

# Transparency of the EU legislative process: trilogues

Briefing on the need  
for transparency in  
inter-institutional  
negotiations

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that in a democratic society can only occur  
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# Introduction and background

Trilogue negotiations are now the prevailing manner in which EU legislation is negotiated and agreed upon. During the 9<sup>th</sup> parliamentary term (2014-2019), 89% of the legislative files reached an agreement in the first reading.<sup>1</sup> From the beginning of the current parliamentary term until December 2023, 875 trilogues have been held.<sup>2</sup>

At the same time, trilogue negotiations are notoriously opaque. The public only has access to the initial negotiating positions of the Parliament and Council<sup>3</sup> followed by the outcome of the trilogue negotiations, which will usually contain many new changes. In the meantime, the only public source of information is verbal updates by the lead rapporteur in the responsible committee of the European Parliament. There is no information on the agenda, nor on the positions taken by the different institutions (as reflected in the so-called 4-column documents),<sup>4</sup> nor by individual parliamentarians or Member States.

This situation is not acceptable in a democratic society. It is a fundamental requirement in all democracies that law-making is a public affair. Only if the public and civil society have information about the ongoing negotiations can they contribute to the public debate and hold their decision-makers to account. Without public access, only a privileged few obtain unofficial access, thus increasing the influence of industry lobbies in the legislative process. Moreover, without visibility as to their positions in the trilogue negotiations, political groups and Member States feel emboldened to later go back on the trilogue agreement, as recently happened in the negotiations on the Corporate Sustainable Due Diligence Directive and the Nature Restoration Law.

Over the years, the Court of Justice of the European Union (CJEU) has recognized various times that the EU institutions do not comply with EU law when they refuse to give the public access to trilogue documents. The European Ombudsman also recommended that the institutions proactively make the main trilogue documents available to the public during the negotiations.<sup>5</sup> With the new European Parliament taking office, it is therefore high time to finally publish all ongoing trilogue documents online, ideally on the already planned EU legislative platform.

This briefing explains why trilogue documents should be public (section 1) and why arguments to keep them confidential are not convincing (section 2). It then recommends which documents must be included at a minimum and what changes need to be made to facilitate that (section 3).

Proactive dissemination of trilogue documents in a timely manner is essential in a democratic society, as it allows public participation in the ongoing legislative process, strengthens legitimacy and public support for the decisions made and curbs undue lobbying influence.

<sup>1</sup> See also European Parliament briefing, "[Understanding trilogue Informal tripartite meetings to reach provisional agreement on legislative files](#)," May 2021, p. 3.

<sup>2</sup> Statistics on Ordinary Legislative Procedure Files concluded since the entry into force of the Treaty of Amsterdam, 16.02.2024.

<sup>3</sup> European Parliament report as voted in plenary and the Council General Approach.

<sup>4</sup> The [Code of Conduct for negotiating in the context of the ordinary legislative procedure](#) refers to a joint document as a basis to conduct negotiations, often referred to as the 'four-column' document because it indicates the positions of the three institutions involved and any provisionally agreed compromise text. The document includes the original legislative proposal from the Commission (first column), the position of the Parliament (second column), that of the Council (third column) and the compromise text (fourth column).

<sup>5</sup> [Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues](#), 12 July 2016.

# 1.

## Why trilogue documents should be public

### A / Participation in the legislative process

The negotiators of the 2007 Lisbon Treaty envisaged a paradigm shift in terms of openness, democracy, and accountability in EU decision-making. One of the objectives of the Treaty was to ensure enhanced democracy, better protection of fundamental rights and more efficient and democratic policymaking.<sup>6</sup> Article 1 and 10(3) TEU state that in the EU decisions are to be *"taken as openly as possible and as closely as possible to the citizen"* (see similarly 15(1) TFEU). The Treaties also require the European Parliament and Council to meet in public when deliberating on EU legislation (Arts. 15(2) and 16(8) TFEU).

The rationale of this openness is to ensure that there can be a real public debate about the laws that will shape the lives of 550 million<sup>7</sup> EU citizens. EU law is increasingly regulating more and more aspects of life in the EU. Meaningful access to information about the legislative process is also essential to uphold the democratic nature of EU law-making. The current lack of transparency contributes to the growing mistrust and misunderstanding of citizens towards EU institutions and policies.

In relation to the environment, the EU has full legislative competence and has attempted through the EU Green Deal to address the environmental crises Europe is facing today. At the same time, public debate about EU law-making is still much more limited than on the national level. A core reason for this is the absence of information about the different positions and compromises that are being taken by Member State governments and the European Parliament during trilogue negotiations.

