

Brussels, 31 March 2016

Transparency International's reply to the European Ombudsman's public consultation on the transparency of trilogues

The Ombudsman invites you to give your views on the following points:

1. In your opinion, is the way in which EU legislation is negotiated through the trilogue process sufficiently transparent? Please give brief reasons for your answer.

Transparency International has identified the lack of transparency in trilogue negotiations as one of the principal transparency blind-spots in the EU legislative process. As we pointed out in our [EU Integrity Study](#) in these meetings large concessions are won and lost with very little oversight and without public disclosure. In the vast majority of cases, Parliament's plenary vote serves only to rubber stamp the deals secured by a handful of negotiators from each institution, side-lining 99% of MEPs in the process. Even the Parliament's own internal strategy [document](#) recognises that transparency has been traded off against efficiency and there is need for reform.

Originally a tool to get the institutions into a conversation early on to find agreements where possible, the trilogue process is now used for virtually all legislative files. During the last legislative term there were [1,500 trilogue meetings](#). Rules that apply to regular proceedings within the parliament for example (committee meetings are open to the public, web-streaming, and minutes of all meetings available online) do not apply to trilogue meetings for which there are no minutes, no participant lists and no publicly available record of results such as minutes.

2. Please explain how, in your view, greater transparency might affect the EU legislative process, for example in terms of public trust in the process, the efficiency of the process or other public interests.

Transparency International firmly believes that greater transparency and greater diversity in stakeholder input into the legislative process leads to better policy decisions, better laws and ultimately better outcomes. This principle is enshrined in article 1 of the Treaty on European Union, which stipulates that "decisions are taken as openly as possible". Making trilogues more transparent is thus not only a question of fundamental principles of the European Union and basic democratic rights of EU citizens, but a transparent legislative process is the best and easiest way to ensure "better regulation".

Over the last decade we have seen a number of signs that public trust in the EU institutions is declining. Many citizens fear that decisions taken behind closed doors are not taken in their best interest. Opaque trilogue negotiations are of course not the only problem in this regard, but making them more transparent and clearly linking decisions to those that have taken them can contribute to regain some of the trust that has been lost.

3. The institutions have described what they're doing about the proactive publication of trilogue documents. In your opinion, would the proactive release of all documents exchanged between the institutions during trilogue negotiations, for example "four-column tables", after the trilogue process has resulted in an agreement on the compromise text, ensure greater transparency? At which stage of the process could such a release occur? Please give brief reasons.

There are two elements to this question. The first question is on the problem of holding decision-makers to account after the decisions have been taken. The publication of four column documents after an agreement has been found can certainly contribute to their accountability. The only column in the document, however, that is currently missing from the picture is the position of the Council. The Commission proposal is public and Parliaments position is also available to anyone as it has been publicly discussed and voted. The final outcome of the trilogue process (the 4th column) is again publicly voted in the European Parliament. So the only element missing is the Council position, as well as any new positions emerging during the negotiations.

This last point is of course the second element to answer this question. In terms of transparency and accountability it is currently impossible to see from the outside where possible compromise positions come from and why they find a majority or not. As the compromises texts develop over the course of negotiation process, and to allow for meaningful external stakeholder input, documents should be released after each political and technical trilogue meeting. Well connected and resourced lobbyists are often fully aware of the negotiations behind closed doors and manage to feed in their recommendations and demands. Those with less money and connections cannot follow the process and only become aware of the state of the discussions when a deal is struck and when it is too late to make any further changes.

4. What, if any, concrete steps could the institutions take to inform the public in advance about trilogue meetings? Would it be sufficient a) to publicly announce only that such meetings will take place and when, or b) to publish further details of forthcoming meetings such as meeting agendas and a list of proposed participants?

In terms of holding EU decision-makers to account, Transparency International believes that it is necessary to be able to follow each step of the legislative process and to clearly attribute why certain aspects of a law get accepted and why others get rejected. The same way that public and nominal votes occur in the European Parliament both at Committee and Plenary level, the Institutions should provide the information on what happened during trilogue negotiations.

To allow this accountability it is important to know when trilogues take place, who participates, what has been decided and most importantly how certain compromises or new positions (not in the initial mandates) came about. Documents such as agendas, "Non-papers" and proposals for compromises should be made available before the negotiations and detailed minutes should be published after trilogues took place.

5. Concerns have been expressed that detailed advance information about trilogue meetings could lead to greater pressure on the legislators and officials involved in the negotiations from lobbyists. Please give a brief opinion on this.

Transparency International believes that such opinions are firmly misguided. Greater transparency and greater diversity in stakeholder input into the legislative process leads to better policy decisions, better laws and ultimately better outcomes. This applies to all stages

of the legislative process and trilogues are in no way an exception to this. We recall again that article 1 of the Treaty on European Union stipulates that “decisions are taken as openly as possible”. This is one of the most important fundamental rights within the European Union.

Our experience is also that those lobbyists with the most resources and the best connections often have little trouble following trilogue negotiations and providing their input and demands. Those that suffer from the opacity are those lobbyists with less resources and most importantly ordinary citizens that cannot hold their elected officials and their representatives in the process to account.

The best protection against undue influence by lobbyists is not less, but more transparency or trilogues.

6. In your opinion, should the initial position ("mandate") of all three institutions on a legislative file be made publicly available before trilogue negotiations commence? Briefly explain your reasons.

Transparency International firmly believes that the mandates of all three institutions should be public before trilogue negotiations start. If they are not, it is impossible to hold decision-makers to account. It would also mean that one of the basic principles of the legislative process, as laid down in the treaties, is not respected.

7. What, if any, concrete measures could the institutions put in place to increase the visibility and user-accessibility of documents and information that they already make public?

The document registers of the EU Institutions urgently need improvement. Transparency International's research has repeatedly shown that the current approach of the EU Institutions to publish their documents leads to inefficiencies, unnecessary administrative burden and does not allow the public to easily follow the EU legislative process. [78% of access to document requests in 2013](#) were for documents that were already in the public domain, but citizens were unable to find them. [33% of requests](#) come from the EU institutions themselves, unable to access each other's documents.

A single user-friendly portal with a powerful search function is necessary to allow citizens to find the documents and information that they are looking for. All documents related to the legislative process should be proactively published on this portal, regardless of which Institution first produced it.

8. Do you consider that, in relation to transparency, a distinction should be made between "political trilogues" involving the political representatives of the institutions and technical meetings conducted by civil servants where no political decisions should be taken?

No.

9. Please comment on other areas, if any, with potential for greater trilogue transparency. Please be as specific as possible.