

Address at Edelman Trust Barometer Event -Trust in Government - Challenges

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Emily O'Reilly European Ombudsman **Address at Edelman Trust Barometer Event Trust in Government - Challenges** 25 February 2015, The Marker, Dublin 2

I'm very happy to be here for the launch by Edelman of the Irish findings of its 2015 Trust Barometer. I intend to focus mostly on the issue of trust in Government, which is one aspect of the overall trust question covered in the Edelman survey.

Just before I became European Ombudsman on 1 October 2013, the "We Are Europe" movement addressed an Open Letter to me to say what it expected of the new "Voice of the Citizens in Brussels". It said that the challenge of my office is "to reduce again the constantly increasing gap between government and governed".

That is of course the job and duty of all Ombudsmen. An Ombudsman is part of the system of checks and balances in government; her job is to keep Government 'honest' and to support it in winning and retaining the trust of its citizens. In the light of the Edelman survey, and several other similar surveys in recent times, it is clear that the challenge is indeed great. Trust matters because trust confers legitimacy and without legitimacy, no institution or state can operate as it should.

Context

But first it is important to understand the context in which Government in Ireland operates.

In Ireland, as in much of Europe, we are living through what President Michael D. Higgins referred to recently as "a fragile moment for democracy". The traditional model of politics, based on a small number of political parties, is splintering. No party is currently in a position to govern on its own and we have seen a significant growth in the number of independent TDs as well as the formation of some new parties.

There is an increase in direct action politics - for example in relation to the water charges - and a decrease in the perceived relevance of Parliament. There is a growing polarisation of political opinion and this is accompanied by a coarsening of political discourse as witnessed by the



recent verbal attacks on our head of state, President Higgins and by the incident involving Minister Joan Burton when she was effectively held captive in her car by people protesting the water charges. What was unthinkable a decade ago has become, if not yet commonplace, increasingly nonetheless a feature of our public life.

So is it the case that people have become so disillusioned with the official State, and with Government, that the normal requirements of civilised behaviour no longer apply or is something else at play?

It is arguable that these changes are simply the manifestation of an established pattern of fluctuations in trust in Government reflecting economic cycles. Austerity brings disillusion and distrust; and trust returns when the economy improves and people are better off but I think we would be naive to assume that this is the case.

The question is: are we witnessing an irreversible change in how politics and government are conducted? Or is this a temporary situation which may be reversed provided Government, and the rest of us, face up to the challenges and find solutions which restore at least a modicum of trust in Government?

For EU member states, including Ireland, major political decision-making happens primarily in Brussels rather than in Dublin or Madrid or Vilnius.

This fact has been most recently brought home to the people of Greece, who voted in a far left Government, packed it off to Brussels, where attempts were and are being made to repackage it in the centre right garb of the dominant economic consensus over there. This is a play with many acts but what is clear even now is that the link between a member state election result and subsequent policy is increasingly tenuous. We all recall in this country, Frankfurt's way or Labour's way and I think the results of that battle are now long in.

This is not necessarily the fault of the domestic government and particularly those with a limited deck of cards to play from, but it does explain perhaps the increasing alienation of citizens not just from their own parliaments but also, in some member states, from the EU itself. How can they make their own Governments accountable when it appears that those Government are compelled to make themselves accountable not to the people who elected them, but increasingly to transnational bodies such as the Troika or to single institutions such as the ECB which are not directly accountable to member state parliaments.

The ECB, for example, has so far declined to take part in the banking inquiry. It's not my business to suggest what they should do. I merely point out that a major actor in our economic drama is under no legal imperative to explain to us – at least directly to our parliament - why it did what it did. Yes, it is accountable to the European Parliament but that linkage between the citizens of the member states and the parliament is not yet sufficiently felt by most people to have significant resonance. The much talked about European public sphere is still in its infancy. This apparent powerlessness then naturally feeds not just distrust of national Governments but also increasingly Euroscepticism.



