

**Commission reply to the request for information in relation to the Ombudsman's own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues**

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**I. BACKGROUND**

On 26 May 2015 the European Ombudsman opened an own initiative inquiry concerning the European Parliament, the Council and the Commission as regards the disclosure of documents and the transparency of the trilateral negotiations between these institutions during the legislative process, the so called "trilogues".

The Ombudsman asked a series of questions and requested to inspect two closed trilogue files. The inspections at the Commission's premises took place on 14 and 16 September.

**II. THE COMMISSION'S REPLY**

**General remarks**

*Transparency of the legislative process*

The Commission wishes to confirm its attachment to transparency in the EU's legislative work in line with Article 15 TFEU. In its proposal for a new Inter-institutional Agreement on Better Regulation, the Commission has provided that the institutions shall ensure an appropriate degree of transparency of the legislative process, including of trilateral negotiations between the three institutions (point 28 of the proposal for an Inter-institutional Agreement on Better Regulation of 19.5.2015, COM(2015)216).

*Admissibility of the Ombudsman's inquiry*

The Commission would like to make the following points in relation to the admissibility of this own-initiative inquiry:

First, the Commission considers that the organisation and practice of trilogues, as such, does not fall within the remit of the Ombudsman. Trilogues are a practical tool used by the co-legislators to facilitate the progress of inter-institutional negotiations. They are a preparatory step in negotiations of a purely legislative nature and it is hard to see how any aspect of their conduct, such as whether or when to hold trilogue meetings, the choice of representatives by each institution to attend trilogue meetings, whether or which supporting documents to produce etc., can give rise to maladministration, except as regards questions related to public access to the documents used during trilogue meetings (on the basis of Regulation 1049/2001).

Secondly, the Commission would like to underline that Article 3 of the Statute of the European Ombudsman limits the power to conduct inquiries to situations where there is

suspicion of maladministration. In the present case, the Ombudsman cites no such elements that may justify a suspicion of maladministration. On the contrary, the Ombudsman recognises, in her letter to the Commission, as regards the two closed files chosen for inspection, that she has "no reason to believe that there is any particular concern in relation to either of these files".

In line with the considerations set out above, the Commission expresses a general reservation on certain aspects of the present own-initiative inquiry and on the admissibility of possible future recommendations if they were to impinge on the co-legislators' prerogatives to organise the legislative work as they see fit.

The Commission acknowledges the Ombudsman's competence in the area of the administrative handling of any existing documents held by the EU institutions and relating to legislative files, including requests for public access under Regulation 1049/2001 and stands ready to assist and cooperate with the Ombudsman as appropriate.

### **Ongoing trilogues**

***1. Are trilogue meetings publicly announced in advance? If so, where and how far in advance is information about these meetings published?***

Trilogue meetings are organised by the co-legislators, i.e. the European Parliament and the Council of the European Union, not the European Commission. The question should therefore be addressed to the co-legislators.

***2. Please provide a list of the trilogues in which the Commission is currently participating.***

The Secretariat-General of the Commission compiles, on a weekly basis, a list of upcoming trilogues.

You will find enclosed the list established on 28 September 2015.

***3. Is the abovementioned list publicly available? If not, please explain why not.***

The Secretariat-General does not publish this list, which is compiled for internal practical purposes such as ensuring presence of the relevant officials.

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

***4. Please provide a list of the categories of documents held relating to the ongoing trilogues in which the Commission is participating.***

In addition to the formal documents established during the legislative process at the different formal steps of the ordinary legislative procedure (vote in plenary by the European Parliament, common position adopted by the Council, etc.), a four-column document is commonly used as a working tool during trilogue meetings. This four-column document presents the positions of the co-legislators compared to the text of the original Commission

proposal. Furthermore, any institution may table additional written contributions on specific issues for consideration in trilogue meetings.

Within the Commission, the key internal documents are mandates given by the College of Commissioners to the representatives of the Commission in trilogues. Such mandates may also allow them, where necessary and possibly subject to conditions, to depart from the original Commission proposal which amounts to an oral amendment of the proposal.

In the Commission, documents related to trilogues are in general held on a decentralised basis by the competent Commission services and the scope and structure of such trilogue files may vary significantly depending on the specific circumstances of the negotiation.

