

Trilogues consultation of the European Ombudsman

- 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.**

Despite more transparency in *trilogues* has been introduced thanks to the introduction of a “mandate” or “priorities” for negotiators of the European Parliament, as well as to the need of having a debate in plenary for certain cases and inform concerned Committee MEPS when the Commission, the Parliament and the Council are close to an agreement; there is still room to increase transparency in *trilogues*.

The gap perceived between citizens and decisions taken at the EU level (wider than between them and the local, regional or national level), as well as the complexity of the decision-making process or the fact that the EU acts thanks to a “delegation of competences and sovereignty” by Member States, requires a higher level of transparency, monitoring and accountability to help citizens feel that decisions taken at the EU level are legitimate. Accordingly, the systematic use of *trilogues*, (as they are designed today), which go beyond the ordinary legislative procedure in first reading, harms the transparency of the process as well as the quality of legislation and the involvement of concerned stakeholders.

- 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.**

The decision-making process of the EU has become more and more complex, due to the increased number of Member States and a more inter-governmental approach. In this respect, it seems clear that *trilogues* led to a more effective and fast decision-making process, as around 85%-87% of legislation is approved in first-reading.

However, despite efficiency is important, *trilogues* might also have an impact in the quality of legislation as well as in the accountability and transparency of the decision-making process. The quality of decisions has been reduced, as the pressure to achieve an agreement or the lack of time and information for stakeholders and MEPS to participate in the process can lead to superficial compromises that might result in less effective legislation.

In addition, the tendency to use more and more delegated and implementing acts in order to escape and delay conflictive political debates might result in less effective legislation as well as in secondary legislation that does not only deal with merely legal aspects, but also with important political elements. And this is particularly relevant, when it comes to the implementation of legislation by those affected, such as local and regional authorities.

In this respect, not all *trilogues* are announced in the press and some “informal *trilogues*” take place with even more restricted groups of people to allow parties to reach an agreement earlier. Even more, *trilogues* sometimes take place too early with respect to the ordinary legislative process, as sometimes these take place when the drafting of legislation under the ordinary procedure is still ongoing (Committee and Council Working Group meetings).

This leads to *trilogues* that take place as early as in the drafting process, beyond the normal phases of the ordinary legislative procedure.

- 3. The institutions have described what they're doing about the proactive publication of trilogue documents[5]. In your opinion, would the proactive release of all documents exchanged between the institutions during trilogue negotiations, for example "four-column tables"[6], 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.**

The proactive publication of *trilogues* documents will certainly ensure greater transparency. In this respect, four-column documents should become public in a dedicated website. All the minutes of *trilogues* meetings should be public soon after the meeting takes place and no later than 4-5 days before the next scheduled *trilogue* meeting.

- 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?**

All *trilogues* should be announced publicly in advance, as well as their participants, in a dedicated website. The progress and minutes of each *trilogue* meeting should be sent to concerned MEPS and Committees. As long as democratic processes need to be as much transparent as possible, the concrete dates and participants of such meetings should be published in advance. At the national level, more and more political parties publish the agendas of politicians in order to increase transparency and accountability, which should also be the case at the European level.

- 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.**

More transparency in *trilogues* will increase accountability in front of citizens as well as within the decision-making process itself. Despite it might increase the pressure on legislators in certain cases, the existence of a transparency register, that should be accompanied by the publication of concrete details about the meeting agendas of MEPS, will guarantee that everybody knows the state of play. In addition, not only the details with respect to *trilogues* meetings should be published, but also with respect to all meetings or hearings related to a report

In addition, the limitation of the frequency of *trilogues*, as well as other measures to ensure the participation of Committees in the process and the publicity of the meeting dates and participants in *trilogues*, will counterbalance potential pressure. At the same time, these complementary measures will ensure a better monitoring and control of such pressure. Because at the end, the existence of lobbyists does not mean that the process doesn't need to be as transparent as possible, because there are other dedicated measures to ensure transparency with regards to the activity of lobbyists themselves. More public consultations and hearings should be organized to counterbalance the potential pressure of introducing more transparency in hearings.

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.

