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Access to documents in the EU Foreign Affairs Council: derailing the transparency narrative?

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Abstract

It is often held that, over the past quarter-century, a global 'transparency wave' has swept through public institutions. In the Council of the European Union, too, a trend towards greater transparency has been documented, based on the progressive advance of access to documents legislation and implementation. This conclusion however is drawn at a rather general level that does not engage with the Council's institutional internal complexity. Therefore this paper considers access to documents developments in the Foreign Affairs Council (FAC), as part of a larger cross-case comparative study, in order to establish to what extent the 'transparency wave' account holds true in specific policy areas. An area that has historically been largely separated from the 'community method' in the Union's founding treaties, the FAC has tended to favour intergovernmental over supranational modes of decision making, relying extensively on an argument of 'transparency exceptionalism'. By combining social scientific and legal analytical approaches and relying on multiple data types including stakeholder interviews, case law, policy documents and descriptive quantitative data, the current paper seeks to lay bare the development dynamics underlying the FAC's access to documents policy.

1. Introduction

It is often held that, over the past quarter-century, a global 'transparency wave' has swept through public institutions.[1] Against a background of constantly decreasing technological costs, transparency seems to have captured institutions in the expectation that this will deliver better governance and lead to more democracy.[2] In the Council of the European Union, too, a trend towards greater transparency has been documented, based on the progressive advance of access to documents legislation and implementation.[3]

Up until now, however, conclusions about the relative advance of access of to documents in the Council are drawn at a general level that does not engage with the Council's complex institutional architecture. In reality, the Council –the place where the various member states interests are represented and forged into a common position– is a composite institution that carries out multiple functions using different instruments.[4] From one area to the next, the centrality of particular actors beyond the member states, as well as these actors' policy-specific preferences and institutional resources, may vary substantially.[5] Variations in institutional factors are likely to impact on the interpretation and implementation of access to documents requirements.[6] The question is therefore warranted whether the 'transparency narrative' - the account of an ever-advancing access to documents policy is generalisable throughout the Council, or whether pockets exist that resists transparency's progressive extension.

This paper considers the development of access to documents in the Foreign Affairs Council (hereinafter, the FAC) against the backdrop of the Council's overall transparency development path.[7] The FAC makes up one of ten policy configurations in which the Council meets, gathering the respective foreign affairs, defence, trade and development ministers of the EU's member states, depending on the subject matter at hand.[8] A policy area that has historically been largely separated from the so-called 'community method' in the Union's founding treaties, a large part of FAC decision making has tended to favour intergovernmental, rather than supranational modes of decision making, with the exclusion of legislative instruments and of the EU Court of Justice as specific legal characteristics.[9]

The current paper addresses the question how the FAC access to documents policy developed

1 E.g. Michener (2011), p. 6; McDermott (2010), pp. 10-1; Hood (2006)
2 Erkillä (2012); Meijer (2009), p. 260
3 Hillebrandt, Curtin and Meijer (2014); Driessen (2008); Settembrini (2005), p. 648-650
4 Wallace (2002)
5 Puetter (2014); Christiansen and Vanhoonacker (2008)
6 Mitchell (1998)
7 The current paper forms part of a larger comparative case study that considers variegation and similarity in the development of transparency in three policy areas of the Council. Next to the Foreign Affairs Council, the Economic and Financial Affairs (Ecofin) and Environment Councils are analysed. The study is due to be finalised by the end of 2016.
8 During the 1990s, the Council had 19 constellations, while foreign policy making was spread out over two constellations: the 'General Affairs and External Relations Council – external relations part' (GAERC) and the Development Council (Devco). For reasons of legibility, all of the Council's foreign policy making activities are here subsumed under the header of FAC.
9 I refer here to decision making in the CFSP, see TEU article 24(1), second indent.

between 1992 and 2014, considering in particular the extent to and manner in which it diverged from the wider Council access to documents policy. It seeks to explain these developments on the basis of a historical institutionalist framework that traces the influence of dominant actors by way of their preferences and resources in Council policy making.[10] The term 'access to documents policy' is understood broadly, as the formal rules, implementation practices and informal norms that are in place to regulate the public's access to documents of the Council (in this case, specifically the FAC).

The paper proceeds as follows. The next section provides a stylised account of the historical developments of access to documents in the Council. The paper then turns to the development of access to documents policy in the FAC. The analysis commences with a rough sketch of the FAC's institutional context in which this development proces occurred (section 3). It then turns to a narrative account of developments broken into two periods. Section 4 covers the years before and under the first Council decision on access to documents (Decision 731/93, 1992-2001) while section 5 covers the years under the legislative act that replaced it (Regulation 1049/01, 2002-2014).[11] Thereafter, the analysis seeks to generalise central changes and continuities in the FAC's access to documents policy and the sector-specific institutional factors that account for them (section 6). The paper concludes by considering the significance of the findings and pointing towards avenues for further research (section 7).

2. A developing Council access to documents policy

Before we are able to establish the extent to which the Foreign Affairs Council's access to documents policy adheres to the narrative of ever-advancing transparency, we must first briefly consider the development of Council-wide access to documents from which the narrative originates. Transparency in the Council has seen an "inexorable rise".[12] Before 1992, the issue of transparency did not feature on the Council agenda. Less than ten years later, by 2001, a policy was in place that was based on a treaty article, a legislative act, and a considerable body of case law, implemented by an administrative unit especially set up for this purpose.[13] Another fourteen years later, the Council publishes more documents than ever on its online document register, while a consensus is emerging on the constitutional status of the principle of transparency.[14] This last oservation is attested by a recent case which holds that in principle, all Council documents produced in the course of a legislative procedure should be made fully and immediately public.[15] Active and passive transparency figures, too,

10 Hall and Taylor (1996)
11 The current paper applies a mixed methods framework that combines both process-tracing and legal analyses. It is based on 20 semi-structured interviews with officials, stakeholders and experts in the area of EU foreign policy (15 Council insiders and 5 outsiders), as well as legal and policy documents and descriptive quantitative data. Further details on the data are provided in the Annex. Data held by the author is available upon request.
12 Maiani et al. (2011)
13 Hillebrandt et al. (2014)
14 Curtin and Hillebrandt (forthcoming)
15 Case C-280/11P, *Council v Access Info Europe*, 13 October 2013. Cf. Abazi and Hillebrandt (2015)

improved over time. Between 1999 (the first year in which the register was operational) and 2013, the annual figure of documents registered doubled to 160,483, of which more than three-quarters were directly downloadable. Similarly, the rate of access provided for the procedure as a whole increased considerably from 58.7% in 1994 to 79.5% in 2013.[16] In short, compared to the situation in 1992, today the Council has moved considerably closer to an ideal of transparent decision making.

Naturally, the reality underlying this success story is more complex. To a certain extent, the mounting of an access to documents policy in the Council has been underpinned by a mixture of overly optimistic assumptions and political rhetoric about the benefits of transparency.[17] It is clear that placing large numbers of documents on a register does not offer a shortcut to transparency and democratic legitimacy.[18] Equally, it must be observed that access to documents in practice has given rise to transparency-evasive behaviour that manifests itself in various ways.[19] This leads to a de-idealisation of the idea of transparency as a policy, which in its development is driven by a composite of institutional factors just like any other policy.[20]

The manner in which Council transparency developed can be convincingly argued to be a product of repeated interactions between the diverging preferences and resources of actors both inside and outside of the Council. From an early point, a coalition of northern European member states known as the 'gang of four' (i.e., Denmark, Finland, the Netherlands and Sweden) actively pursued the expansion of the Council's access to documents policy, through a mixture of administrative, rule-making, and judicial advocacy. In doing so, they were aided by institutional actors such as the EU Court of Justice, the European Parliament (EP) and the European Ombudsman, as well as NGOs such as Statewatch, Access Info Europe, and the Meijers Committee.[21] Eventually, the advocacy of these actors succeeded in enshrining the right of access to documents in the 1997 Amsterdam Treaty (TEC, art. 255) as well as in the 2000 Charter of Fundamental Rights (art. 42). Strategic negotiations by the 2001 Swedish presidency thereafter succeeded in translating these provisions into a rather generous access law (Regulation 1049 of May 2001).[22] Exogenous factors such as public opinion (e.g. the Danish no-referendum of 1992), technological possibilities (the emergence of the internet in the mid-1990s), focusing events (the fall of the Santer Commission in 1999) and institutional changes (the 2004 'big bang enlargement) have periodically altered this balance.[23]

The development path of access to documents in the Council between 1992 and 2014 thus reveals a pattern of growth over time (albeit interrupted in recent years) that is explained by a combination of member state coalition-driven advocacy, outside pressure, and judicial review.[24] Yet

16 Council (1998d), (2000d) and (2014)
17 Hillebrandt (2013); Curtin and Meijer (2006)
18 Curtin and Meijer (2006)
19 Curtin and Hillebrandt (forthcoming)
20 Novak (2014); Bjurulf and Elgström (2004)
21 Curtin and Hillebrandt (forthcoming); Hillebrandt et al. (2014)
22 Bjurulf and Elgstrom (2004)
23 Hillebrandt et al. (2014)
24 Abazi and Hillebrandt (2015); Hillebrandt et al. (2014); Bjurulf and Elgström (2004)

this explanation provides only a rather partial account. For example, certain policy areas were more insulated from outside pressure than others. Furthermore, it cannot be a priori assumed that member states' access to documents preferences are generalisable to all policy areas. Sector-specific institutional arrangements may also have affected the resources available to those actors seeking to influence the access to documents policy. Finally, certain exogenous factors may have exercised a disproportionate effect on the development of access to documents in specific policy areas. In order to address these issues, we must move away from a general study of Council transparency to consider its development in a specific policy context. The FAC, being a policy area that functions differently in many of the aspects that featured in the above discussion, offers a good case study to explore whether the account of an ever-expanding public right of access to Council documents also holds true under exceptional circumstances, or whether in fact the experiences in the FAC derail that narrative.