Globalisation has also tended to shift the balance of power away from national governments and into the hands of global businesses. This means that even major political blocs, such as the EU or the US, must contend with the power of globalised business.

We also have the equivalent of a disruptive Industrial Revolution with the phenomenal growth and spread of social media and the evisceration of the old models and indeed the old industry. As evidenced by the Edelman survey, the overall media landscape is changing rapidly and dramatically. And this disruption of the media industry mirrors what has happened politically in that increasingly the traditional controllers of both the media message and the political message are now being bypassed as ordinary people, through social media and other channels can directly put out their own messages or directly challenge the messages of others. We have gone from an era in which de Valera once summoned the reporters of the Irish Press in order to dictate their stories for the following day, to an era where his successors tweet directly to their constituents and other citizens and the latter tweet right back.

In my days as a political correspondent we hung on the words of PJ Mara as he ambled into the pol corr's room in Leinster House for his nightly show time. We survived otherwise on bits and scraps culled from our landline telephone calls or chances meetings on corridors. My equivalent of today exists in a 24 7 information overload hell while the PJ Maras of today have to cope not with a few polite questions from information starved reporters but a world where message control is almost impossible and where a careless tweet or smartphone observed comment can send the political world spinning out beyond control.

The other side of this technological explosion is that we are all now living in a world of mass surveillance, a world in which genuine personal privacy scarcely exists anymore and today's reality therefore is that we are no longer living in the world for which our political and governmental institutions were designed.

Voter turnout is sometimes taken as a proxy measurement of political engagement. On this front, Ireland represents something of a mixed bag. Voter turnout for the 2011 Dáil elections was 70% of those registered to vote but just 64% of the voting age population. For the 2014 European Parliament elections the Irish turnout was 52% of registered voters but just 47% of those of voting age. For the 2011 Presidential election the turnout was 56% of registered voters but just 51% of those of voting age.

Probably we should not be over-concerned at electoral turn-outs in the range of 50 - 70 per cent. However, there may be cause for concern with the level of voting by younger people in the 18 - 24 age bracket. In the European Parliament election last May just 21% of younger people in Ireland voted as against an overall turnout of 52per cent. Paradoxically, in Ireland, as across the EU, it is the 18-24 age group which is most positive in its view of the EU. They are of course the generation that has known nothing else, they are the Erasmus generation who take for absolute granted the ability to move freely around the EU avail of its jobs and services and who are therefore so accepting of it as part of their landscape that they may naturally be more inclined to support it than their elders.



The global pattern identified in the survey is one of significant levels of public distrust across the four institutions in question - government, business, media, NGOs.

At national level in Ireland, the survey shows that public trust in business, the media and in NGOs has dropped in each case as between 2014 and 2015.

Trust in Government in Ireland has actually increased - from just 21% in 2014 to 26% in 2015 - but is still dangerously low.

What perhaps may surprise some people is that, in the case of Ireland, its citizens appear to have a considerably higher level of trust in the institutions of the European Union than they do in national Government. I cannot possibly know what prompted these figures one way or the other. Irish people have generally had a positive attitude towards the EU and while the Troika may have been an unwelcome intrusion on some levels, there was also a sense of conflicted gratitude for the Europeans coming in to sort out the mess that our own had created.

Lack of Trust in Government

OTA - openness, transparency and accountability - these were the buzz words of governance which emerged in the Ireland of the 1990s and to be fair, much has been achieved in this regard over the past 20 or 25 years. Freedom of Information, ethics in public office legislation, controls and accountability in electoral spending, whistleblowing protection, expansion of the remit of the national Ombudsman, establishment of the Garda Síochána Ombudsman Commission - there has been important progress made in each of these areas and Minister Brendan Howlin and his team deserve credit for pushing this agenda through. But we can also safely say that important progress remains to be made in each of these areas.

