

Public seminar on ‘Decision-making in the EU and in Finland – Does transparency have limits?’

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Good morning everyone, thank you all for being here and thank you to the European Parliament Liaison office for organising this event and for giving me the opportunity to speak with you on this very important topic at a crucial moment, coming just ahead of the start of the Finnish presidency of the EU, a presidency that has already stated that greater EU institutional transparency will be a priority.

Transparency and ethics in public life are of course well-ingrained in the Finnish psyche. Finland's consistent ranking as one of the least corrupt countries in the world is inspiring for all of us who believe that open, ethical, and transparent Government is inextricably linked not just to good governance but also to the fight against corruption, a phenomenon that robs so many people of the resources they need to live their lives well and to provide for their families.

When I asked during the week, what makes Finland in this period such a successful country on so many levels, I was told that it was due to a willingness to co-operate in public life and to a strong attachment to the rule of law. The observation makes sense at a time when the opposite – political polarisation and a weakened attachment to the rule of law – is boosting populism in Europe and elsewhere the consequences of which may not be fully visible for quite some time.

My role as European Ombudsman puts me in a unique position to act as a bridge between the public and the EU's administration. Citizens want from the EU what they want from their own member state, an open, ethical and accessible administration, one which supports a good quality of life, and one in which they can actively participate.

When they cannot understand decisions, or the process by which they are made, a dangerous vacuum exists, one that is very easy to fill with disinformation and with a caricature of the EU that can nonetheless be extremely influential. The depiction of the EU institutions as undemocratic, unaccountable, and run by faceless bureaucrats drove much of the Leave vote in the Brexit referendum and in other countries with strong Eurosceptic or anti EU movements.

Nonetheless, the drama of Brexit, and of other recent EU crises, from the financial collapse to migration, has had the positive effect of making many more EU citizens interested in the



institutional EU. This was reflected in the recent European Parliament elections which saw a steep rise in voting across Europe.

From my perspective, this new level of interest, which of course necessarily implies greater levels of informed public scrutiny will hopefully now help to challenge any remaining, traditional, impulses towards secrecy and towards behind closed doors decision making at EU level.

As European Ombudsman, my broad strategic priorities relate directly to this issue – how to give concrete reality to an EU citizen's Treaty right to take part in the democratic life of the Union, including the right to participate in the EU's decision-making process. The priorities also concern transparency, the accountability of the institutions and the ethical conduct of EU civil servants and particularly top officials.

My recent inquiry into how the national governments, while sitting in the Council of the EU in Brussels, consider draft laws is a good example of my work in this area. It is also a matter that is ongoing, as Council's response to date has not been satisfactory. This is in spite of the overwhelming support that the European Parliament gave to my findings in its vote on my 'special report', and also the support of many national parliaments.

The overarching goal of the inquiry is to bring national governments' decision making on EU laws in Brussels more into the open, so that the public and civil society can hold governments to account for the decisions they make on EU laws. A similar motivation guided my decision, last month, to open an inquiry into the transparency of the Eurogroup, and how its meetings are prepared.

The Eurogroup – comprised of the Finance Ministers of all 19 Eurozone countries - is not a formal EU institution, but, given its influence on people's lives within Europe, it is obvious to me that that should not be an impediment to greater openness about its decision making.

Greater transparency would help enable those interest groups with a legitimate stake in a particular law or decision to bring their views more effectively to the attention of European lawmakers. The argument against greater openness is that Council members would be exposed to pressures which would make it difficult to strike compromises and make decisions.

The counter argument is that a failure to agree frequently means that important measures are left stuck at Council level, and as there is little information about which national government or governments are blocking a legislative initiative, it is difficult to break the impasse through public pressure.

In addition, without greater transparency, we cannot know whether individual governments are themselves being influenced by lobbying pressure. My recommendations do of course recognise the importance of the 'space to think' and that it is indeed in the public interest that reflection and discussion do need to take place behind closed doors. But it is important to strike



the correct balance between the 'space to think' and the permanently closed door.

One brief example: in 2013 the European Food Safety Agency issued guidance in relation to pesticides and their impact on the bee population and therefore on biodiversity. Six years later, the Commission is still awaiting a decision by a committee of national authorities on the matter but has refused to release requested documents which would essentially reveal the various national authorities' positions on an issue which, in the intervening period, has become even more critical given our heightened awareness of environmental degradation.