***5. Are trilogue meeting minutes or reports on trilogue meetings or “notes” reporting on trilogues drawn up and made available internally? Does the Commission maintain a list of participants in trilogue meetings?***

The three institutions do not establish joint or agreed minutes or reports of trilogue meetings. Instead, reporting takes place within each institution according to its own practices.

For the Commission, a summary report is normally circulated shortly after each trilogue meeting. This report is drawn up under the authority of the Secretariat-General and the report is circulated internally within the Commission. Often, the line services responsible for the legislative proposal produce their own report for internal use of the officials working on the specific file discussed in trilogue.

The Commission does not keep lists of participants in trilogue meetings. The identity of participants in trilogue meetings is included in the summary reports mentioned above, although this information is not always exhaustive and is sometimes limited to the head of the delegation of each of the institutions and/or an indication of the organisational affiliation of un-named participants (e.g. "DG TRADE team", "Presidency team", "MEP assistants"). This reflects the fact that participants in the trilogue meetings do not act in an individual capacity but as representatives of their respective institutions.

***6. Please explain how the four-column document, on the basis of which the trilogue negotiations take place, is drafted.***

The four-column table shows, in separate columns, the Commission's original legislative proposal, the position of the European Parliament and the position of the Council on the various provisions of the proposal. A fourth column shows the compromises suggested by any one of the three institutions or considered agreed between the negotiators.

These tables are drawn up in collaboration between the competent services of the three institutions that fill them in as negotiations progress.

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

**7. *Are trilogue documents proactively published on the Commission'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.***

The Commission does not proactively publish trilogue documents.

**8. *Has the Commission 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.***

The Commission has received such access requests. Copies of requests and replies (initial and confirmatory) are being provided separately to the Ombudsman on electronic support.

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

There is no such established point in time. Each file has to be assessed individually, and where there is a request for access to a document, in accordance with the provisions of Regulation 1049/2001.

### **Language regime**

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

There are no rules on the use of languages between the EU institutions in the context of trilogues. The institution that organises a trilogue meeting (usually the European Parliament or, less frequently, the Council) takes care of the logistical aspects, including interpretation.

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

In practice, most of the documents are drafted in English.

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

Please see the general remarks above.

ANNEXES

**TRILOGUE MEETINGS from 28 September 2015:**

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
28 September	17h00-18h30	ASP 1E1	Free movement of citizens and businesses by simplifying the acceptance of certain public documents (2013/0119 COD)	JURI (DELVAUX)  DG JUST	1 <sup>st</sup> reading Council	E1
28 September	16h30-18h00	ASP 5G2	European Union Agency for Law Enforcement Cooperation and Training (Europol) (2013/0091 COD)	LIBE (DÍAZ DE MERA GARCÍA CONSUEGRA)  DG HOME	1 <sup>st</sup> reading Council	E1
<del>29 September:</del> POSTPONED			Conditions of entry and residence of third-country nationals (Students and Researchers) (2013/0081 COD)	LIBE (WIKSTRÖM)  DG HOME	1 <sup>st</sup> reading Council	E1
29 September	AM		EU PNR (2011/0023 COD)	LIBE (KIRKHOPE)  DG HOME	1 <sup>st</sup> reading EP	E1
29 September	10h30-13h00	ASP 1G1	Procedural Rights Package: Legal aid (2013/0409 COD)	LIBE (DE JONG) DG JUST	1 <sup>st</sup> reading EP	E1

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
29 and 30 September (two days - one trilogue)	10h00-15h00 12h00-15h00	ASP 5G2	Data protection reform package (Regulation) (2012/0011 COD)	LIBE (ALBRECHT)  DG JUST	1 <sup>st</sup> reading Council	E1
30 September	PM (evening)	Council premises	European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES) (2014/0002 COD)	EMPL (BECKER)  DG EMPL	1 <sup>st</sup> reading EP	D4
<del>30 September:</del> POSTPONED			Long-term shareholder engagement / certain elements of the corporate governance statement (2014/0121 COD)	JURI (COFFERATI)  DG JUST	1 <sup>st</sup> reading EP (amendments voted JULY 2015, wait vote legislative resolution)	E1
30 September			International protection of unaccompanied minors (2014/0202 COD)	LIBE (WIKSTRÖM)  DG HOME	1 <sup>st</sup> reading EP	E1
30 September	14h30-16h30	<a href="#">Justus Lipsius 35.3</a>	Procedural Rights Package: Procedural safeguards for children (2013/0408 COD)	LIBE (CHINNICI)  DG JUST	1 <sup>st</sup> reading EP	E1

