

## Letter to the Council of the EU opening the European Ombudsman's own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues

Correspondence - 26/05/2015

**Case** OI/8/2015/JAS - **Opened on** 26/05/2015 - **Decision on** 12/07/2016 - **Institutions concerned** European Parliament ( No further inquiries justified ) | Council of the European Union ( No further inquiries justified ) | European Commission ( No further inquiries justified ) |

Mr Uwe Corsepius Secretary-General Council of the European Union BE-1048 Brussels

Strasbourg, 26/05/2015

Re: Own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues — the Council of the EU

Dear Mr Corsepius,

According to Article 228 of the Treaty on the Functioning of the European Union, the European Ombudsman is empowered to conduct inquiries on her own initiative. These inquiries are intended to be helpful to the institutions concerned by promoting good administrative practice.

I have decided to open an own-initiative inquiry concerning the European Parliament, the Council of the EU, and the European Commission as regards the disclosure of documents relating to so-called "trilogues" [1] and transparency of trilogues in general. This is a matter which has been drawn to my attention by several MEPs, MPs from some Member States as well as by business and civil society groups. The specific reasons for opening this inquiry are the following:

Transparency as regards the law-making process is vital for building trust in the EU. Trilogues are now an established feature of the ordinary legislative procedure. They are, moreover, increasingly heralded as the place where the negotiated content of the final legislation text is decided upon.

I am concerned that trilogues be conducted in a manner which can be reconciled with the requirements as to the transparency of the legislative procedure, set out in Articles 15(2) and (3) TFEU [2] .



By way of example, I have not been able to find a comprehensive, publicly accessible list of ongoing trilogues. Nor can I find a complete record of the documents tabled and exchanged at such meetings. It would, thus, be useful to know whether such documents are made available on the public registers of Parliament, Council and Commission in a coherent and consistent manner.

As far back as 2003, the Interinstitutional agreement on better law-making [3] provided that *"[t]he three institutions will ensure an appropriate degree of transparency of the legislative process, including of trilateral negotiations between the three institutions."* An identical commitment is contained in the Commission's recently adopted proposal for an Interinstitutional Agreement on Better Regulation [4] . As such, this own-initiative inquiry is particularly timely [5] .

Against this background, I would be grateful if the Council could reply to the following questions:

### **Ongoing trilogues**

1. Are trilogue meetings publicly announced in advance? If so, where and how far in advance is information about these meetings published?
2. Please provide a list of the trilogues in which the Council is currently participating.
3. Is the abovementioned list publicly available? If not, please explain why not.

### **Trilogue documents held by the institutions**

4. Please provide a list of the categories of document held relating to the ongoing trilogues in which the Council is participating.
5. Are trilogue meeting minutes or reports on trilogue meetings or "notes" reporting on trilogues drawn up and made available internally? Does the Council maintain a list of participants in trilogue meetings?
6. Please explain how the four-column document [6] , on the basis of which the trilogue negotiations take place, is drafted.

### **Public access to trilogue documents**

7. Are trilogue documents proactively published on the Council's website, notably via the public register? If so, please specify which documents are published and at what stage in the procedure they are published.
8. Has the Council received any requests for public access to trilogue documents? If so, please provide me with copies of the access requests made and with copies of the decisions (including decisions following confirmatory applications) made.



9. Is there an established point in time after which, in the Council's view, trilogue documents can be published, e.g. after the legislation in question has been adopted or the end of the trilogue negotiations?

### Language regime

10. In which language/s do trilogues take place? Are interpretation facilities made available (i) always; (ii) on request only?

11. In which language/s are the relevant documents for use in trilogues issued?

12. If there is any other information or comment which you feel is relevant to the inquiry, please feel free to include that also.

I would be grateful if you could submit an opinion responding to the above questions by 30 September 2015.

Moreover, for the purpose of identifying the documents relating to trilogues and in order to obtain a full overview of them, I would appreciate it if, in accordance with Article 3(2) of the Statute of the European Ombudsman, you could arrange for my services to **inspect** two closed trilogue files, namely:

Ø The files concerning the [Mortgage Credit Directive \[Link\]](#)[7] ;

Ø The files concerning the Clinical Trials Regulation [8] .

I have chosen these two files on the sole basis that they deal with matters of wide public interest. I have no reason to believe that there is any particular concern in relation to either of these files.

I would like to stress that, in accordance with Articles 5(2), 13(3) and 14(2) of the Implementing Provisions of the European Ombudsman, the Ombudsman's inspection will not result in third parties or any other person obtaining access to any documents which your institution identifies as confidential during the inspection, or to any information contained in such documents.

I should be grateful if your services could contact Mr Fergal Ó Regan (tel. +32 2 284 35 48), Head of Complaints and Inquiries Unit, responsible for this inquiry in order to agree on a convenient date for the inspection of documents.

Please note that, during my inquiry, I intend to publish the Council's opinion and the inspection report on my website and may also give interested third parties the opportunity to make observations.

Finally, I have today also written to the Presidents of Parliament and the Commission, with the



same list of questions and request for an inspection.

Yours sincerely,

Emily O'Reilly

cc: Mr Hubert Legal, Director-General of the Legal Service

[1] The Ombudsman has seen reference made to “formal” trilogue meetings, “informal” trilogue meetings and “technical” trilogue meetings/“preparatory technical meetings” (PTMs).

[2] Article 15(2) TFEU states that *“the European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.”* Further, the fifth subparagraph of Article 15(3) TFEU states that *“the European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph”*. Article 12 of Regulation 1049/2001 on public access to documents further emphasises the special importance of providing access to documents drawn up *“in the course of procedures for the adoption of acts”* which are legally binding in or for the Member States, by stating that, subject to the exceptions to access set out in the Regulation, such documents be made directly accessible to the public in electronic form or through a register.

[3] Interinstitutional agreement on better law-making by the European Parliament, Council, and the Commission, OJ [2003] C 321, p.1.

[4] Communication from the Commission to the European Parliament and the Council: Proposal for an Interinstitutional Agreement on Better Regulation; COM(2015) 216 final.

[5] The Ombudsman is also aware of other efforts to ensure transparency in this area. By way of example, on 11 March 2014, the European Parliament adopted a resolution on public access to documents which contained the following proposal:

*“28. Calls on the Commission, the Council and Parliament to ensure the greater transparency of informal trilogues, by holding the meetings in public, publishing documentation including calendars, agendas, minutes, documents examined, amendments, decisions taken, information on Member State delegations and their positions and minutes, in a standardised and easy accessible online environment, by default and without prejudice to the exemptions listed in Article 4(1) of Regulation (EC) No 1049/2001;”*

[6] The Ombudsman understands that the first three columns present each of the three institutions’ respective positions, while the last column is reserved for compromise proposals.

[7] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on



credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010; OJ [2014] L 60, p.34.

[8] Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC; OJ [2014] L 158, p.1.