3. Institutional context of the Foreign Affairs Council

The institutional context of the Foreign Affairs Council and the way in which it developed after 1992 exercised an important influence on the development of access to documents in this policy area. The period of the 1990s marked a gradual build-up of a foreign policy architecture in the Council and a concomitant growth in foreign policy activity, which began with the establishment of the Common Foreign and Security Policy (CFSP) in the 1992 Maastricht Treaty.[25] The fact that the TEU excluded the EP and the court from the CFSP, as well as the requirement of unanimity in all but a few well-circumscribed situations, meant that the blocking power of individual member states or coalitions of member states in the CFSP was particularly strong compared to other policy areas.[26]

During the first years of the 1990s, CFSP (and more widely, FAC) decision making remained relatively limited. This changed with the Amsterdam Treaty, which expanded the number of CFSP tasks, established a High Representative (HR) for the CFSP who took up office during the second half of 1999, and introduced limited oversight rights for the EP in the EU's negotiation of international agreements.[27] Moreover, the TEU's incorporation of the so-called 'Petersberg Tasks' brought about a steady rapprochement with the Western European Union (WEU),[28] and thereby, closer cooperation with NATO. These developments signalled the Council's increasing ambitions in the area of defence and security, and thereby, a growing need for a stable security of information (SI) regime.[29] It also united in one person the triple role of Secretary-General of the Council and High Representative of the CFSP and the WEU. Before the Amsterdam Treaty, the CFSP was driven by an informal group of senior national officials (the Political Committee, or PoCo for short). While formally subordinated to

25 IGC (1992a), Title V; Wallace (2005), pp. 435-8; Respondent #22
26 IGC (1997a), article 23; Respondent #22
27 Respectively IGC (1997a) articles 11 and 18(3); IGC (1997b), article 300(2)
28 IGC (1997a), article 17(1); WEU (1992)
29 Reichard (2013), p. 328

the Coreper, the PoCo directly advised the ministers on CFSP matters.[30] The Amsterdam Treaty now formalised the PoCo into the Political and Security Committee (PSC), which began operating early 2000 and was increasingly staffed by ambassadors-level national officials.[31] A Military Committee and Military Staff were set up in parallel.[32] These major changes introduced new powerful actors, bodies, and activities into FAC decision making, thereby altering the structure of incentives and preferences.

The Lisbon Treaty again introduced a number of important institutional changes. It separated the function of Council Secretary-General and High Representative, and turned the latter role into a Vice-Commissioner post placed at the head of a newly established European External Action Service (EEAS).[33] The new HR and her EEAS representatives soon took over the chair of the rotating presidency for a majority of FAC bodies, including FAC ministerial meetings, the PSC, and CFSP preparatory bodies.[34] The new step meant in practice that most central coordinating and agenda-setting powers were carried over to the EEAS, at the expense of the presidency and the Council Secretariat. The latter maintained only its organisational function of facilitating meetings and circulating documents received from the EEAS and the member states.[35] The EEAS quickly turned into the 'hub' of CFSP decision making. This is also evidenced by the HR's seat in the European Council, which allows her to bypass both the ambassadors in Coreper and the foreign ministers in crisis situations.[36] Finally, the Lisbon Treaty again expanded the EP's role in the EU's negotiation of international agreements, particularly with regard to its information rights throughout the course of negotiations.[37]

4. 1992-2001: Transparency and foreign affairs: two policies under construction

The area of foreign policy and the public's right of access to documents always made an unlikely match. As at the national level, a certain presumption existed among foreign policy actors of exceptionalism. Indeed, this 'exceptionalist consensus' was entrenched in the access rules, and subsequently confirmed and elaborated by the EU courts. However, during the short decade before Regulation 1049/01entered into force, the foreign affairs policy area was also going through a process of institutional build-up. This brought with it a rearrangement of actors and bodies, and as a consequence, of the access to its documents policy in this area. Particularly, the introduction of classified information rules was the subject of major controversy among the member states and the EP. However, by the end of 2001, as Regulation 1049/01 entered into force, the main points of

30 Respondent #27; Nugent (2010), p. 389; Duke and Vanhoonacker (2006), p. 373
31 IGC (1997a), article 25; Council (2001a), Respondent #22
32 Reichard (2013), pp. 64-5
33 IGC (2007a), article 27
34 Council (2009); Vanhoonacker and Pomorska (2014), p. 1317
35 Respondents #22, #39
36 IGC (2007a), article 15(2); Respondents #39, #40, #56
37 TFEU article 218(6) and (10)

disagreement were again settled in a 'grand bargain'.

4.1 The exceptionalist consensus in foreign policy

In the first period here under consideration, the debate concerning access to documents initially had relatively limited salience in the area of the FAC. Similar to the national level, the institutional context foresaw in a limited role for transparency and potential transparency actors such as the parliament and the courts. The first formal rules enabling or restricting public access to FAC documents were those of the Council's first general access rules (Decision 731/93).[38] This decision framed the FAC-related refusal ground of 'the protection of international relations' as a mandatory exception, as opposed to the protection of decision making, which was discretionary.[39] This reflected the general outlook in the Council, which could be described as an 'exceptionalist consensus' around foreign policy transparency:

> *[… A]s you know, external relations make up one of the exceptions [to the access rules …]. The dealings of the EU in the area of external relations are a sensitive question, just like at the member state level.*[40]

The 'exceptionalist consensus' is apparent when confirmatory applications for FAC documents between 1994 and 2001 are considered. There we find that during this period, decisions leading to full or partial access were considerably lower than the Council average (50% for FAC appeals, and 69% for the Council average). Unsurprisingly, the 'international relations' exception was relied on considerably more often (66%) than the Council average (38%) to justify (partial) refusals. This is not to say that outcome of the consensus went uncontested. On the contrary, member state countervoting had a considerably higher incidence than the Council average (respectively 70% and 52%). Indeed, in a number of instances, the decision regarding a confirmatory application for FAC documents barely attained the required simple majority. The driving force behind these protest votes were the same member states that were active in the wider transparency debate. Five member states (Sweden, Denmark, the Netherlands and Finland, as well as the United Kingdom) formed a block in favour of wider access, while two member states (France and Spain) repeatedly expressed their opposition to this line (see Table 3 below). However, their opposition was mainly centred on what they considered to be a too narrow interpretation of an exception ground that they considered generally justified.

A major conflict erupted when applicant Heidi Hautala, a Finnish MEP, brought a case before the CFI to seek annulment of the Council's refusal to grant her access to a requested document

38 Council (1993b)
39 Council (1993b), respectively articles 4(1), first indent and 4(2)
40 Respondent #38

pertaining to the Common Foreign and Security (CFSP) policy.[41] When the Council contested the court's right to adjudicate over the matter on the basis of a treaty provision excluding court jurisdiction in CFSP matters,[42] this cast France, which shared this view and intervened in support of the Council, against Finland and Sweden, which advocated both jurisdiction and an annulment of the access refusal and intervened in favour of Hautala.[43] Upon appeal, when Denmark and the United Kingdom joined in support of Hautala, and Spain in support of the Council, the number of interveners further rose to an exceptionally high 6 out of 15 member states.[44]

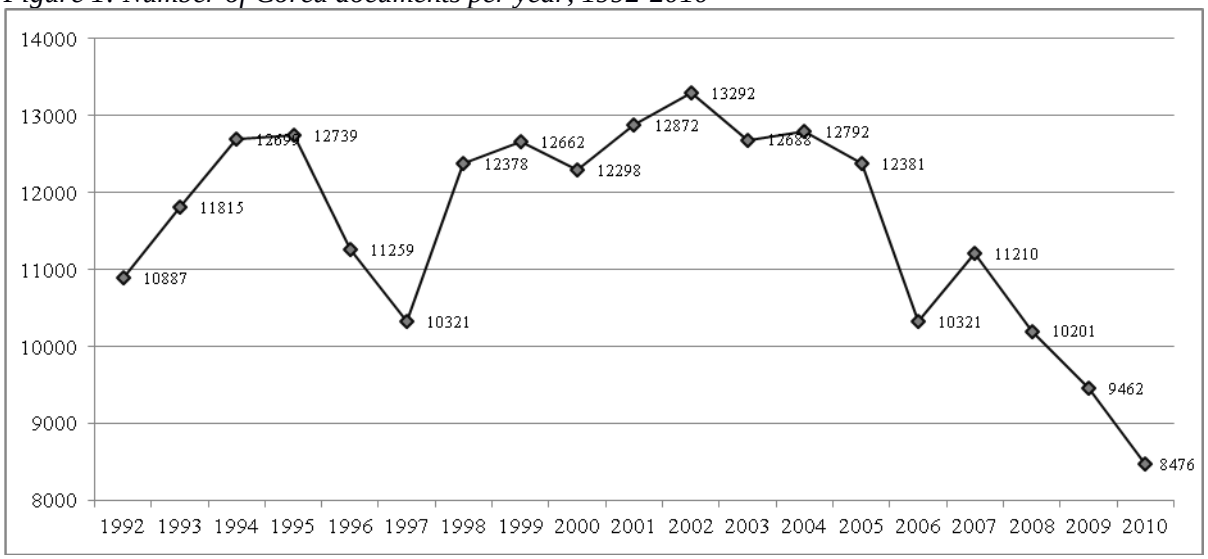
Hautala offered the CFI the opportunity to unequivocally assert its jurisdiction over access to CFSP documents cases. Contrary to the Council's arguments, the CFI found that, following the *Svenska Journalistförbundet* case law and in absence of any specific provision to the contrary, the court had jurisdiction to all access cases irrespective of their content (para 42). It thereby normalised the interpretation of the access rules in the CFSP context, in favour of the position of the applicant and the Council's pro-transparency coalition.[45] At the same time, it was also in *Hautala* that the CFI for the first time proclaimed the limited review criteria that thereafter continued to be applied to all access cases where a mandatory exception grounds was at stake. The courts thus left the Council wide discretion in determining the appropriateness of refusing access by interpreting its right of judicial review in the narrowest possible sense. Their reluctance to intervene too deeply was possibly enhanced by the sensitivity underlying jurisdictional question. The fact that Hautala eventually won the case should not distract from the fact that the court thus opened a path of 'hands-off' review that largely matched the Council's 'exceptionalist consensus'.[46]