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
1 October			European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES) (2014/0002 COD)	EMPL (BECKER) DG EMPL	1 <sup>st</sup> reading EP	D4
1 October	9h00-12h30		Procedural Rights Package: Presumption of innocence (2013/0407 COD)	LIBE (GRIESBECK) DG JUST	1 <sup>st</sup> reading EP	E1
8 October	9h00 – 12h30	Strasbourg	Cooperation in the prevention and deterrence of undeclared work (2014/0124 COD) (October)	EMPL (PIRINSKI) DG EMPL	1 <sup>st</sup> reading EP	D4
13 October	PM	EP	European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES) (2014/0002 COD)	EMPL (BECKER) DG EMPL	1 <sup>st</sup> reading EP	D4

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
13 October			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2
14 October			Reduction of pollutant emissions from road vehicles	ENVI (DESS)  DG GROW	1 <sup>st</sup> reading EP	D2
15 October	9h30-12h30		Procedural Rights Package: Procedural safeguards for children (2013/0408 COD)	LIBE (CHINNICI) DG JUST	1 <sup>st</sup> reading EP	E1
15 October			Protection of undisclosed know- how and business information (trade secrets) against their unlawful acquisition, use and disclosure (2013/0402 COD)	JURI (LE GRIP)  DG GROW	1 <sup>st</sup> reading EP	D2
15 October (tbc)			Animal, Plant and Control package: Protective measures against pests of plants (2013/0141 COD)	AGRI (McINTYRE)  DG SANTE	1 <sup>st</sup> reading Council	E1

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
15 October			Indices used as benchmarks in financial instruments and financial contracts (2013/0314 COD)	ECON (VAN NIEUWENHUIZEN) DG FISMA	1 <sup>st</sup> reading EP (amendments voted MAY I 2015, wait vote legislative resolution)	D2
15 October			Emission limits and type-approval for internal combustion engines for non-road mobile machinery (2014/0268 COD)	ENVI (GARDINI) DG GROW	1 <sup>st</sup> reading EP	D2
19 October (tbc)			Animal, Plant and Control package: Officials controls (2013/0140 COD)	ENVI (KADENBACH) DG SANTE	1 <sup>st</sup> reading Council	E1
20 October (tbc)			Procedural Rights Package: Legal aid (2013/0409 COD)	LIBE (DE JONG) DG JUST	1 <sup>st</sup> reading EP	E1
22 October			Emission limits and type-approval for internal combustion engines for non-road mobile machinery (2014/0268 COD)	ENVI (GARDINI) DG GROW	1 <sup>st</sup> reading EP	D2

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
27 October (tbc)			Animal, Plant and Control package: Protective measures against pests of plants (2013/0141 COD)	AGRI (McINTYRE)  DG SANTE	1 <sup>st</sup> reading Council	E1
28 October			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2
10 November	PM (evening)	Council premises	European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES) (2014/0002 COD)	EMPL (BECKER)  DG EMPL	1 <sup>st</sup> reading EP	D4
10 November			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2
18 November			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2

<b>Date</b>	<b>Time</b>	<b>Place</b>	<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
19 November			Emission limits and type-approval for internal combustion engines for non-road mobile machinery (2014/0268 COD)	ENVI (GARDINI)  DG GROW	1 <sup>st</sup> reading EP	D2
23 or 24 November	PM (23/11) or AM (24/11)	Strasbourg	European network of Employment Services, workers' access to mobility services and the further integration of labour markets (EURES) (2014/0002 COD)	EMPL (BECKER)  DG EMPL	1 <sup>st</sup> reading EP	D4
3 December (tbc)			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2
17 December (tbc)			Medical devices package (2012/0266/67 COD)	ENVI (WILMOTT/LIESE))  DG GROW	1 <sup>st</sup> reading Council	D2

