



## How transparent are the EU institutions? Emily O'Reilly

*Matching the EU institutions' positive rhetoric about democratic ideals with their practical administrative actions is ultimately what the European Ombudsman is about.*

It is now a year before the European elections, an event that obviously invites reflection about what has happened over the current parliamentary term. In the context of my office, this means examining any changes, positive or negative, vis-à-vis the quality of the EU public administration when it comes to acting in an open, ethical and accountable manner.

I was elected European Ombudsman in 2013 by the European Parliament fresh from the national context where I spent ten years as Irish Ombudsman, dealing with people's day-to-day issues such as social welfare; education and health, issues with national rather than EU competence.

In the EU context the focus can seem slightly removed from the immediate concerns of ordinary citizens, but the impact is felt nonetheless if not always directly and immediately.

The big concerns at EU level transmitted to my office are often to do with transparency around decision-making, including how those decisions are influenced through lobbying.

I also check for example if procedures were followed in OLAF cases, or in competition or state aid cases, or in the migration field, or I deal with problems regarding EU grants or procurement procedures. My office is driven by complaints. We get around 2,000 a year in all 24 languages and open approximately 300 inquiries, as many of the complaints relate to national and not EU competence and we direct the complainant accordingly.

There is another fundamental difference from a national context – in that the EU to many Europeans seems far more remote and complex than does their national governance, although events of the last two years have added a drama and a profile to the EU that has given it a sharper focus for otherwise previously uninterested citizens.

Emily O'Reilly is the European Ombudsman. This text presents remarks she delivered on 22 May 2018, at the fourth meeting of a new series of CEPS events devoted to the Future of Europe. The series aims to help Europe grapple with the intense internal pressures as well as complex external dilemmas it confronts today and to move beyond these challenges and reflect on the opportunities that lie ahead.

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The combination of Brexit, Trump, the refugee crisis and Russia, while obviously causing headaches for the Union have also had the paradoxically positive impact of making people contemplate, and for some possibly for the first time, on what it means to be a member of the EU at the centre of European public debate and of course, what it might be like to be an ex-member.

It would appear that most Europeans are anxious to stay, although recent political events in Italy show how easy it can be to paint the EU as the 'bad guy' when it comes to attributing blame for many of the difficulties in people's lives.

Other events have also brought people's attention to the global role of the EU when it comes to regulation. The clashes between Competition Commissioner Vestager and 'big tech' is one example, while the new EU Data Protection law, due to arrive in a matter of days, has probably surprised many people with its scope and reach. I'm sure many people here, like myself, have had their inboxes inundated with pleas from companies online to give our consent to continued contact.

At a cultural level, a novel by Robert Menasse – *The Capital* in English and set in the European Commission, with protagonists from several different EU countries – won a major German book prize last year. It's actually one of only a few novels set in the Brussels bubble, although Boris Johnson's father Stanley did write one in the 1980s and indeed has just published a thriller based around Brexit. Perhaps Netflix might consider exploiting the new-found citizens' interested in the Berlaymont and release a popular series on its activities.

So, we are happily at a point where the EU is becoming more real, more tangible for the public. But as that public gazes afresh at the EU and at its institutions, it receives very mixed messages about their value and their competence and, as we await next year's elections, it is therefore important to assess what they see, what is visible to them as they make their own assessment in a blizzard of fake news and alternative facts. How transparent are the EU institutions?

As a starting point, I would say that, generally speaking, the EU has high transparency standards relative to many of the member states. It has a pretty good lobbyist register which is always improving and hopefully will soon include the Council; it has staff rules on the so-called 'revolving doors' challenge and top Commission officials publish information about their meetings with lobbyists and Commissioners publish their travel expenses. Very few EU Member States can say the same, and even fewer outside the EU. And, as Donald Trump continues to normalise previously unacceptable behaviour for a US President and a US administration, the EU will seem even more of an outlier when it comes to open and ethical governance.

The EU institutions and agencies also cooperate well with my office - compliance with my recommendations lies between 80 and 90 percent in any given year and this too is a good barometric measure of good administration.

So where should we be expecting more transparency from the EU? The making of new laws is one obvious example. As a fundamental element of democracy, citizens should have a clear idea how a law affecting their lives is made. But it is currently not easy – and for non-experts virtually impossible – to trace the evolution of a piece of legislation. And if people have little

understanding or knowledge of how important laws are made until it's too late to find out or do anything about them, the potential for citizen alienation to be increased or provoked is obvious.

This black hole comes about mainly because the Council, despite being a co-legislator with the European Parliament, continues to use old-style diplomacy for reaching deals in a method that obviously views transparency as an impediment to its work.

This means that, from the point of view of the public, a draft law is proposed by the Commission and published, proceeds in a fairly transparent manner through the European Parliament, but essentially disappears in the Council before emerging nearly fully formed after the Trilogues process. We know what positions MEPs take on draft laws, but we do not always know what the national governments are doing in Brussels, something largely unimaginable in a national context.

So what message does this send to citizens? It suggests that the EU is something that is “done to them”, rather than something they can participate in and influence.

The situation helps enable the ‘blame Brussels’ culture which we all know. In the absence of any accessible evidence to the contrary, the information gap can easily be filled by populist rhetoric about who is to blame for particular unpopular policies or outcomes.

But even pro-EU national politicians – without the public having the necessary information to challenge them – claim the good things from the EU, but blame anything unpopular on “Brussels” even though they themselves were part of the process.

That is why I consider my inquiry into the transparency of law-making in the Council to be among the most consequential pieces of work my office has undertaken. I want it to be clear to citizens that it is their elected national ministers who are shaping laws in Brussels so I have recommended that Member State positions be systematically recorded – once the positions are recorded, they are retrievable at a later point – and that the Council end the practice of routinely marking documents as not to be published. It is unacceptable that a methodology has developed which essentially shields its work from public view.

