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Publicity and efficiency in the decisions of the Council of the European Union (first draft)

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Since the beginning of the 90s, transparency is an essential requirement in the European institutions. The Amsterdam Treaty, the Laeken declaration or the results of the Seville Summit are some landmarks in the development of a policy of transparency. Pressures in favour of more transparency mostly came from civil society, the European Parliament and a few member states. Among member states, Denmark, Sweden or Netherlands were some of the warmest supporters of transparency. There have also been pressures from the members of the European Parliament who co-decide with the national ministers : they demanded more transparency of the decision-making process in the Council of ministers¹. Transparency should help to reduce the democratic deficit. As a consequence of the different pressures, little by little, a policy of transparency has been enforced. Transparency is so popular in the EU that politicians cannot oppose it openly. Yet, some of them are divided between their willingness to appear in the mainstream, and their fear that transparency will hamper the decision-making process. According to them, there is a tension between the transparency and the efficiency of decision-making.

In this paper, my aim will be to analyze the so-called tension between the transparency and the efficiency in decisions. This tension is very often invoked by decision-makers as an obvious argument. Existing studies of transparency in the EU institutions also refer to this tension. Yet, the relationship between transparency and efficiency is not so obvious because the notions need to be analyzed.

Decision-makers often refer to efficiency but this notion is not clear: do they mean the capacity for making compromises? The decisional productivity?

Transparency refers to the availability of information. It is considered as a guarantee of accountability since it allows to know the positions of the decision-makers. Theoretical

¹ Cf. "Transparence au Conseil des Ministres européen", *Le Monde*, Paris, 29 novembre 2005

studies focus on the effects of transparency. Yet one needs to further investigate the mere possibility of transparency, ie obstacles to its implementation. Rules might not be sufficient to establish transparency. Furthermore, most of the studies on transparency in the EU institutions focus on the rules² and their elaboration³. They show what the rules leave undisclosed but the recent implementation of these rules limited the possibility of studying their effects on the actors' behaviours⁴. Lastly, existing studies emphasize the public availability of documents and pay less attention to the publication of votes (which became compulsory in 1993) and to the broadcast of Council sessions by videostreaming (which began in 2006).

In this paper, I will focus on the two latter vectors of transparency and their effects on the decision-making process in the Council of the European Union. The Council is the main legislative institution in the EU. Member states are represented by their ministers who decide to adopt or to reject the initiatives of the Commission. The lack of transparency of this institution is notorious. It is considered as a "club" of diplomats, the representatives of the member states, who negotiate behind closed doors. These diplomats often claim that more transparency would hamper the decision-making process. I will attempt to analyze what the tension between transparency and efficiency means in the Council by relying on about 50 interviews with representatives of member states in the Council and EU civil servants at the Council Secretariat and at the Commission.

I will first describe and analyze the obstacles to transparency in the Council. Then I will attempt to show that transparency is counterproductive in the Council. Finally, I will investigate the relationship between the failure of transparency and the objective of efficiency.

1. Transparency and its obstacles

² Cf. M.E. De Leeuw, "Openness in the legislative process in the European Union", *European Law Review*, 2007, 32(3), p.295; *ibid.*, "The regulation on public access to European Parliament, Council and Commission documents in the European Union : are citizens better off ?", *ELR*, 2003, 28(3), p.324-348; S. Peers, « The new regulation on access to documents : a critical analysis », *Yearbook of European Law*, (2001/2002) vol.21, p.385-442; P. Settembri, « Transparency and the EU legislator : 'let he who is without sin cast the first stone' », *Journal of Common Market Studies*, 2005-09, 43/3, p.637-654 ; B. Driessen, « The Council of the European Union and access to documents », *ELR*, 2005, 30(5), p.675-696 ; A. Peters, « European Democracy after the 2003 Convention », *European Market Law Review*, 2004, 41/1, p.63 sq.

³ B. Bjurulf and O. Elström, « Negotiating Transparency: The Role of Institutions », *Journal of Common Market Studies*, 2004-06, 42/2, p.249-269.

⁴ On this topic, see D. Naurin, *Deliberation behind closed doors. Transparency and lobbying in the EU*, Colchester, ECPR Press, 2007.

Since the beginning of the 90s, the openness of the Council has been promoted through different means :

- Votes are published since 1993
- Sessions of the Council are partly broadcast on the internet by videostreaming since 2006
- Numerous documents are online (minutes, stages of the codecision process for the different measures...)

