

Inaugural Jean Monnet Lecture - EU accountability: An Ombudsman Perspective

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Thank you Dr Dimitrakopoulos.

I am delighted to be here with you this evening and I'd like to begin by congratulating you on the awarding – to you – of the Jean Monnet Chair late last year. To receive it is always an honour but to receive it at this historical juncture in the relationship between the UK and the EU gives it a particular salience.

I'm sure many in this audience were unaware of the European Ombudsman before this evening's invitation popped up in your emails. In broad terms, I fulfil the same role as the UK's or a member state ombudsman does – I take complaints from citizens who feel they've been badly treated by the administration – in my case the EU administration – and attempt to resolve them.

Complaints can range from freedom of information refusals, problems with contracts and grants, the handling of infringement allegations, fundamental rights issues, ethical issues such as conflicts of interest and revolving door cases, the transparency of the EU's decision-making process, and issues around EU staff complaints and recruitment.

If I find maladministration, I make recommendations for redress or suggestions for improvements in their service. Most complaints are against the Commission because of its size and executive reach, but my mandate also covers bodies such as the European Central Bank, the European Medicines Agency, the European Investment Bank all three of whom are currently significant players in the EU's management of the pandemic.

Ombudsmen therefore trade in the world of accountability and while that is commonly understood as the need for an administration to account for and take responsibility for its actions, the word has a particular resonance when it comes to the European Union: a resonance probably best summed up in the apocryphal quote attributed to Henry Kissinger, "*Who do I call if I want to call Europe?*"

It is said that it is rare in Brussels for a seminar to be held without that quote being trotted out despite many attempts over the years to deny that Kissinger ever uttered it.



In 2009, Reginald Dale of the Center for Strategic and International Studies in Washington told the Financial Times:

“ Kissinger never made the famous remark about Europe’s telephone number. According to the late Peter Rodman, who knew him well, the saying is apocryphal, and in fact Kissinger’s concern was the precise opposite – he was fed up with having to deal with a Dane whom he regarded as incompetent and ineffective, who was trying to represent the whole of the EU as President of the Council. Kissinger himself has disowned the remark, and it seems that he was actually seeking to divide and rule in Europe, rather than be restricted to a single voice on the telephone. ”

The remark – made or not made – nonetheless retains its value.

The Treaty of Rome is now over sixty years old, yet the question of who is in charge, who is accountable, who indeed do you call if you want to call Europe, remains both contested and unsettled, just as the ultimate destination of the EU itself does.

Ownership of, approval for, and therefore accountability for EU initiatives is multi layered.

The European Commission, for example, recently unveiled a massive post-COVID recovery fund, which most EU citizens assume is now a done deal given that every head of the EU member states – the European Council – endorsed it after weeks of rather tense haggling.

Nonetheless, both Commission President Von der Leyen and Council President Michel have now had come out to plead with the parliaments of the 20 member states that have yet to ratify it to do so as a matter of urgency.

If diplomatic niceties and hierarchies were set aside, who would Kissinger call? German Chancellor Angela Merkel or Commission President Ursula Von Der Leyen? European Council President Charles Michel or French President Emmanuel Macron? The new Italian Prime Minister – and former ECB head – Mario Draghi or European Parliament President David Sassoli?

The power balances constantly shift, either deliberately or inevitably. A powerful German Chancellor can trump a Commission President. Small member states can form alliances strong enough to trump the big ones. A Parliament boxing clever can outwit the Council while the actions of an altogether different body – such as the ECB – can make and have executed decisions that have profound implications for the state of the Union.

Draghi’s ‘whatever it takes’ speech during the financial crisis is regarded as the game-changing moment of the EU’s response. In a Union without an agreed end game, power, in one sense, is always up for grabs or perhaps like mercury slithering across a table it is theoretically always within reach but remains – like accountability – elusive.

When I was first elected as European Ombudsman in 2013, the memory of the Troika was still very sharply etched in the minds of EU citizens, who had felt its power and reach. Some of



those citizens approached me wanting someone to blame, someone to be democratically accountable for the measures imposed by their governments essentially on the orders of the Troika, as they perceived it. They told of hollowed out health services, of lost jobs, of basic services denied and wanted to know who could account to them for what they had suffered.