At EU level, with a population of over 500 million people, the task of bridging the gap between government and the governed is proportionately so much greater than is the case in a small Member State such as Ireland. The EU has recognised the need for measures which will inhibit the emergence of such a gap and, where necessary, to deal with whatever gap does emerge.

The EU Treaties recognise explicitly that good government is based on consultation, on listening to different views, and on transparency regarding how decisions are made. There is a specific recognition of the role of "civil society" which, while not amounting to power-sharing, nevertheless recognises that political and administrative actors must, at least, be open to dialogue with other interests.

The creation of the independent office of the European Ombudsman is provided for in the Treaties as is the right of access to documents of the EU's institutions and the right of any citizen to send a petition to the European Parliament on any matter coming within the remit of the EU and its institutions.



The Charter of Fundamental Rights of the EU, the provisions of which are now legally binding, creates for the citizen a right to good administration from the EU institutions.

I am not suggesting that all of these provisions are working smoothly and without problems. Far from it! In fact my job as European Ombudsman is to deal with complaints from citizens and others who feel these provisions are not working in their cases.

In the past 18 months I have been dealing with several areas of public concern which bear directly on trust in government at EU level. These include:

- The need for the European Commission to maximise transparency in its negotiations with the US on the Transatlantic Trade and Investment Partnership.
- The need for greater transparency on the part of the European Medicines Agency regarding public access to the clinical data it considers in the course of its authorisation of drugs and medicines.
- The need for tighter application of, and greater transparency regarding, the rules governing the movement of senior EU officials into and out of business - the so-called "Revolving Doors" issue.
- The need to ensure that the EU institutions have proper procedures in place for dealing with reports from whistleblowers of wrongdoing or malpractice.
- The need to extend, and make mandatory, the EU's transparency register in the case of lobbying by business and other interest groups.
- The need to ensure that the EU access to documents arrangements - Europe's FOI - are operated correctly and to maximum effect in the interests of transparency.

Transparency

There is no magic bullet which solves the problem of trust in Government. Instead, what we have is a system of checks and balances designed to create and sustain an environment in which Government will behave ethically and with integrity. These checks and balances include Parliament, the Courts, the Ombudsman as well as other sectoral regulators such as auditors.

However, the public needs to know what is being done both by Government and by those actors who form part of the checks and balances system. That is why transparency is the single most important element in the overall trust framework.

But even transparency has its own problems. One problem is the sheer volume of data being generated and the fact that so much of it is complex and technical.

The ordinary person cannot really make sense of this information and, increasingly, we rely on what we hope are neutral experts to explain what is involved. The US academic and transparency advocate, Alasdair Roberts, talks about the need for "trusted intermediaries", bodies which will extract and interpret information for the ordinary public. Of course, this begs the question of the trustworthiness of such intermediaries.



A second problem with transparency is that it does not necessarily result in action or political engagement even when seriously unacceptable practices are disclosed. Sometimes citizens have become so disconnected that they feel no sense of responsibility for what is being done by Government in their name. Or they may even tacitly endorse it as evidence that their Government is protecting their interests albeit through unethical practices. The Wikileaks revelations for example failed to provoke the level of public and political reaction that its founders had apparently anticipated.

Nevertheless, transparency remains a vital mechanism in our efforts to promote trust in Government. To quote Alasdair Roberts:

"Transparency is a critical technique for preventing the arbitrary use of public and private power. It is also essential to preserving the capacity of societies to judge the performance of public institutions, and decide when those institutions should be altered."

Regulation of Business

One of the issues raised by Edelman is the particular challenge posed where Government is expected to regulate business in circumstances where Government itself is fundamentally distrusted. This challenge is more acute given that, as the Edelman survey suggests, business in Ireland enjoys a higher level of public trust than does Government. So how, then, can Government be relied upon to do the job properly?

In our Western European democratic tradition, we all agree that in principle Government should serve the common good or the public interest.