As long as the ordinary legislative procedure is public, we do not see why it shouldn't be also the case also for *trilogues*. Everybody, citizens, MEPs and stakeholders should be aware about what position the European Parliament, the European Commission and the Council will defend in a negotiation. It is fundamental in a democracy to know at all stages of the decision-making process and in a transparent manner, what legislators are going to stand for, as it is the only way to have accountability and in consequence, legitimate and democratic decision-making processes.

Especially, when the decision-making takes place through a method that goes beyond the ordinary legislative procedure. It should be of common sense to oblige the Council, the Commission and the Parliament to make these "mandates" public if we want to have a transparent, accountable, democratic and legitimate decision-making process at the EU level.

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?

There should be a dedicated website to publish documents on negotiations between the three institutions. A notification should be sent to all registered stakeholders in such website, as it already happens with respect to public consultation notifications.

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?

As long as civil servant meetings remain technical and as long as the European Commission doesn't become a co-legislator, a distinction could be made between "technical" and "political" *trilogues*. However, the CEMR believes that the same transparency rules should apply for technical and political meetings because in reality that distinction is almost impossible to maintain.

The increasing use of delegated and implementing acts for examples, results from the impossibility of reaching an agreement in certain sensitive political matters. Accordingly, the legislators use secondary legislation to avoid and delay conflict, which results in "*technical trilogues*" that are in reality, "political". It seems obvious then, that the outcome of these supposed technical meetings, might have a great impact on the implementation of legislation, particularly for local and regional authorities. At the end, the technical aspects of legislation are the most important one, when it comes to the implementation at the local and regional level and this is why the same transparency rules should apply both for technical and non-technical *trilogues*.

Furthermore, the Commission and “technical expertise” more generally, are not immune to special interest pressures, which can sway industry standards and what is seen as ‘realistic’ to implement.

Moreover, there have been complaints that some of the legislation that results from these *trilogues* is inefficient as the compromises made during the *trilogue* can be impractical to implement.

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

In order to increase the transparency in *trilogues* as well as in the negotiation of delegated and implementing acts, we need an in-depth assessment of the EU decision-making process in order to have more clear rules about how the legislative process should take place. The Better Regulation Package, and the Inter-Institutional Agreement in particular, represent a great opportunity to improve the transparency and accountability of the EU decision-making process in general, and in *trilogues* in particular.

The systematic use of *trilogues* should disappear, and the Council and the Parliament should evaluate case by case whether *trilogues* are appropriate to reach an agreement and justify publicly why. Furthermore, *trilogues* should never by-pass the ordinary legislative procedure and they should take place after the adoption of EP reports (and opinion-giving Committees, discussions and votes) as well as after political agreements in the Council. *Trilogues* taking place in parallel to the drafting process or at an earlier stage should be ‘banned’ or announced publicly in advance and properly justified. The outcomes of these earlier meetings should be also released in order to be consulted by everyone.

The role of the European Commission in *trilogues* should be further examined in order to assess whether it is necessary that they participate in all *trilogues* or not and under which conditions. The Council and the Parliament should evaluate when the Commission should be present and when they should not. In certain cases, the Council and Parliament might decide not to include them in the process but keep them informed. The Commission should not be the one proposing amendments itself and the Council and the Parliament should be the only ones filling the fourth column.

The frequency and duration of *trilogues* should also be determined in advance, as more time between discussions could help to reach compromises and good legislative outcomes. In this respect, if a compromise is not achieved after a certain number of *trilogue* meetings, the ordinary legislative procedure should resume. *Trilogues* should be always announced with enough time in advance.

Parliamentary Committees (lead and opinion-giving Committees) should be always informed about the outcomes and progress of *trilogue* meetings and there should be Committee discussions on the negotiations in-between and after *trilogue* meetings. This has become a rare practice, however, there is a need to have proper debates on the ongoing negotiation process in Committees as well as about the final outcome to determine whether second reading is necessary. This is the fundamental task of legislators. Finally, after *trilogues* and before voting, impact assessments on compromise amendments should always take place according the proposed Better Regulation Package, in order to see the impact of legislation after the negotiation process.

Finally, the Committee of the Regions should be allowed to be present in trilogue meetings (even if without voting rights). This will reinforce the accountability of the process as well as the subsidiarity principle and make the whole process more transparent in front of European citizens. At the same time, it will facilitate the early implementation of agreements as well as a better understanding of compromise amendments and more comprehensive impact assessments, following the principles of good governance and better regulation.