I had to explain that, in an accountability sense, the Troika did not exist. It was not an EU body but rather a group comprising the Commission, the ECB and the IMF; not directly collectively accountable to anyone. Furthermore, it was the Eurozone Finance Ministers who were essentially in control, representing, in their eyes, their own taxpayers. I could deal with specific complaints against the Commission or the ECB, but what citizen could possibly disentangle the Troika's work to a point where that would be possible?

The recent row over the vaccine contracts also demonstrated the accountability conundrum. While the Commission held its hands up for certain clumsy actions, it was also the representatives of the member states who were very much involved in every stage of the vaccine procurement.

That is not to deny the significant role of the Commission in the planning and indeed in the legal detail, but why heap blame on the Commission alone when – behind the scenes – it is the member states who are squabbling about price and indemnity and even perhaps, about the choice of vaccines on which to place their bets? Where does accountability lie in that scenario?

Citizen confusion isn't helped either by the identikit titles the EU gives to its leaders, leading to an administration awash with Presidents and a citizenry largely puzzled as to their respective decision-making roles assuming even that the power distribution remains static over time.

We have the President of the Commission, the President of the Parliament, and the President of the European Council, in addition to the six-month rotating Presidency of the Council. We also have Presidents of the Committee of the Regions and of the Economic and Social Committee. Then we have Presidents of the ECB, the EIB and even a President of the Court of Justice.

The rotating Council is not to be – but often is – confused with the European Council. The latter body comprises the heads of state and government of the EU while the Council comprises member state ministers. The Council of Europe in Strasbourg also has a President plus a six month rotating presidency of the Council itself and while that is a completely separate body to the EU, many citizens probably think it is not.

I will leave aside citizen and indeed media and political confusion around the European Court of Justice – an EU body – and the European Court of Human Rights – a Council of Europe body – while noting that the failure to distinguish between the two did play a role in the Brexit propaganda wars, with the rulings of the ECHR at times confused with those of the ECJ.

In terms of EU law making, the relative powers of the three big institutions seems straightforward. The Commission proposes legislation and the co-legislators – the Parliament and the Council – then agree or disagree to adopt them, with or without amendments although



usually with.

But, while the Commission's proposals are understood to be drawn from the broad policy direction drawn up by the heads of state and government (the European Council), both the current Von der Leyen Commission and the Juncker Commission, which preceded it, have very self-consciously described themselves as 'political commissions'. I'm not sure that anyone is entirely clear as to what that means.

The jockeying for political centre stage – to be the one perhaps to lift the phone should Mr Kissinger ring – was on full display in recent months when no one could initially agree on who should chair the proposed Conference on the Future of Europe. Neither could anyone agree on what the Conference is intended to achieve; but, for the moment, the political noise is confined to a row over who presides.

The Council did not endorse the Parliament's preferred candidate, and names floated by the Council did not appear to endear themselves to the MEPs. In the end, Solomon-like, it was agreed that all three Presidents of the institutions should share the role and that is where it currently stands.

My role, amid all of this, is to act as a bridge between the EU citizen and those who take administrative decisions that affect them, to extract accountability.

The Ombudsman was created following the 1993 Maastricht Treaty to give practical life to the exercising of rights granted to the newly created European citizen.

As ever, trying to make an institution common across Europe to sit on all fours with the much more complex political and administrative structure of the EU has its challenges.

In general, the work is straightforward, but at times accountability is elusive with hot potato items tossed between the institutions as my office tries to pin down somebody or some institution for an answer.

The Commission may, for example, hold certain documents on a sensitive issue, such as fishing quotas – to take a recent case – but, if a member state or member states (i.e. the Council) object to their release, the Commission will not release them.

The ECJ might take a different view, but few citizens are likely to take that route and, unlike in the UK and Ireland, there is no Information Commissioner to act as an independent arbitrator and enforce binding decisions.

The answers, therefore, to the normal type of Ombudsman question – who took a decision, who made a mistake, who is responsible, who do I hold to account – aren't always clear. Or the real answer in many cases – it was the member states who done it – is rarely satisfactory.