Another element underpinning the exceptional status of foreign policy was the secured-communications network of Coreu (*Correspondence Européene*). This inter-capital network was set up as early as 1973, during the European Political Cooperation (EPC), to facilitate the secure exchange of foreign policy-related information. However, document traffic began to rise in the early 1990s when the EPC was replaced by the CFSP, even after the Council-wide Extranet was set up for purposes of document distribution (Figure 1).[47] The fact that two pro-transparency Council members, Denmark and the Netherlands, were involved in the network's establishment and subsequent maintenance, attests to the Council's strong commitment to an intergovernmental working method.[48] The Coreu network thus served as a low-threshold instrument for information exchange outside of the Council's formal organisational structure.[49] "Something is only CFSP when member states decide so. So which

41 Case T-14/98 *Hautala v Council ('Hautala I')*, 19 July 1999
42 IGC (1992a), article L; at the time of the court action, IGC (1997a), article 46
43 Sweden (1998)
44 Case C-353/99P *Council v Hautala ('Hautala II')*, 6 December 2001
45 The CFI's judgment was upheld upon appeal by the ECJ.
46 Heliskoski and Leino (2006), pp. 761-5
47 Bicchi and Carta (2012), p. 471; Respondent #33
48 Bicchi and Carta (2012), pp. 467, 475-7
49 Respondent #36

documents fall within its reach is also dependent on their decision".[50]

Figure 1: Number of Coreu documents per year, 1992-2010



Source: Bicchi and Carta 2012, p. 471. Published figures only go up to 2010.

After 1998, document traffic on the network was in fact so high that it represented a substantial volume of all FAC-related document traffic, possibly even larger than what was circulated via the Extranet.[51] After the public document register went online in 1999, FAC documents became unquestionably easier to access. However, the existence of this parallel document exchange system clearly made it more difficult for (uninformed) outsiders to file access requests, as it would generally be nearly impossible for them to know of the existence of specific documents.[52] This translated into a relatively poor performance in the registration and direct accessibility of FAC documents.[53] Thus, we find that, although the rate of direct access to FAC documents on the register increased steadily from 40.5% in 1999 to 58.1% in 2001, many FAC documents were not listed on the register. For example, before the entry into force of Regulation 1049/01, the Political Security Committee (PSC) and military bodies registered no documents at all, while very few Common Defence and Security Policy (CSDP) documents were entered on the register. Thus, although the annual FAC document registration rate increased considerably faster than the overall Council rate, this was purely due to a catch-up effect, in

50 Respondent #37
51 Respondent #27
52 Respondent #63
53 FAC documents were circulated among varying constellations of decision-makers, and registered and published in different ways, making it difficult to establish an accurate estimate of all FAC documents produced in any given year. Out of a list of all Council distribution codes, 19 codes were identified by a respondent as pertaining to FAC decision making (email correspondence with respondent #36, d.d. 25 March 2015). Another observer estimates the current number of distribution codes to stand at 34 (Lauwerier 2016, p. 8). A sample of distribution codes covering the full range of FAC activities were analysed for the years 1999 to 2002 and 2007, 2008, 2013, and 2014. Data is held by the author and available upon request.

the sense that initial low figures tend to inflate subsequent grow rates.[54] While part of this 'interrupted' disclosure would improve over time as the FAC improved its operational processes in the developing field of the CFSP, an ongoing reluctance to engage in public disclosure continued even after Regulation 1049/01 entered into force.[55]

Thus, in the years under Decision 731/93, an 'exceptionalist consensus' emerged that was broadly supported and criticised mainly for the way in which it was implemented. Changes in the CFSP's institutional architecture towards the end of the 1990s however introduced a parallel policy debate that proved far more divisive.

4.2 The exceptionalist consensus reconfigured

In the years leading up Regulation 1049/01, the institutional architecture of the CFSP was undergoing a vast expansion which strongly impacted on the access to FAC documents policy. The fact that EU foreign policy activity was becoming more consequential affected the already-existing 'exceptionalist consensus', in the sense that pivotal Council actors came to advocate a more comprehensive security of information (SI) regime. The process of institutionalisation of the CFSP set in motion by the Maastricht Treaty amplified this change. It introduced new actors and bodies who did not necessarily have transparency-favourable preferences. Most important of these was the first High Representative (HR), Javier Solana, who entered into office during the second half of 1999. Solana brought with him the experience of NATO and its modus operandi, the organisation of which he had been Secretary-General (SG) directly before joining the Council.[56] Within the Council, he was well-positioned to advocate closer cooperation between the EU and NATO, acting as he did in the triple-hatted role of SG of the Council, SG of the WEU, and HR of the CFSP.[57]

Solana's appointment introduced an active proponent of a strong SI policy into the Council.[58] He quickly developed into a powerful elite official, acting on the basis of proactivity and informality, travelling profusely and seeking support from a relatively small staff that acted at some distance from the rest of the Council Secretariat.[59] During their first years of existence, the bodies served by this staff published no documents on the register, insisting on the traditional modes of communication such as Coreu or unofficial memos.[60] One of these bodies was the Political Security Committee (PSC) which in 2000 formally succeeded the informal 'PoCo' group.[61] During the first years, member state representatives and Council officials still operated under the usual norms of informality. This included the issue of security, and document circulation within the PSC was characterised by a high degree of

54 Comparing 1999 and 2002 figures, Council (2003)
55 See below, section 6
56 Respondent #56
57 Respondent #22
58 Reichard (2013), p. 325. However, it must immediately be added that from the outset, HR Solana's team developed an active communications policy that involved the publication of speeches, statements, and agenda items on a dedicated website. This website went offline at the end of 2014. Respondent #56; Council Secretariat (2015), d.d. 14 April 2015
59 Respondents #33 and #56
60 Respondent #56
61 See above, section 3

improvisation with little concern for formal procedures:

> *It was a transition period. At that time documents were flying in from everywhere. […] They were not even classified as meeting documents.*[62]

At the same time, an emerging awareness on the need for a strong security of information policy came squarely on the agenda, a development that Solana actively encouraged.[63] The new decisional structure, with the High Representative and his team at the centre, was perceived as "really […] a new format",[64] and a revision of the existing document classification rules was deemed a necessary part of that reform.

The legal framework of access to documents in the area of foreign affairs cannot be properly understood without reference to the classification system.[65] The first formal legal text concerning document classification in the Council context was Decision 24/95, adopted in March 1995. This Decision, which introduced three classification levels and (applying the French terminology, 'restreint', 'confidentiel' and 'secret'), kept classified documents fell within the scope of access to documents.[66] For several years, these rules remained in place unaffected. This changed firstly when the Council document register went online in 1999. Finland used its presidency in the second half of that year to see through a decision to include references to all classified documents in the newly established public register,[67] significantly enhancing the visibility and, thereby, the accessibility of classified documents.

Only months later, in July 2000, this arrangement was again rolled back under the French presidency. However, the measures related to classified documents passed during the French presidency went further than the question of document registration. In a classification overhaul which came to be known as the 'Solana Decision',[68] a number of major steps were taken with regard to the right of access to documents. A new classification level of 'top secret' was added, the principle of group classification was introduced, and classified documents became completely exempted from the access to documents rules. Moreover, the Decision introduced the so-called 'orcon' principle, according to which classified documents supplied by third parties could not be disclosed without the originator's consent.[69]

62 Respondent #36
63 Respondent #56
64 Respondent #56
65 A second field of legal development concerns the European Parliament's right of access to (classified) information. While parliamentary access is also important for obvious reasons, it was (and continues to be) legally and functionally distinct from the public's right of access. This chapter therefore only discusses parliamentary access to the extent that it influenced the Council's policy of *public* access to documents.
66 Council (1995a), article 2; Council (1996a), section 3.4
67 Council (1999c), article 2; Reichard (2013), pp. 330-1. It must be noted that direct access to these documents was for obvious reasons not foreseen, and in any event only became possible at the end of 2000.
68 Council (2000a); Bunyan (2002), section 6
69 Council (2000a), articles 2(1)(a), 3(1) and 4; Council (2000b); Council (2000c)

Solana's proposal, it appears, was presented in a manner that allowed the measures to be passed with the least possible resistance.[70] It was put forward in the middle of the summer, unannounced, and through the application of a two-week 'written procedure', meaning Decision 731/93 would be amended unless a simple majority manifested itself against the plan. While the new rules were to apply across the Council, it is apparent from both the context and the content of the reform that the changes were brought about with developments in the CFSP and CSDP in mind. For example, the presidency cited haste because of pending access to CSDP document requests. It also transpired that the HR had already committed to a revision of the access to documents rules in place in an exchange of letters with NATO.[71] The amended version of Decision 731/93 now included the new exception ground of "the security and defence of the Union or of one or more of its Member States, military or non-military crisis management".[72] In administrative terms, while confirmatory applications were usually decided on by the Working Party on Information (WPI), it was decided that confirmatory applications for classified security and defence documents were to be handled by the appropriate CSDP body.[73]

The events of July 2000 were condemned in the strongest language by a collective of pro-transparency member states, MEPs, and NGOs. This coalition particularly criticised the total exclusion of classified documents from the access to documents rules.[74] These protests however had no effect in the short run:[75] the proposed changes, after all, had found the required majority, and as the UK government pointed out, the Council had no obligation to consult with the EP on the internal matter of access to documents.[76] The coalition however was quick to detect the overhaul's possible negative spill-over effects on the ongoing negotiations for the 'Article 255 Regulation' (the later Regulation 1049/01). Thus, in November 2000, the Netherlands, supported by Sweden and Finland, brought a case against the revised access decision to keep political pressure on the ongoing 'Article 255 Regulation' negotiations:

