

Introductory address for a dialogue with the Civil Society Europe Annual General Assembly

Speech - **City** Brussels - **Country** Belgium - **Date** 26/04/2018

Good morning.

Thank you for the invitation to join you this morning for a dialogue on an issue that is a top priority for me and my office, and which I believe should also be a priority for all of the EU institutions in the current challenging context.

I doubt that the EU has ever existed at a time that wasn't challenging but to me there are a number of distinctive features about this particular period.

One is the increasingly 'uncivil' nature of our political and other conversations. The word 'civil' doesn't just apply to the naming of citizens but it also means a form of discourse that is at the very least respectful and polite. We can all disagree but the way in which we articulate that disagreement marks the difference between 'civil' and 'uncivil' societies.

The second feature – and linked to the first – is the increased polarisation of political debate in many countries. We see it very markedly in the U.K. and in the U.S.A where political polarisation provoked by Brexit and by the election of Donald Trump has divided society into tribes with each one claiming 'the truth' often leaving citizens adrift in a landscape where the vital elements of shared community, values and even of objective fact are slowly being eroded.

But civil society and civil society organisations are not formal political groupings and in a society where politics is increasingly reduced to a zero sum game – my complete win equals your complete loss – the role of civil society has never been more vital in seeking to fill the gaps left by that fractured political landscape or more importantly, in attempting to bridge it.

But no matter how well you play that role outside of the political arena, it is only through interaction within that arena that you can effect real and positive change for citizens everywhere. You are not legislators as politicians are, but you are influencers with the potential to be the entities that change the political debate, that act as the pressure points on the political system when the system itself isn't finding solutions to challenges.

And it is precisely because of that soft power of influence, and its extraordinary potential, that civil society organisations are coming under pressure even in some EU member states. And



that is because civil society can act as the disruptor of a political status quo that seeks to create a single shared narrative about what or who is good or bad for a people.

By creating that narrative that seeks to divide the 'people' from everyone else deemed to be 'the enemies of the people', so-called illiberal governments are logically compelled to criticise or demonise civil society activists who put forward an inclusive vision around genuinely shared values and who therefore threaten the dominant political narrative.

So, your engagement with the EU institutions is particularly vital given the various challenges across the union faced by civil society. And at an EU institutional level, that means being enabled genuinely to participate in the broad decision-making process of the Union, whether through passive acts of simply finding out what's going on to increasing level of engagement through public consultations, direct meetings with relevant lawmakers and administrators, essentially being enabled to know, to connect, and to make your voices heard.

And while on the one hand, that isn't easy given the complex nature of the lawmaking processes and the institutions' physical and even emotional distance from citizens, on the other hand that very complexity and distance makes it even more vital to have a strong and engaged civil society presence in what in shorthand we will call 'Brussels'. That isolation – without the active presence of civil society – also makes the EU a soft target for populist Eurosceptic criticism..

So how the EU institutions engage with the public and civil society organisations representing the public interest is crucial to how they are perceived. If they don't engage with those who support the EU and who want it to succeed they leave the door open for negative voices and – as we now know for sinister online and other technological manipulation.

Therefore, in order to turn the tide of negative public perception, the EU institutions have to take meaningful steps to improve their accountability and strengthen public participation in the EU democratic process and this has been a motivation for much of my work in the area of transparency and accountability.

Council accountability inquiry

It is clear that the Council is not a star pupil among the institutions when it comes to transparency and accounting for its role in the EU's decision-making process. The overarching reason is I believe the tension that exists between its role as legislator on the one hand which implies being open to citizens and to citizen input, and its processes that are heavily influenced by the world of diplomacy with the secrecy that that implies.

My ongoing strategic inquiry into this area is looking at what improvements Council can make to address this in order to more closely align the expectations of citizens vis a vis transparent law-making with what the Council actually does.

The public consultation, carried out in the context of my strategic inquiry, provided me with



plenty of concrete issues on which to follow-up and I greatly welcome CSE's contribution to this process.

In February of this year, I set out a series of recommendations to Council.

As you know, when Council formally adopts EU laws, meetings and discussions by the ministers on the draft laws are public. However, before it reaches a formal position, preparatory discussions will have taken place in some of the more than 150 committees and working parties in Council.

It is at this level that much of the nuts and bolts of the legislative work takes place, but where transparency is patchy and often lacking.

