



## Strengthening Public Trust in the European Union - Address to the Institute of International and European Affairs

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Good afternoon ladies and gentlemen. Let me begin by thanking the IIEA for the invitation to address you this afternoon and during a time of intense political activity both here in Ireland and at EU level.

As European Ombudsman, I sit on a small perch but a perch that nonetheless allows me a bird's eye view of much of what happens at the institutional level of the European Union. My mandate covers every institution, agency and body of the EU although we deal mainly with the Commission.

The issues and complaints we are currently dealing with, or have dealt with, include everything from standard administrative errors such as delays and failures to reply, right through to access to documents held by the secretariat of the Eurogroup, how the European Medicines Agency authorises certain drugs, the opacity of decision making at Council level, alleged conflicts of interest involving senior EU personnel, human rights compliance by the EU border agency Frontex, how fishing quota decisions are made, and very recently why Commission advice in relation to certain pesticides and the protection of the bee population remains stuck at member state discussion level, essentially invisible to EU citizens.

Policy is not my business but the investigation of administrative compliance with the law and with the principles of good administrative behaviour afford nonetheless a deep insight into how the EU is functioning.

Turf wars and conflicts between the institutions can be laid bare in freedom of information requests. The influence of global corporations on policy making is visible through revolving doors cases. The challenges of policy making in sensitive areas such as defence or now climate action can be seen as citizens, civil society organisations and businesses attempt to look inside the decision-making process whether at expert group level, Council working group level and above, or through monitoring the meetings held by Commissioners and their cabinet or senior officials.

Reflecting about my experience over the last six years and noting how episodic it was in terms of the various crises affecting the EU over that period I started to see the story and



trajectory of the EU in TV terms, or perhaps more appropriately for 2020, in terms of what we watch through online streaming services.

Before the advent of binge watching, many of us patiently watched series and serials on television. A series is defined as a collection of stories that all belong to the same 'franchise' but can be watched in any order, while a serial has to be watched in the correct order because it is a single story leading to an eventual end or climax.

So I wondered whether the EU is a series or a serial? When I glance across the years 2013 to now, I see a franchise certainly – the European Union - a cast of characters whether Commission President or head of member state, whose nominal role doesn't change but the actors playing them constantly do, and with plot lines that acquire heightened relevance at certain points before either fading from significance or disappearing altogether.

So, in the past six years we have had a series of stories – the Greek financial crisis, the catastrophic deaths of thousands of migrants on our shores, terrorism that came even to the institutional centre of the EU with the attacks on Brussels, the rise of populism in certain member states, the growth of right -wing extremism, Brexit, the challenges of the Trump administration, and even as we speak the ongoing negotiations over the EU budget.

There are plot lines that are constant such as inter institutional rivalries, playing alongside novelties such as some of those mentioned above - and now introducing the climate emergency.

Hovering over all of this is the question of how it all ends, will it be like a serial, reaching a predictable and safe conclusion no matter how much disruptive drama is stitched into the plot or will the storylines drift aimlessly on, with the audience forgetting the original plot, becoming indifferent as to how it ends or perhaps, like the UK, simply switching to another channel.

Every new story line prompts fresh existential angst. Would Brexit cause a domino effect, would the migration crisis provoke an unbearable level of anti-EU populism, would the Euro collapse, would the Trump effect prompt an army of European copycats?

On some issues, it probably is too early to tell, but through the rear-view mirror, one can see how some predicted catastrophes were caught on time or minimised.

Greece did not leave the Eurozone. Former ECB President Mario Draghi did indeed do anything that was required to quell the Euro panic. A contested 'deal' with Turkey did impact on the migrant crisis. The withdrawal deal with the UK was managed in a way that has so far protected EU interests.

And while some EU politicians do indeed play from the Trump playbook, others are strongly calling it out. Incremental erosion of democratic standards nonetheless continues in certain parts of Europe and dealing with that while conscious of the law of unintended consequences continues to be a significant challenge.



The improbable sight of an Irish Supreme Court judge recently marching through the streets of Warsaw in solidarity with an embattled judiciary is testament to the gravity of this issue for the Union.

The appointment of the new Commission marks the start of a new EU episode. While it is still getting off the ground in relation to many policy initiatives, some of its very first moves – even if superficially cosmetic – did give a sense of an institution alive to popular – even populist - anxieties and biases.

An initial decision to designate one Commission mandate as that of 'PROTECTING the European way of life' was however deemed rather too populist and was swiftly changed to 'PROMOTING the European way of life'.

The word 'transparency' found its way for the first time ever into a Commissioner's title – alongside 'values' - and the climate crisis was brought centre stage to the Commission's agenda with very ambitious carbon neutrality targets set involving virtually every area of EU activity.

