



# Position Paper

30 March 2016

## EUROCHAMBRES response to the public consultation on the 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.

The issue of the transparency of trilogues is extremely relevant in consideration of the significant increase in the frequency of trilogues that has been observed in recent years and of the fact that, as the European Ombudsman put it, “it is increasingly in trilogues that legislation is finally negotiated and decided upon. It is where deals are done that affect over 500 million Europeans and frequently the fortunes of businesses not just in Europe but also globally”.

EUROCHAMBRES welcomes the EU institutions’ commitment to a transparent legislative process. To this regard, more should be done in the framework of the trilogue process, with particular reference to issues related to access to documents. The level of disclosed information is currently very low: the four-column document is not made publicly available, nor are the calendar of the trilogue meetings, the list of participants, the minutes or reports. This is in contrast with Art. 15 para. 3 TFEU, according to which “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies [...]”.

With particular regard to *post factum* publication, EUROCHAMBRES believes that after an agreement has been reached, all documents related to trilogue negotiations should be made publicly available.

An additional remark regards the fact that trilogues take place behind closed doors, while Art. 15 para. 2 TFEU stipulates that the Parliament and the Council shall meet in public when considering and voting on a draft legislative act.

### 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.

Greater transparency as regards the EU legislative process would have a positive impact in terms of democracy, public trust and quality of the legislation.

Transparency of the legislative process is a key aspect in every democratic society. Citizens are entitled to hold their elected representatives accountable for their performance during the legislative process. In order to be able to do so, they need to know and understand the considerations underpinning legislation. Greater

transparency would thus contribute to strengthening democracy by allowing citizens and businesses to follow and understand the EU legislative process, whose outcome will ultimately affect them.

Greater transparency would also play an invaluable role in building trust in the EU and in lowering the distance perceived by citizens and businesses towards EU decision-makers.

In this regard, it is essential that the EU institutions make publicly available relevant documents and information on the legislative process, including calendar and agenda of the trilogues as well as four-column documents. If the publication of the latter is deemed impossible due to the frequency at which trilogues are held, at least detailed minutes or reports of the meetings outlining on which points progress has been made and how the negotiations are evolving should be published soon after a trilogue meeting took place and prior to the following one.

Equally important is that the EU institutions involve - as appropriate - the parties concerned, in line with art. 11 TEU. An appropriate involvement of interested stakeholders at all stages of the EU legislative process, including the preparatory phase of trilogues, may it be in form of public consultations, working groups, hearings or any other, enhances transparency and democracy. It also increases the quality of the process in light of the expertise and practical knowledge that the parties concerned can provide. It should not be forgotten that legislation negotiated and adopted in Brussels has an impact on citizens and businesses across the whole EU. For this reason, when legislating on issues that will affect businesses, the involvement of EUROCHAMBRES and the Chambers of Commerce and Industry is of paramount importance. Their proximity to enterprises, and particularly SMEs, is a valuable asset to help the decision-makers take well-informed, evidence-based decisions throughout the legislative process. As stated in the Communication "Better regulation for better results - An EU agenda" adopted in May 2015, "[o]pening up policy-making can make the EU more transparent and accountable, but it also ensures that policies are based on the best available evidence and makes them more effective"<sup>1</sup>.

Greater transparency can also enable a better understanding of the legislation. In line with this, full access to trilogue documents would help decode complex legislative acts.

**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 release of all documents exchanged between the institutions during trilogue negotiations after the trilogue process has resulted in an agreement on the compromise text is an essential step to ensure greater transparency.

However, in order for the legislative process to be sufficiently transparent and with a view to enabling the participation of the parties concerned, it is essential that relevant information is made publicly available also before trilogues take place. This should be done early enough to allow interested stakeholders to provide the decision-makers evidence-based arguments, thereby increasing the quality of the negotiations and ultimately of the legislation that will be adopted.

Moreover, as previously observed, soon after each trilogue meeting takes place, a report indicating the main points discussed and progress achieved should be made publicly available. Of particular importance is also the timely publication of the compromises reached on issues that will affect businesses, so as to enable them to promptly assess the impact of the agreed text on their activity.

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better Regulation for better results – An EU agenda, COM(2015) 215 final, Strasbourg, 19.5.2015, p. 4.

**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?**

Publicly announcing the dates of trilogues meetings is a welcome step towards increasing transparency, but it is not sufficient. In addition to the calendar of the trilogues, the publication of the agenda of the meetings, a list of proposed participants, preliminary positions of the three institutions, provisional compromise proposals and background documents for the negotiations is key to allow stakeholders to provide their expertise and know-how to the decision-makers. As previously observed, the participation of concerned parties does not only increase the transparency of the legislative process, but it also enhances its quality.

The publication of the aforementioned material is in line with the principle that the EU institutions shall conduct their work as openly as possible, enshrined in Art. 15 TFEU.

**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.**

A more transparent way of handling trilogues, and in particular the publication of detailed advance information, would allow a more democratic participation in the legislative process.

As previously illustrated, the appropriate involvement of interested stakeholders, from business and other interest representation associations to civil society organisations, is of vital importance to ensure the quality of the legislative process in view of the expertise that they can provide to the decision-makers.

**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.**

EUROCHAMBRES is in favour of the advance publication of the initial position of all three institutions. Such a measure would enable interested parties to know which institution is holding which position and to better understand the underlying considerations. As previously explained, this would strengthen democracy in relation to the EU legislative process. Moreover, it would allow interested stakeholders to clarify their position towards the three institutions, if and where appropriate.

**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 documents and information that the institutions already make public could be made more visible and easily accessible by improving Internet searching tools. In addition to that, visibility and user-accessibility could be enhanced by introducing the possibility to subscribe to a newsletter on specific user-defined topics and to be notified of the emergence of information on the selected areas.

More specifically in relation to the website of the Council, a more user-friendly tool for the search for documents should be implemented.

**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?**

EUROCHAMBRES believes that it is essential to ensure a sufficient degree of transparency in relation to both political trilogues and technical meetings. To this regard, it is essential that stakeholders are

appropriately involved, so that their expertise can benefit the quality of both types of meetings. Given their expertise, interested stakeholders can be a valuable asset in the context of the preparation of the meetings as well as in the assessment of the impact of the compromises agreed on. For this reason, EUROCHAMBRES would like to stress once more the importance of involving the parties concerned for a better, more efficient and democratic decision-making process.

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