If for example, it was Ireland, behind closed doors in the Council, that blocked a proposal, along with some allies, that French citizens would have supported, how could those French citizens possibly hold Ireland to account? Or even find out that it was, in fact, Ireland that blocked the move? Or that their own country failed to win the argument?

The public interest, according to the Council, is usually best served by protecting the 'deliberative process' even if that 'deliberative process' goes on for a decade. In many cases, they simply stop deliberating at all neither agreeing to nor rejecting a proposal, confident that most citizens will be oblivious.

But the question of EU accountability – who does what and who is accountable – took on a particular urgency when the pandemic hit. Panicked citizens looked not just to their own governments but also to the EU to provide help and protection.

The fact that member states have historically not ceded control of public health to the EU – to allow it to become an EU competence – was probably not widely understood by citizens but the consequences of that power asymmetry soon became very clear.

Last July, my Office launched a series of inquiries and initiatives looking at varying aspects of the response of the different EU institutions and agencies. We worked with the European Commission, the Council, the European Investment Bank, the European Medicines Agency, and the European Centre for Disease Prevention and Control (ECDC).

We urged transparency in how they operated, particularly at a time when citizen trust was a very valued yet fragile commodity.

In recent weeks, we have received complaints in relation to the publication of the vaccine contracts and, while the cases are still ongoing, the issue took on a fresh dimension when the Commission got into a row with, and demanded transparency from, one of the vaccine manufacturers and partially published the contract along with two others.

I have remarked on how the politics of the matter had effectively dictated the transparency level of the Commission and not – one could argue – the pleas to the public interest that had preceded the controversy.

Amid that larger-scale investigation, I opened a major inquiry into how the European Centre for Disease Prevention and Control gathers and assesses data to enable it to do what its title says it is supposed to do – prevent and control disease.

The centre – based in Stockholm – was set up after the SARS outbreak of 2002. It's worth mentioning that approximately 30 people in Europe caught that virus, with just a single death.

That small fright, however, was sufficient to give political support to the setting up of a quasi EU health agency, but not sufficient enough to give it the powers it needed to actually do its job.



It gave the EU a handhold on a small sliver of health competence, but within the small print multiple reassurances to the member states that there would be absolutely no threat to their national competences. ‘Cake and eating it’ to quote the British Prime Minister on another matter.

It was, and continues to be, the member states who control the data tap, with the ECDC given no independent powers to find out how prepared the EU was should the big crisis happen and preferably long before the big crisis did happen.

So, this small EU agency – with the big title – suddenly found itself in charge of advising on matters not just at the heart of public safety but also of national sovereignty. The crisis would consequently expose the inbuilt fault lines of its design.

As the pandemic hit, and the EU struggled to exert a type of central control to avoid a free for all, national authorities struggled to report complete data to the ECDC or did not even answer its appeals for important data. The habits of years had kicked in at the worst possible time.

The ECDC did not have a comprehensive dataset on hospital, testing or other medical capacity, precisely what it should have had in its bottom drawer not just to make assessments and give advice during the pandemic, but data which could have helped build member state and therefore EU resilience long before the emergency began.

Our investigation helped to explain all of this to a wider audience. We made general remarks about the need for greater transparency and for public explanations of its statements and advices, but we also highlighted for the legislators that, in the absence of meaningful powers, the ECDC and therefore the EU will struggle to get on top of similar crises – crises that respect neither national sovereignty nor the competing competences of EU institutions.

Some might observe that that was entirely the political point of the ECDC from its very creation. Establish the simulacrum of an EU body, wait for a crisis, point to the need for the simulacrum to become real i.e. to draw slightly more powers in its direction better to protect citizens thus strengthening the EU’s role in a vital arena of public policy.

The Commission is currently ploughing ahead with plans for a so-called ‘Health Union’; whether the member states will play ball remains an open question, although the size of the fright this time around may resolve that issue.

Indeed, some might see in this matter shades of another apocryphal and widely used claim that Jean Monnet said that Europe was a superstate being created by stealth, incremental steps disguised as for a particular and rational purpose but with a fundamental and different ultimate purpose.