The global role of the EU was also given significant billing with the Commission now identifying as a 'geopolitical' one and the new Council President Charles Michel embarking on an energetic round of bilateral meetings around the world.

And it therefore falls partly to me – as the Ombudsman – to bring belief and citizen trust into what the institutions now say, the targets they set, the life-affirming sentiments they express.

And I do that by holding them to account for the subsequent actions the EU administration takes in relation to the agenda of the institutions and in relation to its compliance with EU law and with the Charter of Fundamental Rights.

In these early days, when the fresh legislative cycle is just beginning and many leaders and others are setting out their stalls, it is rare not to hear the words 'citizen' and 'trust' being mentioned.

The EU institutions and their leaders know that trust – however difficult it is to define and to deliver – is the glue that keeps the Union intact – a continued belief that people are better inside than out, a belief eroded to destruction in the UK through a combination of largely internal forces that I don't need to outline for this audience.

But if the opening remarks of the institutions and the new institutional leaders do genuinely speak to people's anxieties and needs, they are in reality just the gliding torso of a swan while the flapping feet beneath are the parts that we have yet to see.

Dealing with the climate crisis for example, the political choices that have to be made if the targets are to be realised – gives an early indication of the challenges ahead.



Proposals across a range of sectors will affect member state citizens differently – from Polish coal miners to Irish farmers – and as we have seen in our own recent election, the climate crisis was not as high up the electorate’s list of priorities as might have been thought.

The spark for the emergence of the Gilet Jaunes in France was President Macron’s proposed policies on fuel taxation, a lesson which will not have been lost on other leaders.

Climate action decisions will also impact on budget negotiations, on funding distribution, on the general prioritising of many issues and with each one comes the possibility for rancour and disunity.

It therefore stands to reason – in my view - that a high priority must be given to the transparency of the decision making around all of this despite anxieties about the challenges of negotiating even with nobody looking.

But major decisions – directly affecting people’s lives, and indeed the life of the planet – are going to be made over the next few years and those who are affected by them don’t have just a woolly general right to know what’s being done to them, they have a right under the Treaties of the Union to participate in the democratic life of that Union.

And that means – just as it would in a member state – knowing what’s proposed and what position their own governments are taking on it.

Let me give you some examples of what that means in practice. In 2013, the Commission – following the expert opinion of the European Food Safety Authority – gave advice to the member states concerning pesticides and the protection of the bee population. Almost seven years later, that advice is still stuck at that member state level, with no movement as to its agreement or implementation.

My office received an access to documents – or FOI – request for the positions taken by the member states as the advice was and is discussed outside of the public gaze.

I recommended that the documents containing those positions be released essentially on public interest grounds. The Commission rejected the recommendation. It recognised the public interest I had outlined – but judged that the protection of the deliberative process – was of a higher order public interest.

Enabling member states freely to discuss difficult issues is of course part of any good transparency regime but using it to protect positions taken after seven years of deliberation is in my view – putting institutional interest ahead of the interests of the public.

Without that information, citizens cannot know who or what is influencing this impasse and do something about it if they choose. Is it one member state or several who are wary of imposing restrictions on certain pesticides? Is lobbying from the chemical sector affecting the play? Whatever the reasons for the delay, the key point is that the citizens much talked about by the institutions are being firmly excluded from this process.



I should point out – in fairness to the Commission – that while some access requests are dealt with directly by them – as they hold the documents – the refusal is sometimes grounded in a refusal by the Council – by the member states – to change certain rules of procedure that would enable greater citizen access to relevant documents.

A similar decision was made in relation to a request for access to documents around the annual decision making on fishing quotas – who gets what and why – the public again being seen not as partners in decision making but rather potential troublemakers.

Given that fisheries policy is already a heavily contested part of the EU UK trade negotiations, one can see how this should be a highly relevant area for the trust, values, and transparency commitments of the new Commission and other institutions.

Those two matters – the bees and the fish - are likely to be just the tip of a melting iceberg of challenges when the climate action plan – and the distribution of the climate fund – gets going.

One can imagine the sheer volume of interests to be heard and reconciled and the vast amount of lobbying that is likely to take place as various sectors vie for influence.

Some concerns have been raised about the possible diversion of these funds to big industries for so-called transitional projects rather than to smaller communities and small businesses directly affected and again transparency will be vital in allowing citizens to see who is influencing what and what the outcomes are. It will be vital for public trust.

So, my recent experience in relation to letting citizens know what's going on, would appear to stand in contrast to another initiative in this 2020 episode of the European Union and that is the planned Conference on the Future of Europe.

This is due to be launched by the Commission, alongside the Parliament and the Council, on May 9 th next, Europe Day, and is planned to run for two years. It is intended, according to the Commission, to give Europeans a greater say on what the European Union does and how it works for them.