Last week I closed the inquiry, and officially called on the support of the European Parliament through an Ombudsman Special Report – this is only the second time I have chosen this path during my mandate. Later today, I will shortly meet with President Tajani to discuss how it will proceed within the Parliament in the coming months and leading up to the elections in 2019.

The majority of my inquiries, however, concern the European Commission. This simply reflects that institution's size, scope and output. President Juncker made a transparency pledge at the start of his term and over the years there has been a general willingness by the Commission to follow my suggestions for improvement in this area.

A few examples: there is now more information available online about the many Expert Groups who advise the Commission on policy. The names of senior officials who move to the private sector are published online annually. The Commission's approach to informing the public about trade negotiations has been overhauled for the better. The Brexit negotiations are being

conducted, at least by the EU side, in a fairly transparent manner. The ethics rules concerning Special Advisers to Commissioners have been tightened. And the Commissioner's Code of Conduct – while still not perfect – has been strengthened.

These are positive developments. But this evolutionary progress is sometimes overshadowed by less positive developments, particularly in this social media age. And these developments challenge people's trust and in turn challenge the institutions to do more to maintain or regain that trust.

The central point about fostering trust is that it is not enough to announce good intentions about achieving an accountable and citizen-friendly administration. It has to be demonstrated so people can see for themselves. Or, as a former Ombudsman colleague used to say: "Live it, don't laminate it."

An institution should also be alive to how its actions are perceived. It might not be against the rules that a certain course of action is taken, but if it creates the impression of a conflict of interest, undue lobbying influence or opaque decision-making, then it should be avoided. Because a populist media will quickly turn that 'perception' into hard and damaging fact.

Let's consider some recent cases.

Earlier this year, I recommended following a year-long inquiry that the ECB President, Mario Draghi, should suspend his membership of the Group of 30, to avoid any impression that the Bank's independence is compromised. The G30 is a private Washington-based club whose members included global banks such as Goldman Sachs, JP Morgan and UBS, which are directly or indirectly supervised by the ECB. Membership is by invitation only, controlled by a board of trustees whose names are not publicly available.

The Bank refused to follow my recommendation. This response represented a missed opportunity I felt to increase public trust in the ECB. It also overshadows the previous steps the bank has made to make itself more accountable.

Another case concerned former Commission President Jose Manuel Barroso's decision to take a post at Goldman Sachs. The move raised considerable public concern – including a petition by EU staff themselves against the move.

After I prompted him to take a position on the matter, then President Juncker in summer 2016 put the question to the Commissioners' Ethics Committee, which concluded that while Mr Barroso's actions did not show the judgement expected of someone who had been Commission President for 10 years, it did not find sufficient evidence to conclude he had violated his Treaty obligations to discretion and integrity. However President Juncker did revise the Code of Conduct, making it tighter, but there are still outstanding issues and more work for the next Commission in this area.

Sometimes I am asked about the rights of ex-Commissioners for post-office employment. No one is questioning the right to work. It is neither possible nor desirable to be overly prescriptive about what high-level EU politicians may do after they leave office.

It is my job, however, to sensitise the institutions to the damage that it does to public perception when people move on to posts that entail them lobbying their former colleagues, or that appear to contradict the values of the public office they previously held.

My hope is that such a perception-damaging situation as the Barroso one will not arise again, because there is now much more awareness about what is acceptable from an ethical standpoint.

Nevertheless the so-called ‘revolving-doors’ issue is likely to remain an ongoing theme as politicians – and political leaders – nowadays tend to be younger and therefore leave office with many years of working life ahead of them. They are considered a major catch for consultancies, valued for their contacts and capacity to open doors.

I have been asked to update you on one of my most recent inquiries, concerning the Commission’s handling of the appointment of its new Secretary-General. I received two complaints on this issue and recently sent a number of questions to the Commission asking, amongst other things, it to reflect now on the affair, comment on the public concern raised by the manner of the appointment and how it will handle future such appointments.

While Parliament already asked many of the relevant questions on this issue, my office brings added value through its own specific powers. My services will conduct a full inspection of all documents held by the Commission related to this appointment at the end of May.

As a general point – and this has occurred to me on several occasions over the last years – EU institutions often underestimate the importance of communicating well with the public. It was noticeable at the beginning of the affair that there was a general lack of information and a reluctance to give clear responses. The way something is said tends to carry as much weight in terms of public perception as what is actually said.

A busy year is unfolding before us. The draft multi-annual budget has been unveiled. Discussions on this are a proxy for the type of Europe we want. One with more border security? With more money spent on research? With funds linked to the rule of law? Of course the EU budget is only 1% of the total European gross national income but much of the debate will be heated. And no doubt in the end the European Council will play a decisive role in the outcome, like last time, through opaque discussions behind closed doors.

There is also the question of how Brexit will be managed and how future relations with the UK will evolve in addition to the overarching Future of Europe debate, the ongoing ‘more Europe or less Europe’ conundrum.

A recent article in the Financial Times, speaking about French President Macron – arguably the most rhetorically visionary EU leader these days – pondered his “strange isolation”. The article suggested the French leader is “a pro-European at a time of mounting Euroscepticism across the EU. He is a globalist and an internationalist at a time when protectionism and nationalism are on the march ...”.

So in this complex climate we all have a role to play in shaping today’s European Union and an Ombudsman’s job as a watchdog for good public administration becomes, I feel, all the more

important. The task is two-fold: recognising the real efforts and progress the EU institutions make in the area of transparency and accountability; and holding them to account when they sometimes fall short. Matching their positive rhetoric about democratic ideals with their practical administrative actions is ultimately what the European Ombudsman is about.