Existing studies show that if transparency consists in the availability of information, it is not a sufficient guarantee of accountability. Accountability depends on the publicity, which means that citizens attend the available information; if information is available but not attended, there is transparency without publicity⁵. Yet, in the Council there is another obstacle to accountability: the members of the Council can sidestep the rules of transparency. The case of the Council shows us that it is not sufficient to promulgate rules of transparency in order to produce transparency. In this paper, I will use the words "transparency" and "publicity" as synonyms, but if one keeps in mind the distinction mentioned above, my topic is publicity because I attempt to analyze the behavior of representatives who believe that their actions are seen by a public.

In the Council, rules that should generate transparency do not help to reveal the actors's positions for 2 main reasons:

- (1) they are not sufficient.
- (2) the actors can sidestep the rules.

(1) Rules of transparency are not *sufficient* because the only final stage of the decision-making process is public. The elaboration of initiatives by the Commission that is based on pre-consultations with national governments and lobbies (a) and the sessions of the Committee of Permanent Representatives (b) remain undisclosed. Furthermore, the votes are published only when a measure has been adopted ; there is no public information about rejected measures (c).

⁵ "The concept of transparency captures the accessibility of information. [...] Publicity on the other hand means that the information is actually spread to and taken in by the principal. [...]here will be no publicity, i.e. no actual exposure of actions to a public audience, no matter how transparent the process or the institution in question is, if the available information about these actions is left unattended.", D. Naurin, « Transparency, Publicity, Accountability – The missing links », *Swiss Political Science Review*, 12/3, 2006, p.90-98. See also D. Curtin, « Transparency, audiences and the evolving role of the EU Council of Ministers », in Fossum, John Erik et Schlesinger, Philip (ed.), *The European Union and the Public Sphere. A communicative space in the making ?*, 2007, London, New York : Routledge, p.246-258

(a) The propositions of the Commission are already compromises that conclude bilateral talks between members of the Commission and representatives of member states or lobbies; the positions of the different governments during the pre-consultations are not revealed. The practice of pre-consultation by the Commission shows a tension between transparency and compromise⁶. This tension might have increased over the years because, according to a Permanent Representative, the members of the Commission "internalized the balance of power" that exists between the Council and the Commission: the Commission is now weaker and proposes initiatives that are already compromises with the national governments⁷.

(b) There are several institutional layers in the Council: the working-groups, the Committee of Permanent Representatives (Coreper) of member states and the Council of ministers. Most decisions are made by the Permanent Representatives based in Brussels, so that during the plenary sessions of the Council, the ministers only need to officially adopt the propositions negotiated by their representatives. The sessions of the Coreper, during which the decision-making process takes place, are not public. Sessions of the Council are partly public and in practice what is broadcast on the internet is the formal adoption of measures.

(c) There are no public data about rejected measures, votes are published only if a measure has been adopted ; when the Presidency deems that the qualified majority is not reached on a given measure, it does not present the measure in the Council.

(2) Furthermore, in the stages that must be public, the actors can sidestep the rules of transparency. During the sessions of the Council, when the ministers need to debate because their representatives were not able to solve a political problem in the Coreper, the Presidency can require the interruption of broadcast. Besides, actors explain that when debates must be public because the Council co-decides with the European Parliament, they find ways to sidestep publicity. For instance, they negotiate at lunch hour, on the phone or "in the corridors"⁸.

⁶ « *The Community method hides political conflicts. The monopoly of initiative conferred upon the Commission produces consensus-oriented decision-making. The Commission consults a large set of actors, including governments and [Members of European Parliament], before making its initiative public. When it presents its programme or its proposals to the public, it defines it as a subtle compromise, which embodies the "common interest", and often argues that "there is no other choice".* », P. Magnette, « European governance and civic participation: can the EU be politicised ? », *Jean Monnet Working Paper*, 2001-09, NYU School of Law, p.7.

⁷ Interview, May 2010.

⁸ « *Real political discussions can and do still occur, although probably now more frequently at the lunch or dinner table than at the plenary negotiating table.* », F. Hayes and H. Wallace, *The Council of ministers*, 2006, p.184. Cf. also E. Best, « Transparency and European Governance : Clearly Not a Simple Matter », *in*

Such escapes are facilitated by some features of the group :

- The same actors negotiate together over a long period and constitute a small group ;
- There is a connivance between the Presidency of the Council and the representatives of the member states because each semester a different member state is in charge of the Presidency. Individuals who are in charge of the Presidency have interests in the game because they preside the Council only temporarily and will be in the same position as the other participants a few weeks or a few months later.

