



Corporate Europe Observatory

Brussels, 21 June 2021

Jeppe Tranholm-Mikkelsen
Secretary-General - Council of the European Union

Dear Mr Tranholm-Mikkelsen,

I am writing to make a complaint regarding the failure to provide information to the public and to parliaments about a key discussion held at the Foreign Affairs Council on 20 May 2021. The topic concerned was the EU position on the proposed TRIPS (trade-related intellectual property rights) waiver on Covid vaccination patents which is currently being discussed at the World Trade Organisation (WTO). The proposed TRIPS waiver would make a substantial improvement to the ability of the world to scale-up and speed-up the production and distribution of vaccines around the world. It is a matter of deep and legitimate public interest. We consider that the Council's failure to be transparent before and after the discussion on 20 May 2021, and the consequential lack of accountability to citizens and parliaments, constitutes maladministration.

Transparency failure

It is a requirement, as set out in the Council's Rules of Procedure, that the agendas for Council meetings are circulated to parliaments across the EU and published on the Council's website. It is implicit that the agenda should be as full and accurate as possible. Supporting documents and written outcomes of meetings should also be published in a full and timely way.

Yet the [agenda on the Council's website](#) for the 20 May 2021 did not contain any indication that a discussion on the EU position on the proposed TRIPS waiver on Covid vaccinations was due to occur. None of the [supporting documents for the meeting](#) make any mention of this issue either; nor does the formal outcome report of the meeting.

In fact it only became known that such a discussion had taken place following a leak of a German Government report about the meeting, and a subsequent confirmation from the Council press office.

In justifying the failure to publish a full agenda for the 20 May meeting, the Council press office told Corporate Europe Observatory that the discussion was "rather general" and "not very deep", and that the position agreed on the TRIPS waiver should not be considered the "final word".

However, we know from the German Government report of the meeting that an extensive discussion took place, with many member states expressing a view. We also know that the meeting was one of only a very few discussions to take place on the EU position since the TRIPS waiver proposal was tabled at the WTO, and likely the first and only occasion where the topic has been discussed at

ministerial level in any depth; that the discussion came days after a substantial policy change on this issue by the Biden administration; and that it was the final opportunity to determine the EU position with member states before a crucial WTO meeting on 8-9 June. As a result, we conclude that this meeting was important in confirming the position to be adopted by the EU at these talks.

We also note that other matters, of varying degrees of importance, were placed on the 20 May agenda and were referred to in supporting documents and/ or in the outcome of proceedings.

We consider it to be maladministration that the documents for the Foreign Affairs Council on 20 May 2021 do not reflect the content and outcome of the discussion regarding the proposed TRIPS waiver.

Accountability failure

This transparency failure has led to an accountability failure.

The Council and member state governments should be accountable to parliaments, individually and collectively. But if no information is made available before or after key discussions on important matters, then accountability is thwarted. In this case, without prior notification of the topic, member state parliamentarians could not communicate with their governments beforehand, nor could they scrutinise decisions taken afterwards. We know that this is a topic of deep interest to parliamentarians across Europe. The European Parliament has adopted a resolution [supporting the waiver](#), as have the French Senate and the [Spanish Parliament](#). The Italian Parliament recently voted to support the waiver for the third time.

In addition, the Council's transparency failure meant that the many EU citizens who are concerned about this issue (for example, see this petition signed by 200,000+ people: <https://eci.ec.europa.eu/015/public/#/screen/home>) were not made aware that a key decision was imminent and thus lost a chance to try to influence the outcome.

The EU's decision on the position to take regarding the proposed TRIPS waiver on Covid vaccines was not taken "as openly as possible and as closely as possible to the citizen" as required by the Treaty.

We consider that this represents a further case of maladministration.

We do not understand why the Council decided to hold this discussion in secrecy, but it is clear that the EU's position on the TRIPS waiver is both deeply controversial at home, and increasingly out of step with much of the thinking of the rest of the world.

More information is available [here](#) and I look forward to hearing from you on these important matters.

Yours sincerely,



Vicky Cann vicky@corporateeurope.org