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16 March 2016

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18 MARS 2016

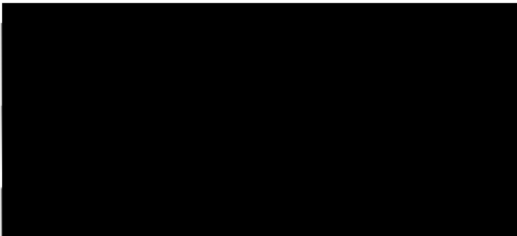
Date d'arrivée

Dear Ms O'Reilly

Trilogues consultation

**House of Lords EU Committee submission to European Ombudsman
consultation**

I am pleased to attach the submission by the House of Lords EU Committee to the European Ombudsman's consultation on the transparency of trilogues.



Lord Boswell of Aynho
Chairman of the European Union Committee

SUBMISSION BY THE HOUSE OF LORDS EUROPEAN UNION COMMITTEE TO THE EUROPEAN OMBUDSMAN'S PUBLIC CONSULTATION ON THE TRANSPARENCY OF TRILOGUES

16 MARCH 2016

The House of Lords European Union Committee welcomes the European Ombudsman's public consultation on the transparency of trilogues. This document forms the Committee's official submission to the consultation. It summarises the Committee's past findings and conclusions on trilogues, which the Committee hereby restates.

In summary, the Committee believes that EU citizens have a right to demand that the laws that will shape their lives should be made in a transparent and accountable manner. They have a right to follow the law-making process in its entirety – to know why amendments are made, what arguments are used, what trade-offs agreed, what outside interests have been brought to bear.

The Committee, through its scrutiny of UK Ministers, seeks to bring as much transparency as possible to the part those Ministers play in the legislative process. But the Committee has no purchase upon the other 27 members of the Council, nor on the other participants in trilogue negotiations. The same goes for all the other national parliaments and chambers. As long as there remain these fundamental gaps in the transparency and accountability of EU legislative processes, there will be ammunition ready to hand for those who wish to attack the democratic legitimacy of the EU as a whole.

The Committee's overall view is therefore that the transparency of trilogues needs to be increased, and that national parliaments need to have a greater oversight of and influence over the trilogue process if they are effectively to fulfil their scrutiny function. In light of the 19 February European Council agreement to enhance the role of national parliaments as part of *A new settlement for the United Kingdom within the European Union*, the Committee particularly calls on national Governments (including the UK Government) and the European Parliament to show willingness and commitment to sharing information with national parliaments and the wider public.

We take as our starting point that the primary function of national parliaments, in respect of the EU legislative process, is to scrutinise their respective national governments, and to hold national Ministers to account for their actions as co-legislators in the Council. This principle does not preclude national parliamentary involvement in other aspects of the EU, but it is our starting point in considering trilogues.

The House of Lords European Union Committee has accordingly taken a longstanding interest in improving the transparency and effectiveness of the trilogue process, and has stressed in particular the need to ensure that national parliaments are able to monitor and influence trilogue discussions through effective scrutiny of national governments.

In 2009, the Committee published a report on *Codecision and national parliament scrutiny*.¹ The report concluded that:

¹ 17th report (2008-09), *Codecision and national parliamentary scrutiny* (HL Paper 125)

“There are aspects of codecision which cause difficulties for us in seeking to influence the Government’s position. In large part these difficulties arise because agreements are reached at first and second reading stages though the use of informal trilogues: small, private meetings between the Commission, Council and European Parliament.

To minimise these difficulties we [have reviewed] our procedures for conducting scrutiny of codecided proposals and the systems operated by Government Departments for keeping us informed of progress in negotiations.

The key conclusions of this review are:

- That the existing system of updates before each reading should continue, but that it is not sufficient where early agreements are reached because it does not provide us with the opportunity to scrutinise changes proposed and agreed in informal trilogues;
- That we should be provided with details of every change with policy implications made to a proposal and that, where the UK Representation to the EU has alerted a Department to change, this should be the cue to the Department to update us;
- That all Departments must work hard to ensure that Parliament is kept fully informed of developments in negotiations and that the Cabinet Office should be more proactive in monitoring and enforcing good Departmental performance;
- That there are a number of trigger points in negotiations, such as where COREPER discusses a proposal, at which we should be provided with an update on negotiations; and
- That the marking of a document LIMITE should not be a bar to its provision to Parliament.”