The Commission says that the release of the documents would damage the decision making process of the committee of national authorities dealing with the issue, while acknowledging a public interest in the matter. My position is that the greater public interest lies in the release of the documents which would enable citizens to see their national authorities' positions and take any action they considered appropriate. The Commission response to my recommendation is due in August.

My recommendations in the Council inquiry as regards the lack of legislative transparency also seek to address the 'blame Brussels' culture, by which some national governments criticise decisions taken in or by "Brussels" before their domestic audiences. Yet, very often, during the legislative process, they had supported and/or shaped the very decision they subsequently criticise as it moved from working group stage through to EU Ambassador level and finally to Ministerial level.

The recommendations essentially seek to ensure that Council records these legislative deliberations systematically, and that it makes this information available in an easy, timely and consistent manner.

Council has indicated that it is considering making some improvements along the lines suggested in my recommendations but some larger Member States are still resisting change. I hope that the Finnish EU presidency will prioritise this, and help to ensure that Council opens up its decision-making processes. This can only strengthen EU democracy, and public confidence in the Union.

It could also lead to a new political maturity when it comes to law making at EU level, a recognition that divisions do of course exist between the member states but that robust debate and a willingness to compromise, to cede some national interest for the sake of the union as a whole, can lead to positive outcomes for all.

The overdue creation of a binding lobbyist register to cover all EU institutions has been on the agenda for far too long. It is something that I have consistently advocated for in my time as European Ombudsman. But those pushing for a binding register - including some of you present here today - have been doing so since long before I first took up office.



Seeking the views of interest representatives is clearly a legitimate and important part of legislating and policy making in a healthy democratic system. Providing the highest and most transparent standards to regulate this practice can help assuage public concerns about the role of lobbying at EU level.

There is no doubt that progress has been made, and the joint European Commission/European Parliament lobbyist register is now a very good model; although there are still some aspects that could be improved. However, to be effective, this register must apply to all of the EU's law-making bodies, and especially the Council, and it needs to be mandatory on lobbyists. It must become in my view the 'central transparency hub' for EU policy making.

The other institutions, and particularly the Council, also need to commit to the same level of transparency as the Commission, and meet only with individuals or groups listed on the register. The question of how to regulate Member States' permanent representations in Brussels, and their national ministries, which play a central role in EU decision-making, will however remain problematic.

Among other things, the register needs in future to have a proper legal basis, enshrined in legislation and not merely an inter-institutional agreement.

To this end, it was disappointing to observe the breakdown of the talks between the European Commission, Parliament and Council in April but the newly refreshed institutions will hopefully return to this matter with renewed focus and renewed engagement particularly given the much higher level of public scrutiny they can expect from now on.

Finland's presidency of the Council of the EU is also critical in this matter and the cross-party letter from some 100 MEPs to the Finnish presidency in April showed that political will is not lacking. Among other issues, the MEPs highlighted both Council transparency and a binding lobby register as priorities.

I hope that the Finnish presidency will tap into this coalition of the willing, and the can-do energy at the start of the legislative term, to secure majorities to deliver more ambitious transparency rules for the EU.

The title of this session is 'the limits of transparency'. It is important to remember that transparency is not an end in itself but rather an accountability tool. It also relies on ethical administrations governed by the rule of law for it to be effective at all. Positive change needs two things to happen – transparency to alert us to problems, yes, but also an administration open to dealing with the problems when public attention is brought to them. And if an administration itself will not change, then it needs to be held to account on a democratic and fair basis.

As I have frequently said, US President Donald Trump for example is very transparent, we see on a daily basis what he and his administration are doing. But if that administration– or indeed other administrations - are reluctant to act in the wider public interest on matters from the



protection of the environment, to the protection of migrants, to the independence of courts and the freedom of the media, then yes we really do begin to see the limits of transparency.

Transparency is just one part the whole when it comes to full democratic accountability, a vital part yes but which nonetheless also relies on adherence to the rule of law and respect to the fundamental elements of democracy for it to fully realise its transformative potential.

But before I conclude, I think it's important to remember and to commemorate this day, the 6th of June, 75th Anniversary of the D-day, when the Allied troops took the first steps onto the beaches of Normandy, ultimately to liberate Europe. Thousands of young soldiers gave their lives to give us the freedoms that we now enjoy as Europeans. We should remember their sacrifice and remember also how fragile at times our democratic freedoms can be. We owe it to all of those young people who died on this day 75 years ago to protect and defend those freedoms, especially at these most challenging of times.

Thank you.