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European Union

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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Closing note of the European Ombudsman (SI/3/2017/KR) on the Strategic Initiative with the Council of the EU on the transparency of the negotiations on the UK withdrawal from the EU ('Brexit')

Delegations will find attached a copy of a letter from Ms E. O'Reilly, European Ombudsman, to Mr Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the EU, received on 6 May 2019, and the closing note of the European Ombudsman (SI/3/2017/KR) on the above-mentioned subject.

E-MAIL / FAX



European Ombudsman

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Emily O'Reilly
European Ombudsman

Mr Jeppe Tranholm-Mikkelsen
Secretary-General
Council of the European Union
1048 Brussels
Belgium

Strasbourg, 03/05/2019

SI/3/2017/KR: Closing note on the Strategic Initiative with the Council of the EU on the transparency of the negotiations on the UK withdrawal from the EU ('Brexit')

Dear Mr Secretary-General,

In the context of the strategic initiative above, we have exchanged letters discussing proactively publishing information on the Brexit negotiations.

Based on this correspondence, and on our monitoring of the Council's publications, I have decided to close my strategic initiative with the following conclusion:

The EU has overall pursued a proactive approach anticipating citizens' and businesses' legitimate need for information on the Brexit negotiations. The level of transparency achieved by the EU thus far has been very high, when compared to for example international negotiations that the EU has conducted in the past.

Thank you for having engaged constructively on this matter.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Closing Note SI/3/2017/KR

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Closing note

on the Strategic Initiative with the Council of the EU concerning public information on the UK's withdrawal from the EU (SI/3/2017/KR)

Abstract

The withdrawal of the United Kingdom from the European Union has serious and wide-ranging implications for millions of EU citizens and businesses. They should, to the appropriate extent, be kept informed about developments in the withdrawal process, as well as the subsequent process for deciding upon the future relationship between the EU and the UK.

The European Council mandated the European Commission to represent the EU in the negotiations leading to the withdrawal of the UK from the EU. Before the UK invoked Article 50 to begin the process, the Ombudsman suggested practical ways to both the Commission and the Council of the EU to ensure appropriate transparency as regards the negotiations.

The Ombudsman closes this initiative by noting that the Union has overall pursued a proactive approach anticipating citizens' and businesses' legitimate need for information on the Brexit negotiations. The level of transparency achieved thus far has been very high, when compared to for example international negotiations that the EU has conducted in the past.

1. Background

1. The withdrawal of the United Kingdom from the European Union has serious and wide-ranging implications for millions of EU citizens and businesses. They should, to the appropriate extent, be kept informed about developments in the withdrawal process, as well as the subsequent process for deciding upon the future relationship between the EU and the UK. The public interest may be best served by choosing carefully *when* information on the negotiations can be released, so as not to disrupt, at critical junctures, the successful outcome of the negotiations.



2. In this context, the Ombudsman has suggested practical ways to ensure the appropriate transparency of the negotiations. The Ombudsman wrote to the Council¹ on this matter and to the Commission twice².

3. The European Commission has been mandated by the European Council to represent the EU in the negotiations leading to the withdrawal of the UK from the EU. The Ombudsman monitored the Commission's transparency efforts in this respect, and concluded in February 2019 that the level of transparency achieved thus far has been very high, when compared to for example international negotiations that the EU has conducted in the past.³

2. Public Information on the Brexit negotiations

4. Before the Brexit negotiations started, on 24 March 2017, the Ombudsman wrote to the Council of the EU calling for the proactive publication of key negotiating documents. In particular the Ombudsman asked whether the guidelines from the European Council would be made public, and whether the Council would commit to timely publication of the negotiating directives.⁴

5. In the weeks and months that followed the Commission published its recommendation for a Council decision authorising the Commission to open withdrawal negotiations (including draft negotiating directives). The Council published its guidelines, setting out core principles for Brexit negotiations. The Council also published the negotiating directives and guiding principles on transparency⁵.

6. Throughout the withdrawal phase, the Council has maintained a timeline, which is public, with all of the publications of the Council of the EU and the European Council. This timeline has been kept up to date, and includes formal decisions, official letters, statements, (draft) negotiating documents, and summit-related documents.⁶

¹ See: <https://www.ombudsman.europa.eu/en/correspondence/en/77306>.

