

Date 31/03/16

Subject: EBF response to the consultation of the Ombudsman on the transparency of the trilogues

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.

No. The intrinsically political nature of this specific stage of the legislative process, its informal character and the traditional sensitivity affecting all parties involved, makes the trilogue process non-transparent for external 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.

European banks think that more transparency in the EU legislative process – and, in particular, in the trilogue stage would enhance public opinion's trust in the decision making process. Reasons:

- Transparency allows a continued dialogue between EU Institutions and third parties. This dialogue is at the heart of our European democracy. In that regard, the trilogues should not be an exception to the fundamental rule of transparency.
- Transparency reduces stakeholder exclusion, allowing more interaction and open debate, not only with co-legislators, but among stakeholders themselves. An open debate is furthermore positive for the acceptance of legislation and prepares the ground for its effective implementation.

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.

In regard to trilogue documents, EBF calls for the publication in advance of meetings of agendas, participants' lists and any support documents. Further to the meetings, minutes should also be published, as it is the case for Parliamentary Committee meetings.

Specifically on the so called "four column table", this document - and any updates - should be published whilst the trilogue is ongoing and at the end of the process. Disclosure of this four-column document can increase the transparency and accountability of the decision-making process.

In connection to the above, the EBF acknowledges the letter "[*Opinion of the European Parliament in the European Ombudsman's own-initiative inquiry OI/8/2015/JAS concerning transparency of*](#)"





[trilogues](#)" of 22.10.2015, where the European Parliament states that it is currently working on "IT solutions to make publicly available documents related to trilogue negotiations once agreement has been reached and Parliament has adopted its position". Public availability should also extend to multi-columns tables, contrary to what the letter says.

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?

As stated before, we would encourage a wide disclosure of information as early as possible and as detailed as possible as it is suggested in option b).

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.

As a member of the European Transparency Register (n°4722660838-23), EBF staff has subscribed to the Transparency Register Code of Conduct. In accordance to letter (b), subscribers shall not obtain or try to obtain decisions by use of undue pressure or inappropriate behaviour. Under (g), EBF staff will refrain from inducing officials or other staff of the European Union to contravene the rules and standards of behaviour applicable to them.

It can be argued that advanced information and disclosure (i) remove mis-incentives making it easier for interest representatives to abide by the Code of Conduct; and (ii) better helps EU officials stay within relevant rules and standards of behaviour.

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.

Yes. We think that there should be no reason not to make publicly available the initial position of each institution, at least as far as financial services legislation is concerned, where no important issues affecting core interests of the Union i.e. security, are generally at stake.

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?

Consistency in the types of documents that are prepared is important. For example, it is often unclear whether minutes exists for certain meetings. This is notably the case for Commission Expert Groups. In the related register of Commission's Expert Groups – same would apply to other EU institutions - it should be stated whether minutes are produced after group meetings or not.

In the European Parliament, some Committees produce minutes of coordinators' meetings – others do not. Same goes for ITER tables, which are updated in very different timeframes, often with no clear explanation as to the delay.

Consistency in what is made directly available is also important. For example, some Council Working Groups disclose agendas for meetings – others do not (even though they are prepared).





A third area is consistency in the content of documents that are eventually made available – either directly or via a request. As way of example, whilst some agendas of Council Working Group meetings list all agenda items, other agendas do not.

Finally, consistency in responding to access to document requests can be improved. In our experience, there is a degree of randomness. This would affect all three institutions. For example some requests are met swiftly, others are not. Some requests are granted. Similar requests may be rejected.

In the specific context of trilogues, we support the European Parliament's plan to use the existing "[OEIL](#)", the Legislative Observatory, to make the documents of the trilogue public. This would be the easiest way to centralise all the relevant documents of the legislative procedure.

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. This distinction is - in our view - relatively permeable. Technical issues can often be very political, for example. We see the split as a way to operationalise the trilogue process without necessarily involving the political layer on a continuous basis. At the end of the process, there is one compromise. The ability of stakeholders to be able to enrich that compromise with their contributions should not be curtailed by procedural / logistical considerations.

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

No comment.

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