
GETTING SECRET EU TRILOGUE DOCUMENTS: A CASE STUDY

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If there is one thing that those representing the EU say they want citizens to do, it is to be interested and get involved in EU lawmaking.

"Act, react, impact," is one of the European Parliament's slogans.

But if we imagine such an engaged citizen, we see that the three main EU institutions are not making it easy for her or him.

In particular the secretive 'trilogue' talks between those institutions are an enormous obstacle for those citizens that try to act on, react to, or impact upon a legislative proposal.

These three lawmaking institutions are the European parliament, the European Commission and the Council of the EU. The latter is where representatives of national governments meet.

Let us take as an example the 2014 proposal to reform the EU rules around organic agriculture, which after four years of negotiation will finally be put to a vote in the parliament in Strasbourg this Thursday (19 April).

Let us assume that the engaged citizen was savvy enough to know how the proposal was amended by the council and parliament. This is not simple - but it is doable.

The council and parliament determined their desired version of the bill in June and October 2015 respectively.

The secret trilogues

The real challenge began after that, when the three institutions began their three-way talks known in EU jargon as 'trilogues'.

In recent years, these secretive negotiations have become the de facto way of reaching an agreement between the institutions on a bill - instead of a more public second reading.

Last year, EUobserver revealed that in 2016, not a single bill went to second reading.

The idea is that the trilogue process can achieve results quicker than the traditional second

reading, although in this case - the organic farming reform - negotiators needed eighteen formal trilogue meetings – and many 'technical' meetings at lower level.

The trilogues took place between November 2015 and June 2017 – when a political deal was finally reached after what is believed to be one of the longest such processes, if not the longest.

Access to documents

On 6 November 2017, EUobserver requested all documents related to the organic farming trilogues, using rights every citizen has thanks to the EU's access to documents regulation.

We received very little.

All three institutions wrote back six weeks later to say that they identified dozens of relevant documents, but that they were not able to release most of them.

Simply put, the institutions did not want to reveal any papers that showed their negotiating tactics.

The most common type of document was the so-called 'multi-column document', also called four-column document.

This lists – in columns – the original positions of the three institutions. The fourth column is reserved for possible compromise solutions or comments on disagreements.

All three institutions argued that the content of the fourth column could not be released, because it would jeopardise the provisional agreement – which always still needs formal adoption by the council and parliament.

High risk of deal collapsing

"If intermediary positions adopted by the delegations or the institutions or suggestions they put forward over the course of the negotiations were made public before the completion of the legislative procedure, there would be a high and concrete risk that those positions and suggestions be used to undermine the provisional agreement," wrote Klaus Welle, secretary-general of the parliament.

Welle added that not even the 18 draft agendas could be disclosed, because that would "seriously undermine" the parliament's decision-making process.

The council did release multi-column documents – but with the content of the fourth column fully removed, thereby stripping the documents of their added value.

"These documents contain sensitive political information such as delegations' positions during particularly difficult, complex and protracted negotiations," wrote Ramon Chismol Ibanez, director of information and knowledge management at the council.

The commission's arguments were similar.

"Trilogue meetings took place in a sphere of confidence and trust, with the aim of finding a ground

for compromise between the respective institutions," wrote Jerzy Plewa, head of the commission's agriculture directorate-general.

He said there was a "reasonably foreseeable and specific risk" that the trilogue process was put "under external pressure, thereby jeopardising the compromises reached".

Appeal

EUobserver appealed the commission's decision, asking for a review from the commission's secretariat-general.

We argued that following the above logic, the decision-making process would only become public after the proposed regulation has already been adopted.

If citizens, via the media, are not able to know the steps leading up to the final compromise text, they are not well-informed enough to tell their MEPs or national governments representing them in the council whether they would like the legislative proposal to be supported, this website argued.

After more than two months, director Jordi Ayet Puigarnau at the commission secretariat-general wrote back to EUobserver, on 22 March.

The final yield?

Then 13 single-page documents, four two-page documents, and one three-page document which laid out the agendas of the trilogue meetings were made public after all. But the column documents remained confidential.

Ayet Puigarnau wrote that for the other documents the secretariat-general disagreed that there was an overriding public interest.

"Extensive discussions took place during the trilogue negotiations and three years were necessary to reach a compromise on this sensitive issue which is directly linked to consumers' awareness and public health," said Ayet Puigarnau.

He went on to say that it was important that the trilogue-related documents remained confidential until after the bill was formally adopted, because of "the sensitivity of the legislative proposal in question, the numerous political interests involved, and the efforts of the institutions to reach a satisfactory compromise".

In other words: we citizens just have to remain in the dark and trust the institutions are doing the right thing.

The EU court intervenes

However, it may be the last time that this loophole can be exploited.

The same day that director Ayet Puigarnau wrote that letter in Brussels, a precedent-setting

decision was made by the Court of Justice of the EU in Luxembourg on access to documents, in a case called *De Capitani v European Parliament*.

The court said that the parliament must, in principle, give citizens access to trilogue-related documents if requested, even if they are still ongoing.

The EU judges said that openness in the legislative process would lead to greater trust among citizens.

"It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole," said the court in its ruling.

For the access to documents request on Thursday's organics regulation, the court ruling has come too late.

When EUobserver wrote back to the commission to ask for a review of their decision in light of the court ruling, the commission said that a reply would be sent before 2 May.

By then, the vote in the parliament will have passed, and it will be too late to "act, react or impact."

Kaynak/Source: