Trilogues Consultation European Ombudsman

Contribution of European Movement International as decided on 17 March 2016

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 European Movement International believes that there is a total lack of oversight in the trilogue process (the informal tripartite meetings attended by representatives of the European Parliament, the Council and the Commission) as there are no meeting records, list of participants, nor documents made available from these meetings before, during or after they occur. The increase in legislation adopted at first reading requires greater transparency for the trilogue meetings that always precede first reading approvals.

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 European Movement International believes that the closed-door negotiations between the Parliament and Council in the form of trilogues undermine the legitimacy of decision making processes at the European level, as well as citizens' trust. Increasing transparency in the trilogue procedure would be one solution to the democratic deficit of the European Union, as it would enable the tracking of how EU legislation came into existence. In the last legislative period, about 1,500 trilogues took place on about 320 different pieces of EU legislation, demonstrating the integral part such meetings play in EU law-making.[1] The publication of documents about the legislative proceedings would enable a public debate on EU decision making, which will bring the public closer to the institutions.

The current opaque process creates unequal access to information for stakeholders, as lobbying firms and NGOs face a very different playing field. Lack of transparency also plays into the hands of populist anti-EU scaremongers all across Europe. Beyond being indispensable to the legitimacy of the European political project, transparency would also help to increase the efficiency of policy implementation, as the changes to legislative proposals resulting from the compromises struck in closed-door trilogue meetings are not always easy to apply on the ground.

---

[1] http://www.europarl.europa.eu/code/information/activity_reports/activity_report_2009_2014_en.pdf

European Movement International – Submission to EU Ombudsman Trilogue Consultation
Rue Marie-Thérèse 21 | B-1000 Brussels | T +32 (0)2 508 30 88 | F -89
www.europeanmovement.eu | secretariat@europeanmovement.eu

Page 1/4
17 March 2016

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.

The proactive release of all documents exchanged between the institutions during the trilogue negotiations such as the "four-column tables" should serve as the minimum threshold for ensuring greater transparency. They should be made publicly available on a central 'trilogue' internet site within a matter of days after the process has concluded and before the presentation of the text to the Parliament's plenary. This is in line with the publishing of draft legislation agreed by the Council and Parliament for the conciliation committee during the ordinary legislative process.[2] The "four-column tables" would allow for the public to track how the legislation was created. It would also act as a safeguard against the blurring of institutional roles and any sort of unhealthy development of long-term institutional dominance, as it would be clear where the compromises have been made. With regards to the fact that the three institutions do not establish agreed minutes or reports of trilogue meetings, the requirement to publish such documents might streamline the process and ensure that all parties are keeping notes on the proceedings instead of inappropriately relying on, for example, the Commission's notes.

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 details of forthcoming meetings such as meeting agendas and a list of proposed participants?

Institutions should inform the public about trilogue meetings by providing meeting times and a list of proposed participant in advance. After the sessions are completed, all documents such as meeting agendas should be made available, following the publication procedure that the Conciliation committee follows.[3] The European Movement International understands that sometimes there will be last minute changes to the list of participants, but these can be added to the original document within 48 hours after the trilogue meeting and re-uploaded to reflect these changes.

---

[2] http://www.europarl.europa.eu/code/information/activity_reports/activity_report_1999_2004_en.pdf

[3] Democratic Decision-Making in the EU: Technocracy in Disguise, by Anne Elizabeth Stie. Abingdon: Routledge, 2012.

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.

Pressure on legislators does not per se harm the democratic process but is an integral part of it. However, the European Movement International does not believe that greater transparency around trilogues will necessarily increase the pressure of lobbyists on legislators and officials involved in negotiations. Instead, by having greater transparency around these meetings, a greater spectrum of lobbyists and stakeholders[4] such as ordinary citizens and civil society organisations can influence and put pressure on the negotiations, or, at least, keep the institutions accountable to their promises and institutional roles. The European Movement International also doesn't see why the trilogues should be more susceptible to heavy influence than other legislative procedures, and why they should thus be exempt from the threshold transparency rules governing the conciliation committee, a body designed to prioritise legislative efficiency. If we want a substantial democracy, then making the list of proposed participants and meeting timetable available in advance is important to ensure that civil society is able to execute its necessary function and that there is more equal access to the EU legislative procedure. If institutions regard trilogues as a normal part of the legislative process, they should also be more transparent about their participation in it.

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.

The proliferation of trilogues, both political and technical, is closely associated with the trend of EU legislation being adopted in a shorter time frame and often after the first reading. Therefore most trilogues are 'first reading trilogues' as 85% of codecision files were adopted at first reading in the last legislative period (2009-2014).[5] The conciliation committee, sometimes called 'formal trilogue' is substantially more transparent than the informal trilogues referred to in this consultation, because by the time they start, the public at least knows the different 'mandates', through the Council publishing its general approach or even first position, and through the Parliament making publicly available its first position, proposed amendment changes or position after the second reading. Therefore, unlike with the informal trilogues, each institution has a public initial position that can then be tracked and compared to the final legislative product. Since today most legislative is adopted through informal trilogues, there should be a requirement for each institution to publish a mandate in advance.

---

[4] The EMI considers lobbying as every effort to input and influence the decision making process on the EU level, regardless of the nature of the stakeholder.
[5] http://www.europarl.europa.eu/code/information/activity_reports/activity_report_2009_2014_en.pdf

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 most user-accessible means of sharing documents would be to create a trilogue website where all documents can be tracked.

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?

In theory, as long as civil servant meetings remain technical and as long as the European Commission doesn't become a co-legislator, a distinction could be made between "technical" and "political" trilogues. However, the European Movement International believes the same transparency rules should apply for technical and political meetings because in reality that distinction is almost impossible to maintain. The Commission and "technical expertise" more generally, are not immune to special interest pressures, which can sway industry standards and what is seen as 'realistic' to implement. Moreover, there has been complaints that some of the legislation that results from these trilogues is inefficient as the compromises made during the trilogue can be impractical to implement.

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

The European Movement International proposes that the European Commission also publishes an updated impact assessment after the trilogue session is complete, before the first reading voting procedure in the Parliament and Council, as often the proposals change so much that the original impact assessment is neither relevant nor helpful anymore.