

How transparency can be improved in the way EU laws are negotiated and agreed

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18/08/2016

The EU's legislative process has often been criticised from the perspective that it lacks transparency. [Aidan O'Sullivan](#) outlines the findings of a recent inquiry by the European Ombudsman on the transparency of so called 'Trilogue' negotiations, where representatives of the European Parliament and national Ministers meet to negotiate and agree on a common final text for a law.



If every teenager in Europe could be taught one thing in school about the EU, it should be how European laws are made by elected politicians. President Juncker of the European Commission was elected following the European elections, and when he proposes a new law, both EU legislative chambers (the European Parliament and the Council of national Ministers) then debate, vote on and must agree to it before it can become law.

Despite what many people might think, this 'normal' EU legislative process is actually quite transparent, even when judged against the processes used in many Member States. When people complain about a 'lack of transparency' in the EU, it is more often actually the intergovernmental decision-making bodies such as the European Council, Council of Ministers or Eurogroup that this criticism refers to.

However, one crucial part of this 'normal' legislative method has raised concerns, namely the transparency of so called 'Trilogue' negotiations. During a [Trilogue](#), representatives of the Parliament and national Ministers meet, negotiate and agree a common final text for a law, based on their initial positions, which is then voted on formally by their respective institutions. They are assisted by the Commission in these negotiations, who naturally wish to see their proposal become law. Trilogues have proven to be a very effective way to reach agreements between both legislators, and most European legislation is now adopted this way.

The EU is a representative democracy, and so our elected representatives have the mandate to negotiate laws on our behalf, and they must have the space to do that. However, citizens also have the right to hold them accountable for the political choices made on their behalf. Citizens in addition have the general right to participate in the EU's democratic process.

In this context, in May 2015 the European Ombudsman [opened an inquiry](#) to help boost transparency in this area. Ombudsman Emily O'Reilly examined which information and documents should be made proactively available to the public, and at what point in time. The EU treaties do of course detail how such agreements should be reached between the co-legislators, though this [formal process](#) can be complex and time-consuming. The co-legislators have implemented more flexible means of reconciling their institutional positions on proposed legislation with Trilogues.



Emily O'Reilly, the European Ombudsman, Credit: © European Union 2013 – European Parliament (CC-BY-SA-ND-2.0)

It must be noted that this structured Trilogue system is an improvement on even more informal means relied on in the past using verbal negotiations, which did not allow for any real democratic oversight within both the Parliament and Council. For example, the parliament negotiation team now consists of representatives of all political groups, and relevant secretariat and legal staff. This team must keep their respective bodies informed as the negotiations continue. It must also be mentioned that the Ombudsman inquiry was not concerned with how the main EU institutions organise Trilogues, which is their own responsibility for which they are accountable to the voters.

Firstly, the Ombudsman asked the Parliament, Council of Ministers and Commission to reply to a set of questions about Trilogues. Documentation of sample closed negotiations were then scrutinised to examine the types of documents normally tabled. Afterward the Ombudsman launched a public consultation during 2015. The submissions received from citizens, NGOs, academics and national parliaments overwhelmingly made the case for enhanced transparency, but some also raised concerns about the premature release of documents, citing the potential harm that could be done to the negotiations at a sensitive time. All of this is [published here](#).

The national parliaments expressed concerns about the transparency of Trilogues. They must be empowered to exercise democratic scrutiny of the positions their governments take in the course of the EU legislative process. Citizens of Member States can then hold their national MPs to account for that important role. While the inquiry was under way, the EU also concluded a new [Interinstitutional Agreement on Better Law-Making](#), which includes a strong commitment to legislative transparency. The Ombudsman welcomed these efforts.

Democracies like the EU accept and encourage their citizens' wish to participate in the democratic process not only at the ballot box, but also through public debates on the merits of legislative proposals. Such debates strengthen the democratic legitimacy of adopted legislation and this participation requires a transparent legislative process. And much of the EU legislative process is indeed already transparent. Parliament, for example, debates, amends and votes for its initial position at the committee stage in public, while the Council makes many documents produced by its working groups proactively available. However, any discussions between the co-legislators behind closed doors – without adequate documentation being made publicly available – risk the creation of public suspicion, and may hinder informed debate about its content.

Some concerns have been expressed that increased transparency might result in more lobbying of public representatives. In the Ombudsman's view, lobbying is perfectly legitimate and problematic only if not transparent or the privilege of a well-connected and well-resourced few. If, however, information is made available to all, this concern is somewhat addressed.

Lobbying may nevertheless be problematic if it occurs at a time when public representatives require some space to deliberate and debate on proposed legislation, and so the timing of the publication of documents is key. The Ombudsman has also repeated her call for a strong, reliable and mandatory Transparency Register as a 'central transparency hub' around which several EU administrative systems would connect.

The inquiry identified three core issues: the need to know if Trilogue negotiations are taking place on a legislative proposal; general information about the content of those negotiations; and who is taking part in the negotiations. The EU already publishes significant information and documentation in relation to the legislative process. Unfortunately, much of it is often spread across different databases and websites. While experts can trace and locate this dispersed information, most citizens cannot. This, regrettably, increases the 'mystique' of Trilogues, reinforcing the gap between 'insiders' and citizens.

When [concluding the inquiry](#) in July 2016, the Ombudsman welcomed the progress so far, however she proposed that the three main EU institutions publish more documentation and information. Specifically, that they publish a 'Trilogue calendar' of upcoming Trilogues, including summary agendas, lists of those politically responsible, such as the MEPs involved, the responsible Minister from the Council Presidency and the responsible Commissioner, and also to make available as far as possible lists of documents tabled during Trilogue negotiations, such as expert studies or statistics. As regards the crucial so-called '4-column documents', which are used to track the negotiations,

listing the initial positions of the three institutions plus the latest draft text in the 4th column, the Ombudsman called for them to be as far as possible and as soon as possible, published after the negotiations have been concluded.

Finally, at the moment, the Commission proposal and the position adopted by the Parliament are always public before negotiations begin, however that is not always the case for the Council position. Ms. O'Reilly proposed to national Ministers in the Council that this change. The three institutions are due to respond by December 2016. Hopefully after that many more teenagers, and many others, will be able to follow the EU legislative process more closely and thus get more involved in their European democracy.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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About the author

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Aidan O'Sullivan joined the cabinet of the European Ombudsman, Emily O'Reilly, as an advisor at the start of her mandate in 2013, and became Head of Cabinet in 2014. Previously he spent four years in the European Parliament, which followed ten years in the private sector. He graduated with a B.Sc. (1998) and a Masters in International Relations (2005) from Dublin City University.



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