While many businesses are committed to acting ethically and for the wider good, it is a fact of life that for most businesses maximising profit and share-holder return is the bottom line. This is as true for indigenous Irish businesses as it is for multi-nationals. We are all aware in recent decades of scandalous and unethical practices in the areas of finance and banking, tobacco, food, pharmaceuticals, clothing, the media and many others. The pressures of competition and the drive for market share and profits are leading to employment practices, such as zero hours contracts, which could be questioned.

When we talk of Government regulating business, we are not for the most part talking of central Government - Ministers and their Departments - being directly involved in regulation on a day to day basis. For the most part, we are talking about regulatory agencies which are separate from Government. In so far as there is scepticism about these regulators, I imagine that arises from a widespread perception of a failure of regulation in the banking-financial area during the Celtic Tiger years.

However, for this type of regulation to be really effective there are some fundamental criteria which must be met. In many ways, these criteria mirror those which are necessary for a public service ombudsman to be effective. They are:



- The regulator must have statutory status and be independent in the performance of its functions.
- The regulator must be seen to be independent of Government and of politics.
- The regulator must have sufficient statutory powers to do the job.
- The regulator must have realistic enforcement mechanisms where there is a failure to cooperate in an inquiry or a failure to act as directed.
- The regulator must report to Parliament and not to a Minister or to the Government.

I think the reporting issue is important. To some extent it may be a matter of optics; but there is an important principle at stake here. Regulators which report to a Minister or to the Government may not be seen - indeed may not see themselves - as genuinely independent. One small, but nevertheless telling, issue is that of the freedom to publish one's annual report. Where a regulator reports to a Minister, it is often the Minister and not the regulator who decides when that report will be put into the public domain. We all know enough about media management to appreciate that troublesome reports may find themselves being published at times when they least likely to attract media attention.

It may be fair to say that in Ireland there is frequently Governmental resistance to the idea of regulators reporting directly to the Oireachtas. While I have not attempted anything like a survey of Irish regulators, the following important regulators (not all strictly in the area of business, but relevant none the less) are required under their founding statute to report to a Minister rather than to the Oireachtas:

- The Irish Central Bank and Financial Services Regulatory Authority
- The Health Products Regulatory Authority (formerly the Irish Medicines Board)
- The Competition and Consumer Protection Commission
- The Garda Síochána Ombudsman Commission
- The Standards in Public Office Commission

I am of course not suggesting that these regulators are not doing a good job - I was a member myself of the Standards in Public Office Commission for quite a few years. Rather, I am suggesting their independence would be enhanced, were they in a position to report directly to Parliament.

Conclusion

I have referred to the Ombudsman as part of the system of checks and balances in our system of government. Ultimately, however, it is Parliament which is the key actor. For as long as Parliament is not respected we will continue to have a serious problem of lack of trust in Government.

President Higgins dealt with this very issue in an address, on 27 January last, to the Parliamentary Assembly of the Council of Europe in Strasbourg. He commented:

"Today, global financial markets assumed to be self-regulating, and unaccountable bodies such



as ratings agencies, occupy a far greater space in contemporary media and discourse than parliaments debating the fears and welfare of citizens"

He asked how have we let it happen, that "ratings agencies ... not bound by any democratic requirement, gain such influence on the lifeworld and prospects of our citizens".

President Higgins then made a stirring plea that parliaments, both at national and European level, should claim back competence and legitimacy. As someone with decades of experience in Seanad Éireann and in Dáil Éireann, we can assume President Higgins has no starry-eyed notions of parliament. For this reason, I think we should trust his optimistic conclusion that parliaments - including our own in Ireland - "can reclaim a central role in preserving the public world that lies at the heart of European democracy ...".

But to do that, parliaments will have to learn to deal with the forces I spoke of earlier, globalisation, an utterly changed media landscape, a breaking of the traditional accountability linkages between domestic governments and the people, the lived reality of pooled sovereignty when it comes to the EU in particular, and a world in which the traditional levers of political control and political spin have been utterly transformed.

THANK YOU