

Request for an inspection in strategic inquiry OI/2/2017/AB on access to documents relating to Council preparatory bodies when discussing draft EU legislative acts

Correspondence - 17/05/2018

Case OI/2/2017/TE - **Opened on** 10/03/2017 - **Recommendation on** 17/05/2018 - **Special report on** 17/05/2018 - **Decision on** 15/05/2018 - **Institutions concerned** Council of the European Union (Closed after Special Report) | Council of the European Union (Maladministration found) |

Mr Jeppe Tranholm-Mikkelsen Secretary-General Council of the European Union 1048
BRUSSELS BELGIQUE

Strasbourg, 04/10/2017

Access to documents relating to Council preparatory bodies when discussing draft EU legislative acts (OI/2/2017/AB)

Dear Mr Tranholm-Mikkelsen,

Thank you for your reply, dated 26 July 2017, to the 14 questions asked of the Council in the context of my strategic inquiry concerning the disclosure of documents from discussions on draft EU legislative acts in Council preparatory bodies. The reply contained useful explanations on the four main aspects of the inquiry and listed various improvements that will enhance the public's ability to follow the decision-making process within the Council.

In order to obtain a full overview of the internal process for recording, marking and disclosing preparatory documents relating to the legislative process, I would appreciate it if, in accordance with Article 3(2) of the Statute of the European Ombudsman, you could arrange for my staff to **inspect three files relating to legislative acts adopted in 2016.**

The files could be chosen by the General Secretariat of the Council (GSC), so as to illustrate the various practices between GSC departments as referred to in the general conclusions of the evaluation conducted by the GSC in 2015 [1] .



It would be particularly useful to enclose in the files, in addition to the legislative documents themselves, any internal notes or email exchanges that would help illustrate in practice:

- how the *prima facie* assessment was made within GSC departments to decide whether or not the documents related to the inspected files should be marked as “LIMITE”, in accordance with Annex II to the Council's Rules of Procedure;
- how and when the LIMITE status was lifted while discussions were ongoing (if applicable);
- how and when the legislative file was made directly accessible following the final adoption of the act concerned (and which documents were not made directly accessible) in accordance with Article 11(6) of Annex II to the Council's Rules of Procedure.

This inspection would also be an opportunity for my staff to see the full results of the evaluation conducted by the GSC in 2015 and to discuss the improvements mentioned in the Council's reply. These include: (i) the new system for recording Council documents, (ii) the inter-institutional project to develop a common drafting platform, (iii) the technical tools that are being developed to make it easier to publicly disclose LIMITE documents and (iv) the various initiatives to further simplify access to documents in the Council's public register.

I would be grateful if the Council would contact Ms Alice Bossière, strategic inquiries officer (+ 32 2 283 34 01), in order to agree on a convenient date for the inspection.

The inspection report will be published on my website. I would like to stress that, in accordance with Articles 4(8) of the Ombudsman's Implementing Provisions, the 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 also take this opportunity to inform you that I intend to launch a public consultation on these issues. You will find the text of the public consultation in the attached annex.

Thank you once again for the good co-operation on this matter.

Yours sincerely,

Emily O'Reilly

European Ombudsman



Enclosure: European Ombudsman public consultation in OI/2/2017/AB

[1] In its reply of 26 July, Council enclosed the general conclusions of the evaluation conducted by its GSC during the first half of 2015 on the principles governing the drafting of documents relating to the Council's ongoing legislative activities.