

Consultation on the Transparency of Trilogues

EPHA Consultation Response

Case: OI/8/2015/JAS

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european public health alliance





EPHA response on 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.

No. Trilogues are not at all transparent and as such are prone to unbalanced influence from better resourced lobbyists representing vested interests. There is a high risk that this runs contrary to the public interest. The trilogue process is not well known or understood by the general public, or even the media outside Brussels. Despite the fact that trilogues are seen as an “informal” stage of decision-making, they have de facto become a routine final step of the decision-making process where critical decisions are reached with decisive impacts on the stringency or effectiveness of legislation, effectively with no accountability to citizen scrutiny.

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2. Please explain how, in your view, greater transparency might effect the EU legislative process, for example in terms of public trust in the process, the efficiency of the process or other public interests.

Given that trilogues are now routine, it is vital to formalise clear transparency requirements for this step of the decision-making process and open it up to public/media scrutiny. Greater transparency would ensure that the very limited number of actors at this stage can better be held accountable by citizens to democratically-reached decisions of the Parliament and Council. In practice, the current lack of transparency means that ambition levels, checks and balances risk being substantially watered down at this stage of the process and justified in the name of making a deal. Lack of accountability can manifest, for example, in that the MEP rapporteur at this late stage reverts to the position of his/her own faction rather than the formal position of the Parliament. The behind-closed-doors nature of trilogues weakens accountability and trust in the entire EU legislative process.

It is essential that all steps of the legislative process are open to representatives of all points of view and seeks expertise to ensure balanced decision-making in the public interest, which is transparent and accountable to citizens.

However, it will be essential to ensure that increased transparency requirements should not be open to abuse as a means to insert delays into the decision-making process.



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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.

Yes. In practice the 4-column documents are already readily available to lobbyists, but not to the general public or media. This clearly favours better resourced professional lobbyists representing vested interests. The documents should be released as soon as they are prepared (to ensure that one lobbyist does not get advanced access) or at least a week before each trilogue meeting, and as soon as possible after each meeting. This would significantly increase accountability of the actors involved in this stage of the decision-making process, ensure better coherence with democratically-reached positions of the institutions and increase public trust.

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?

It is not sufficient to merely publish meeting dates, as this could still exclude public scrutiny of the process beyond Brussels insiders. The general public (and even students of EU policy-making) are largely unaware of the importance of this de facto vital stage of the decision-making process, which is why formal transparency requirements are crucial. Dates, agendas and participant lists for trilogue meetings should be published and circulated well in advance, together with the 4-column documents, in a place that is easily accessible to anyone with an interest in the process.

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.

Considerations around increasing transparency must be made in the light of today’s reality, where better resourced professional lobbyists already have extremely preferential access to the trilogue process, documents and decision-makers. In contrast, the general public, interested citizens and the media are excluded in practice, including by the claim that trilogues are merely an “informal” step. Civil society organisations, despite knowing the process, are in practice often limited by lack of resources or other barriers to access particularly at this stage.



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These concerns however are legitimate and illustrate the vital importance of further mandatory transparency requirements, both for representatives of all interests seeking to interact with EU institutions and for decision-makers. As well as further transparency around trilogue meetings and agendas, these must include a mandatory transparency register and mandatory disclosure of all meetings by all actors in the process. This must in particular include Permanent Representations.

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.

Yes. Please see response to Questions 3 and 4 above.

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 ?

Information about the decision-making process for each legislative and non-legislative file should be made available in one easily accessible / searchable / navigable place online, also for people who are not experts in EU institutional procedures. It should be instantly visible who are the key decision-makers (Commission directorate/unit responsible for the proposal, EP committee, rapporteur and shadows, Working party chair, Council/Presidency representatives) at what stage the decision-making process currently is, the next steps and approximate timetable. All of the relevant documents from the process, including from the trilogues should be linked to the overview. The site and materials should also be accessible, e.g. for visually impaired people.

For stakeholders with an interest in a particular legislative file, there should be an option to sign up to an RSS feed (for example) which circulates email updates on the process to those who sign up when a document is updated and at each point of decision-making. This process could be automatic, as is the case for example with DG SANTE's 'What's New?' updates service.

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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 ?

No, there should not be a distinction. Transparency requirements should apply to both kinds of meetings, because in practice essential decisions on the stringency and effectiveness of legislation are also made in the “technical” meetings. The recent Volkswagen scandal illustrates that the air quality legislation was weakened to the point of rendering it ineffective at both the technical and political



levels of the decision-making process, and that VW lobbyists were party to information which was not disclosed to the public or civil society.

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

Following on from Q8, the false dichotomy of presenting the comitology process and Commission expert/advisory groups as “merely technical”, exclusively for nominated experts from member states or industry, is a serious problem which undermines public trust in EU decision-making. We maintain very similar concerns over the establishment of the ‘Regulatory Scrutiny Board’ and REFIT Committee by the Commission, which should advise on legislation, but whose recommendations will be entirely dependent on the composition of the bodies to be nominated by the Commission. These groups often lose sight of the public interest purpose behind legislative proposals (e.g. focusing almost entirely on short-term cost assessment for industry rather than longer-term societal benefits), as there is a lack of accountability mechanisms or oversight. Transparency requirements on disclosure of meetings, agendas, participants and documents should apply. Mechanisms to ensure oversight from elected representatives and civil society / public interest advocates should be built in.

In practice, as the VW scandal illustrates, essential decisions are also reached at the technical meetings, behind closed doors of comitology and recommendations of expert/advisory groups. Professional lobbyists representing vested interests have almost exclusive access to this process, whilst civil society is routinely excluded.

In the case of automotive legislation, particularly important in the light of the VW case and for the public interest as it affects road safety, environmental emissions, public health and climate, these essential “technical” decisions are delegated by DG GROW to the sub-committees of Working Party 29 of the United Nations Economic Committee for Europe (UNECE) in Geneva. Effectively, decisions which will become EU legislation are taken by a non-EU body, without any political oversight from Parliament or Council. This part of the EU-decision making process, despite being decisive, is unknown the media, extremely difficult for civil society to access because of the resource-intensive nature of the meetings and practically impossible to access for the general public.

About EPHA

EPHA is a change agent – Europe’s leading NGO advocating for better health. We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe. EPHA is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the EU Civil Society Contact Group and the Better Regulation Watchdog.

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