

Transparency in the EU Legislative Process

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Thank you Bernd for the introduction, and good afternoon everyone.

I had hoped to visit Berlin during the German Presidency to discuss these issues with the government, and with organisations such as yours but I am happy that this event can now take place, today in this digital format.

Firstly, it is important to state that in general the EU institutions already have a very high degree of transparency especially in comparison to some Member States. However, the EU is also a more abstract, complicated, and distant system than those of national or regional governments and it is therefore even more important that high levels of transparency and accessibility should apply.

As the European Ombudsman, my office is an independent oversight body, the demanding voice in the ear of the EU administration, encouraging the institutions to prove that they actually do want to connect with citizens as they so often claim they do.

I receive about 2,000 complaints a year from citizens, civil society organisations and businesses and I hold the institutions to account where I find maladministration.

The current pandemic unites us in many ways but in particular in our shared anxiety simply to know what is going on. It is crucial to know why and how mayors, national governments, and international organisations take their decisions. Most people feel powerless in this pandemic and desperately want to be able to trust those who have power.

And this is not an abstraction. It goes to the heart of the protection of all of our lives because if you want the public to do what you ask or compel them to do, you need their trust. And trust is earned only when people are included in the conversation about policy options. Openness becomes therefore – at this time and in these pandemic circumstances – not a fetish of civil society but quite literally a matter of life and death.

In normal times a lack of openness also has real life consequences, not always as dramatic as issues linked to COVID19 but it is just as important to draw the connecting lines between a failure to be open and the damage done to a vital national or union issue.



At the EU level, this openness is especially difficult to obtain from the Council of Ministers, where national governments make EU laws.

In 2018, I issued a Special Report to the European Parliament on the lack of accountability of the Council, notably the lack of transparency of the legislative process. The Parliament overwhelmingly supported my report, as did many national parliaments, but my recommendations were met with resistance from certain large Member States.

I see two main issues in the Council.

Firstly, it seems that the Council's starting position for most documents is that they are secret unless there is a particular reason for them not to be. However, the EU treaties, the Regulation on access to documents, the case law and common sense suggest that the starting point should be the inverse. Every legislative document should be public by default, unless there are specific reasons for it not to be.

Secondly, it is difficult to obtain information on what individual Member State's positions are. The Court of Justice has ruled that Member State positions need to be public if recorded. The practice has been in many instances therefore for the Council not to record the positions of Member States. There is a vital distinction between access to information and access to documents. If the documents don't exist, neither does the information.

But the issue is not limited to the approving of EU regulations and directives. Two years ago, I received a complaint from a French civil society organisation, concerning the positions taken by national authorities in a Commission technical committee. This committee deals with the risk assessment of how pesticides affect the bee population – a vital public interest.

The Commission argued that the documents, revealing the positions of national authorities, could not be released because it would jeopardise the on-going decision-making process, even though this process had been on-going for almost seven years.

We stated that the right of the public to know, and therefore to hold their national authorities to account if necessary, is stronger. The balance was even more weighted towards release because the issue concerned environmental information - protected by the Aarhus Regulation. Today, the Commission still refuses to grant public access to these documents but has committed to reviewing the relevant process. The French NGO in the meantime has also gone to Court on the issue and that will be a very important judgment.

The public has a right to know how their governments contribute to shaping EU legislation just as they have a right to know how and why their governments shape domestic legislation.

Without that right being exercised, the **'blame Brussels' culture** will continue with national Ministers obscuring their own role in the making of laws that directly affect their citizens. Yes, decision making between 27 member states is complex and challenging but if the EU wants to make its sometimes elusive legitimacy become more real in the eyes of its citizens, it has to



confront those challenges.

But progress, even if slow, is being made. This summer I was happy to welcome some small steps in the right direction:

In July, the Council under the German Presidency announced improvements to its rules, including measures proactively to publish:

- progress reports addressed to Coreper, where EU ambassadors meet, on negotiations on draft laws;
- the initial Council mandate even at Coreper level;
- the four-column document for trilogues, containing the initial positions of the institutions, however without the 4th column which shows amendments being made over the course of the negotiations;

I wish to thank the German Presidency for this progress, no doubt in the face of some resistance.

Also in July, after the Council rejected my recommendations in a case concerning the annual negotiations on fishing quotas, the Commission announced that it would start proactively publishing some Commission documents related to the decision-making process through which Member States agree and allot the fishing quotas for each year, another hugely important issue.

There is a lot we can do to make progress in Brussels, but the national input is vital. A few years ago, I visited Berlin and met with several Members of the Bundestag. I emphasised to them that the best way to find out what national Ministers are saying and voting in Brussels is for their national parliaments to hold them to account. At the very least, the public should understand that 'Brussels' is not an abstract community of 'faceless bureaucrats' Brussels rather is also Paris and Berlin and Bratislava and Athens and the Ministers of every other member state involved in making the decisions that at times national Ministers attempt to blame Brussels for.

Another way to increase the accountability of the legislative process is to install safeguards against undue influence. I applaud the German Presidency for not accepting any corporate sponsorship and I am pleased to hear that the Council Secretariat is considering drafting guidelines on the matter, following an inquiry by my Office based on a complaint from a German NGO.

The EU has also worked on accountability through the Transparency Register for lobbyists, now under review. The rationale behind the register is plainly written on its website, in a nice example of citizen friendly clear writing. It states that:

"Citizens can, and indeed should, expect the EU decision-making process to be as transparent and open as possible. The more open the process is, the easier it is to ensure balanced representation and avoid undue pressure and [...] privileged access [...]. Transparency is also a key part of encouraging European citizens to participate [...] in the democratic life of the EU."



The work of lobbyists is legitimate and an important part of the democratic process. However, the public interest is served only if their work and its impact is capable of being assessed.

The current EU Transparency Register is already a good start but the revision could take note of points my office has consistently made. Any negotiated revision of the register should:

- contain full funding transparency of all interest groups;
- have improved data accuracy, improved monitoring and improved sanctioning;
- include law firms who lobby;
- refer to the right to complain to the Ombudsman.

The definition of lobbying should also be sufficiently wide and I was encouraged to hear this week that the negotiations are heading in the direction of a wide definition. This takes on additional relevance during the pandemic as lobbying has to take place in more indirect ways.

Lobbying also happens through the national capitals. Now that Berlin is discussing its own possible lobby register, German leaders may wish to take inspiration from the EU in this area.

The Commission recently published its Strategic Foresight Report, which provides a longer-term perspective on EU policymaking and adds **resilience** as a required component. It reads:

"Resilience is the ability not only to withstand and cope with challenges but also to undergo transitions in a sustainable, fair, and democratic manner."

If the EU is to become more resilient, the EU administration must become more resilient in terms of transparency, ethics and democratic accountability. My job, with your help, is to help the EU administration become more resilient.

Finally, I wish to pay tribute to the European Movement and Transparency International, both in Berlin or Brussels. We have worked well together, and you have always been strong and influential supporters of greater democratic participation in the EU, I wish you well in your future work and great resilience as you face its challenges.

Thank you for your attention.

I look forward to our discussion