

"The Citizens and their Union after the Lisbon Treaty"

Presentation by the European Ombudsman,

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- Honourable members and guests, I would like to thank Mr Karas and Mr von Wogau on giving me this opportunity to address the Kangaroo Group. *Thanks also to Mr Weiland for his introduction.*
- In this presentation, I will touch on the importance of individual rights, the need for accountability, and the role that parliaments can play in this regard. All of these ideas are central to a discussion of Union citizenship after the Lisbon Treaty.
- "Citizenship" is a rich concept, to which I cannot do full justice in this presentation. My focus will be on citizenship as a bundle of rights and duties, including rights that could lead dynamically to the formation of political identity. I will present a conception of citizenship as an evolving relationship between individuals and those who exercise political power.
- It was in the Maastricht Treaty that the gap between citizens and EU institutions first began to be recognised as a problem. A decade later, frustrated by the experience of the IGC that produced the Nice Treaty, European leaders produced the "Laeken declaration". One of its objectives was to increase the democratic legitimacy and transparency of EU institutions.
- There are many provisions in the Lisbon Treaty that open up opportunities for tackling the Union's "legitimacy deficit" and for closing the gap that exists between individuals and those who exercise political power in the EU.
- This is important because legitimacy is not an optional extra, but a fundamental requirement for the long-term success of the European integration process.
- Before I trace the evolution of the relationship that is central to this discussion, something more needs to be said about the idea of citizenship based on rights and duties and how it relates to political identity.
- Rights and duties are, of course, legal concepts, but a purely legal analysis would yield an impoverished account of citizenship. For now I will focus on political rights and on their purpose: what are they for?

- First, political rights enable citizens to make those who exercise public authority accountable for their actions. Second, they also make it possible for citizens to participate in public activities and in political life, with a view to influencing how they are governed.
- Thus the development of citizenship is about raising the quality of democracy and strengthening the legitimacy of democratic political institutions — just as the Laeken declaration prescribed.
- Laeken also highlighted the principle of transparency, which is indeed fundamental to both accountability and participation.
- The basic idea of transparency is that citizens should easily be able to obtain information about the activities of the EU institutions. They need this information both in order to call public authorities to account and in order to participate effectively in the ongoing public debate which is part of a healthy democracy.
- Transparency, accountability and participation therefore go hand in hand, and are key to building citizens' trust in the Union.
- We also need to acknowledge and account for one reality pertaining to the European context. Few citizens ever have a real need to contact an EU institution or body during their lives. This is for two reasons:
- First, because EU institutions do not directly provide the public services typical of the welfare state - these services are provided by the Member States.
- The second reason why so few citizens need to contact EU institutions is that it is Member State authorities which have primary responsibility for the implementation of EU law and for guaranteeing the rights it confers on citizens.
- Any focus on citizenship as a means of empowering Europeans must therefore take account of the fact that such empowerment must take place not only *vis-à-vis* the EU institutions, but also *vis-à-vis* national authorities in relation to EU matters.
- As you are all aware, citizenship of the Union complements national citizenship and does not replace it.

- The duality of citizenship reflects the dual nature of the Union and the Member States. Each Member State has its own constitution and its own political institutions, but at the same time, Member States are also important actors in the Union's institutional framework, through the Council and the European Council.
- For this reason, it is not useful to discuss citizens' relationship with EU institutions in isolation from their relationship with national authorities as regards EU matters. Thus when we talk of an "evolving relationship", we must take both aspects of the relationship into account.
- In the early years of the European Communities, notions of transparency or legitimacy did not feature explicitly at all.
- The Maastricht Treaty introduced Union citizenship: conferring special rights on European citizens to participate in the Union's democratic processes and of accountability. It was also the first Treaty to specifically mention the principle of transparency.
- The Amsterdam Treaty addressed the Union's legitimacy problem through greater transparency, and specifically for a right of public access to documents for Union citizens and residents.
- The Nice Treaty focused on institutional questions. It contained little or nothing for citizens and the fact that the problem of legitimacy remained unsolved was recognised at that IGC.
- A year later, the Laeken Declaration told us that people wanted EU institutions to be:
- *"less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives. This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny."*
- I think it is fair to say that, since Laeken, we have made insufficient progress in satisfying these demands.