Apparently, even if ministers represent a member state that supported increased publicity, they are used to require secrecy of debates when they have to make a decision on a controversial topic in their country.

Moreover, although the results of the votes must be publicly stated by the Presidency, the actors can also escape this form of publicity and conceal the positions that they defended behind closed doors. In some member states, ministers must register a negative vote or an abstention when their MPs had opposed an adopted directive. But in most member states, there is no such obligation. According to the Council's internal rules, what must be public is not the vote in itself, but its results. The published votes are registered after the political agreement reached by the Coreper, and before the official adoption in the Council. When they register their votes on a given measure for publication, the ministers already know that there is a qualified majority in favour of the measure and that it will be adopted. Defeated ministers are used to joining the majority at the last minute because they do not want to be seen as defeated by their peers and by their constituencies ; the Commission and the Presidency usually encourage the minority to join the majority. Therefore, there is often a discrepancy between the results of the decision-making process and the published votes.

Even behind closed doors, the Presidency does not use voting procedures. It states orally that there is a qualified majority in favour of a given measure, and if nobody objects, the proposition is sent to the Council of ministers for its official adoption. When the proposition is publicly adopted in the Council, the Presidency reads the names of the delegations that voted against it or abstained. The fact that most decisions are made behind closed doors does not imply that the positions of the delegations are clear in the Coreper and concealed only when sessions are public. On the contrary, the absence of vote in the Coreper allows to conceal the representatives' positions. The Presidency does not open voting procedures partly

Increasing transparency in the EU ?, Maastricht, European Institute of Public Administration, 2002, p.116 and De Leeuw-2007, p.302, Peters-2004, p.67.

because the defeated delegations might be embarrassed and do not want to be seen as defeated by their peers. Furthermore, delegations are not used to clearly stating their positions during the negotiation process to keep room for manoeuvre. Usually, the delegations do not exactly know the positions of the different delegations when the Presidency orally states the qualified majority. In this context, the Presidency does not use voting procedures because it aims at getting adopted as many measures as possible. It orally states the qualified majority as soon as no blocking minority is explicitly constituted. If the Presidency opened a voting procedure on a given measure, delegations that remained silent without really approving the measure might abstain or even vote against it (in the Council, when qualified majority is the official rule, an abstention is the equivalent of a negative vote), and the measure might be rejected. According to representatives who chaired the Coreper, the absence of voting favours the decisional productivity.

Thus there is a double layer of opacity in the Council: delegations' positions are not revealed because ministers fear domestic reactions, and also because behind closed doors, opacity favours diplomatic relationships between the peers and the decisional productivity. One cannot contrast a public stage on which positions are concealed, with a hidden stage on which positions are revealed. Even behind closed doors, positions are concealed⁹. In this context of opacity, when actors argue that publicity is an obstacle to efficiency, efficiency refers first to the decisional productivity¹⁰.

Therefore, even though the votes are published, a conjunction of institutional circumstances and strategic considerations can drive the representatives to conceal their positions. Rules cannot compel the actors to reveal their actions and positions.

2. A counterproductive transparency

If the only obstacle to accountability were the fact that the actors can escape publicity, one could claim that the policy of publicity is useless and does not change the statu quo. But the

⁹ Since the Council does not vote, it is difficult to argue that the Council complies with the rule of transparency of votes even if ministers are not obliged to be accountable to their MPs; yet, it seems to be Settembri's argument: « *Intelligibility of voting* is fully complied with. Where the Council acts as a legislator, 'the results of votes and explanations of votes by Council members, as well as the statements in the Council minutes and the items in those minutes relating to the adoption of legislative acts, shall be made public' (Rule 9). As the Member States supporting or opposing a legislative decision are listed unambiguously in the minutes of the meeting and these are subsequently put on the Council's website, each national parliament can hold its minister to account with no margin of uncertainty. Whether or not national legislatures effectively exploit this opportunity is certainly an important issue to clarify; however, this falls outside of the brief of this contribution. », Settembri-2005, p.649.

¹⁰ Cf. T. Selck, « Explaining the absence of inertia in EU legislative decision-making », *Journal of Common Market Studies*, 2005, 43/5, p.1055-1070.

ministers can use publicity in a strategic way, to present to their constituency the positions that they deem the most profitable from the political and electoral point of view.

