



## **BirdLife Response to Ombudsman public consultation on the transparency of trilogues**

*March 31 2016*

### **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.**

The Lisbon Treaty is clear in stating, "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen." EU legislation affects every EU citizen, so the way it is negotiated must reflect the democratic principles set out in the treaties. At present this is not the case. Some presidencies publish meeting dates and documents, others do not. While discussions in European Parliament Committees are televised, trilogue meetings are not. Access to trilogue documents and meeting dates is limited and variable. While some very well connected lobbyists are able to access this information, other interest groups with equal right to be heard are not, skewing the process in favour of better resourced lobby groups.

Where files are highly complex, decisions reached in trilogue can have far-reaching effects. For example the discussions between 2010 and 2014 around the Common Agriculture Policy (CAP) were highly complex, and revolved around several different pieces of EU legislation, over 7000 amendments at the Committee stage, and multiple overlapping trilogue meetings. This level of complexity, coupled with an inconsistent approach to transparency, effectively excludes citizens from a critical part of the legislative process. Furthermore, the resulting compromise position may no longer reflect the democratically agreed positions of the European Parliament or Council, fuelling the perception that the EU is remote, undemocratic, and unaccountable.

With Eurobarometer results suggesting that trust in the EU is at an all-time low, this lack of transparency must be tackled as a matter of urgency.

### **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 trilogue process remains one of the last bastions of secretive decision making at EU level. While the Council, the Commission and the Parliament – each in their own way and often still to a limited extent – have tried to open up elements of their decision making processes by publishing information online, granting access to documents when requested, live streaming certain debates, etc., the final step of the co-decision process remains opaque. There, where the institutions come together and make compromises on their hardly fought mandates, the show happens completely behind closed doors.

Greater transparency is essential to guarantee accountability, transparency, and rebuild public trust in the EU's decision-making processes. Transparency is also essential for ensuring accountability of decisions that are taken, especially to ensure that these decisions deliver on the commitments they have made to citizens. Experience with increased transparency in the European Parliament suggests that this will not undermine decision-making efficiency. Indeed a recent Eurobarometer poll reported



that the most often cited reason why EU citizens trust the European Parliament is that, "Decisions by the European Parliament are made in a democratic way".<sup>1</sup>

For example, during the recently concluded trilogue negotiations on the "Baltic plan" COM(2014) 614, only limited information on the process was made publicly available. Without full disclosure of the meeting documents, it was impossible for citizens to follow the discussions and hold their representatives to account. This already unacceptable situation was exacerbated by the institutions involved publicly criticising each other during the negotiations, further eroding public trust in the process.<sup>2</sup>

In BirdLife's experience, any gains in terms of decision-making efficiency resulting from the current trilogue process are more than offset by the damage this process does to the EU's reputation for openness, accessibility and accountability, and by inefficiencies and failures elsewhere. For example, what was gained from the decision on the Common Agriculture Policy (as explained in question 1) through a non-transparent and unaccountable process, has only fuelled further distrust of the EU, especially in taking decisions relating to agriculture issues.

**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.**

In our view, all documents should be made public at the stage of the process in which they are produced. That should include, but is not limited to, four-column documents, minutes of the meetings, agendas, outcomes of any potential votes, country positions, technical clarification documents, etc.

While publishing the four-column document after the meetings would make a positive difference, in the sense that societal actors could evaluate the process, analyse the outcome, and convey their reactions to the different negotiating actors, this alone is insufficient as the relevance of receiving the documents afterwards is only limited. It is during the trilogue process that negotiating parties must be held accountable to citizens, not after the event when citizens can no longer influence the outcome.

As explained above (see question 2), without having the changes/agreements during the trilogue process makes it difficult for the public to follow. It also makes it difficult to hold decision makers accountable. Therefore, having documents such as the four-column document regularly updated and made available during the trilogue process helps the public understand what is happening, and helps ensure public trust in the process.

