's negotiating position in the WTO. The regime costs the EU some one billion euros a year.³

CONTINUED OVERLEAF

EDITOR'S NOTE

This is the twenty-eighth in a series of regular *European Policy Briefs* produced by the Federal Trust. The aim of the series is to describe and analyse major controversies in the current British debate about the European Union.

We would welcome comments on and reactions to this Policy Brief. Other Policy Briefs are available on the Federal Trust's website www.fedtrust.co.uk/policybriefs.

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Reform of the sugar regime depended in 2005 on finding a balance between different sectoral and national interests. Those member states with large and efficient sugar industries were more willing to see greater moves towards a market-based reform; those who feared the consequences of such a step demanded substantial compensation for their domestic sugar producers.

The procedure for reform of the sugar regime

From a legislative standpoint, the sugar regime is composed of a set of regulations which have accumulated over nearly 40 years. Regulations enacted as part of the Common Agricultural Policy are subject to the consultation procedure, so that the European Parliament normally first gives its opinion and the Council then subsequently takes the final decisions.⁴ The Parliament's opinion must be taken into account but has no binding force.⁵

In the case of the sugar regime, a slightly modified procedure was followed for reasons of time. As a result, the deliberations in the Parliament and in the Council took place simultaneously on the basis of the same text, rather than the Council's considering a text to which the European Parliament had already proposed amendments. The fact that the same text was considered in parallel by both the EP and the Council of Ministers helps make a comparative study of the two legislative routes particularly transparent and compelling.

In the Council of Ministers

Reform of the regime started (as normally) with a proposal from the European Commission. In the case of the sugar regime, the proposal went through three drafts, each more detailed than the last, having been subject to scrutiny from national governments and detailed consultation with stakeholders. The final draft, taking the form of an actual legislative proposal, was published in June 2005.⁶

The Council of Ministers, despite its name, is not simply a meeting of government ministers. A considerable amount of the Council's work is carried out by meetings

of national civil servants, at varying degrees of seniority. In some cases, the meetings of officials can dispose of the business before the politicians even get involved: these items appear on the agenda of Council meetings as so-called 'A' points and it is estimated that they might amount to as much as 80 per cent of the work of the Council.⁷ The role of ministers in those cases is effectively to act as a rubber stamp.

In the case of sugar reform, in addition to the ministerial meetings, there were as many as three levels of official meetings involved. A working group, composed of members of the Sugar Management Committee, dealt with the technical aspects.⁸ It reported to the Special Committee on Agriculture, which in turn passed its contentious issues to a 'High Level Group' of the most senior officials from each member state.⁹

In addition to this series of collective meetings, so-called 'trilateral' meetings of officials were held, bringing together the Commission, the presidency and each member state in turn. These meetings appear to have formed opening shots in the negotiation, with each member state able to speak privately about its interests.

The ministers themselves met to discuss sugar on three occasions: in a first reading on 18 July 2005, with a presentation by the Commissioner Mariann Fischer Boel; on 26 October to exchange their national starting-points; and over four days in November to conclude the negotiations themselves.

The procedures followed during the course of this debate were broadly secret. The meetings were held in private, and the agendas and background papers were not formally published. Some of the relevant material was made available informally and on an ad hoc basis to interest groups, but there were no proper or systematic procedures for the public transmission of information.

For example, whenever an updated version of the reform proposal was prepared by the Commission, it was produced as an internal working document primarily for the benefit of Council delegations. It was given no general distribution and not made available on the Commission website. When outsiders obtained access to the revised versions, it was of course possible

to identify changes made (sometimes more than 50 of them in a single revision). But it was not clear which member state proposed each of them nor which other member states were supporters or opponents of the new text.

Amendments introduced as the negotiations continued were substantial. Comparison of the different versions of the Council text reveals that the first stage of negotiation, conducted at official rather than ministerial level, resulted in decisions that would reduce the size of the price cut (i.e. increase the future cost of the sugar regime) by 2.9 billion euro over 4 years – more than 700 million euro per year – and increase the compensation budget over the same period by 1.2 billion euro, or 300 million euro a year. These are hardly small sums of money. 700 million euro is approximately the annual EU budget for Trans-European Networks, while 300 million euro is more than the EU spends on the totality of its environmental programmes.¹⁰

The conclusion of the Council negotiations was announced in a press release on 24 November, which reported that 'The text of the compromise is available in Michael Mann's office. BERL 1/343'.¹¹ The document remained available for physical inspection only in that particular office in Brussels for a week, until it was finally made available to the wider public.¹²

