

Comments on the transparency of trilogues upon the European Ombudsman's Invitation

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.

There is still a lack of symmetry between the EU institutions regarding the transparency of their legislative work. This also affects inter-institutional legislative negotiations. While in the EP the process of establishing the negotiation mandate has been made fully transparent by the 2013 procedural reform (including the possibility of full scrutiny in plenary), the setting up of the Council's negotiation mandate continues to be entirely opaque.

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.

In order to allow for public trust, the deliberative process in both branches of the legislative authority should be made fully transparent until the setting up of each side's negotiating mandate. Full transparency is also required, once an agreement has been reached in the negotiations between the institutions, during the procedures leading to the approval of the compromise in both institutions. During the phase of negotiations, however, the negotiators must benefit from the privilege of confidentiality since without confidentiality political actors cannot be expected to move away from publicly taken positions and to facilitate sincere compromise-finding.

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.

Once compromise-finding has been achieved and both branches of the legislative authority have endorsed the negotiated compromise, there is no longer a reason to keep trilogue documents confidential, since the scope of confidentiality is to facilitate agreement which has been reached while the availability of the documents may help to better understand the outcome of the negotiations.

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?

Information of the public prior to trilogue meetings, going further than making transparent the general negotiation mandate of either side, would only strengthen lobbies and pressure groups and be detrimental to the discursive process which consists in conciliating with a view to the general good the differing approaches retained in a body of representatives of citizens and in a body of representatives of States.

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.

Such concerns appear as fully justified. Lobbyists and civil society pressure groups can usefully contribute general position statements to legislative procedures, but should not be alimented with details allowing them to targeted influencing of on-going negotiations.

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.

If negotiations are to be held on a level playing field, the same rules should

apply to all parts involved in the negotiation. That means that all three institutions should make public their positions at the beginning of the negotiations. Both the EP and the Council are obliged to hold their legislative deliberations in public, but the Council still refuses to implement this Rule at the preparatory stage. As to the Commission, it is normal that it considers its legislative proposal which is public as its starting position for negotiations.

Beyond such official documents, no institution can be expected or legitimately requested to make public any „read-lines“ for upcoming negotiations.

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?

The user-friendliness of the databases/register of all institutions should be tested by non-professional users with low computer-literacy and be improved taking their profiles into account.

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?

The strictly preparatory character of technical meetings does not allow for assimilating them in any respect to trilogues held between representatives of the institutions involved in the legislative process. Such technical meetings are useful to update all sides involved about possible technical options and thus may be helpful on the way towards well reflected choices and compromise proposals, but do not enact any such moves. Without full confidentiality of this level no institution would allow it to work.

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

The democratic principle requires transparency of the legislative process. Citizens need to be able to distinguish, for which reasons a legislative act has been adopted and which political actors carry the responsibility for it. Legislative procedures regularly involve negotiations in order to organise sufficient support, within a political party, within a parliamentary group,

amongst parliamentary groups, amongst representatives of federal interests etc. There is a legitimate interest for the public to know the initial positions of such negotiations and their outcome. This allows attributing to the various actors their political responsibilities. There is no legitimate concern to make the inside of the negotiation process public since this, on the contrary, would impede this process by making positions more rigid. If the basic constitutional choice of the EU is a democracy of consensus-building through negotiations, their good functioning should be preserved safeguarding the freedom of legitimate representatives against the aspiration of whatever pressure group to fully control the process. Freedom of legislative deliberation should be defended against ambitions of full control that tend to become totalitarian.