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Transparency of trilogues

Despite recent efforts to improve the transparency of trilogues, these continue to take place behind closed doors without the possibility for stakeholders to follow or contribute to the debates. This is particularly problematic as their outcome usually forms the basis for the final legislative acts that affect stakeholders.

While informal trilogues have no legal anchoring in the TFEU nor in any earlier Treaty, they have become the default operating procedure.¹ Stakeholders have long raised concerns about the democratic legitimacy of this practice because an essential part of EU policymaking, the (final) political compromise between the co-legislators, takes place in secrecy, away from public scrutiny. Whereas business appreciates an efficient and speedy legislative process, this must not come at the expense of transparency and participation throughout legislative process, and must not deprive stakeholders of their rights.

The way in which trilogues currently take place contradicts the principle of transparency, and in particular Article 15 TFEU which concerns good governance by EU institutions. Dialogue between stakeholders and policy makers can only take place if the content of the political discussions is known. In addition, better regulation principles should apply throughout the entire legislative process and not merely in the preparatory phases.

The debate about transparency of trilogues has recently gained significant momentum. EU institutions have made a specific commitment to ensuring transparency of trilogue negotiations in the 2016 Interinstitutional Agreement on Better Law-making (in particular paragraphs 33 and 38). In the same year, the EU Ombudsman issued a decision which pointed at the lack of transparency of trilogues and presented a list of recommendations to improve transparency. In 2017, the European Economic and Social Committee published a study which reiterated her recommendations. Finally, the EU General Court has recently ruled that access to documents of ongoing trilogues in principle has to be granted.²

Recommendations

In the light of the above, BusinessEurope calls upon the EU institutions to find a new *modus operandi* to reconcile the Treaty-based principles of transparency and participation with the need for an efficient and speedy legislative process. In practical

¹ European Economic and Social Committee (2017), 'Investigation of informal trilogue negotiations since the Lisbon Treaty – Added value, lack of transparency and possible democratic deficit'. The European Parliament considers trilogues as the "acknowledged way of reaching consensus among the co-legislators" and "the established practise by which most EU legislation is adopted" in its resolution of 26 April 2018.

² Case T-540/15 of 22 March 2018.



terms, this means that meeting dates and agendas of trilogues and the negotiation positions established for individual negotiation rounds should be made publicly available in a manner that is easily accessible.