- The European Convention that drafted the Treaty Establishing a Constitution for Europe was transparent, but inward-looking;
 - The Lisbon Treaty went back to the intergovernmental method, whose deficiencies had led to the Laeken Declaration;
 - Outside Ireland (where the referendums gave the chance for genuine debate) the process of ratifying the Constitutional treaty and then Lisbon has probably had a negative impact overall on the perceived legitimacy of the EU and its institutions.
- Now, however, the entry into force of the Lisbon Treaty constitutes a genuine opportunity to start afresh.
 - One of the most significant improvements for citizens brought about by Lisbon is that the Charter of Fundamental Rights now has the same legal value as the Treaties.
 - The Charter is a broader document than the European Convention on Human Rights, containing not only the classical civil and political rights, but also social and economic rights.
 - The provisions of the Charter are addressed to the EU institutions and to the Member States when they are implementing Union law.
 - The Charter contains the right to good administration which is the right to have one's "affairs handled impartially, fairly and within a reasonable time" by the Institutions and other bodies of the Union.
 - When we think of citizenship in terms of "rights and duties", and as an evolving relationship with those exercising political power, it is surely a source of great encouragement that the fundamental right to good administration is included in this legally binding Charter.
 - The introduction of a new form of public participation in the democratic life of the Union, in the form of the "citizens' initiative" in the Lisbon Treaty, should make an important contribution to the empowerment of European citizens.
 - In January 2010, I responded to the public consultation on how the citizens' initiative should work in practice. I tried to anticipate

questions that could arise in its operation, especially those that could result in complaints to the Ombudsman.

- In my view, the right of one million citizens to petition the Commission should be implemented in a way that genuinely empowers citizens. In particular, the national and European Parliaments should be involved. I'll explain how in a moment.
- The Lisbon Treaty also requires EU institutions (i) to give citizens the opportunity to make known and publicly exchange their views in all areas of Union action and (ii) to maintain an open, transparent and regular dialogue with civil society.
- These provisions are of great significance because Union law affects every citizen of every Member State. How citizens perceive Union law and whether they see themselves as having a voice in its adoption are matters of profound importance for the legitimacy of the Union.
- A number of articles in the Lisbon Treaty provide for greater openness and transparency in the activities of the Union institutions, thus potentially enhancing accountability and strengthening both national and Union citizenship:
 - Article 10(3) of the TEU refers to decisions in the Union being taken “as openly and as closely as possible to citizens”. Article 16(8) stipulates that the Council shall meet in public when it deliberates and votes on a draft legislative act.
 - Article 42 of the Charter and Article 15(3) of the TFEU extend the right of public access to documents.
 - Article 15 (1) of the TFEU requires all the Union institutions “to conduct their work as openly as possible, in order to promote good governance and ensure the participation of civil society”. In my view, this new provision is of very great significance because it requires the institutions to be proactive in ensuring the openness of their work.
- An example of what this might mean in practice comes from the US federal administration which has recently issued an “Open Government Directive”, instructing each agency to (i) publish

- information online, and (ii) develop and publish an Open Government Plan to improve transparency and integrate public participation and collaboration into its activities. Of course, there are big differences between the US federal agencies and EU bodies, but I intend to reflect on whether the principles of the Open Government Directive might be transposable to the EU context.
- Citizens have an important role to play in holding public authorities to account. Again, the Lisbon Treaty enhances their ability to do this. We have already seen how the Treaty promotes their participation in the democratic life of the Union, also an important reflection of active citizenship.
 - Let me focus now on democratic control of Union law-making and what I believe to be its necessary complement: that is, strengthening citizens' involvement in making the law work in practice. This is, after all, what was identified by the Laeken declaration as missing and marks a critical step on the road to full citizen empowerment.
 - The Lisbon Treaty provides an excellent starting point. It reinforces the powers of both the European Parliament and national parliaments in the law-making process. The greater role for national parliaments gives citizens at the Member State level the opportunity to be involved in Union law-making also within their national democratic framework, where some of them may feel better able to participate than at the Union level.
 - But the process of making laws at the Union level and transposing them, if necessary, into national legislation is only half the story. Legislation is (or should be) more than a symbolic process. The other half of the story is about how legislation is applied and enforced in practice.
 - National authorities have primary legal responsibility for enforcing Union law and for guaranteeing the rights that it confers. The Commission, in its role of "guardian of the Treaties", merely acts as a "gatekeeper" for legal responsibility at the Union level.
 - As regards political accountability in the enforcement and application of Union law, citizens have access to a mechanism at the Union level, in the form of the right to petition the European Parliament. What is

missing, however -- in most, if not all, Member States -- is a political mechanism to call public authorities to account at the national level in relation to problems that arise in the enforcement and application of Union law.