> *[W]e carried out [this court action] con amore and leaned in quite strongly. But then we withdrew it after the Regulation had been passed*.[77]

The EP, which cast the exclusion of classified documents from public access in the light of its ongoing negotiations concerning privileged access, also began proceedings in December after it became clear that an interinstitutional agreement (IIA) concerning privileged access to classified information was

70 Respondent #30; Financial Times (2000); Guardian (2000); Bunyan (2002), section 6
71 UK (2000a); Bunyan (2002), section 6
72 Council (2000b), article 4
73 UK (2000a), point 5
74 Respondents #56, #63; International Herald Tribune (2000); Guardian (2000); Financial Times (2000)
75 Respondent #56; Duke (2001), p. 168; Reichard (2013), p. 331
76 UK (2000b)
77 Respondent #27

not forthcoming.[78] Such access had been a long-standing demand of the EP.[79] The pressure of court action had its influence on the negotiations. Whereas in August 2000, the UK government still assumed that the arrangements favoured by Solana would form the basis of the new Regulation, by November, it reported that the Council was "looking at a range of possible solutions".[80]

The incoming Swedish presidency swiftly rolled back the block exclusion of classified documents in new internal security rules adopted in March 2001, which replaced the 'Solana Decision' and were explicitly "without prejudice to Article 255 of the Treaty".[81] However, a number of provisions, such as the 'orcon' principle, the possibility for bulk classification, and the fourth classification level in place, and special vetting arrangements of confirmatory applications for classified CSDP documents were retained. The decision to exclude reference to classified documents on this register was only partially restored: only documents bearing the lowest classification level ('restreint') were again listed on the register.[82]

Over a period of 15 months, the relation between classified documents and access to documents was thus three times significantly revised, in a tug-of-war between the pro-transparency Finnish and Swedish presidencies and the transparency-sceptic French presidency and the HR. It may be noted that all three decisions obtained the required simple majority of Council members' votes, suggesting a relative willingness among member states to follow presidency proposals in this matter.[83] The new political compromise of March 2001 was entrenched in the EU's first legislative act on access to documents, Regulation 1049/01 which was adopted in May of that year.[84]

At the same time, the access regulation left many of the thorny issues undecided. In a carefully worded article 9, it foresaw in the inclusion of classified information and refusal procedure in accordance with the general exception rules listed in article 4 of the regulation, as well as on the basis of internally decided rules outside of the Regulation and with full respect for the orcon principle. The handling of classified documents thus remained subject to an exceptionalist legal regime, the legal subordination of which was not wholly apparent. Unsurprisingly, the outcome was thus met with a wide range of reactions. On the one hand, there was deep suspicion on the side of pro-transparency observers, who described the new arrangement as an "amended version of the Solana decision"[85] or a "Russian doll" tucked away into the general access rules.[86] After all, Regulation 1049/01 did not deal with the matter of classified information in a decisive manner but instead left the details to be decided

78 EP plenary, 5 September 2000 cited in Rosén (2015), p. 389 and p. 391
79 Rosén (2015), pp. 389-91
80 UK (2000a); UK (2000b)
81 Council (2001a), seventh recital. The new classification rules again centred specifically on the area of foreign policy, as evidenced by their third recital: "In practice, the major part of EU information classified CONFIDENTIEL UE and above will concern the Common Security and Defence Policy".
82 Council (2001b); Council (2011b), I.2
83 UK (2000a)
84 Reichard (2013), p. 340; Rosén (2015), p. 393; Respondents #31, #63
85 De Leeuw cited in Reichard (2013), p. 342
86 Respondent #17

in exactly the kind of internal Council secrecy framework that in 2000 had sparked off wide protest, and which upheld a number of the Solana Decision's provisions. Others however described the notorious article 9 as a 'necessary component' of package deal: "They had to give the secrecy advocates something in order to save the general principles".[87]

The fact that the eventual outcome departed from the 'Solana Decision' by once again including classified documents in the scope of Regulation 1049/01 was in large part due to the involvement of the EP as a negotiating partner: this strengthened the Swedish's presidency's role and forced a qualified majority in the Council to accept a 'grand bargain' that included the prospect of privileged parliamentary access to classified information in the short term.[88]

From an early point, classified information developments in the Council had been critically followed by the EP. Initially, its insistence on a greater right of oversight in the relative new and emergent Union area of the CFSP found little resonance with the Council beyond some very general information rights foreseen in the Maastricht TEU.[89] The court case initiated by Hautala MEP in 1998 therefore proceeded on the basis of a *public*, rather than a privileged right of access. At the same time, Hautala's case was clearly facilitated by her institutional platform, as she first learned about the existence of the specific document (a CFSP report approved by the PoCo and distributed via Coreu) through the Council's answers to her parliamentary question, and benefitted from the direct advice of both the European Ombudsman and a representative in the Finnish Brussels delegation.[90] However, the case for wider rights of parliamentary oversight in the area of the CFSP only became truly entangled with access to documents policy when the EP saw opportunity to use its formal co-legislative role in the latter as a lever for the former.

By the end of May however, part of the terms of the package deal had still not been met. When negotiations over the IIA concerning privileged access broke down, the EP again went to court, this time to challenge the March security rules as a lever to force the Council back to the negotiating table.[91] Towards the end of the period here under consideration, the Council and the EP were close to finalising a deal on limited parliamentary access to sensitive foreign policy documents, in exchange for a withdrawal of the court case.[92]

Although legally speaking, the changes to the classified information rules affected access to documents across the Council, their impact was particularly felt in the area of foreign policy. This is apparent when a case from before the classified information overhaul (*Kuijer*, April 2000) is considered alongside a comparable case after this overhaul had taken place (*Mattila I*, July 2001).[93] Both cases involved classified documents. In *Kuijer*, the CFI ruled in favour of the applicant both with

87 Tallberg cited in Rosén (2015), p. 392
88 Respondent #25
89 Rosén (2015), p. 389
90 Respondent #63; EP (1997), p. 48
91 EP (2001), point 6
92 Rosén (2015), p. 393
93 Case T-188/98, *Kuijer v Council ('Kuijer I')*, 6 April 2000 and case T-204/99, *Mattila v Council and Commission ('Mattila I'*), 12 July 2001

regard to his plea that the Council's refusal justification had been below the standards of reason-giving (paras 44-47) and, with reference to *Hautala,* that it had failed to consider the possibility of providing partial access (para 60), leading to an annulment of the Council's refusal decision. By contrast, in *Mattila I* the CFI dismissed the applicant's action in its entirety, even going as far as to state that "partial access would be meaningless because the parts of the documents that could be disclosed would be of no use to the applicant" (para 69).[94] One can only speculate as to the influence of Council developments on the CFI's rulings. However, it is likely that the 'Solana Decision' and subsequent rule-making developments had placed the issue of sensitive/classified documents clearly on the EU court's radar.

Another consequence of the introduction of the new classification rules was the growing risk of overclassification of Council document. Although the extent of this (potential) problem is difficult to gauge, there are indications that the Council has struggled with this issue.[95] A flight into "face-saving secrecy"[96] however also led to frequent negligence of the internal security rules:

> *Often I received restreint information via regular email. Then I would think: oh well, let's get on with it. […] There needs to be fast communication so you need to be willing to pass over bumps and formalities.*[97]

In summary, during the first period here under consideration, the access to FAC documents policy saw two central developments. First, as the general Council access to documents policy was introduced, a consensus developed around the exceptionalism of the area of foreign policy, which built on a number of measures to limit the public's access to FAC documents. Second, as the foreign policy activity began to expand due to developments in the CFSP, the 'exceptionalist consensus' was reconfigured. Eventually, in 2001, a revised version of the document classification rules was adopted as part of a 'grand bargain' package, leading to a new political consensus between the Council, the EP, and the EU courts. An overview of developments is provided in Table 1.

94 Mattila subsequently appealed the case, see 5 below.
95 Respondent #56; EUObserver (2012). A Council insider however has downplayed these concerns as exaggerated, see Galloway (2014), pp. 668-9.
96 EUObserver (2012)
97 Respondent #27

Table 1: Access to documents policy in the FAC, developments 1992-December 2001

Development	*Indicator*		
	Formal rules	*Implementation*	*Informal norms*
Exceptionalist consensus in foreign policy	- Special exception ground - Court jurisdiction but strict adherence to doctrine of 'limited review'	- Below-average access rate and above-average frequency of mandatory exception grounds for confirmatory applications - Increasing but 'interrupted' direct access to documents	- Steady and increasing Coreu traffic between 1992 and 2001
Exceptionalist consensus reconfigured	- Adoption classified information rules, fluctuation in the legal interaction with access to documents rules	Exclusion of certain categories of documents from register (1999-2001)	- Growing likelihood of overclassification - Parallel information regime (Coreu/informal)

5. 2001-2014: the 'transparency ceiling' of foreign policy

After Regulation 1049/01 entered into force, access to FAC documents policy began a process of consolidation. The exceptionalist logic to the access rules was characterised by the entrenchment of the classified documents rules, a steady increase in classified information exchange agreements with third countries, and a 'transparency ceiling' in the disclosure of FAC documents. As FAC policy making became increasingly multi-lateral and focussed on counter-terrorism, the exceptionalist consensus also came under pressure. External actors such as third countries, the EP, and NGOs each in their own way exercised pressure on the FAC to grant wider access, while member states and the EEAS took measures to avoid the unwanted disclosure of sensitive information.

