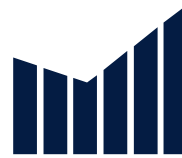




DANISH BANKERS ASSOCIATION



DANISH SECURITIES DEALERS ASSOCIATION

TRILOGUES CONSULTATION: Response to the European Ombudsman public consultation on the transparency of trilogues

Point 1

Transparency in the legislative process is an essential part of good law-making. This principle is broadly recognized by the European Parliament, the Council and the Commission, most recently in the Interinstitutional Agreement on better law-making¹, which explicitly states that the three institutions agree to promote, inter alia, the utmost transparency of the legislative process.

With a comprehensive and increasing part of legislation being adopted by the EU and not at the national level, it is crucial that EU legislators respect and recognize the need for deep and timely stakeholder involvement and transparency in the legislative process, particularly for democratic reasons. From an overall perspective, the Danish Bankers Association and Danish Securities Dealers Association believe this is generally the case.

However, when it comes to the trilogues, the current process can become opaque and exclusionary to the public, which has limited insight into such negotiations. A consequence of this is that access to information is not uniform, but will rather depend on informal contacts and personal relations. Furthermore, political deals negotiated at this late stage in the legislative process will sometimes include new elements outside the original mandates which have not been subjected to a thorough analysis in the prior impact assessments (please see the illustration under point 6 below).

While we recognize the need for informal negotiations in the trilogues, it is the opinion of the Danish Securities Dealers Association and the Danish Bankers Association that more transparency in the trilogue process is needed, and we support the initiative of the European Ombudsman to conduct this highly relevant inquiry.

Point 2

As stated in the Better Regulation agenda, thorough impact assessments and stakeholder inclusion are necessary in order to improve the quality of Union legislation. This is not only true for the legislative processes within the respective European institutions (Parliament, Council and Commission), but also when the three

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¹ <http://data.consilium.europa.eu/doc/document/ST-15506-2015-INIT/en/pdf>

institutions meet to negotiate compromises in the trilogues. In these final stages of negotiations, deals should not be concluded without taking account of the impacts associated with compromise amendments.

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We would therefore advocate carrying out impact assessments and/or public consultations to any substantial amendments negotiated in the trilogues that have not been assessed at an earlier stage. This would result in longer legislative processes and require more resources, but such measures could prevent the potential negative consequences of changes in the final stages of law-making, which ultimately could be detrimental to the overall objective of the legislative proposal. Furthermore, greater transparency would ensure equal access for stakeholders to highlight potential consequences associated with amendments, thus avoiding undue accommodation of special interests.

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Point 3

The Danish Bankers Association and the Danish Securities Dealers Association acknowledge the need of the European institutions to have an informal forum where legislation can be negotiated. However, release of e.g. "four-column tables" after the trilogue process has resulted in an agreement on the compromise text is a necessary, but not a sufficient step since this will not imply adequate transparency in the mechanisms behind the final agreement. At best, it would help to interpret the legislation, and as such would not be very useful for persons, companies or institutions that are targeted by the legislation and as a consequence have a vested interest in the legislative process.

It is the opinion of the Danish Bankers Association and the Danish Securities Dealers Association that proactive release of all documents would be welcomed and indeed increase transparency of the legislative process.

Point 4

We would prefer option b).

Point 5

We do not necessarily see a risk of increasing pressure on legislators and officials involved in the process by increasing transparency. Rather, we assess that the major change is a level playing field for information, which could imply more open and relevant dialogues with the legislators and officials and not secret discussions in the corridors between selected stakeholders and the legislators and officials. Stakeholders which are affected by the legislation must and should have equal access to both information and legislators/officials. We might face longer legislative process at one hand. But at the other hand, as stakeholders face significant impact of the legislation, they should be able to expect that the legislation is made right the first time. This requires transparency and access for stakeholders to the process.

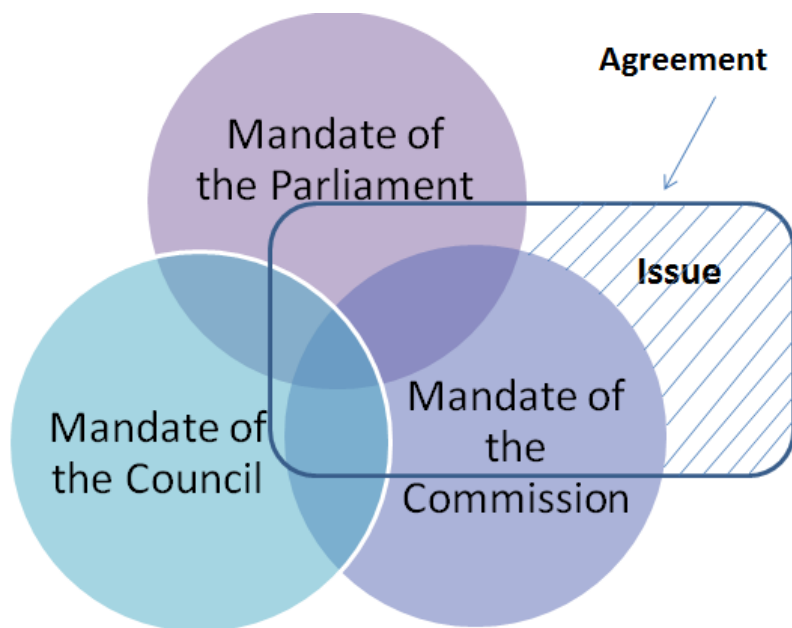
Point 6

If what is meant by the initial positions ("mandates") of the three institutions are the Commission proposals and the Council and Parliament compromise texts, these documents are publicly available before the start of the trilogue, though not in a compiled version like a "four-column table". It is our opinion that a compiled

version of the initial mandates should be made publicly available before the trilogue negotiations commence.

If what is meant by “mandate” is rather the internal mandate of the institutions to deviate from their original position during negotiations, we agree that such information cannot be made publicly available before the trilogue.

It is, however, important that the institutions do not stray too far from their mandates, especially as long as the trilogues are as closed a process as it is today. The diagram below illustrates a situation where the trilogue negotiations are concluded by an agreement that is only partially covered by the original mandates of the institutions:



In such instances, the parts of the agreement that lie outside the original mandates (marked by the crossing lines) are included at a very late stage in the legislative process and therefore have usually not been subject to stakeholder input. As stated under point 2 above, any substantial amendments in the trilogues that have not been previously assessed should be subjected to stakeholder input.

Point 7

Since the Commission is advocating further use of digitalisation in all areas, the Commission should be at the very forefront with initiatives regarding digitalisation. Hence we would suggest that the institutions adopt the use of the app developed by the EDPS for the General Data Protection Regulation (or a similar app developed by the institutions).

Such an app could be made to function cross platforms and would, if used consistently, enable all parties to get an overview of 1) the mandates of the institutions, and 2) the compromise text as agreed upon by the institutions. Such a tool would greatly improve the transparency of the legislative texts.

Point 8

In our opinion, no such distinction should be made since the concept of “political trilogues” would be open to divergent interpretations. Transparency requirements should apply to all trilogues.

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Point 9

Not applicable.

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