Most of the time, defeated ministers join the majority to avoid the public embarrassment of defeat. But they sometimes use negative votes and abstentions to send a message to lobbies or different kinds of groups. For instance, an Environment minister sometimes voted against environmental directives that marked an ecological progress. This minister publicly disapproved of these measures to show that he was in favour of even more progressive directives. He hoped that this behaviour would flatter Greenpeace and environmental lobbies and would bring him electoral points¹¹. But if such negative votes had prevented the adoption of the directives, the Italian minister would have joined the majority. Votes are published only when a measure is adopted. If the directive had been rejected, the minister would not have been able to give publicity to his opposition. Even if the minister had told the journalists that he was fighting for a more progressive measure, the costs of a rejection would have been superior to its potential benefits. Indeed, a negative vote has always costs inside the Council and the Presidency and the Commission demand justifications from the opponents. The reiteration of the decision-making process between the same actors encourages the national representatives to be "constructive" and to publicly vote against measures only when they have a major problem at home.

The possibility of using publicity for a purpose of electoral communication sometimes even leads to hypocrisy. For instance, a communist minister supported the liberalization of the railway freight inside the Council because he expected economical benefits for the national railway company. Yet he publicly voted against the directive because the trade unions in this company were strongly opposed to liberalization¹².

This effect of publicity is increased by the fact that the Council is not well-known by the citizens. They often think that the Parliament and/or the Commission legislate. Therefore, the Council's activities are monitored mostly by groups whose interests are at stake. For instance, representatives refer to the influence of Greenpeace on the Environment Council, or of the lobbies of fishermen and peasants on the Agfish Council. Ministers can use publicity in order to send messages to specific groups that have an interest in the decision.

Thus, as ministers are not subjected to the rules of publicity but can use them, publicity in the Council paradoxically increases the opacity of the decision-making process.

¹¹ Italian Permanent Representation (PR), 2007

¹² Council Secretariat, 2008

It is possible to further analyze the counterproductive features of publicity by distinguishing the following effects:

- (1) Publicity leads opponents to remain silent;
- (2) Publicity is used by the Presidency and the Commission as a means of pressure on opponents;
- (3) Publicity stimulates spectacular and irresponsible positions.

(1) In some institutions, it has been observed that opponents are reluctant to express their disagreement when they know that their positions will be published. In the 19th century, the publication of votes encouraged the judges in the US Supreme Court to publicly state the same opinion as the majority even though they had expressed disagreement behind closed doors¹³. Ellen Meade and David Stasavage established that the members of the Open Market Committee of the Federal Reserve Board were used to express disagreement more often when their positions were not published¹⁴. This comparison was possible because before the publication of votes, the sessions were already recorded and the participants did not know that the records were not destroyed.

In the EU Council, before votes began to be published, the minority was already used to joining the majority and the Presidency was already used to orally stating the qualified majority without opening voting procedures. There were fewer members in the Council but the information about the delegations' positions was already asymmetrical. The Presidency avoided open voting procedures to encourage the minority to keep silent. Furthermore, the Agricultural Council still legislates behind close doors, and the Presidency does not open voting procedures to avoid the embarrassment of the minority and the disclosure of a blocking minority. Yet, members of the Council interviewed for this research claim that the openness of the Council sessions leads the opponents to keep silent. Formal openness has reinforced a tendency that already existed behind closed doors. Given this impact of publicity, if secret voting were introduced, it might decrease the decisional productivity of the Council because opponents would be less reluctant to express their disagreement. If "efficiency" refers to decisional productivity, the presence of a public, in the Council or outside the Council,

¹³ Epstein, Lee, Segal, Jeffrey A. et Spaeth, Harold J., « The norm of consensus on the U.S. Supreme Court », *American Journal of Political Science*, 2001-04, 45/2, p.362-377.

¹⁴ Cf. E. Meade, and D. Stasavage, « Publicity of debate and the incentive to dissent: evidence from the US Federal Reserve », *The Economic Journal*, 2008-04, 118, p.695-717.

increases the efficiency of the decision-making process. It is likely that real transparency would lead to a decrease of the decisional productivity, but fake publicity as it exists in the Council favours decisional productivity.