5.1 Consolidation of the exceptionalist consensus

As Regulation 1049/01 entered into force at the end of 2001, a formal legal landscape underpinning the 'exceptionalist consensus' concerning access to FAC documents was in place. In the following years, this consensus was further consolidated. This entailed a strong protection of classified information and relatively low levels of access to documents whether in its active or passive form, accompanied by low salience among member states and increasing rule entrenchment to protect this consensus.[98]

The consolidation of a legal framework in support of 'transparency exceptionalism' built on the rules that were put in place in 2001. Besides the horizontally applicable Regulation 1049/01 with its foreign policy-specific provisions, this included the classification rules laid out in Council Decision 264/01 which would stay in place for the next ten years. Even when these rules were revised in 2011 and 2013,[99] this remained largely without consequences for the right of access to documents. Though horizontally applicable, the classification rules overwhelmingly concerned documents produced in the CFSP.[100] Decision 264/01 further foresaw the establishment of a member state-staffed security

98 Respondents #40, #56; Galloway (2014)
99 Council (2011); Council (2013)
100 According to the Council (EP (2012)), and a Council official (Galloway (2014), pp. 674-5)

committee and security office, both of which were in place by the end of the year.[101] The subsequent construction of a watertight security regime was overseen by top officials from Solana's cabinet. The security office furnished a situation centre (sitcen), as well as central unit for document classification and declassification, the *bureau d'informations classifiées* (BIC).[102] The new focus on security issues created a self-reinforcing dynamic:

> *It works as a cycle really. If there's the awareness, there is the willingness to acquire the necessary tools, the IT to guarantee security, which again brings greater security consciousness. I think the emergence of a security culture has been the largest change over the past decade in the document management of the Council's foreign policy.*[103]

In July 2002, the Security Committee oversaw a further entrenchment of the classification rules. Although transparency-favouring Denmark had just assumed the presidency, it had no agenda-setting role in this matter, as the committee was chaired by a delegate of the HR who had been one of the architects of the 'Solana Decision'.[104] A revision of the rules of procedure raised the bar for future changes to the Decision 264/01 to a qualified Council majority.[105] This arrangement deviated from the general rule by which decisions on procedural matters, including the rules of procedure which formed the basis of the security rules, were adopted by a simple majority.[106]

By the end of 2002, the Council met all of NATO's security standards. A bilateral declaration with NATO on classified information exchange, in which it reaffirmed its commitment to interconnecting security arrangements was soon followed by the NATO-EU SI agreement.[107] This paved the way for subsequent third-party classified information agreements. With the proliferation of such agreements, the impact of the orcon principle on access to FAC documents policy also increased significantly. An internal memo of 2007 listed various new agreements, including with Ukraine, Turkey, and the UN.[108] By 2014, around 20 such agreements were in place,[109] which vastly increased the number and proportion of orcon-protected documents.[110] A 2008 staff note from the secretariat provided guidelines for the handling of classified information, giving document authors the option of excluding online access or even reference to the document. The latter option was to be applied only "in exceptional cases". Moreover, following the orcon principle, the Council was free to list third-

101 Council (2001b), annex, part II, section 1
102 Respondent #56
103 Respondent #41
104 Council (2001a), part II, section I, point 3; Council (2001c) , p.3; Respondent #56
105 Council (2002b), article 24
106 Amsterdam TEC article 207, later TFEU article 240(3))
107 EU (2002b); EU (2003)
108 Council (2007)
109 Galloway (2014), p. 678
110 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.

party classified information where it had permission to do so.[111] In reality, the Council listed only a fraction of the classified information that it produced or received. By one recent estimate, of all classified documents that could have been legally placed on the register since 2001, only in 11.3 per cent had this in fact occurred.[112] It is likely that powerful intelligence partners, such as the United States, exercised a de facto veto over disclosures concerning documents to which it was a party:

> *Actually, the Americans to a large extent determine the degree of openness in Europe. Because if the Americans say: 'Guys, we will keep this secret', it will not be disclosed. End of story.*[113]

Others have argued that the implementation of the orcon principle is more nuanced, pointing out that disclosure of classified third party documents are subject to the "constitutional requirements, national laws and regulations" of the member states.[114]

The newly emerged consensus was also underlined by the Council's handling of requests for FAC-related documents. In confirmatory applications, the (partial) access rate remained relatively stable, and access refusals continued to rely heavily on mandatory exception grounds (81.6 per cent of all refusals). New however was a surge in the number of requests for classified documents related to CFSP/CSDP, from 28.9 per cent in the first years to 57.3 per cent in the last.[115] At the same time, member state dissent in confirmatory applications plummeted. In the period between 2002 and 2014 it declined by 40 percentage points; considerably faster than the Council average of 10 percentage points. Furthermore, after the *Hautala* appeal, judgment on which was rendered days after the entering into force of Regulation 1049/01, member states no longer intervened in access to FAC documents cases.[116] These numbers indicate a waning interest among the pro-transparency minority during this period (see Table 3).[117]

Meanwhile, the access to documents case law in the area of foreign policy after the entry into force of Regulation 1049/01 suggested a thawing of the courts in the sense that several judgments upheld, or resulted in, wider access.[118] In some judgments, however, the courts proved more rigid, leaving (the gist of) the Council's refusal decision intact. For example, in *WWF EPP* (2007),[119] concerning documents about WTO negotiations, the court reaffirmed that the Council was legitimately limited in the degree of detail it could provide to justify non-disclosure, lest this justification

111 Council (2008), point 5
112 See Bunyan (2014), p. 1
113 Respondent #15, also #27
114 EU (2011), article 4(2), cf. Galloway (2014), p. 673
115 Council (2015c); Council (2005); email correspondence with Council Secretariat (2016), taking three-year averages (2002-2004 and 2012-2014).
116 See section 4.1 above
117 Respondent #15
118 See Case C-353/99P (appeal), *Council v Hautala* (*'Hautala II'*), 6 December 2001; case T-211/00, *Kuijer v Council* (*'Kuijer II'*); case C-353/01 (appeal), *Mattila v Council and Commission* (*'Mattila II'*), 22 January 2004
119 Case T-264/04, *WWF European Policy Programme v Council*, 25 April 2007

undermine the interest protected in the first place (para 37). Curiously, when discussing the Council's assertion that the requested meeting minutes did not exist, it established that the Council was held to minimal standards of record-keeping, passing over the opportunity to clarify what such standards would actually entail (paras 61-3). In *Besselink* (2013),[120] the document requested was a draft mandate for the Commission to commence negotiations on the EU's accession to the European Convention for the Protection of Human Rights (ECHR). The court here followed the *Kuijer I* strategy,[121] annulling part of the Council's decision for having failed to consider the possibility of partial access. However, it rejected the applicant's argument that the Council had breached the international relations exception (para 73) or that refusal to disclose the document infringed his constitutional right to freedom of expression and information (para 39). Nevertheless, it may be argued that the EU courts stayed firmly within the doctrinal boundaries first set out in *Hautala I*:[122] a 'hands-off' approach towards the Council's application of mandatory exception grounds of the access regulation resulting in a limited, strictly procedural review.

With the new access-secrecy consensus in place, some movement also took place in the area of document registration. Certain bodies which had previously shunned the register, such as the CFSP-related PSC and the international trade-related Article 133 committee, now began to register (small numbers of) documents. Much however suggests that the registered documents were far from representative of the decision-making process. For example, the unlikely high percentage of Article 133 committee documents, consistently above 97 per cent, were directly accessible,[123] is explained by the fact that most documents were simply not registered. The Article 133 committee, as well as its successor the Trade Policy Committee (TPC), tended to rely heavily on so-called 'meeting documents' (MDs) in its decision-making processes,[124] which were only informally registered by the secretariat and did not appear on the online register.[125] The discretionary reliance on both MDs appears to have been prevalent beyond the area of trade policy. For example, when the Secretariat conducted an internal inventory of FAC documents in 2013, it emerged that MDs comprised 48% of all documents handled by it.[126] Recently, the 'informal rule' of using unofficial documents as the basis for FAC meetings has been countered by an informal norm by which preparatory bodies are expected to issue 'tracking documents' that list all MDs produced over a given period.[127] However, these are merely used to improve the Council's 'institutional memory',[128] and are not placed on the online register.[129]

In spite of some exceptions however, in general FAC bodies offered only very limited direct

120 Case T-331/11, *Besselink v Council*, 12 September 2013
121 See section 4.2 above
122 See section 4.1 above
123 Data held by author, available upon request.
124 Respondent #33; Council (2008), p.1
125 However, although the formal status of these documents is unclear, it appears that they can be requested, see Respondents #20, #32, #33, #36, #40, #63
126 Email correspondence with respondent #36
127 Respondent #32
128 Respondents #20, #33
129 Email correspondence with Council Secretariat, 2 June 2015

access to their documents. As a consequence, proactive FAC document disclosure soon reached what may be described as a 'transparency ceiling'. Between 2002 and 2007 a sharp, nearly fourfold increase occurred in the annual number of documents registered. This catch-up effect in terms of FAC document registration however marked less of a transparency-enhancing development than it may seem. As it happened, while the numbers of *registered* FAC documents increased over time, the proportion of these documents that was *directly accessible* actually declined, starting at 66.3 per cent in 2002 and settling with a more than 10 point decrease at 55.4 per cent in 2014.[130] In 10 out of the 13 years in this period (2002-2014), an *increase* in the number of registered documents corresponded to a *decrease* in the percentage that was directly accessible. In the year that the number of registered documents was highest (2011), the proactive access rate stood at 43.8 per cent, the second lowest rate of all measured years since 2000. This contrasted starkly with the overall percentage of directly accessible Council documents, which continued to rise until 2012 when it settled at around 75 per cent.