That false quote has been widely used by Eurosceptics for obvious reasons but, in its more benign essence, Jean Monnet’s drive to find solutions that are effective is now well acknowledged and he did say in 1974, “ *The problems that our countries need to sort out are*



not the same as in 1950. But the method remains the same: a transfer of power to common institutions, majority rule and a common approach to finding a solution to problems are the only answer in our current state of crisis ”. [1 [Link](#)]

Monnet would probably regard the current crisis as an obvious example of the need for common institutions when the non-common ones have failed to prove their effectiveness.

But, whatever the subterranean long term aspirations, the investigation – and indeed the crisis itself – demonstrated the current role of the member states in the working of the ECDC, its own lack of useful independence precisely because of the member state stranglehold on its autonomy.

That disentangling of the decision making of the EU administration – pointing out that Brussels is actually not a faceless bureaucrat, but rather a leader with a well-known face in Paris and Madrid and Bratislava and Dublin etc – is a significant part of my work.

I should point out nonetheless that, despite the Tower of Babel approach to decision making and to its communication, the EU still wins substantial public approval for its leaders and for its institutions.

For some reason, possibly best addressed by you the academics, the EU insists on declining to obey the will of what your PM might describe as ‘the doomsters and the gloomsters’ and continues to progress in the face of – some might say because of – the serial crises that befall it. Hanging together remains the default option.

I wonder at times if the late Mr Monnet has not become a sort of EU whisperer, his spirit descending incognito just when the tumbrels appear to be rattling for the EU.

A recent documentary by French public TV gave a fly on the wall look at two critical meetings of the European Council last year. The second one concerned the COVID recovery funds and the dramatic tension was provided by the clash between the so called ‘frugals’ – the countries concerned about the volume of funding and how it might be used – and others, which were urging both generosity and speed.

In the end, the editorial line was that the frugals were deemed to have lost the argument. In interviews after the ‘climbdown’, both the Austrian Chancellor and the Dutch Prime Minister looked slightly bemused by what had occurred, as if they had indeed been taken over by a force outside of their control; perhaps, indeed, by the spirit of the late Mr Monnet.

Last November, the Pew Research Centre, the institute for global opinion polling, found high levels of support for the EU: a finding backed by a recent Eurobarometer report. But, while 71% percent of Europeans are either fully or partly in favour of the European Union, nearly half of Europeans are not in favour of how the European Union has been realised so far.

The poll stopped short of asking what such a realisation might actually look like but it is the task



of academics like yourselves to investigate these attitudes more closely.

It is possible that Europeans believe in cooperation but have trouble supporting a system as complicated as the EU and without the direct line of accountability they are generally accustomed to in their home states.

That idea of accountability, the lynchpin of public trust, takes on many forms in my case file.

Last year, I issued a recommendation in a case where the European Banking Authority (EBA) had, in my view, wrongly allowed its former Executive Director to become CEO of a financial lobby association. The public image – and consequently public trust – risked being damaged by a perceived, if not manifest, conflict of interest.

The EBA responded with a pledge that it is prepared to forbid senior staff from taking up certain positions when they leave the EBA in the future. Shortly afterwards, it prohibited its former Executive Director from taking up another post in the private sector, in the City of London. It has also adopted a new policy for assessing post-employment restrictions and prohibitions for staff.

Another example concerned complaints about the Commission's awarding of a public contract, as regards sustainable finance, to BlackRock Investment Management in an area which is of financial and regulatory interest to the company. I concluded that the Commission's guidelines for assessing bidders should be revised with a broader and more comprehensive assessment of potential conflict of interest.

These cases also link to the more fundamental question of who is in charge of Europe's financial and economic policy in the coming years. Where does the accountability lie for Europe's recovery and the EU's recovery plan post-pandemic, a point I referenced earlier.

How the institutions and member states share out and execute the responsibility for the scrutiny of, and accountability for, those funds needs also to be carefully observed. I anticipate that complaints to my Office will inevitably arise, and that the accountability issue will loom large.

Underpinning that interplay between the institutions and its member states is the question of legitimacy and where accountability arises. The EU institutions can only do so much to create a responsive and legitimate democracy, the heavy lifting has to be shared with the member states.