(2) Moreover, this first effect entails a second one: the fear of the minority to be seen as isolated is used by the Presidency and the Commission as *a means of pressure* on opponents. As a former president of the Environment Council puts it: « From the Presidency's point of view, the fact that it is public works for you: ministers do not dare to say in the face of the world that they are against an environmental directive, they are embarrassed if they are against. »¹⁵ In the Environment Council, the Presidency can favour decisional productivity by pushing contested directives on the public stage. The Commission has been an advocate of this strategy when the Council negotiated the climate package¹⁶. Indeed it is often difficult for ministers to oppose directives that are deemed progressive from the ecological point of view. They fear the environmental lobbies' reactions. Therefore, the publicity leads the Presidency to propose the adoption of texts that are too demanding to be implemented. Even if the ministers know that the implementation of a directive will not be possible, they do not oppose the directive because it would be unpopular.

(3) Lastly, publicity stimulates spectacular and irresponsible positions. Since in the environmental field, publicity generates hypocrisy, it might also stimulate the "civilizing effect of hypocrisy"¹⁷. If the identity of opponents were not published, the difficult implementation of a measure may lead the ministers to vote against it. But publicity would generate a civilizing effect only if governments implemented measures that they did not dare to oppose by fear of public reactions. If implementation does not follow a hypocritical approval, publicity leads only to hypocrisy without civilizing effects. For instance, according to a member of the Council Secretariat, French ministers do not oppose ecological measures even if they know that they will not implement them. According to him, their implementation rate in this field is "lamentable". One cannot anticipate this mechanism:

¹⁵ Finnish PR, Winter 2008. « *It's difficult for ministers to vote against a legislation which is good for environment because it's public.* », a colleague of the former interviewee, Winter 2008.

¹⁶ French PR, Fall 2007.

¹⁷ Cf. J. Elster, "Argumenter et négocier dans deux Assemblées constituantes", *Revue française de science politique*, 1994, 44/2, p.190.

publicity → forced agreement of ministers → implementation of ambitious measures
because the actors can escape the decisions that they agreed to implement. In this context, it might be preferable that ministers dare to reject unrealistic measures behind closed doors: if citizens did not know who opposed the measures, at least they would know that the measures will not be implemented. If representatives do not oppose measures by fear of the public reactions, while they would have rejected them behind closed doors, the citizens are ignorant on two levels: they are not informed of their representatives' positions, who can approve a measure in public while they opposed it behind closed doors; they are not informed of the fact that this measure will not be implemented.

3. Does the objective of efficiency explain why the decision-makers escape transparency ?

Since the actors often argue that efficiency is hampered by publicity, they might escape publicity for the sake of efficiency. Yet, the notion of efficiency is not clear. I will first list the incentives of the actors when they escape transparency. Then, I will attempt to analyze the relationship between those incentives and efficiency.

1. Actors escape publicity because they do not want to bear political and electoral costs entailed by the positions that they had during the negotiations with the Presidency and the Commission. Most of the time, they do not publicly vote against adopted measures even if they opposed them behind closed doors because they fear that a negative vote would be interpreted as a failure by domestic journalists.
2. Interviewees sometimes claim that they do not reveal their defeats because a negative vote would jeopardize the implementation in their home country.
3. Delegations avoid to debate in open sessions and negotiate during the lunch break because publicity prevents them from being flexible. During public sessions, they cannot make concessions and have to support the national positions. On the contrary, when they have bilateral talks with the Presidency, they have more leeway and can find solutions; the Presidency usually attempts to offer them cosmetic concessions that they will use to justify the fact that they joined the majority.
4. The Presidency encourages the minority to join the majority when the Council has to codecide with the members of the European Parliament (MEPs). Indeed, the Presidency must present the common position of the Council to the MEPs. If some

member states vote against the common position, the MEPs might take advantage of the Council's division¹⁸.

5. To modify the initiatives of the Commission, the Council must be unanimous (EU Treaty). This rule partly explains the Presidency's habit of encouraging the minority to keep silent.
6. The Presidency does not use open voting procedures because it might reveal the existence of a blocking minority. The objective of decisional productivity would be less easy to reach.

This list shows how a complex conjunction of interests explains why the actors escape publicity. I hierarchized these reasons according to the type of public that the actors consider when they escape publicity. Incentives 1 to 3 depend on the consideration of the national audience. Yet, incentive 3 also involves the peers in the Council (need for bilateral talks between the Presidency and the delegations). Incentives 4 and 5 rely on interinstitutional relations. In incentive 6, the public is composed of the national delegations themselves – the peers. The distinction of these three types of audience (domestic, peers, other EU institutions) and the fact that both the Presidency and the delegations attempt to escape transparency show how deeply-rooted the tendency to opacity is. There are heterogeneous reasons why the decision-makers escape publicity, and this heterogeneity explains why opacity is so resistant in the Council.