- There is no Union competence to require such a mechanism. Nor would it be desirable for the Union to acquire such a competence.
- However, the lack of such a mechanism produces several undesirable effects. Most notably, it deprives citizens and their representatives of the opportunity to examine, concretely and in detail, an important aspect of the EU-related activities of their Member State's public authorities. It also deprives the Union level of potentially valuable information that should be fed back into the policy-making and legislative processes in order to improve Union law in the future.
- The Union institutions could therefore encourage and facilitate the *voluntary* adoption of such a mechanism by the Member States.
- The European Parliament could take the lead in this regard by, for example, selecting one or more existing Union laws for evaluation each year. Possible examples are: the Citizens' Rights Directive; the Equality Directives; subjects pertaining to the protection of the environment; air passenger rights; or roaming charges.
- I believe that this proposed focus on making Union law work for citizens would help:
 - improve the substance of Union law (and thus contribute also to the “better regulation” agenda);
 - empower citizens and their representatives in the European and national parliaments;
 - help realise the promises and goals concerning citizens contained in the Lisbon Treaty; and
 - contribute tangibly to addressing the Union's "legitimacy deficit".
- In terms of the contribution of my own institution, last year, I adopted a mission statement as follows:

“The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions.”

- I am developing a strategy that will translate this mission into a set of objectives for my new mandate.
- In reaching out to citizens, I aim to promote active citizenship, by helping citizens learn about their rights, encouraging their participation in the democratic life of the Union, promoting their ability to hold the EU institutions to account, and strengthening their involvement in making the law work in practice.
- This should help raise the quality of democracy and strengthen the legitimacy of democratic political institutions.
- In reaching out to the institutions, I aim to convince them that, in order to win public trust and acceptance, they need to demonstrate that they are accountable and responsive.
- Good administration implies that European laws should be effective. Europe will not get closer to its citizens merely by enacting good laws. Unless those laws are effectively applied and enforced, they will have no worthwhile results. Legitimacy is only enhanced if there are effective remedies.
- I have already described how democratic control of Union law-making can be strengthened and how citizens can become more involved in making the law work in practice.
- Linked to this is the idea that citizens should have effective remedies available to them if their rights are not respected. As Ombudsman, I promote remedies for citizens who have problems obtaining their rights under EU law.
- As my mandate is limited to investigating complaints about maladministration in the EU administration, complaints against public authorities of the Member States are not within my mandate, even if they concern matters falling within the scope of EU law. Many such

complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen. I co-operate closely with my colleagues in the Member States to ensure that EU law is correctly applied.

- The Network promotes both the good administration of EU law at the national level and effective local remedies. My national colleagues all support the principles on which the EU is founded. They are also committed to dealing impartially, effectively and fairly with complaints about EU-related activities of authorities of the Member States.
- I look forward to strengthening our co-operation in the Network to ensure that citizens can fully enjoy their rights under EU law. I will also endeavour to ensure that the quality of information provided to citizens regarding their rights and how to seek redress is improved.
- This point brings me neatly to my conclusion:
- The entry into force of the Lisbon Treaty offers us a "seize the day" opportunity to promote European citizenship by empowering citizens vis-à-vis the EU institutions. But we should not neglect citizens' relationship with the authorities of their own Member State. For most people, their status as European citizens is relevant to them primarily or exclusively in their relations with the authorities of their own Member State. Any discussion of European citizenship must take this reality into account.
- If European citizens are to be empowered vis-à-vis those who exercise political power, part of what is needed is to enhance the mechanisms through which they can call national authorities to account for their input into policy-making and legislation at European level and their enforcement of EU law at national level.
- There are two main reasons why this important point has been neglected to date.
- First, the concept of European citizenship has often been understood in a way that implies a zero-sum game. The more that people think of themselves as European citizens, the less important becomes their national citizenship. Within this mind-set there has been little room

for the idea that the process of European integration might require a systematic focus on the accountability of national public authorities to citizens.

- Second, even when it has been understood that European citizenship also involves relationships with Member States' authorities, the main focus is on citizens who have problems with the authorities of another Member State. We can think, for example, of the kinds of problem that arise when citizens exercise the right of free movement.
- Increasingly, however, the EU and European law affect relations between citizens and their own public authorities. In light of these developments, it is clear that public authorities of the Member States must systematically relate to their own citizens as European citizens. Unless this happens, a growing number of people are likely to feel that European integration is a process that excludes and disempowers them.
- Our duty is to emphasise that legitimacy in the EU is not a zero-sum game, in which European institutions can gain at the expense of national political institutions, or *vice versa*.
- To the contrary, it is by working together, effectively, transparently and ethically, that national and EU institutions can ensure full accountability and participation, thereby jointly enhancing their legitimacy in the eyes of the citizens.
- Thank you for your attention.