**(POSSIBLE) FURTHER TRILOGUE MEETINGS UNDER LUXEMBOURGISH PRESIDENCY:**

<b>Title</b>	<b>EP Committee (Rapporteur) DG</b>	<b>Stage</b>	<b>SG unit</b>
Novel foods (2013/0435 COD)	ENVI (NICHOLSON) DG SANTE	1 <sup>st</sup> reading EP	E1
Caseins and caseinates intended for human consumption (2014/0096 COD)	ENVI (LA VIA) DG AGRI	1 <sup>st</sup> reading EP	D3
Aid scheme for fruit and milk in schools (2014/0014 COD)	AGRI (TARABELLA) DG AGRI	1 <sup>st</sup> reading EP	D3
Multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks (2014/0285 COD)	PECH (WAŁĘSA) DG MARE	1 <sup>st</sup> reading EP	D3
Market Surveillance - Product Safety (package) (2013/0048-49 COD)	IMCO (PIETIKÄINEN/ SCHALDEMOSE) DG GROW DG JUST	1 <sup>st</sup> reading Council	D2 / E1
Network and Internet Security directive (NIS) (2013/0027 COD)	IMCO (SCHWAB) DG CNECT	1 <sup>st</sup> reading Council	E2
Accessibility of public sector bodies' websites (2012/0340 COD)	IMCO (CHATZIMARKAKIS) DG CNECT	1 <sup>st</sup> reading Council	E2

Title	EP Committee (Rapporteur) DG	Stage	SG unit
Technical requirements for inland waterway vessels (NAIADES II package)	TRAN (WORTMANN-KOOL) DG MOVE	1 <sup>st</sup> reading Council	E2
Rail transport statistics, as regards the collection of data on goods, passengers and accidents (2013/0297 COD)	TRAN (CRAMER) DG ESTAT	1 <sup>st</sup> reading Council	D1 / E2
Court of Justice: number of judges at the General Court (amend. Statute) (2011/0901B COD)	JURI (MARINHO E PINTO) LS	1 <sup>st</sup> reading EP	E1?
European Union Agency for Criminal Justice Cooperation (Eurojust) (2013/0256 COD)	LIBE (VOSS) DG JUST	1 <sup>st</sup> reading EP	E1
Fight against fraud to the Union's financial interests by means of criminal law (PIF) (2012/0193 COD)	CONT (GRÄSSLE) LIBE (LÓPEZ AGUILAR) DG JUST	1 <sup>st</sup> reading Council	E1
Minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (2013/0304 COD)	LIBE (JIMÉNEZ-BECERRIL BARRIO) DG HOME	1 <sup>st</sup> reading Council	E1
Extension of the Autonomous Trade Measure for Western Balkans (2014/0197 COD)	INTA (BETTINI) DG TRADE	1 <sup>st</sup> reading EP	E3
Due diligence in conflict zones (2014/0059 COD) end 2015, or during NL Pres	INTA (WINKLER) DG TRADE	1 <sup>st</sup> reading EP	E3
Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (2014/0005 COD)	INTA (SCHAAKE) DG TRADE	1 <sup>st</sup> reading EP	E3

Title	EP Committee (Rapporteur) DG	Stage	SG unit
Structural measures improving the resilience of EU credit institutions (Bank Structural Reform) (2014/0020 COD)	ECON (HÖKMARK) DG FISMA	1 <sup>st</sup> reading EP	D2
Money Market Funds (2013/0306 COD)	ECON (GILL) DG FISMA	1 <sup>st</sup> reading EP (amendments voted APRIL II 2015, wait vote legislative resolution)	D2
Statistics for the macroeconomic imbalances procedure (2013/0181 COD)	ECON (LUCKE) DG ESTAT	1 <sup>st</sup> reading EP (amendments voted MARCH 2014, wait vote legislative resolution)	D1
Community statistics concerning balance of payments, international trade in services and foreign direct investment as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures (2014/0194 COD) (possibly end Nov.)	ECON (GIEGOLD) DG ESTAT	1 <sup>st</sup> reading EP	D1
Harmonised indices of consumer prices (2014/0346 COD)	ECON (GUALTIERI) DG ESTAT	1 <sup>st</sup> reading EP	D1