As Advocate General Cruz Villalón explained: *"'Legislating' is, by definition, a law-making activity that in a democratic society can only occur through the use of a procedure that is public in nature and, in that sense, 'transparent'. Otherwise, it would not be possible to ascribe to 'law' the virtue of being the expression of the will of those that must obey it, which is the very foundation of its legitimacy as an indisputable edict."*<sup>8</sup> In other words, to ensure that citizens can fully understand and respect the laws that bind them, they must be able to understand how they are made.

### B / Curbing the influence of industry lobbies

The EU Treaties recognise the importance of involving representative associations and civil society in all areas of Union action (Art. 11 TFEU). However, the opaque nature of trilogue negotiations makes it very difficult for civil society organisations representing various public interests to participate in the procedure, while a limited number of stakeholders do obtain privileged access. Even though trilogues are theoretically conducted among the three EU institutions behind closed doors, information about these negotiations is nevertheless available informally to lobby groups with more resources and connections within the EU institutions. This opens a possibility for these groups to influence the agreements reached in trilogues. Thus even though the legislative decision-making should be based on democratic participation and plurality of opinions, in practice there is inequality of access to trilogue negotiations among different stakeholders.

As a result, those who may have a vested interest and substantive expertise in the issues addressed in the legislative proposal but do not possess the resources to access information about trilogues informally are excluded from following the negotiations altogether.

### C / Accountability of the negotiators and no "blaming Brussels"

Transparency of the legislative process is crucial to hold decision-makers to account. As the CJEU has held: *"[i]n a system based on the principle of democratic legitimacy, co-legislators must be answerable for their actions to the public and if citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information."*<sup>9</sup>

For instance, if European Parliament rapporteurs are pushed to compromise on key elements of the European Parliament's position, the public and civil society must be aware and understand how and why this happens. Only this way can the public and their organisations put pressure on Member States to give up blockades. They are also able to know where MEPs go against the will of the EP plenary.

<sup>6</sup> Facts Sheets of the European Union, *The Treaty of Lisbon*, October 2023.

<sup>7</sup> Facts and figures on life in the European Union, Size and population.

<sup>8</sup> Case C-280/11, *Council of the European Union v Access Info Europe*, Opinion of Mr Advocate General Cruz Villalón, 16 May 2013, para. 63.

<sup>9</sup> Case T-163/21, *Emilio De Capitani v. Council of the European Union*, 25 January 2023, para. 84.

This links to the “Blame Brussels” effect, where Member State governments will agree to laws on the EU level and then turn around to blame the EU bureaucracy internally. Only full transparency would ensure that Member State governments’ positions are public, so they cannot claim that they are not at fault for the form and shape of EU laws.

### **D / Preventing Member States and political groups from going back on the deal**

In recent months, a number of trilogue agreements have been threatened by last-minute opposition from groups in the European Parliament or EU Member States governments that had previously agreed to the deal. In March 2023, Germany sought to go back against a trilogue agreement of just five months earlier to ban the sale of new petrol and diesel cars by 2035.<sup>10</sup> Germany only relented after the Commission watered down the text.<sup>11</sup> Similarly, in February 2024, Germany and Italy sought to undermine the trilogue agreement of just two months earlier concerning the Corporate Sustainable Due Diligence Directive,<sup>12</sup> finally resulting in a significantly smaller group of companies covered by the directive than previously agreed.<sup>13</sup> In March 2024, Member States failed to sign into law the EU Nature Restoration Law trilogue agreement reached only four months earlier.<sup>14</sup>

The lack of transparency of the trilogue process exacerbates its informal nature, which in turn emboldens participants to later go back on the agreement reached. If there were a clearer track record of the positions taken by the Parliament and Member States negotiators, it would be easier to point out the clear contradictions between the positions taken during the negotiations and those following the trilogue agreement. Moreover, greater transparency of the trilogue process would enhance its visibility and clarify it as a formal aspect of law-making, the outcome of which needs to be respected.

Even within the EU institutions, the information is not always shared with both co-legislators. Thus, the publication of all information related to inter-institutional negotiations would also create a level playing field, including between political groups representing different interests within the institutions in terms of information shared.

Over the years, various arguments have been raised to defend the lack of transparency in the trilogue process. However, one are convincing.