² "Information for the public on the upcoming negotiations aimed at reaching agreement on the UK's withdrawal from the EU." (28 February 2017): <https://www.ombudsman.europa.eu/en/correspondence/en/76528>, with press release ("Ombudsman urges appropriate Brexit transparency"), and

"Securing appropriate stakeholder input in the Brexit negotiations and potential for further progress on transparency." (23 February 2018) <https://www.ombudsman.europa.eu/en/correspondence/en/90192>.

³ See: <https://www.ombudsman.europa.eu/en/press-release/en/109859>.

⁴ See: <https://www.ombudsman.europa.eu/en/correspondence/en/77306>. See also Annex 1 for an overview of the Ombudsman's suggestions for improvement and the Council's replies.

⁵ The Council responded to the EO on 6 June 2017:

<https://www.ombudsman.europa.eu/en/correspondence/en/80065>.

The European Council has produced a timeline with all of its publications:

<https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/>.

See also Annex 2 for a description and time-line of key publications.

⁶ See: <https://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/>.



7. The Ombudsman thereby closes this initiative by noting that the Union has overall pursued a proactive approach to meeting citizens' and businesses' legitimate need for information on the Brexit negotiations. The level of transparency achieved thus far is very high when compared to for example international negotiations that the EU has had, and it served to enhance the legitimacy of the EU in these negotiations. The Ombudsman will continue to engage with the Council to ensure that the future relationship negotiations are as transparent as possible.



Annex 1 - Ombudsman suggestions for improvement and Council replies

Letter to the Council concerning public information on the UK's withdrawal from the EU

On 24 March, the EO wrote to the Secretary-General of the Council of the EU saying that as a starting point, it would be helpful:

(a) "if the European Council were to publish the guidelines, referred to in Article 50(2) TEU, in the light of which the Union shall negotiate and conclude an agreement with the UK"

(b) "for the Council to commit, in principle, to the earliest possible disclosure of the negotiating directives and of any subsequent amendments or additions".

Council's reply

On 29 April 2017, the [European Council published its guidelines](#) and the Council's directives were [annexed to the Council decision authorising the opening of negotiations](#) of 15 May 2017. These actions respond to points (a) and (b).

The Council responded to the EO on 6 June 2017, attaching the [Guiding principles for transparency in negotiations under Article 50 TEU \(XT 21023/17\)](#). The Council pointed out that these guiding principles also apply to citizens' rights and obligations, which is "the first priority for the negotiations" for the European Council.

Annex 2 - Time-line of publication of key documents for the withdrawal negotiations

| Institution | Title | Timing |
|----------------------------|---|---------------|
| European Council (art. 50) | European Council's guidelines , setting out core principles for Brexit negotiations, including the phased approach of the negotiations (first phase of withdrawal on 3 main disentanglement issues (citizens; financial settlement, land border) and second phase of the withdrawal negotiations, then trade negotiations). | 29 April 2017 |



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| Commission | <u>Recommendation</u> for a Council decision authorising the Commission to open withdrawal negotiations (including draft negotiating directives). | 3 May 2017 |
| General Affairs Council (Article 50) | Adoption of <u>negotiating directives</u> , authorising the opening of the negotiations and nominating the Commission as EU negotiator. | 22 May 2017 |
| General Secretariat of the Council (TFUK) | <u>Guiding principles</u> for transparency in Brexit negotiations. | 22 May 2017 |
| Commission | <u>Q&A document</u> on the rights of EU27 and UK citizens after the UK has withdrawn from the EU (in all official EU languages). | 12 December 2017 |
| European Council (art. 50) | <u>Guidelines</u> setting out core principles for the Brexit negotiations as regards the second phase related to transition and the framework for the future relationship. | 15 December 2017 |
| Commission | <u>Draft Withdrawal Agreement</u> with colour-coding to indicate (the absence of) progress in the negotiations. | 19 March 2018 |
| European Council (art. 50) | <u>Guidelines</u> for post-Brexit relationship with the UK. | 23 March 2018 |
| Commission | <u>Proposal</u> for a Council decision on the signing of the Withdrawal Agreement. | 5 December 2018 |
| General Secretariat of the Council (TFUK) | Council <u>decision</u> on the signing of the Withdrawal Agreement. | 7 January 2019 |