Yet, what is the relationship between these incentives and efficiency in the decisions?

Incentive 3 – the possibility of making compromises – is classical (the need for unanimity *vis-à-vis* the Commission [incentive 5] is closely related to incentive 3). Existing studies very often invoke this argument that was first offered by Madison¹⁹. Efficiency is defined as the ability to make compromises. In the case of the Council, this argument is especially convincing because the qualified majority threshold is high (about 70%). Qualified majority leads to make compromises because to reach it, the actors have to make concessions. Yet, the

¹⁸ According to some specialists, when the Fed presents an unanimous decision to other institutions, it increases its credibility: "Achieving consensus is also thought to be an important goal for the Committee. Internal consensus gives the Fed power and credibility in dealing with external clients, including the President, the Congress, and the public. Indeed, FOMC records rarely show explicit evidence of divisiveness." Chappell, Henry W. Jr., McGregor, Rob Roy, and Vermilyea, Todd, "Majority rule, consensus building, and the power of the chairman : Arthur Burns and the FOMC", *Journal of Money, Credit, and Banking*, 2004-06, 36/3, part 1, p.408.

¹⁹ Cf. De Leeuw-2007, p.302-303 and Peters-2004, p.67

necessity of compromise is implied by the objective of decisional productivity. Without this objective, compromises would not be so necessary and transparency would not be such a burden. In this context, qualified majority entails opacity. When actors argue that they need opacity to decide in an efficient way, efficiency refers both to the search for compromises and to decisional productivity, decisional productivity being more fundamental.

Incentive 2 – the implementation stage would be endangered if a minister voted against a measure –also refers to the efficiency of the decision-making process. One cannot consider this process without the implementation stage because there is no collective decision if the group is not compelled to implement its decision²⁰. The efficiency of the decision-making process involves the ability to implement measures. To know whether the actors are right when they fear that a vote against a measure will jeopardize its implementation is another issue.

Yet, it is much more difficult to establish a link between incentives 1 and 4 and the objective of efficiency. Even if there were no objective of decisional productivity nor a need for compromise to explain the opacity of the process, the ministers would still present public positions that they would deem profitable from the electoral and political point of view since they have the possibility to do so. The only way to avoid such use of publicity is a parliamentary control as it exists in Denmark for instance: when the MPs have opposed a measure, the minister must publicly vote against it or abstain. Such institutional constraint would probably decrease both the decisional productivity and the ability to make compromises. As for the ability to implement measures in the member states, it is difficult to assess this point because we lack data. As far as I know, existing studies on member states' compliance did not find a correlation between votes against a measure and non implementation in the opposed member states. The implementation process takes a long time, and many actors are involved: a public vote against a measure may not be such an obstacle to its implementation²¹.

²⁰ Cf. P. Urfalino-2007.

²¹ The plurality of actors involved in the process explains why some specialists of compliance deem irrelevant the hypothesis of a link between opposition in the Council and non-compliance (T. Boerzel). Yet, G. Falkner explains that she "checked whether *outright opposition during the negotiations alerts EU Commission officials and thus leads to an especially attentive enforcement policy*. This working hypothesis has proven to be of some empirical relevance for our sample even though, again, it is as a trend rather than a causal effect. Our empirical studies have revealed three clear-cut cases where national governments openly rejected a draft Directive either wholly or in part during the EU-level negotiations and subsequently refused to transpose the unwanted measure at the domestic level. In only one of these three cases did the Commission remain inactive in the matter of ensuring domestic compliance (Working Time Directive in Germany). However it has not been possible as yet to

Finally, it seems difficult to object to national MPs' control if efficiency refers to decisional productivity insofar as the legitimacy of this objective and the methods it entails in the Council (absence of open voting) are questionable. Yet, if efficiency refers to the ability to make compromises, the youth and fragility of the EU might be a good reason to argue against an increased transparency. The decision-making process in the EU raises the issue of a legitimate balance between publicity and the ability to make compromises.

substantiate these observations with respect to a larger number of cases.", *Complying with Europe: EU harmonization and soft law in the member states*, Cambridge, U.K., New York, Cambridge University Press, 2005, p.224.