As the 'exceptionalist consensus' in the Council was becoming firmly consolidated and entrenched, the EP, generally a proponent of access to documents, desisted from advocating greater transparency, as the misgivings it previously had were now largely addressed. Thus, after the conclusion of an interinstitutional agreement (IIA) on access to classified CSDP information in November 2002, the EP withdrew its court action against Decision 264/01.[131] Thereafter, the EP's access to CFSP information continued to expand through successive agreements.[132] All agreements concerned privileged access, leaving the formal legal scope of *public* access to documents unaffected. Indeed, parliamentary oversight had been the EP's main concern from the start.[133] However, as we will see in the next section, subsequent developments meant that the EP, supported by the EU courts, became increasingly critical of the 'exceptionalist consensus' as it stood.

5.2 The exceptionalist consensus under pressure

Into the new century, the FAC's position on access to documents policy was not only consolidated; it also came under increasing pressure. The EU's search for a concerted response to exogenous events raised the political stakes of foreign policy cooperation for member states, which in turn affected their attitude to the circulation of documents.[134] But also external actors began to test the limits of transparency exceptionalism in the area of foreign policy. The result was a degree of fragmentation and disintegration, the effects of which are as of yet difficult to oversee.

On 11 September 2001, four airplanes hijacked by the terrorist group al-Qaeda crashed into strategic targets on US territory, killing 2,996 people. '9/11' reverberated across the world, including

130 Data held by author, available upon request.
131 EP and Council (2002a); Rosén (2015), p. 392
132 EP and Council (2006); EP (2010) and most recently, EU (2014)
133 Rosén (2015), pp. 393-4
134 Bicchi and Carta (2012), p. 470

the EU and its foreign and security policy, where it brought about a surge in counter-terrorist activity. Certain counter-terrorism measures that were already underway were fast-tracked, while in the years after the attacks, the PSC, on behalf of the FAC, increasingly began to impose sanctions against individuals associated with terrorism.[135] At the level of transparency rule-making, the events had a limited impact, as a strict SI regime was already largely in place.[136] However, as EU institutional actors rallied around the counter-terrorism cause, it did influence how the existing rules were interpreted. This is apparent when we consider the *Sison* case law, in which the EU courts arguably went beyond the CFSP's original 'exceptionalist consensus' to protect FAC confidentiality.[137]

Mr Sison, an EU resident of Philippine origin, had been targeted by a Council decision freezing funds and financial assets of a number of individuals suspected of financing terrorism. When Sison was denied public access to the documents related to this decision, he brought three actions against the Council's refusal to grant him access to documents which the CFI addressed in a single judgment. Sison's was one of a number of cases in which targeted individuals were offered very limited access to the justification of their listing, although he was the only one to bring an action on grounds of his right of public access to the documents.[138] The CFI thus duly pointed out that the fact that Regulation 1049/01 regulated *public* access to documents meant that it could not take the specific circumstances of an applicant into consideration (para 54). The fight against terrorism of which the contested sanction formed a part clearly mattered for the considerable leeway that the CFI granted the Council in the justification of its reliance on the international relations exception (para 60).[139] The CFI applied only a very minimal review of the Council's decision to refuse access to the underlying documents, finding no objection to the brevity and general nature of the reasons provided by the Council (para 65). As two observers at the time argued:

> *On the whole, […] it seems that hardly any reasoning going into the substance was necessary on the Council's part. Is the implication then not that a few magic phrases such as 'fight against international terrorism' and 'involvement of third states' will always do the trick?*[140]

When the CFI dismissed the application in its entirety, Sison appealed. In the appeal, AG Geelhoed supported the CFI's judgment, emphasising the strong distinction between the mandatory exceptions under article 4(1) and the discretionary exceptions listed under article 4(2) and (3), finding that,

135 Eckes (2009), p. 12; Zimmerman (2006), p. 127-34
136 Respondents #33, #36
137 Joined cases T-110/03, T-150/03 and T-405/03, *Sison v Council* ('*Sison I'*), 26 April 2005; case C-266/05P (appeal), *Sison v Council* ('*Sison II'*), 1 February 2007; see Heliskoski and Leino (2006), p. 753
138 Eckes (2009), p. 4
139 EP and Council (2001b), article 4(1)(a), third indent
140 Heliskoski and Leino (2006), 756

> *[A]s the efficacy of policy in this area in many cases depends on confidentiality being observed, the Community institutions involved must have* complete discretion *in respect of determining whether one of the interests listed in Article 4(1) (a) [the public interest exception which includes the protection of international relations] could be undermined by disclosure of documents.* (para 30, italics added)

He continued by arguing in rather general terms (and in the absence of any detailed evidence from the Council's side) that

> *[I]t cannot be excluded that disclosure of the document requested […] could have revealed details on the fight against terrorism in a more general sense.* (para 52)

The ECJ, relying partially on the legislative history of Regulation 1049/01 (para 37), arrived at the same conclusion (para 107). When considering both the initial and the appeal judgment, what is notable is that neither the CFI nor the ECJ systematically applied the *Hautala* criteria for limited review, which had previously been established as a constitutive element of the 'exceptionalist consensus'. This raised concerns of court permissiveness of arbitrariness in the Council's application of the international relations exception.

The greater consequences of the EU's foreign policy stances were also becoming apparent through third countries' growing interest in the FAC's decision-making processes. For example, in 2003 spy devices were discovered in the seat of the Council, the Justus Lipsius Building. As a consequence, security measures were tightened further.[141] A subsequent report suggested the Israeli secret service likely planted them.[142] More recently, information leaks in discussions on targeted sanctions listings were suspected to have occurred under the active pressure of Russia on individual member states:[143]

> *For instance with sanctions we had real problems with leaking documents. It was immediately in the news which names were put on the list proposed to Relex or Coreper to decide upon. […Even] before the Coreper meetings you could read already in the Financial Times or whatever, which names were [being] put forward.*[144]

Strategic leaking was felt to be facilitated by the proliferation of electronic devices in meeting rooms, and clearly undermined the intended secrecy required for effective policy making.[145] In other areas of

141 Respondents #36, #56
142 EUObserver (2011)
143 Respondents #36, #39, #56
144 Respondent #36
145 Respondents #32, #33, #38, #41

foreign policy, leaks occurred to exercise political pressure:[146]

> *If you go to trade […], for example, […strategic leaking] has become a policy instrument.*[147]

While the issue of leaking is periodically addressed by the chair, it remains a prevalent and more or less accepted element of the policy process, as leakers are difficult to trace, and often suspected to be based within member state delegations.[148] Although respondents highlighted that document leaking had always been around, its incidence appears to have gone up over the past ten years. This may have been caused by the eastern enlargement of 2004, which significantly expanded the 'circle' of classified information partners, and led to a decline in cohesion and mutual trust.[149]

Over time, the growing risk of national intelligence being compromised at the European level led to an increasing reluctance among member states to share their intelligence via the ordinary Council channels of communication, including the Coreu network. Resorting to restrictive document sharing, such as through numbered hard copies for the duration of a meeting, was believed to decrease leaking.[150] In parallel, member states with sensitive intelligence began to revert to informal sharing among smaller groups of member states.[151] Even where member states did share sensitive information for inspection, such as in cases where proposals for sanction listings require substantiating evidence, they rarely formally submitted these documents to the Council, or even allowed other member states to keep the documents.[152] In fact, the amount of 'hard intelligence' that was formally circulated was minimal.[153]

New institutional arrangements introduced after the entry into force of the Lisbon Treaty may have further facilitated the trend of informal and differential information exchanges. For example, since the HR (supported by the EEAS) became the formal chair of the PSC, a routine was developed by which a very summary draft agenda was formally submitted to the Council Secretariat, while in parallel, the EEAS itself would submit an annotated agenda directly to the member states. This method prevented outsiders from having references to the documents underlying agenda items.[154] Apart from that, member states have maintained regular informal contact with the EEAS in situations where they were reluctant to share information too broadly, or to test the waters before stating their official position.[155] Equally, the EEAS has tended to consult selected larger states early on in the decision-

146 Respondents, #32, #33, #40
147 Respondent #41
148 Respondents #32, #33
149 Respondent #41
150 Respondents #27, #36, #57
151 Respondents #27, #33, #36
152 Respondent #33
153 Respondent #41
154 Respondent #36
155 Respondent #33

making process.[156]

The implicit member state hierarchy in CFSP decision making has put member states with smaller diplomatic and intelligence networks at a disadvantage. At the same time, there is an implicit understanding that the CFSP, being an 'incipient' field of decision making that works on a unanimity basis, relies on the willingness and support of all, and particularly the larger member states:[157]

> *You know, France and Germany, UK also, Spain… [they are] important players in NATO and other international organisations. […] Big member states are also very much solo players. Even today we have this problem […]: what is this common security and defence policy? Even now with a look at the Russian situation and the Ukrainian crisis… So there's this division.*[158]

> *Policy making in the CFSP is less committed. Something is only CFSP when member states decide it is. So which documents fall within that scope is also their decision.*[159]

The 'realpolitik' of several member states in a context of reluctant cooperation helps explain the dual trends of a consolidating security culture on the one hand, and an acceptance of the informalisation of document exchanges on the other. In this respect, FAC decision making in this area was likened to that in the UN Security Council.[160]

The same dynamic however did not apply where the Council sought to enter into international agreements, either under the CFSP or other areas of foreign policy. Here, the basic paradigm of confidentiality has in recent years become challenged by a number of NGOs, member states, the EP, and the EU courts. This is not in the last place due to the growing treaty powers of the EP in this area.[161] A new provision under TFEU article 218(6) now granted 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 now entailed that the EP "shall be immediately and fully information *at all stages of the procedure*".[162] Both the EP's new right to be immediately, fully and completely informed about all international negotiations, and its power to vote any agreement down altered the dynamic of information exchange, especially after it became clear that the EP did not hesitate to use its powers when it was dissatisfied with an outcome.[163]

156 Respondent #36
157 Respondent #20, #32, cf. Zimmerman (2006), p. 130
158 Respondent #63
159 Respondent #37
160 Respondent #38
161 Respondents #27, #34, #38
162 TFEU article 218(10), addition relative to the original Amsterdam TEC article 300(2) italicised
163 As was the case, inter alia, in 2010 with the Terrorist Finance Tracking Programme (SWIFT/TFTP) and in 2012 with the Anti-Counterfeiting Trade Agreement (ACTA). Also Respondents #34, #38

In recent case law, the EU courts have shown themselves to be receptive to the EP's pressure. In a number of ways, the *In 't Veld* case law[164] formed the court's most complex access to FAC documents case of recent years, giving way to a rather transparency-friendly doctrinal development.[165] Sophie in 't Veld, an MEP, was dissatisfied with the information that the EP received about the SWIFT/TFTP negotiations with the United States, Consequently, she decided to seek public access to an opinion by the Council's legal service concerning the legal basis to be used for an EU-US agreement on the exchange of financial data to prevent and combat terrorism (the so-called Terrorist Finance Tracking Programme, or SWIFT/TFTP for short). The Council refused access on the basis of the exceptions protecting international relations and legal advice.