In order for the public and civil society to be able to hold governments to account for the decisions they make on EU laws, they need to know how their governments positioned themselves in the legislative process.

This requires, firstly, that legislative discussions in preparatory bodies be documented and, secondly, that such documents are accessible in an easy and timely manner.

At present, it appears there is no uniform approach to reporting and documenting the legislative discussions in the preparatory bodies. Council also takes a selective approach as to how it discloses documents that do exist. My recommendations and suggestions to Council seek to ensure these issues are addressed.

One particular frustration, of which we are all aware, is the practice by which member state governments criticise decisions taken "in Brussels" towards their domestic audience. Yet, very often, during the legislative process "in Brussels", they had supported or shaped the very decision they subsequently criticise.

Systematically recording the identity of member states expressing positions in the preparatory bodies, and proactively disclosing these records, would go some way to addressing this problem.

There is greater detail on my recommendations on our website. We are currently awaiting Council's response, which is due on Europe Day of May 9th, before considering the next steps to take. This is an issue on which I am prepared to make a Special Report to the European Parliament, given its importance.

Trilogues inquiry

My inquiry into the transparency of the trilogue legislative negotiations was motivated by a similar objective to improve the accountability of the EU's law-making process.

As you know, decisions on the final make-up of most of the EU's legislation are taken in these



meetings between the European Parliament, Council and the Commission.

When I started out with my inquiry, it was difficult to find the information necessary to follow trilogues without insider information. Basic details about what was being discussed, by whom and when, were simply not in the public domain.

My inquiry encouraged the institutions to publish key documents that would enable the public and interest groups better to follow the process. These documents include trilogue dates and summary agendas; the positions of both co-legislators on the Commission's proposal; and the names of the decision-makers present in trilogue meetings. I also called for documents that track the main stages of the process to be published as soon as possible after the negotiations end.

Making this information available should make it easier for the public, civil society and other interest groups to engage effectively in the legislative process, and to hold to account those public representatives involved in that process.

However, the proposals also recognised the need for those involved in agreeing the content of legislation to have the political space they need to negotiate, deliberate and come to agreement.

The three institutions were at first hesitant to say the least but in the end responded positively to my suggestions for improvement. They have already implemented some of the proposals and are assessing how to put several other proposals.

The recent ruling of the EU's General Court in the De Capitani case gives further encouragement that there is not only a democratic case for improving the transparency of trilogues, but also a legal basis.

Expert groups inquiry

Many of you will, no doubt, be aware of my inquiry into the so-called 'expert groups' that advise the Commission. It is an area that is clearly also very relevant to the accountability of the institutions and the EU's legislative process. This was another inquiry that was greatly enriched by the public consultation we carried out.

Based on my recommendations, the Commission made a number of improvements to how it manages its system of dozens of expert groups.

It developed a new conflict of interest policy for experts appointed in a personal capacity. It has also made the selection procedure for experts more transparent, including an obligation, where relevant, for experts to be registered on the Transparency Register.

The Commission has also committed to ensuring a greater balance in expert group composition, making clear what this entails, as well as allowing the public to see the reasoning behind the selection of a group's members. Those of you in this room are well-placed to judge how it is



performing to this end.

The Commission has also made progress on publishing meeting agendas and background documents in advance, as well as more detailed minutes of meetings.

While the EU institutions have made undeniable improvements in terms of transparency and accountability in my time as European Ombudsman, it is fair to say that there is still plenty of work to do in this field.

A central element of improving the accountability of the EU institutions is in addressing how they engage with civil society organisations in Brussels and beyond. Common rules for all EU institutions on stakeholder engagement and civil society dialogue would no doubt be an important step to this end.

Civil Society Europe is uniquely placed to test the temperature of the EU institutions' commitment to engaging with civil society. Your network enables you to identify common issues and barriers faced by civil society organisations that truly want to proactively engage with the institutions on policy issues linked to their areas of expertise.

As such, if the EU institutions are serious about strengthening public participation and stakeholder engagement in the EU democratic process, CSE's work has to be an important reference point.

I look forward to studying CSE's report on the situation of civil society dialogue in Europe in greater detail, as I am certain it can help guide the work of my office on the accountability and transparency of the EU's administration.

I am also very interested to hear your thoughts today, and to exchanging with you on the issues you see as priorities in the context of this debate.