



Council of the European Union
General Secretariat
The Secretary-General

SGS17/04966



Médiateur européen

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Date d'arrivée

Ms Emily O'Reilly
European Ombudsman
1, av. du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
France

Brussels, **02-06-2017**

Subject: Public Information on the UK's withdrawal from the EU (SI/3/2017/KR)

Dear Madam,

Thank you for your letter of 24 March 2017 concerning the issue of public information on the UK's withdrawal from the EU (SI/3/2017/KR).

You have pointed out the importance of transparency in the context of the withdrawal negotiations, while acknowledging the need to create an appropriate and effective negotiating context, which may sometimes require keeping confidential certain documents at particular points.

At the same time, you underlined that it would be helpful to adopt a proactive approach from the outset and give citizens access to relevant information and documents at the appropriate time and without the need to ask for them.

You will have noted that both the European Council's Guidelines following the United Kingdom's notification under Article 50 TEU and the Council directives for the negotiation annexed to the Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the Union have already been made public.

The guidelines of the European Council specify under section I on core principles that negotiations under Article 50 will be conducted in transparency. In the light of this core principle, on 17 May 2017, the Permanent Representatives Committee endorsed *Guiding principles for transparency in negotiations under Article 50 TEU* (document XT 21023/17, which you will find enclosed).

The proactive approach of these guiding principles also applies to the second relevant area you identified, i.e. citizens' rights and obligations in circumstances where many citizens have exercised their right of free movement. The European Council itself has identified this area as "the first priority for the negotiations" in its guidelines, which highlights delegations' awareness of the importance of this issue to citizens.

Sincerely yours,

Jeppe Tranholm-Mikkelsen

Enclosure: XT 21023/17



Council of the
European Union

Brussels, 22 May 2017
(OR. en)

XT 21023/17

BXT 31
INF 100
API 73

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Guiding principles for transparency in negotiations under Article 50 TEU

Delegations will find hereafter a note setting out guiding principles for transparency in negotiations under Article 50 TEU as endorsed by Coreper (Art. 50) ¹ on 17 May 2017.

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¹ Following the notification under Article 50 TEU, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

GUIDING PRINCIPLES FOR TRANSPARENCY
IN NEGOTIATIONS UNDER ARTICLE 50 TEU

The upcoming negotiations with the United Kingdom under Article 50 TEU are an unprecedented situation for the Union, not least from the strong public scrutiny and interest they will legitimately generate from citizens, public authorities and stakeholders across Member States as well as in partner countries.

Ensuring that the negotiations are conducted in a transparent manner will be one of the keys of their success. The guidelines of the European Council clearly confirm this principle by specifying that negotiations under Article 50 TEU will be conducted with transparency. In this regard, a coherent EU approach to transparency arrangements for the negotiations should be carefully defined well ahead of the formal start of negotiations.

This note presents a set of guiding principles for transparency for the overall course of negotiations under Article 50 TEU. These principles aim at facilitating effective public scrutiny and providing a steady flow of public information throughout the negotiations whilst preserving the space to form EU positions and negotiate with the UK.

Principles for transparency in negotiations under Article 50 TEU

- **The Union negotiator is invited to reach out to citizens, national parliaments and stakeholders, and to provide timely and directly accessible information to the public in particular around negotiation rounds.** This could include regular press conferences and other information materials.
- **The European Parliament will be kept closely and regularly informed throughout the negotiations by the Union negotiator,** including through the transmission of negotiation documents through the appropriate channels and in accordance with applicable rules and practices. In addition, regular contacts between the rotating Presidency and representatives of the European Parliament will take place, in particular before and after meetings of the General Affairs Council (Art.50).

- **Member States with constitutional arrangements requiring them to transmit documents to their National Parliaments will be able to do so according to applicable Union and national rules and practices and without prejudice to the application of Union rules on public access to documents.**
- **Third country partners (in particular the EEA) and international organisations will be updated as appropriate by the Union negotiator on the progress of negotiations with the UK. The Council (Art.50) and its preparatory bodies (Art.50) will be duly informed in this regard.**
- **Rules on transparency and public access to documents will apply to all Council documents in the context of negotiations under Article 50 TEU.** Following a case-by-case assessment, certain documents may be released proactively to the public by the Council (Art.50) and its preparatory bodies (Art.50). Other Council documents will in principle be marked as "LIMITE". Initial applications for access to documents will be handled by the General Secretariat of the Council and confirmatory applications by the Council (Art.50) and its preparatory bodies (Art.50), assisted by national experts on transparency and public access to documents and in accordance with applicable rules, including exceptions, foreseen in EU law.
- **The first and subsequent versions of European Council guidelines and Council negotiating directives will be made public immediately after their formal adoption by the European Council and/or the Council².** Until their formal adoption, these documents will in principle be marked as "LIMITE".
- **It is noted that negotiating documents of the Commission shared by the Union negotiator with the EU Member States / European Council / Council / European Parliament / National Parliaments / UK will be released to the public by the Union negotiator, within the limits of EU law.**

² This is without prejudice to the transparency regime applicable to other negotiations.