<sup>10</sup> Jennifer Rankin in Brussels and Philip Oltermann, [Germany faces EU backlash over U-turn on phasing out combustion engine](https://www.theguardian.com/environment/2023/mar/24/germany-faces-eu-backlash-over-u-turn-on-phasing-out-combustion-engine), the Guardian, 24 March 2023. See the trilogue agreement here: [https://www.europarl.europa.eu/RegData/commissions/envi/lcag/2022/11-16/ENVI\\_LA\(2022\)007140\\_EN.pdf](https://www.europarl.europa.eu/RegData/commissions/envi/lcag/2022/11-16/ENVI_LA(2022)007140_EN.pdf)

<sup>11</sup> Joshua Posaner, [Brussels and Berlin strike deal on 2035 combustion-engine ban](https://www.politico.eu/article/brussels-and-berlin-strike-deal-on-2035-combustion-engine-ban/), Politico, 25 March 2023.

<sup>12</sup> Jonatan Packroff, [German-Italian revolt delays EU's due diligence law](https://www.euractiv.com/en/legislation/german-italian-revolt-delays-eu-s-due-diligence-law/), Euractiv, 9 February 2024. See the trilogue agreement here: <https://www.consilium.europa.eu/en/press/press-releases/2022/12/01/council-adopts-position-on-due-diligence-rules-for-large-companies/>.

<sup>13</sup> European Economic and Social Committee, [Corporate sustainability and Due Diligence Directive: the good, the bad, and the ugly](https://www.eesc.europa.eu/en/press/press-releases/2023/11/09/nature-restoration-council-and-parliament-reach-agreement-on-new-rules-to-restore-and-preserve-degraded-habitats-in-the-eu/), 15 March 2024.

<sup>14</sup> Nikolaus J. Kurmayer, [EU countries' approval of contested nature restoration law hangs in the balance](https://www.consilium.europa.eu/en/press/press-releases/2023/11/09/nature-restoration-council-and-parliament-reach-agreement-on-new-rules-to-restore-and-preserve-degraded-habitats-in-the-eu/), 20 March 2024. See the trilogue agreement here: <https://www.consilium.europa.eu/en/press/press-releases/2023/11/09/nature-restoration-council-and-parliament-reach-agreement-on-new-rules-to-restore-and-preserve-degraded-habitats-in-the-eu/>.

## 2.

# Arguments against transparency are ineffective

### A / Positions of negotiators will not become entrenched

The Council has argued that, if the positions of Member State delegations in the legislative process were made public, they could no longer deviate from this position later on in the process. This argument has been heard and rejected by the CJEU. For instance, the CJEU has held in response that: *"The identification of the Member State delegations which submit proposals at the stage of the initial discussions does not appear liable to prevent those delegations from being able to take those discussions into consideration so as to present new proposals if their initial proposals no longer reflect their positions. By its nature, a proposal is designed to be discussed, whether it be anonymous or not, not to remain unchanged following that discussion if the identity of its author is known. Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently."*<sup>15</sup>

The CJEU also stated that the public would be able to understand *"in line with the principle that 'nothing is agreed until everything is agreed,' the information contained in the fourth column is liable to be amended throughout the course of the trilogue discussions until an agreement on the entire text is reached."*<sup>16</sup>

In other words, public disclosure of the Member State positions would not prevent Member States from adjusting their positions and would not undermine the effectiveness of the negotiations.

### B / Access on request is insufficient

Everyone can request access to the documents held by the EU institutions, including documents related to the trilogue procedure (based on Regulation 1049/2001). However, in practice, this possibility does not substitute uploading the trilogue documents proactively as soon as they are prepared.

First, the handling time of such requests is relatively long and can take up to 30 working days for the EU institutions

to provide an initial answer. This is usually too late for the public or environmental NGOs to provide any response or engagement with the swiftly conducted trilogue process. From our experience with access to documents requests addressed to EU institutions in connection to trilogues, the EU institutions very often significantly delay the handling process of the requests by extending the deadlines to respond.

For example, on 30 January 2024, ClientEarth requested the Council access to *"documents that contain the dates of any meetings that represent informal negotiations (trilogues) between the EU co-legislators' representatives in connection to the Packaging and Packaging Waste Regulation (PPWR), as well as any agendas for these meetings."*<sup>17</sup> On 21 February 2024, the Council extended the deadline for the response to the request. The initial response to our access to information request was provided by the Council on 13 March 2024 – nine days after reaching the agreement on the proposal of the packaging and packaging waste regulation.<sup>18</sup>

This means that by the time the information was received, it was no longer relevant.

