EAHP response to European Ombudsman Consultation on Transparency of 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.

EAHP has experience of trying to make inputs to trilogue negotiations on topics such as the Professional Qualifications Directive, Clinical Trials Regulation and Medical Devices Regulation.

In all cases considerable time and effort has needed to be dedicated to tracking down the progress in trilogue and nature of discussions. Typically this can only be conducted via a series of phonecalls and conversations with those directly involved in the process as open information is simply not provided.

The net result of this lack of transparency is to hand further advantage to those stakeholder interests wishing to convey information to the decision making process that have the financial resource to conduct such labourious information finding processes.

This lack of transparency is therefore to the detriment of good law making and public confidence in the processes by which EU legislation is formed.

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 nature of EU law is often focused on very technical matters, such as medical device assessment rules, or fields of information made public in respect to clinical trial results, to provide examples from two recent areas of trilogue attention.

Therefore, to effect the best decision making the recruitment and soliciting of expert outside experience is required. Those who live and practice in the area impacted.

A trilogue decision making process which therefore remains closed and fails to meets transparency standards risks losing opportunities from gaining from such external insight, with poorer legislation the net result.

Furthermore, in the context in which citizen understanding of EU law making remains limited and journalistic resource is constrained, lack of transparency inhibits open reporting of law making by the media to the public.

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.

Yes, proactive release of any trilogue documentation would benefit transparency, and should be mandated for this reason. All stakeholder interest groups could then equally benefit from common understanding of what stage trilogue negotiations have reached.

However, release of documentation should occur at the earliest available opportunity. Given the scale of public interest involved in all EU law making, rationale for secrecy must surely be highly limited. It is not considered acceptable in normal legislative making practice to keep proceedings, participants and documentation hidden. It is difficult to conceive why trilogue procedure should be considered differently.

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?

Similar to the excellent European Ombudsman newsletter, the institutions should offer to any member of the public the facility to sign up to an update service on the trilogue process. This would not entail disproportionate deployment of resource as newsletter sign up services are very common facilities, often provided free of charge by certain providers, and simply involves the circulation of already created documents.

Meeting agendas and participants should be made publicly available. No sound reasoning for secrecy on this point can be identified. Such secrecy would not be considered acceptable in respect to any Parliamentary considerations of legislative files. It can not be reasoned that trilogue procedures deserve exemption from such standards.

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.

« Lobbying », or the representation of interest in a legislative file, is not a negative activity per se. Law makers need insight into the impact upon various stakeholders of the legislation they are responsible for agreeing. It would be impossible for them to have understanding of all sectors' perspectives without this activity.

However, where lobbying becomes problematic is when privilege of information on the process hands an unfair advantage to those interests with the necessary resources to take advantage of the situation. For example, in the current trilogue process, information *can* be gained via persistent telephone calls or meetings with researchers, MEPs and officials close to the process. However, only organisations with large enough lobbying resource to conduct such time consuming activity can afford to deploy such effort.

Creating greater transparency (e.g. proactive and open availability of information) therefore levels the playing field, and gives all affected stakeholders greater opportunity to spell out the perceived impacts for their community of an impending decision on EU law.

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. It is difficult to perceive the reasoning why the positions of the institutions should be kept closed from the citizens in whose interests they are supposed to be acting on behalf.

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 ?

As suggested in response to question 4, an email newsletter sign up service, as provided by the EU Ombudsman and many other Government departments and Parliamentary scrutiny committees at European and National levels, is a simple, straight forward, resource efficient, and tried and tested means to share information proactively with all who have an expressed interest.

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. Making a distinction whereby « political » meetings are expected to operate to a higher standard of transparency than « technical » meetings opens the door to myriad unintended consequences, including increasing the prospect of « real » decisions being made in the closed door technical meetings.

Public confidence in EU law making demands transparency throughout the trilogue process, not simply certain chosen sections of the process.

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

The trilogue process is still described as « informal negotiations". This pretense should be ended. Custom and practice has made it clear that trilogue is one of the most fundamental parts of EU decision-making, where real agreement on legislative files is made and secured.

The reality of trilogue as a long term and "formal" method of EU law making should be recognized, with strong supporting rules on transparency to support it. Otherwise it risks being perceived as a form of "off balance sheet" law making.