When the November text was published, it took the form not of a set of amendments to the formal legislative proposal, but rather it was a distinct and discrete document on the general principles of reforming the sugar regime. There had therefore to be a subsequent programme of work to elaborate an appropriate set of amendments to the legal text, a programme which in turn revealed ambiguities in that Council 'compromise agreement'. Some of the details of that agreement were unclear and disputed among the member states, and so further changes were introduced into the text on 20 January 2006, including aspects of such fundamental questions as price cuts and compensation payments.¹³

The final text, including the compromise amendments from November and all subsequent additions,¹⁴ was adopted formally by a meeting of the Council of Ministers on 20 February 2006. Sugar reform had been agreed.¹⁵

In the European Parliament

The European Parliament followed a very different and much more open procedure. Its proceedings took place in public, speeches by its members were public utterances, and its votes were recorded.¹⁶

A legislative proposal from the Commission is directed for consideration first to a committee of the EP before reaching a Parliamentary plenary session. In the case of sugar, the main reporting committee was the Agriculture Committee, with the rapporteur nominated for the dossier being Jean-Claude Fruteau, a French Socialist. Membership of the Agriculture Committee is clearly defined and published, with each party group in the EP nominating members to the Committee according to its relative overall size in the Parliament.

With very few exceptions, dates and times of the EP's committee meetings are published, and there is room for members of the public to attend the meetings as observers and follow the proceedings in person.

The Agriculture Committee first met to discuss sugar on 22 June 2005, a draft report from Jean-Claude Fruteau was published on 23 September, amendments were invited by 17 October, and the final report of the Committee was adopted at a meeting of the Agricultural Committee on 29 November.

In addition to deliberations in the Agriculture Committee, several other committees of the EP also debated the issue. Their reports and votes were submitted in writing to the Agriculture Committee, before its final session. At that final session, the Committee adopted a set of proposed amendments to the Commission's proposal, known as the EP's 'opinion'.

Each draft amendment considered by the Agriculture Committee on 29 November had been submitted beforehand in writing, proposing the deletion and/or insertion of text, accompanied by a written justification.¹⁷ For any amendment therefore to be considered by the Committee, an elected politician was required to express unambiguously his/her opinion on the political issue arising.

The final position of the EP was agreed on 19 January 2006, when the report from the Agriculture Committee was submitted to and discussed by a full plenary session. As with the proceedings in the committees, the debates and votes of the EP plenary session took place in public.

Comparison of the procedures of the European Parliament and the Council of Ministers

The contrast between the approach followed by the Parliament and that of the Council is striking. In the Parliament, meetings were held in public, documents were available for public inspection, amendments were clearly identified and required explicit support from a named source, votes were recorded and decisions reached were clear and unambiguous.

In the Council, the procedure was very different. Meetings were held in private, documents were not published formally, amendments were introduced into the text with neither proposers nor reasons being specified, there was no procedure for voting except at the very final stage, and decisions themselves were not always clear (particularly after the crucial Council meeting in November 2005). One of the arguments sometimes advanced for the secrecy of the Council's proceedings is that it supposedly enhances the efficiency of the Council's workings. The events of November 2005 can hardly be said to support this contention.

Another notable feature of the Council proceedings was the extent to which civil servants were responsible for substantial changes to the text, committing the EU to the expenditure of hundreds of millions of euros a year. Equivalent increases were proposed in the European Parliament, too, but there the MEPs who did so had to speak and vote in public. The power of amendment is a significant power. The contrast between the way in which national civil servants can make use of this power and the way in which elected European parliamentarians do so, is a stark one.

The existing Council rules on secrecy and openness

Although the ratification process for the European Constitutional Treaty has effectively been suspended and its new provisions on greater transparency in the Council with it, the debate about openness in the European Union's legislative procedure continues. A set of updated rules on access to the Council's work was agreed in December 2005.¹⁸ The reform of the sugar regime provides a useful background for the review of these rules.

The access granted to Council business by the new rules depends on which of the European Union's various legislative procedures is being followed for any particular item of legislation. The most frequently used legislative procedure of the Union is that of 'co-decision', covering more than half of primary EU legislation.¹⁹ The Council's new rules for the 'co-decision' procedure allow access for the public to:

- the presentation by the Commission of all legislative proposals which, in view of their importance, are presented orally in a Council meeting, and the ensuing debate on them;
- all of the Council's final deliberations, i.e. all discussions at Council level which take place once the other institutions or bodies have delivered their opinions. (Other Council deliberations on items which come under the co-decision procedure (at intermediate stages) may also, where appropriate, be open to the public);
- the vote, the result of which is displayed on the screen which relays the vote to the public.

The first of these provisions is relatively clear and uncontroversial. The second and third elements, however, require further comment. In the Council, the concept of 'final deliberations' and even the concept of 'the vote' are far from clear-cut.