Second, in some instances the EU institutions provide either late or insufficient responses. For example, in the above-mentioned Council's response to our request for dates and agendas of the Packaging and Packaging Waste Regulation trilogue negotiations, the documents eventually disclosed contained multiple references to the numbers of rows agreed or under discussion based on numbering contained in the four-column document, which was not publicly accessible.<sup>19</sup>

In another recent situation, which was subject to the European Ombudsman's case 253/2023/MIK, the European Parliament, replied to the access to documents request in a timely manner, but did not provide access to the latest version of the four-column document. Instead, an earlier version was sent to the applicant.<sup>20</sup>

<sup>15</sup> Case T-540/15, *Emilio DeCapitani v. EU Parliament*, 22 March 2018, para. 102.

<sup>16</sup> Case T-540/15, *Emilio DeCapitani v. EU Parliament*, 22 March 2018, paras. 102 and 109.

<sup>17</sup> Access to documents request registered under reference number Ref.24/0320/mj/mf.

<sup>18</sup> Council of the European Union press release entitled *"Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU"*, 4 March 2023.

<sup>19</sup> For example, one agenda point contained in a Draft Agenda of the 1st trilogue on the Packaging and Packaging Waste Regulation of Monday 5 February 2024 (18.00-22.00) read: "3.1. Article 5 - Substances of concern (rows 243a, 243b, 244a, 244b, 245, 246, 249a".

<sup>20</sup> European Ombudsman, *Decision on how the European Parliament dealt with a request for public access to a four-column document relating to trilogue negotiations in the adoption of the Digital*

The European Parliament has recently adopted a resolution decrying systemic delays in the handling of access requests by the European Commission.<sup>21</sup> Most importantly, the resolution states that the Parliament is

*"convinced that the proactive publication of documents in the register is the best solution to lower the number of access-to-documents requests and to avoid delays; stresses that a more proactive approach would help ensure effective transparency and prevent unnecessary legal disputes that could result in unnecessary costs and burdens for both citizens and the EU institutions."*

As explained above, similar issues arise and the same conclusion applies to requests addressed to the Council and European Parliament, especially in relation to trilogue documents.

### **C / Trilogue documents are not recognised as "sensitive" under EU law**

The CJEU has consistently held that documents related to the EU legislative process are not confidential. In *C-280/11 P Council v Access Info Europe*, the Court held that the Council should not refuse disclosure to certain amendment proposals tabled by several Member States in a Council Working Party, including the identity of these Member States.<sup>22</sup> More specifically to trilogues, cases *T-540/15 De Capitani I*<sup>23</sup> and *T-163/21 De Capitani II*<sup>24</sup> confirm that 4-column documents and Council Working Group documents are legislative documents that should be accessible on request.

Transparency of the documents related to the legislative process is regulated in Regulation 1049/2001. In particular, it states: *"The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible"* (Articles 12(1) and (2)).<sup>25</sup> EU institutions also have an obligation under Article 4 of the Aarhus Regulation<sup>26</sup> to ensure that documents which contain "environmental information" are proactively disseminated.

Thus, rather than being protected from disclosure, EU law requires that all legislative documents be proactively made available to the public.

Markets Act (case 253/2023/MIK) | Decision | European Ombudsman (europa.eu), 24 July 2023.

<sup>21</sup> European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents (2023/2941(RSP), 14 March 2024, para.8.

<sup>22</sup> CJEU, Case C-280/11 P, *Council of the European Union v. Access Info Europe*, 16 May 2023, para. 63.

<sup>23</sup> Case T-540/15, *Emilio De Capitani v. EU Parliament*, 22 March 2018.

<sup>24</sup> Case T-163/21, *Emilio De Capitani v Council of the European Union*, 25 January 2023.

<sup>25</sup> Article 4 and 9 of the EU Transparency Regulation provides the exceptions from disclosure, which must be applied restrictively, only when the disclosure would undermine the protected interest in an actual and foreseeable manner.

<sup>26</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ("Aarhus Regulation").

# 3.

## The way forward

### A / What documents should be made publicly available?

Between 2015 and 2018, the European Ombudsman conducted two own-initiative investigations into transparency in the Council legislative process (OI/2/2017/TE)<sup>27</sup> and trilogues (OI/8/2015/JAS).<sup>28</sup> The Ombudsman made several proposals to the EU institutions to ensure that trilogue documents are proactively disseminated. For now, only two recommendations have been implemented, namely to make the initial negotiation positions and the final outcome publicly available. The other recommendations still remain unimplemented and valid, namely to proactively publish:

