

Letter from the Ombudsman to President Juncker concerning securing appropriate stakeholder input in the Brexit negotiations and potential for further progress on transparency

Correspondence - 23/02/2018

Case SI/1/2017/KR - **Opened on** 28/02/2017 - **Decision on** 11/02/2019 - **Institution concerned** European Commission |

Mr Jean-Claude Juncker President of the European Commission

Strasbourg, 23/02/2018

Subject: Securing appropriate stakeholder input in the Brexit negotiations and potential for further progress on transparency.

Dear Mr President,

On 28 February 2017 I wrote to you about the measures the European Commission was considering in order to inform the public on the UK withdrawal negotiations. [1] On 28 April 2017 you replied and pledged to ensure - within the framework of the European Council's Guidelines - that the Commission would aim for a maximum level of transparency. [2]

I am pleased to see that, in the meantime, the Commission has published a wide range of negotiating documents on the website of the Taskforce on Article 50 negotiations with the United Kingdom [3] (taskforce) including, but not limited to, position papers on all disentanglement issues, meeting agendas for the negotiation rounds, and EU/UK joint technical notes in which progress on citizens' rights after each negotiation round is described.

I appreciate the commitment of the taskforce to accept meeting requests only from interest representatives that are registered in the EU Transparency Register, and that some details of the meetings between the Chief Negotiator and interest representatives are being published.

I welcome also that, in an attempt to keep citizens informed of progress, the Chief Negotiators have been giving joint press conferences at the end of negotiation rounds; that at the end of



phase 1 of the negotiations the Commission published an assessment of the of the state of progress [4] ; and that the negotiators of the EU and UK published a Joint Report on the results attained during the first phase of the negotiations on achieving an orderly withdrawal of the UK from the EU. [5]

The joint technical reports on EU citizens' rights provide a valuable source of information for Europeans. Moving into phase 2 of the negotiations, which are aimed at reaching agreement on the Withdrawal Agreement, on transitional arrangements, as well as on the overall understanding on the framework for the future relationship, **I encourage the Commission to propose that other Article 50 negotiation working groups should also issue joint progress reports after each negotiation round.** Such reports can be of great help in informing the public debate as these important negotiations proceed. Given that both negotiating parties have stated in the Terms of Reference [6] that, "*for both parties the default is transparency*", issuing such progress reports will be in line with public expectations.

While welcoming the strong commitment of the Commission to transparency, I would be grateful if you could reflect on ways to do even more in terms of informing EU citizens. I am aware that the Commission decision on disclosure of meetings with interest representatives is limited to Commissioners and Directors-General and that in the case of the taskforce, on this approach, disclosure of details of meetings would apply only to the Chief Negotiator. However, I urge the Commission to make an exception in this case given the specific commitment to a maximum level of transparency extending to the entire taskforce.

In particular, I would be grateful if you could reflect on whether the Commission could:

1. Publish details of all meetings held by members of the taskforce. I realise that the Commission has issued such lists in response to access to documents requests. However, the Commission could also pro-actively publish all of the taskforce's meetings on its website on a regular basis (such as after each negotiating round).
2. List the activities of the Deputy Chief Negotiator on her personal page.
3. Provide more context on the meetings by publishing any or all of the following in relation to meetings with organisations and self-employed individuals: participant lists, agendas, minutes or other documents exchanged during the meetings. Should there be reasons for not disclosing any of this material in full, in line with Regulation 1049/2001, appropriate redactions could be considered.

It has been pointed out by some that the majority of taskforce meetings have been with interest representatives from the business community. It is my understanding that requests for meetings with the taskforce have, thus far, come predominately from businesses. Taking into account the specific mandate of the taskforce, it is quite understandable that there will be a relatively high level of interest from economic actors.

That said, I do feel it is important to ask the Commission to make plans to secure and structure



the input it needs from all stakeholders, now that the negotiations will start to address the future framework of the relations between the UK and the EU. Such plans should include efforts to broaden consultations to obtain adequate input from other stakeholders.

From two constructive meetings my staff have had with the taskforce, I have learnt that the Commission is already reflecting on ways to consult with organisations such as citizens' groups, trade unions and self-employed individuals in broader settings. During the second phase it is expected that certain professions will in particular be interested in the content of the negotiations. **I encourage the Commission to find ways to ensure that stakeholder input represents a wide-range of relevant viewpoints and is as inclusive as possible.**

As phase 2 negotiations will in part be aimed at reaching agreement on the disentanglement issues that remain to be negotiated, and the transformation of all the agreements on disentanglement into a legally binding text for the Withdrawal Agreement, **I believe it would be desirable and appropriate for the Commission to allow relevant stakeholders to look at specific parts of the draft Withdrawal Agreement – notably those that concern citizens' rights – as it might be helpful to the Commission and add to the overall legitimacy of the exercise.**

I would be grateful to receive the Commission's views on these matters at your earliest convenience and by 16/4/2018 at the latest. Should you require any further information or clarifications, please contact Fergal Ó Regan, Head of Unit (02 28 43 548).

Yours sincerely,

Emily O'Reilly European Ombudsman

[1] See:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/76528/html.bookmark?si-related-doc=1>.

[2] See:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/78650/html.bookmark?si-related-doc=1>

[3] 'Negotiating documents on Article 50 negotiations with the United Kingdom', see:

https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_

[4] 'Communication from the Commission to the European Council (Article 50) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union', see:

<https://ec.europa.eu/commission/publications/communication-commission-european-council-article-50-state-progress>

[5] 'Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United



Kingdom's orderly withdrawal from the European Union', see:

<https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-governm>

[6] 'Terms of Reference for the Article 50 TEU negotiations', see:

https://ec.europa.eu/commission/sites/beta-political/files/eu-uk-art-50-terms-reference_agreed_amends_en.pdf