The court's review of the Council's refusal decision revealed its much more sympathetic attitude than in earlier FAC access cases. This change in position may have been due to the international agreement's controversy, as well as the court's support for strengthening the EP's right of privileged access in CFSP-related international agreement in a controversial judgment handed down only days before the *In 't Veld* appeal judgment.[166] Although the court reviewed the Council's justification of the former exception on the basis of the *Hautala* criteria, it interpreted this procedure more stringently that it had done up until then, by insisting that the harm which would be caused by disclosure must be "reasonably foreseeably and not purely hypothetical" (para 69), and that to this end, such foreseeable harm must be set out in a sufficiently concrete manner (para 58). This new interpretation once again narrowed the distinction between mandatory and discretionary exceptions, although the court officially left the *Hautala* criteria for limited review intact.[167] With regard to the legal advice exception, the GC rejected the Council's argument that a stringent review test established in earlier access to legal advice case law (*Turco*)[168] did not apply in the present case because it did not relate to legislative activity as had been the case there. Instead, the CFI reviewed the legal advice exception as it would have done in any other area of Council policy (para 76).[169] This line was defended upon appeal by AG Sharpston:

> *It […] seems to me over-simplistic to say (for example) that legislative acts generically require a high level of transparency but that other [fields] require less.*[170]

The increasing stringency of review from *Sison* to *In 't Veld* was palpable when the CJEU insisted that in spite of the Council's wide discretion to determine harm to the protected interest, it "remained

164 Case T-529/09 *In 't Veld v Council*, 25 April 2012 and case C-350/12P (appeal), *Council v In 't Veld*, 2 July 2014
165 Abazi and Hillebrandt (2015)
166 Case C-658/11, *Parliament* v. *Council* ('*Mauritius'*), was delivered on 24 June 2014, 9 days before C-350/12 P, *In 't Veld*.
167 Abazi and Hillebrandt (2015), pp. 835-7
168 Joined cases C-39/05P and C-52/05P (appeal), *Turco and Sweden v Council*, 1 July 2008
169 Leino (2014), p. 7
170 AG (2014), para 97; Council (1993b)

obliged" to explain the risk of harm in sufficient detail (para 64).[171]

Most recently, the issue of public access again resurfaced during the Transatlantic Trade and Investment Partnership (TTIP) negotiations. In June 2013, a year after the GC's judgment in *In 't Veld*, the FAC debated the possibility of publishing the TTIP negotiating mandate, in response to public concern. The decision was eventually delegated to the Coreper, which maintained its classification level at 'restreint'.[172] According to common practice, a decision to declassify and publish a Council document would be taken on the basis of consensus, implying a lowest common denominator.[173] However, public pressure continued to mount and in May 2014, a group of over 250 NGOs submitted a petition calling on the EU to increase transparency of the TTIP process.[174] After the outgoing trade commissioner De Gucht joined the chorus of critics, in October 2014 the Council gave in. By then, the mandate had already been long leaked to the press.[175]

In summary, two central trends stand out in the development of the access to FAC documents policy during the second period here under consideration. First, the FAC consolidated the policy flowing out of the political consensus reached in 2001-2002. Second, as a result of an increasingly active EU foreign policy, the Council began to feel growing external pressure that challenged the 'exceptionalist logic'. This led to what seemed the beginnings of a fragmentation and differentiation in the extent of access to documents depending on the policy subarea. Table 2 provides an overview of the most important developments.

Table 2: Access to documents policy in the FAC, developments December 2001-2014

Development	*Indicator*		
	Formal rules	*Implementation*	*Informal norms*
Consolidation of the exceptionalist consensus	- Entrenchment of security and classification rules through new voting arrangements, third-party agreements, and administrative-level arrangements	- Below-average access rate and above-average frequency of mandatory exception grounds for confirmatory applications - 'Transparency ceiling'	- De facto veto third parties due to 'orcon' princple
Differentiation under increasing external pressure	- Difference in court review between area of counter-terrorism and international trade	- Strong increase confirmatory applications	- Parallel document circulation (e.g. double meeting agendas, *in camera* or bilateral document sharing) - Document leaking

171 Compare with AG Geelhoed's statement above. Cf. Abazi and Hillebrandt (2015), p. 837
172 Respondent #20
173 Respondents #20, #56
174 AIE (2014)
175 Euractiv (2014); Council (1995a)

6. Analysis: change and continuity over time

How must the dynamics underlying the development of access to documents policy in the Foreign Affairs Council be characterised? In this policy area, from the outset a consensus exited around the presumption of exceptionalism: the idea that generally speaking, foreign policy making could not be transparent in the same way that other policy areas could. Over time, this 'exceptionalist consensus' was developed, revised, and most recently, challenged by a conjunction of actors in and around the Council. Thus, while access to FAC documents made an evident advance over time, this advance knew a clear 'ceiling': a point at which access to documents became stunted by a permissive interpretation and implementation of the exception grounds in the formal rules and several transparency-constraining informal norms.

An important element of the 'exceptionalist consensus' in the FAC were the Council's rules on document classification. Particularly in the two-year period around the turn of the century, these rules underwent important change. Whereas initially, reference to classified documents was to be made on the public register barring exceptional circumstances (1999), thereafter such documents were excluded altogether from the scope of access to documents (2000). Finally, the access rules were once again brought under the scope of the access rules, albeit in a very restrictive manner subject stringent safeguards (2001). The dominant role, in this episode of reform, of Finland, France and Sweden stands out in particular, and is associated with their respective presidencies. In general, we may conclude that the perceived salience of access to documents in the FAC declined notably from the first period under consideration to second. After Regulation 1049/01 entered into force, the willingness of (coalitions of) member states to place related items on the agenda, intervene in court cases, and countervote or make statements in confirmatory applications all dropped considerably.

Table 3: Waning member state involvement in access to FAC documents policy, 1992-2014

	*Court intervention **		*Countervotes in confirmatory application decisions ***		*Statements attached to confirmatory application decisions ***		*Central presidencies****	
	I	*II*	*I*	*II*	*I*	*II*	*I*	*II*
Denmark	1 (+)	-	58%	8%	-	2%	-	-
Finland	1 (+)	-	15%	6%	-	6%	1999 (+)	-
France	1 (-)	-	-	2%	-	-	2000 (-)	-
Netherlands	-	-	15%	-	-	2%	-	-
Spain	1 (-)	-	4%	2%	-	2%	-	-
Sweden	1 (+)	-	31%	14%	4%	12%	2001 (+)	-
United Kingdom	1 (+)	-	23%	-	-	-	-	-

*Data compiled by the author. I/II represent respectively the period before and after entry into force of Regulation 1049/01. * Out of a total of 3 court cases (period I) and 9 court cases (period II). (+) indicates intervention on applicant's side, (-) on Council's side. ** % of total, 203 confirmatory applications (period I) and 145 confirmatory applications (period II). *** Presidencies in which important legal or political texts were adopted.*

From 1999 onwards, the FAC's decision-making architecture was expanded with a High Representative with his own dedicated staff, as well as several new CFSP bodies, among them the Political Security Committee that was predominantly staffed by member state officials of the ambassadorial rank. This altered arrangement introduced administrative elite officials who increasingly took over the role of setting the agenda with regard to procedural matters. This is apparent by such rule changes as the 'Solana Decision' (2000) and the establishment of the Security Committee which in 2002 entrenched the rules covering document classification. From 2002 onward, these actors were also responsible for brokering security of information (SI) agreements with third states. This meant that the so-called 'orcon' (originator consent) principle began to play an increasingly important role, as the Council handled ever-more third-state classified documents. These documents were only rarely disclosed, or even made visible on the online register, and it was held that powerful third-country partners held a de facto veto over disclosure of their own documents. In this light, it may be noted that the applicable voting rules, which at times were simple majority, at other times qualified majority, had only a limited impact, generally favouring transparency's critics in the Council.

As the CFSP was expanding, other institutional actors entered the policy debate seeking to check the FAC's power. In the area foreign policy, the EU courts were given plenty of opportunity (12 court cases) to interpret the access rules. At an early point, the CFI, later supported by the ECJ, asserted both the applicability of the access rules in the CFSP, as well as its jurisdiction therein. The courts thereby protected applicants' access to the judicial review in CFSP access matters. However, they remained reluctant to apply strong judicial review in access to FAC documents cases, instead developing procedural criteria for limited review in *Hautala*. Thereafter, the courts' adherence to the '*Hautala* criteria' was variable. Whereas they were generally explicitly applied, in the *Sison* case law in the aftermath of the 9/11 attacks, the courts were rather hands-off, merely referring to the *Hautala* criteria in passing. Most recently, the *Hautala* criteria were given a more restrictive interpretation in the *In 't Veld* case law, where the court held that justification of a mandatory exception ground not only could not be purely hypothetical, but also be couched in an sufficiently detailed argument explaining the 'specific and actual' risk in disclosure.