- a) The four-column document - the main tool of the trilogues. This document is comprised of four columns: the first three columns represent each of the three institutions' respective positions (the Commission, the Parliament and the Council) and the last one is reserved for compromise text;
- b) Documents tabled during trilogue negotiations;
- c) A document published on the Commission, Council and Parliament's websites with an overview of the 4-column lines on which the co-legislators are already in agreement (green), those for which there are still technical discussions (yellow) and those requiring political discussions (red);
- d) Trilogue calendar identifying forthcoming trilogue meetings;
- e) Summary agendas before each trilogue meeting;
- f) Minutes including minutes or videos of public Parliament Committee meetings where trilogue meetings are discussed;

- g) List of the representatives who are politically responsible for decisions taken during a trilogue, such as the MEPs involved, the responsible Minister from the Council Presidency and the Commissioner in charge of the file. If the power to make decisions is delegated to civil servants, their identities should also be disclosed proactively.

In more recent inquiries, the Ombudsman has repeatedly asked the legislative institutions to make the 4-column document (cases 360/2021/TE<sup>29</sup> and 253/2023/MIK)<sup>30</sup> and Member State positions (case 1499/2021/SF)<sup>31</sup> available. The Ombudsman emphasised that public access would also *"reduce the need to process individual access requests while ensuring timely public access to legislative documents."*<sup>32</sup>

### B / What rules need to be changed to make this happen?

As explained above, trilogue documents are legally not confidential. The fact that they are currently not published is therefore merely a political decision and a question of practice. Having said that, on the technical level the new approach could be formalised by:

- on the European Parliament's side, amending the Decision of the Bureau of the European Parliament of 8 March 2010 adopting a list of the categories of documents directly accessible to the public via the public register;<sup>33</sup>
- on the Council's side, amending Article 11 of Annex II to the Council's Rules of Procedure (entitled "Specific provisions regarding public access to Council documents");<sup>34</sup>
- on the Commission side, amend the Guidance note on access to documents relating to trilogues to reflect that Trilogue documents are, in principle, public and must be disclosed unless there are convincing case-specific reasons based on a strict interpretation of Article 4 of the Regulation

<sup>27</sup> European Ombudsman, *Decision in strategic inquiry OI/2/2017/TE on the transparency of the Council legislative process*, 10 March 2017.

<sup>28</sup> European Ombudsman, *Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues*, 12 July 2016.

<sup>29</sup> European Ombudsman, *Decision on the Council of the EU's refusal to provide full public access to documents related to trilogue negotiations on motor vehicle emissions (case 360/2021/TE)*, 28 February 2021.

<sup>30</sup> European Ombudsman, *How the European Parliament dealt with a request for public access to a 'four-column document' relating to trilogue negotiations on the EU Digital Markets Act*, CASE 253/2023/MIK, 24 July 2023.

<sup>31</sup> European Ombudsman, *Decision on the Council of the EU's refusal to give full public access to documents related to negotiations on the draft 'Digital Markets Act'*, Case 1499/2021/SF, 27 June 2022.

<sup>32</sup> European Ombudsman, *Decision on the Council of the EU's refusal to give full public access to documents related to negotiations on the draft 'Digital Markets Act'*, Case 1499/2021/SF, 24 July 2022, para. 39.

<sup>33</sup> *Decision of the Bureau of the European Parliament of 8 March 2010, adopted under Rule 122(3) of the Parliament Rules of Procedure and Art. 5(3) of Decision of the Bureau of the European Parliament of 28 November 2001, as last amended by Bureau Decision of 22 July 2011, OJ C 216/19, 22.7.2011, p. 10.*

<sup>34</sup> *Annex II to the Council's Rules of Procedure*, as last amended by Council Decision 2006/34/EC, Euratom of 23 January 2006 (OJ L 22/32).



1049/2001 to withhold specific (parts of) the requested documents;<sup>35</sup>

- on the Commission side, amend Article 3 of the Annex to Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 to include Member State positions and 4-column documents;
- creating a joint database with up-to-date information regarding different legislative files, which is an obligation the co-legislators undertook 8 years ago,<sup>36</sup> would make the process more efficient for the Council and Parliament and facilitate easy access for the public.

It is now time for the co-legislators to ensure that their practice lives up to the democratic principles and values enshrined in the Treaty of the European Union.

<sup>35</sup> Secretariat General of the European Commission Guidance note on "Access to documents relating to trilogues", 25 August 2016.

<sup>36</sup> Under the [Inter-Institutional Agreement on Better law-making](#), the three legislative institutions commit themselves "by 31 December 2016, ways of further developing platforms and tools to that end, with a view to establishing a dedicated joint database on the state of play of legislative files."



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