European Ombudsman

Oireachtas Joint Committee on Petitions. Opening remarks on the European Ombudsman's work during the COVID-19 pandemic and the EU's overall response

Speech - **City** Brussels - **Country** Belgium - **Date** 30/03/2021

Good morning chairman, honourable members, a dhaoine uaisle.

Thank you for your welcome and for the opportunity to discuss my work during and in the context of the COVID-19 crisis.

You do not need me to tell you how challenging this past year has been for all of us and those challenges are set to continue for much of 2021 despite the miracle arrival of vaccines developed and authorised with unprecedented speed.

As national politicians, you have had the unenviable task of monitoring life or death decisions made by the government and NPHET, and with no comparable situation in recent memory with which to guide you. The balancing of risks and needs has had to be done with little time fully to reflect on the outcomes both short and long term. I wish you well as you continue that arduous task while also striving to keep yourselves and your families well.

COVID-19 continues to have devastating consequences across Europe and the world, and continues to monopolise the attention of governments and public administrations, and the societies they serve.

Shortly after the WHO declared Europe as the 'epicentre of the pandemic', it was obvious that this virus, which has no respect for borders, would be a major challenge for the EU. For me, as the watchdog of the EU administration, it was clear that a transnational crisis of this scale would severely test the capacity of the EU institutions, and I began to monitor their response early on, using my powers of own initiative investigation.

In addition, I also began to receive complaints related to the pandemic and to the EU's response.

In April last year, I wrote to the Presidents of the European Commission and the European Council with proposals on how to maintain high transparency standards during the crisis, especially in the context of emergency or accelerated decision-making procedures and derogations from standard rules on meetings.

I made the point that, during such a major crisis, it is even more important that public authorities are open about how they operate and take decisions. Transparency helps to ensure public trust in, and reinforces the legitimacy of, decision-making processes.

I am sure you are all acutely aware of how people during this terrifying time will constantly seek assurance about what the government is doing and whether they, the people, are being given all the facts necessary to make decisions about their lives and the lives of their children. Any sign that information is being hidden provokes not just distrust but also increased mental stress.

I received encouraging replies from both institutions that they would indeed prioritise transparency.

However, as the crisis evolved, I considered it important to look in greater detail into some more specific aspects of the EU response, and the roles of particular institutions and agencies. In July, I launched a series of inquiries and initiatives to this end.

One of those concerned the work carried out by the European Centre for Disease Prevention and Control (ECDC) in gathering and assessing data linked to the pandemic.

As you are likely aware, the ECDC was set up in 2004 in the aftermath of the SARS outbreaks, essentially to help to co-ordinate the EU response to a future and much more serious epidemic.

Approximately 30 people in Europe were infected by SARS, a tiny number compared to COVID-19 and which may have led to a certain complacency in relation to the necessary powers to be granted to this new agency.

Making it work wasn't helped of course by the fact that the member states retain power over health policy and not the EU. So while the ECDC was gifted a flattering title and lofty ambition, it was not given complementary powers, emerging rather as a weak agency with little independence of action. It can request health and other data from the member states but there is no legal obligation on them to supply it.

My inquiry highlighted shortcomings in how the data is communicated to and gathered by the ECDC, both in terms of timing and completeness, and how the ECDC presents this information to the outside world. I raised issues for example vis a vis changing advice on the wearing of facemasks and why certain surveys of member state capacity to deal with the crisis were published while others were not.

I made a series of suggestions aimed at promoting greater transparency and better means to enable greater scrutiny of the data and assessments compiled by the ECDC.

Ultimately however, if the EU wants an agency that can live up to the title of pan-European disease prevention and control, EU legislators will need to reflect on the ECDC's mandate. Without specific new powers to ensure the completeness and quality of the data it receives from

national authorities, it cannot effectively fulfil this role. It remains to be seen how the proposal from the Commission in this regard will develop.

The second inquiry I opened concerned the Council of the EU and the transparency of its decision making. My inquiry assessed the decision by the Council to derogate, temporarily, from its Rules of Procedure during the crisis, and the implications this has had for its decision-making process and the transparency of that process.

As you may also be aware, the Council shifted to meeting by videoconference and to taking all decisions by written procedure. My inquiry found that there was a considerable lack of transparency in how the Council made this fundamental shift to its way of operating. While the meetings of preparatory bodies in the Council are now more accessible to the public, there are still areas in which the Council should improve and I concluded this inquiry just last week with some suggestions.

In addition to these inquiries, I also engaged with the European Medicines Agency (EMA), the Commission and the European Investment Bank about their roles.

I also received a number of complaints related to the transparency of the negotiations for the vaccine procurement scheme, as well as public access to the so-called ‘advance purchase agreements’, the contracts that have been subject of so much debate.

While my inquiries into the requests for public access to the contracts were underway (freedom of information requests), the Commission itself decided to publish most of these contracts. As is often the case, it belatedly realised that transparency was actually in its own interest.

Another recent inquiry concerned a request that the Commission disclose details about the negotiating team in charge of these vaccine contracts. Given the blame game around vaccine procurement and roll out, I would consider that it is in the Commission’s interest to provide greater transparency about the negotiations, including this team, since it is made up predominantly of representatives of national authorities in the Member States. EU citizens need to know the extent to which their own governments are involved in the contract deals and that the work is not solely carried out by the Commission.

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I hope this has provided you with some insight into my work in the context of the COVID-19 crisis.

In the case of COVID-19, I think it is clear that there is a negative perception of how “the EU” responded to the crisis. While the institutions were undoubtedly unprepared for dealing with a health crisis on this scale, it is possibly too easy to blame Brussels, without acknowledging that often the real decision-makers reside in the national capitals and not in the so-called Brussels bubble.

This crisis has cast a spotlight on decision making at EU level, and may in time influence the future direction of the Union itself, as the debate over what should best be done at national level and what could better be done at EU level continues against the backdrop COVID-19.

The EU, as I noted earlier, has no real competence in the area of health policy, which made it very difficult for the institutions to play any role in coordinating a response, something my inquiry into the ECDC laid bare.

In terms of the joint procurement scheme for vaccines, this was not without flaws. However, it was a first of its kind with the Commission constrained by the demands of Member States concerning which vaccines they wanted at which price. The negotiating team was clearly also a joint effort with national administrations having been active members.

I fully expect there to be more twists before we finally emerge from the crisis and as Ombudsman, I will likely be dealing with more complaints. However, my overriding message to the institutions will remain that conducting their tasks in as transparent a manner as possible is both in the public interest and, as the Commission found out with regard to the vaccine contracts, also very much in their own.

I look forward to our discussion. Thank you. Go raibh maith agaibh.