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[http://www.europarl.europa.eu/pdf/eurobarometre/2015/2015parlemeter/eb84\\_1\\_synthese\\_analytique\\_partie\\_II\\_en.pdf](http://www.europarl.europa.eu/pdf/eurobarometre/2015/2015parlemeter/eb84_1_synthese_analytique_partie_II_en.pdf)

<sup>2</sup> <http://cfp-reformwatch.eu/2015/06/baltic-fisheries-negotiations-suspended/>



**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?**

Not just should meetings (both of political and of technical nature) be announced, all the information that is made available to the negotiating parties should also be made available to the public. In the end, this is about **public** policy making with significant consequences for Europeans in all parts of the Union. There cannot be any overriding reason not to make all of this information available in a comprehensive and easy to access way.

**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.**

Currently there is no one accepted approach to the dissemination of detailed information about trilogue meetings within the European Commission, the European Parliament, or the Council of Ministers. Under some presidencies for example meeting documents are freely provided online in advance of trilogue meetings, while others withhold this information. Where co-decision processes span different presidencies, as is often the case, the nature of the decision-making process can change almost overnight. This inconsistency, coupled with the already technical nature of the debates in trilogue meetings, contributes to the impression of a closed, opaque process, where special interests trump democratic accountability. Legislators and officials at EU level should not be perceived to be exempt from democratic accountability at any stage of the decision-making process. For this reason, detailed advance information about trilogue meetings should be made available.

**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.**

Current practice seems to be to publish the mandates of the three institutions, with the exception of the Council's document which outlines the individual member state positions, which should also be made public for transparency and accountability reasons. Nevertheless, for the documents that are being published, this is not done in a coordinated or centralised way (see answer to question 7). There are often delays between mandates being adopted and then being published. In some cases mandates may only be publicly available after initial trilogue meetings have taken place. In BirdLife's experience this is particularly the case for Council positions, with the European Parliament publishing its positions more promptly after adoption. There is an urgent need for the institutions to overhaul their procedures to ensure timely public access to documents relating to decision-making processes. As stated above, it is BirdLife's view that "four column" documents should also be made publicly available, including any updates based on agreements/compromises or changes to positions.

**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?**

To increase user accessibility to information that is already made public, all elements of one file should be made available under one platform. This should include: positions of all three institutions (and any other opinion making EU body), names and information on the negotiators per institution (this is important also to check their neutrality on the file), timeline, all related documents that can be linked



to the file. For example, the European Platform Legislative Observatory “Oeil” is a very informative database that is easily accessible, where all information is organised on the basis of files. Access to the positions of the council can often be difficult, where positions/minutes for a specific file are not included within one page, making it difficult to follow the position and negotiations. Also for the Commission, one needs to know what to look for, to be able to find it. For EU citizens, the EU is seen as one body so that means that the information should also be made available in one place linking to each of the three institutions.

It would also be useful to provide and align with the relevant information from the Transparency Register, e.g. on meetings key MEPs and Commission Officials have had with interest groups.

**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?**

All information on meetings, whether political or technical, should be made available for transparency reasons. Technical meetings are important, for example, for common legal understanding of specific texts. Therefore, the public should also be aware of these common legal understandings. Importantly, technical meetings often have political consequences. For example, during the negotiations mentioned above on the “Baltic plan” (see question 2), several technical trilogues were held which discussed legal definitions and interpretations of the Common Fisheries Policy (CFP). This had major implications for the political trilogues and for further legislative files in fisheries which implement the CFP, such as future legislations on other regional management plans.

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

To further increase transparency of trilogue, the following information should be made publicly available after every trilogue meeting:

- Who attended trilogue meetings should be minuted from all institutions;
- Outcomes of the meetings should be made public – one day at the latest
- What meetings trilogue negotiators have had with outside interests during the negotiations

Furthermore, we believe that timetables of trilogues should be publicly available in advance of the meetings.