The example of the sugar regime explored above shows how far the process of decision-making has progressed before a text is placed before the Ministers meeting in their 'final deliberations' at Council level. Indeed, there are many cases in which no 'final deliberations' at all take place in the ministerial Council,

the matter being treated as an uncontroversial 'A' point and nodded through after agreement has been reached at the level of officials. There is no guarantee that the new rules above will enable the public genuinely to see the basis on which important decisions are taken. Ministers may well prefer under these new rules to instruct their civil servants to make necessary but politically unwelcome compromises before controversial issues come to the ministerial Council meetings. It would be a supreme irony if new provisions to enhance openness simply led to more decisions being taken by unaccountable officials.

Nor is it clear what information will be conveyed to the public by putting the result of 'the vote' on television screens in Brussels or Luxembourg. Even disputed legislation is often adopted in the Council by consensus, when the differing parties conclude that they can or should press their case no further. Member states will sometimes insist on pressing to a vote a specific matter of great importance to them, but when voted down not oppose the passage of the broader legislative text in which this specific matter figured. Very little of this complex interplay of forces will be reflected in the publication of the result of a single, final vote in the Council, where an apparently unanimous outcome can reflect (or hide) a wide variety of outcomes ranging from genuine consensus to a messy, ambiguous, reluctant and unsatisfactory compromise.

Opening up the legislative process: recommendations

The new rules on transparency in Council business seem based on an artificial distinction between preliminary and technical meetings of the Council (which should remain private) and final, political meetings of the Council (which can take place in public). The case of the reform of the sugar regime shows how difficult it is to make such a distinction. Technical and political issues are always intertwined in the work of the Council. 'Technical' meetings can be the occasion for politically important amendments to be made to legislative texts. 'Political' meetings can often serve simply to ratify the compromises agreed at 'technical' meetings.

To ensure greater transparency of the Council's work, the most relevant distinction is not that between the technical and the political, but that between meetings at which amendments can be made to proposed texts and those where they cannot. If the Council were to borrow from the procedures of the Parliament in formalising the way in which amendments are dealt with, a substantial step forward would be taken. If draft amendments to legislative texts considered by the Council were published, their proponents identified and a public record of votes kept, then the changing shape of legislation from its first publication as a proposal by the Commission to its final appearance in the Official Journal could be followed and understood by all who were interested. Members of the Council could be held to account through the paper trail left by their actions. It would no longer be possible to hide behind the veil of Council secrecy and consensus, a veil which sometimes hides national responsibilities, but all too often promotes a negative and largely unfair image of the European Union as remote and unaccountable.

Greater access to the Council's evolving discussions on proposed European legislation along the lines advocated above would not require a change to the European Treaties. The demise of the European Constitutional Treaty is not a barrier to the implementation of such an initiative. A change in the Rules of Procedure of the Council would suffice. National politicians throughout the European Union have often spoken in the past year of the need for the Union to become more democratic and accountable, to 'reconnect' with its electors. The sincerity of these protestations will be measured by their willingness to think constructively and creatively about measures to make their own European institution, the Council of Ministers, more comprehensible, more transparent and more open to scrutiny.

Notes:

¹ Article I-24(6).

² *General Secretariat of the Council of the EU Information Sheet, 'Openness and transparency of Council proceedings', Brussels, December 2005.*

³ *European Commission information pack, 'The European sugar sector: its importance and its future', June 2005.*

⁴ Article 37(2), TEC.

⁵ *Isoglucose ruling, 1980, cases 138 and 130/79, European Court of Justice.*

⁶ COM(2005) 263 final, 22 June 2005.

⁷ *F Hayes-Renshaw and H Wallace (2006) The Council of Ministers (London: Palgrave), p. 53.*

⁸ *Council of the European Union, 11255/05, 9 September 2005.*

⁹ *Briefings from DEFRA, 4 July and 28 October 2005.*

¹⁰ *Figures from the EU budget, 2006.*

¹¹ *'EU radically reforms its sugar sector to give producers long-term competitive future', IP/05/1473, Brussels, 24 November 2005.*

¹² *Council of the European Union, 14982/05, 30 November 2005.*

¹³ DS 569/05, 20 January 2006.

¹⁴ Article 44(a). *Council of the European Union, DS 5/2/06 Rev 2, 2 February 2006.*

¹⁵ *The new sugar regime is actually composed of three separate Council Regulations: (EC) 318/2006, (EC) 319/2006 and (EC) 320/2006, and a further set of transitional measures.*

¹⁶ *R Corbett, F Jacobs and M Shackleton (2005) The European Parliament (London: John Harper Publishing), pp. 137-139.*

¹⁷ *Draft Fruteau report, 2005/0118, 23 September 2005.*

¹⁸ *General Secretariat of the Council of the EU Information Sheet, 'Openness and transparency of Council proceedings', Brussels, December 2005.*

¹⁹ *R Corbett, F Jacobs and M Shackleton (2005), p. 210.*