Ursula **von der Leyen** , President of the European Commission, has said: *" People need to be at the very centre of all our policies. My wish is therefore that all Europeans will actively contribute to the Conference on the Future of Europe and play a leading role in setting the European Union's priorities. It is only together that we can build our Union of tomorrow."*

While Dubravka **Šuica** , Vice-President for Democracy and Demography, has stated: *" We must seize the momentum of the high turnout at the last European elections and the call for action which that brings. The Conference on the Future of Europe is a unique opportunity to reflect with citizens, listen to them, engage, answer and explain. We will strengthen trust and confidence between the EU institutions and the people we serve. This is our chance to show people that their voice counts in Europe ."*



It is probably fair to say that there is some scepticism around the proposal no matter how well intentioned. Civil society groups are not confident of their meaningful inclusion while others worry that the Conference is just a sop to those left disenchanted by the failure to appoint a Commission President through the Spitzenkandidaten or 'lead candidate' process, the attempt to do so thwarted by the Council.

Critics argue that the failure to use the lead candidate process does not suggest a genuine intent to have citizens play, as the Commission President said, 'a leading role' in setting the EU's priorities.

But, as with anything, this initiative will stand or fail not by the attitude of the sceptics but rather by the commitment of the institutional leaders who will put it in place and act or not act on what emerges from it. To be successful, in my view, there is a compelling need to match the big rhetoric with the small everyday actions that speak to the democratic legitimacy of the Union just as much as the 'showtime' events such as the proposed Conference or indeed the European Citizens Initiative, another big ticket item intended to give voice to citizens but which has yet to live up to its promise.

I should mention inter alia that the Irish Citizen Assemblies, the Transparency Register and our FOI Act are quite often referenced in Brussels as progressive and effective methods of citizen inclusion. Ireland has also joined a growing number of member states – ten at the moment – pressing for more transparency in the Council.

My office's major investigation into Council Transparency revealed the ways in which the contribution of the member states to EU legislation is kept away from citizen scrutiny thereby continuing to fuel the 'Blame Brussels' culture that underpinned so much of the Brexit referendum debate. I shall be going to Berlin in advance of Germany's Presidency in June and hope to press the case for continued progress in this area.

So from my Ombudsman perch, I can often sense what plays well with citizens and what does not, I can hear the mood music change from light and happy to dark and unhappy as actions or inactions give rise at times to a loss of faith.

Legitimacy is eroded when influential EU personnel move through the revolving door dragging their institutional network and insider knowledge with them with just superficial restraint imposed.

Legitimacy is eroded when a citizen cannot find out what position their own Government is taking on an issue that is important to that citizen.

Legitimacy is eroded when expert groups that advise the Commission on lawmaking fail fully to comprise all legitimate interests.

Legitimacy is eroded when conflicts of interests are not fully disclosed or fully dealt with.



Legitimacy is ultimately eroded when an institution prioritises its own interest over those it is there to serve.

Needless to remark, my work is not always welcomed with open arms by the institutions but I do appreciate the high levels of co-operation we received and I also acknowledge and applaud the committed work of those who work in the EU administration. The standards of the administration are high in accordance with the major role it plays within the Union and often higher than those in some of the member states.

But I approach my work, not as a cynic, or even a sceptic, but as someone who is deeply committed to the Union and never more so than now when its values – no matter how fragile they can seem at times – are needed in a world where so many of those values are in danger of degradation.

We live, it is said, in an age of anxiety, from anxiety about the planet, about pandemics, about the reach and power of artificial intelligence, the future of work, the might of China, the direction of travel of the Trump administration. The small EU administration cannot be expected on its own to solve or resolve those global issues but it can do its own work ethically and in compliance with the values under threat in other parts of the world and even within the EU itself.

Its leaders have an even higher ethical obligation. Every individual deviation from the values of the EU are seized upon by those hostile to the Union and used as weapons to discredit and attack.

Some complaints might seem trivial or nitpicking but I have seen so-called trivial complaints – if not resolved by the institutions – weaponised by Eurosceptics and inflict significant reputational damage on the Union.

As the new legislative cycle gets underway, the EU is faced with great challenges, some traditional, some brand new. Some people wonder if the Union has the strength of will and the institutional means to deliver the outcomes it has committed to.

My belief is that the Union can be as powerful as its leaders wish it to be and as courageous as those same leaders dare themselves to be.

If populists with agendas that lack compassion for outsiders, that attempt to subvert the rule of law – can gain support among a multitude of followers – it simply cannot be that a Union that genuinely upholds the deeply humanitarian values set out in the Treaties and the Charter cannot garner the depth and breadth of support that will enable it not just to survive but to flourish.