From the late 1990s onwards, the EP, too began to increasingly assert itself regarding the matter of access to FAC documents. In a 'grand bargain' deal involving Regulation 1049/01 and the document classification rules, the EP was able to secure modest privileged access to classified CSDP information rights, which were thereafter gradually expanded. Treaty change also played its part in empowering the EP. Through the Amsterdam Treaty, the EP attained certain information rights in the area of international negotiations, which were expanded in the Lisbon Treaty. Of itself, the EP's battle to strengthen parliamentary oversight in the foreign policy area had only a limited impact on the public's access to documents. However, on two occasions, MEPs dissatisfied with the access to Council information received on the basis of their institutional platform, relied on the public access rules (*Hautala I* (1999) and *II* (2001); *In 't Veld I* (2012) and *II* (2014)), leading to the important

doctrinal developments described above.

During the second period under consideration, the 'exceptionalist consensus' came under increasing pressure. Sparked by the a chain of events that began with 9/11, the CFSP developed an increasingly active counter-terrorism and defence policy. This policy cooperation required more intensive information exchanges from particularly the larger member states with more elaborate intelligence capacities. However, in a post-enlargement EU, these pressures increasingly gave way to informal, idiosyncratic bilateral or 'minilateral' document exchanges outside of the formal document frameworks. The significant power of the larger member states in the decision-making process meant that other member states largely accepted these developments.

> *[M]ember states [have] a much stronger leverage within the Council working process […], because […] they can stop at any time. If there is no consensus, there is no consensus.*[176]

The EEAS, which upon establishment (2009) became the epicentre of CFSP policy making, also quickly adopted this information exchange style. Together with the vast amount of orcon-covered third-party documents, this has led to an increasing number of documents the existence of which evades the public eye.

Finally, as in other Council policy areas, the emergence of the internet towards the end of the 1990s formed the exogenous factor that enabled introduction of an online public register. This helped the cause of access to documents, as it placed a presumption of transparency on the FAC's side. It also facilitated monitoring of the document register, aiding NGOs in their calls for greater transparency, such as in the case of the TTIP negotiations. However, from the start, the functioning of the document register in the area of foreign policy was significantly curtailed. First, the parallel Coreu exchange network featured documents that would not regularly appear on the public register. When Coreu document traffic began to decline after 2005, much of the decline was probably absorbed by informal document exchanges. Second, from 2000, the Council sought to keep certain documents off the register. Initially, it did so by excluding classified documents from the scope of the access rules ('Solana Decision'). When this decision was reversed, the Council adopted new internal rules that formally prohibited the registration of documents with high classification levels, and registered de facto only a negligible proportion of documents with lower classification levels. Third, registration of non-classified FAC documents soon hit a 'ceiling', whereby an increase in the number of documents registered led to a proportionate decline in the rate of directly accessible documents.

All things considered, the 'exceptionalist consensus' that has characterised FAC decision making throughout, and that brings with it an inevitable degree of strain on the functioning of access

176 Respondent #41

to documents, is here to stay for the foreseeable future. Table 4 sets out the factors that are most important in explaining the development of the FAC's access to documents policy.

Table 4: Explanatory factors in the development of access to documents in the FAC

	Stable factors	*Changing factors*
Actors	- Central role of member states - Strong influence courts - Variable influence non-institutional actors: partner states and organisations (strong), NGOs (limited)	- Introduction of High Representative for CFSP (1999) - Introduction of new decision-making bodies for the CFSP (PSC, Military Committee) (2000) - Growing influence EP (2001) - Decreasing policy entrepreneurship presidency (2001) - Establishment of EEAS, increasingly central role (2009)
Preferences	- Exceptionalist consensus, constraining either scope or impact of access to documents rules	- Increasing reliance on and protection of third-party classified information (2000) - Increasing protection of member state intelligence (2002)
Resources	- Recourse to judicial review - Voting rules favouring transparency's critics	- Entrepreneurship administrative elite officials (1999) - Decreasing agenda-setting role presidency (2001) - Decreasing reliance on parallel document exchange system (Coreu) (2005) - Strong decrease of countervoting in confirmatory applications (2002-2014)
Exogenous factors	- Decision making largely reliant on consensus and trust-based intelligence exchange	- Introduction of HR for CFSP (1999) - Emergence of IT (introduction of online document register) (1999) - 9/11 attacks (2001) - EU enlargement (2004) - Establishment of EEAS (2009)

7. Conclusion: a 'natural exception' to transparency

From the outset, access to documents policy in the FAC context was developed with the idea that foreign policy formed a 'natural exception' to transparency. This assumption followed practices at the national level, where the conduct of foreign policy has traditionally been seen as an 'executive prerogative'. Thus, in contrast to other areas of Council policy making, FAC actors from the outset embraced the 'exceptionalist consensus' that emerged around a special exception ground, limited court review of the Council's invocation of this exception ground, structurally lower passive and active disclosure rates, and a strong reliance on the parallel secured Coreu document network.

At the turn of the century, CFSP activity began to expand rapidly. This led to an overhaul in the document classification rules, the temporary exclusion of classified documents from the scope of the access rules, and the exclusion of certain categories of documents from the recently introduced online document register, all measures of which were strongly contested by the pro-transparency minority. Eventually, a new, middle ground settlement was agreed that broadly satisfied the preferences of the Council majority and the HR on the one hand, and the Council minority and the EP on the other. In the years thereafter, this new consensus was further consolidated. This entailed the entrenchment of the classification rules, the signing of several classified information agreements with third countries, and continually low levels of access to documents. As a consequence, classified

documents originating from third states were structurally kept off the register, and direct access to documents soon reached a 'transparency ceiling'.

The FAC's policy engagement was stepped up as the first decade of the twenty-first century unfolded, with the 9/11 attacks (2001) as an important triggering moment. The raised stakes of counter-terrorism policy, along with the EU's 'big bang enlargement' (2004), posed an growing challenge to the FAC's 'exceptionalist consensus'. This led to both policy-undermining developments such as third-country intrusion and document leaking, and increasingly assertive external actors, both institutional and non- institutional, that questioned the 'exceptionalist consensus' and demanded wider access. So far, the FAC and particularly its larger members have responded to these challenges by exchanging particularly CFSP and CSDP-related information with ever-greater caution and selectiveness.

At first sight, the development of access to documents policy in the FAC seems to fit with a notion of exceptionalism according to which transparency 'works inherently differently' there compared to other policy areas. Yet, upon closer inspection, the considerable contestation over policy change between 1999 and 2001, as well as the subsequent entrenchment of the 'exceptionalist consensus' suggests a more dynamic development by which efforts to create transparency were gradually 'encapsulated'. In particular, the FAC's manner of dealing with classified documents, as well as the 'orcon' principle form policy elements that potentially conflict with the spirit of access to documents rules. This is further exacerbated by the fact that FAC policy making leads to a 'compound exceptionalism' in the sense that the traditional notion of an executive prerogative at the national level is duplicated at the European level and thereby attains a multilevel character, potentially creating accountability gaps. At a practical level, arrangements are also increasingly questioned and challenged by critical outsiders, who consider the current extent of confidentiality no longer feasible nor desirable. While these efforts have added certain constraints on the FAC's ability to rely on confidentiality of its documents, their result should not be overestimated. Indeed, for the foreseeable future, it seems unlikely that outside critics will successfully curb the 'exceptionalist consensus' in the FAC's access to documents policy.

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T-188/98	Kuijer v Council	6 April 2000
T-204/99	Mattila v Council and Commission	12 July 2001
T-211/00	Kuijer v Council II	7 February 2002
Joined: T-110/03, T-150/03 and T-405/03	Sison v Council	26 April 2005
T-264/04	WWF European Policy Programme v Council	25 April 2007
T-529/09	In ‘t Veld v Council	25 April 2012
T-331/11	Besselink v Council	12 September 2013

ECJ/CJEU

C-353/99P	Council v Hautala (appeal)	6 December 2001
C-353/01	Matilla v Council & Commission II (appeal)	22 January 2004
C-266/05P	Sison v Council II (appeal)	1 February 2007
C-280/11P	Council v Access Info Europe (appeal)	17 October 2013
C-350/12P	Council v In ‘t Veld (appeal)	2 July 2014

Advocates-General’s opinions

C-266/05P	Sison v Council (appeal)	Geelhoed	22 June 2006
C-350/12P	Council v In ‘t Veld (appeal)	Sharpston	13 February 2014

Annex

Interviews

Interview number	*Role interviewee*	*Case study*	*Date interview*
15.	Member of the European Parliament	FAC	17 April 2014
17.	Member, Brussels-based NGO	General	14 May 2014
20.	Staff member, Council Secretariat	FAC	3 June 2014
22.	Academic, specialist CFSP	FAC	4 June 2014
25.	Former senior member state representative, Brussels delegation	General	24 June 2014
27.	Staff member, national ministry of foreign affairs	FAC	11 July 2014
30.	Former member state representative, Brussels delegation	General	8 September 2014
31.	Former member state representative, Brussels delegation	General	4 September 2014
32.	Member state representative, Brussels delegation	FAC	10 September 2014
33.	Staff member, EEAS	FAC	10 September 2014
34.	Senior staff member, European Parliament Secretariat	FAC	11 September 2014
36.	Staff member, Council Secretariat	FAC	11 September 2014
37.	Staff member, Council Secretariat	General	12 September 2014
38.	Senior staff member, Council Secretariat	FAC	12 September 2014
39.	Member state representative, Brussels delegation	FAC	12 September 2014
40.	Staff member, Council Secretariat	FAC	12 September 2014
41.	Senior staff member, Council Secretariat	FAC	12 September 2014
56.	Former staff member, HR’s cabinet	FAC	11 November 2014
57.	Member state representative, Brussels delegation	FAC	11 November 2014
63.	Member of the European Parliament	FAC	9 December 2014