The Committee returned to the issue after the Lisbon Treaty came into force. For instance, the Committee’s March 2014 report on *The role of National Parliaments in the European Union*² noted that:

“In recent years there has been an increase in early agreements, or ‘first reading deals’, between the co-legislators, based on negotiations in informal ‘trilogues’ also involving the Commission. These negotiations are something of a ‘black box’ for those not directly involved in them. Witnesses argued that the speed with which the deals are sometimes concluded ‘puts pressure on the ability of national parliaments to perform scrutiny in a timely fashion’. In 2009 this Committee noted that the use of informal trilogues ‘makes it harder for national parliaments to conduct effective scrutiny of EU legislation’.

“As part of the re-evaluation of the reasoned opinion procedure, consideration should be given to improving the transparency of the later stages of the legislative procedure. The EU legislative procedure is already complicated, and we do not wish to add unnecessary additional layers. However, national parliaments have an important role to play and if that role is confined to the initial Commission proposal it is possible that they will be denied the opportunity to examine important changes brought forward during the negotiations between the Council and the European Parliament. ... National

² 9th Report (2013-14), *The Role of National Parliaments in the European Union* (HL Paper 151)

parliaments should be kept informed, particularly by their own governments, as negotiations progress. National parliaments should become involved again at the later stages if there have been major changes to a proposal.”

The Committee concluded that:

“It is vital that national parliaments should have a recognised opportunity for their voices to be heard during the later stages of legislative negotiations, particularly when those negotiations result in major changes to draft legislation. We suggest that the Council consider making a commitment that, if a legislative proposal is significantly altered during its consideration by the co-legislators, the Council will allow sufficient time, and no less than 12 weeks, for each national parliament to scrutinise the new or significantly altered elements of the proposal. This would be a logical development of the role of national parliaments in EU policymaking and without such a commitment there will remain a fundamental gap in the legislative process.”

The report also concluded that “there is scope for national parliaments and the European Parliament to engage more effectively with each other, sharing information and debating key policies.” One suggestion that we noted with approbation was that “national parliaments and the European Parliament could reach agreement that EP rapporteurs could provide informal briefings to Members of national parliaments on the progress of trilogue negotiations.”

Since the publication of that report, the Committee has continued to argue the case for greater transparency of trilogues, most recently in the context of negotiations on the Interinstitutional Agreement on Better Law-Making. The Committee welcomed the UK Government’s statement in its Explanatory Memorandum on the proposed IIA that “improving the transparency of trilogues will be of particular importance to the UK during the IIA negotiations”, and asked the Government whether it would be possible for the Committee to be provided with a report of trilogue discussions without attributing specific comments to participants.

However, the Government was noncommittal in its response, and the Minister for Europe, Rt Hon David Lidington MP, went so far as to state that the UK Government would “stand against attempts to bring a level of transparency to trilogues which undermines the decision-making process”. In its reply, dated 16 September 2015, the Committee noted that:

“Trilogues are a key part of the EU legislative process, not merely matters of ‘decision-making’, and we cannot understand why the United Kingdom Government would wish to stand in the way of introducing a greater degree of transparency to the making of the laws that shape the lives of UK and EU citizens, in particular given your repeated emphasis on the need to enhance the role of national parliaments. Moreover, your statement appears to be based on a false antithesis between transparency and decision-making: is it not possible to increase transparency without prolonging negotiations? Can you be also more specific about what you have in mind when you state that ‘any additional requirements which would excessively prolong negotiations could potentially be counterproductive to achieving our policy objectives’?”

In a further letter, dated 28 October 2015, the Committee indicated that it found the Government’s “commitment to transparency of the trilogue process, heavily caveated as it is,

lukewarm at best. This, together with the continued lack of clarity on the detail of the Government's proposals [in the context of the 'new settlement for the UK'] on strengthening the role of national parliaments, tends to undermine your stated commitment to enhancing national parliaments' role." The Committee continues to press the UK Government on its position regarding the transparency of trilogues following conclusion of negotiations on the IIA.

In conclusion, the Committee welcomes this consultation, and trusts that the results of the Ombudsman's review will be to the benefit of all EU citizens.