- **Member States will be consulted on negotiating documents to be sent to the United Kingdom**, in accordance with applicable procedural arrangements for the conduct of the negotiations. **All UK documents received by the Union negotiator, will be transmitted to the Council (Art.50) and its preparatory bodies (Art.50)** via the General Secretariat of the Council.
- **Documents originating from Member States may be disclosed on a case-by-case basis, subject to prior agreement of the originating Member State and in accordance with applicable rules and exceptions under EU law. Other third-party documents may be disclosed on a case-by-case basis, subject to prior consultation of the author and in accordance with applicable rules and exceptions under EU law.**

It is noted that the elements of the principles referring to the Union negotiator are also endorsed by the Commission.

Typology of documents used in the negotiations under Article 50 TEU and relevant transparency regime

Different types of documents will be used and discussed by the Council (Art.50) and its preparatory bodies (Art.50) in the context of negotiations with the UK. Documents will originate from different sources and will be addressed to different recipients. The following Annex establishes a typology of documents and suggests an adequate transparency regime for each of them, in accordance with the principles listed above.

• **TRANSPARENCY REGIME FOR COUNCIL (Art.50) DOCUMENTS**

COUNCIL (Art.50) DOCUMENT			
Originator	Possible types of documents	Recipient	Disclosure
COUNCIL (Art.50) including GSC / ROTATING PRESIDENCY/ PREPARATORY BODIES (Art.50)	- European Council guidelines - Council decision authorising the opening of negotiations and nominating Union negotiator - Council negotiating directives ³	Delegations and Union negotiator via GSC	Public from the time of formal adoption
	Coreper (Art. 50), GAC (Art. 50) and European Council (Art.50) meeting agendas and convocations	Delegations and Union negotiator via GSC	Public
	Notes to WP/Coreper/GAC/EUCO(Art.50)/Documents with guidance for the Union negotiator and compromise proposals/Opinions from the Council Legal Service, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment in accordance with applicable rules and exceptions under EU law

³ This is without prejudice to the transparency regime applicable to other negotiations.

TRANSPARENCY REGIME FOR DOCUMENTS ORIGINATING FROM 3rd PARTIES

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)			
Originator	Possible types of documents	Recipient	Disclosure
EU NEGOTIATOR (COMMISSION)	- Recommendation for Council Decision authorising the opening of negotiations and nominating Union negotiator - Recommendation for Council Negotiating Directives	Delegations via GSC	Made public by Union negotiator
	Negotiating documents: e.g. Agendas for negotiating rounds / EU position papers / non-papers / EU text proposals etc.	EU MS / EP / National Parliaments / UK	Made public by Union negotiator within the limits of EU law
	Background information / press material, etc.	General public	Made public by Union negotiator
	Non-papers / position papers, etc.	Delegations and Union negotiator via GSC	Case-by-case assessment subject to prior agreement of Member State on possible disclosure, in accordance with applicable rules and exceptions under EU law
MEMBER STATES (except UK)			

DOCUMENTS ORIGINATING FROM 3rd PARTIES (OTHER INSTITUTIONS, BODIES, STAKEHOLDERS, etc.)			
Originator	Possible types of documents	Recipient	Disclosure
UK	Documents originating from the UK (positions, draft proposals, non-papers, etc)/UK draft proposals for provisions of the withdrawal agreement	EU negotiator (shared with delegations via GSC)	Case-by-case assessment subject to prior consultation on possible disclosure, in accordance with applicable rules and exceptions under EU law
OTHER INSTITUTIONS BODIES AND STAKEHOLDERS	Documents originating from third parties (positions, draft proposals, non-papers, etc.)	EU negotiator and/or delegations via GSC	Case-by-case assessment subject to prior consultation with the author on possible disclosure, in accordance with applicable rules and exceptions under EU law