The roles of the Commission and the Parliament are relatively easy to grasp, but not so the Council. Its structure is not intuitive. Its workings are multi layered, complex and obscure, with lip service paid to its Treaty obligation to legislate in public. I recently watched a clip of a Council meeting – ostensibly in public – with the meeting chair desperately trying to sort out the public bits from the non-public bits, and tersely instructing 'cameras on, cameras off'.

The Council's starting position for most legislative documents is that they are not public despite the fact that the EU Treaties, the regulation on access to documents, EU case law and common



sense suggest that the starting point should be the inverse.

It is also 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 Council has effectively subverted the transparency intent of the ruling by simply not recording the positions. This consequently allows national governments to hide behind unanimity and apply the "blame Brussels" method to accountability.

These two issues were subject to an own-initiative inquiry I carried out, and which ultimately ended up as a report to the European Parliament in 2018. The Parliament overwhelmingly supported it, and 22 national parliamentary chambers from 18 different member states called for legislative documents to be made public systematically. The Council however continues to resist, and its opaqueness prevents citizens from knowing exactly who is doing the resisting.

But pressure has brought about some small changes. The recent German Presidency of the Council introduced measures to proactively publish certain progress reports on legislative negotiations, the initial Council mandate at the level of the head of the permanent representations to the EU, and the initial position documents ahead of negotiations. The current Portuguese Presidency has also made some interesting transparency moves concerning the Common Agricultural Policy. It remains to be seen whether this approach is file-specific or whether we will continue to see other such proactive publication.

Much of this opaqueness and complexity was obvious fodder for the pro-Brexit movement, whose anti-EU rhetoric continues apace through this crisis, pouncing on any EU misstep as a justification for leaving the Union.

The COVID crisis has helped partly to obscure the initial fallout from the divorce and, while UK media is filled with laments from business people and others about the bureaucracy and obstacles they now encounter as they attempt to trade with the bloc, these so far have been dismissed by the UK government as teething problems or, as Michael Gove put it recently, the bumps one experiences on take off before the plane levels off, and heads, quite literally, into the sunny uplands.

But, as sovereignty and taking control are neither edible nor bankable, it may take a while before those benefits are visible or to form a conclusion as to the extent to which the emotional attachment of many pro-Brexiteers to those intangibles was the real driving force behind the exit.

As Nigel Farage said in 2018: "*I made ONE absolute promise in that campaign ... We will be in control ... for good or for bad ... I never promised it would be a huge success, I never said it would be a failure, I just said we'd be in control.*"

The Financial Times noted last month that the EU-UK trade and cooperation agreement mentions financial services 90 times and fish 368 times. The comparison may be less drastic if one were to search for different combinations of words but, given that fishing accounts for only



0.1 per cent of the UK economy, one might conclude that it was psychodrama around the idea of controlling its waters that drove that particular piece of asymmetry.

As I have said throughout this lecture, accountability is challenging in the EU and complex. As I have also said, this does not mean that the EU doesn't ultimately manage to live with its contradictions and provide a quality of life and a force in the world that is in the main positive.

Brexit was infected with a caricature of those contradictions and of the institutions that attempt to manage them. A toxic, negative view of the EU was essentially internalised – predominantly in England – to the point where its attempted unravelling by the Remain side came too late.

In my role as Ombudsman, I occasionally find that some of my investigations are picked up by a Eurosceptic or a euro hostile press. I use that fact as a message to the institutions of how important it is for them to operate at a standard of ethics and transparency beyond that even of most of the member states. I told my colleagues recently that our job is to help the good guys to stay good.

I recently re-read an article by Dr Dimitrakopoulos of last April in which he and his colleague gave a preliminary assessment of the EU's reaction to the pandemic. In that article you wrote that after a rocky start, “*the EU had done much more than meets the eye*”. In the same article, you suggested, that “*the EU should strengthen its decision-making process in times of crisis to ensure efficiency, speed and visibility*”.

A strong decision-making process clearly identifies who is taking which decision. Efficient processes have clearly allocated responsibilities. Speedy decisions are made when ownership of tasks is clear.

If the EU is to gain strength through this crisis, its leaders need to show ownership but also to show that ownership at times is shared, that control is exercised through a delicate balancing of forces, which attempts to reflect the multiple ways in which the people accord legitimacy to the law makers and decision makers.

Only by doing that can true accountability be secured.