



The President



Médiateur européen

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Date d'arrivée

Ms Emily O'Reilly  
European Ombudsman  
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D 317505 22.10.2015

Dear Ms O'Reilly, dear Ombudsman,

Thank you for your letter of 26 May 2015, opening an own-initiative enquiry on trilogues and asking a set of questions to the two co-legislators and the European Commission on the functioning and transparency of these trilogues. You also requested, on this occasion, to inspect the documents linked to two legislative procedures<sup>1</sup>. Moreover I noticed that you organised a seminar on trilogues and transparent law-making on 28 September at the European Parliament and wrote to five Committee Chairs, requesting your staff to have access as observers to one of their upcoming trilogue meetings, in order to obtain a better practical understanding of how trilogues are conducted.

Given the intrinsically interinstitutional nature of legislative work, the fact that trilogues are the expression of the more political role of the Parliament, and the scope of your mandate, your questions required careful examination and coordination within the Parliament, but also coordination with the Council and the Commission. More time was therefore needed than originally proposed in your letter.

I appreciate the context in which you wish to conduct your enquiry, which does not seem to be based on a suspicion of maladministration. With regard to the request for inspection of trilogue documents, you acknowledge that there is no particular reason to be concerned at either of the two selected files. I therefore conclude that your enquiry pursues two main aims: in the first place it seeks to ensure more clarity concerning the handling of requests for access to trilogue documents, which can be considered as an *administrative* exercise and would thus fall within the scope of your mandate. I therefore hope that the explanation below sufficiently replies to your questions on public access to trilogue documents (questions 7 to 9). I also agree that inspecting

<sup>1</sup> - 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;  
- 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.

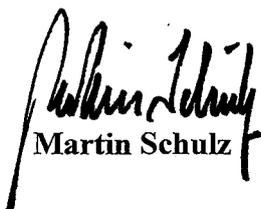
our documents could prove very instrumental to your work and the European Parliament would be happy to host these inspections.

If I understand correctly, your second aim is to better clarify the organisation of trilogues, such as the drafting of minutes, the linguistic regime in trilogues or their publicity and transparency in general. While I consider these elements not to be of an *administrative* nature, I am happy to provide below more clarity on these issues and on the functioning of trilogues in general. In particular I hope to clarify the recent changes in our working methods and how trilogues became an essential part of the law-making process, ensuring a more orderly, reliable, and accountable way of negotiating between the Institutions.

Parliament takes transparency and accountability very seriously. It strives to find the right balance between ensuring transparency to the public, while at the same time ensuring that all political groups can fully follow and influence the negotiations. An undue formalisation of the trilogue process might have the opposite result, as the real negotiations might then take place at other occasions, without having all political groups in the room and without text proposals being exchanged in an orderly way between the Institutions. This would put the internal transparency and accountability of the decision-making process at risk.

I hope the information provided below addresses your questions adequately. I remain at your disposal should there be any need for further information.

Yours sincerely,



Martin Schulz

Annex: Answer to the Own Initiative Inquiry

## Answer to the Own Initiative Inquiry

### Observations on the scope of the inquiry

The present inquiry concerns to a large extent the *legislative* work of the Parliament, the Council and the Commission. The organisation of the legislative process, including the negotiation of legislative files with the other institutions, cannot be considered an administrative activity. It rather has to be understood as an essential aspect of the legislator's prerogatives<sup>2</sup>. Substantive choices on the preferable legislative options and on the way the political interaction is organised through a legislative procedure pertain to the political responsibility of the co-legislators. Parliament's organisation of the legislative process is governed by its Rules of Procedure which are equally the result of a political decision as they are drafted, discussed and adopted by its Members.

Nevertheless, a series of *administrative* decisions are undoubtedly taken in the framework of handling of documents, including trilogue documents. These decisions concern in particular, but not exclusively, requests for access to documents in the framework of Regulation 1049/2001.

Given the absence of sufficient grounds pointing at a case of maladministration and given the fact that only a part of the questions addresses administrative matters, it is understood that the inquiry does not fall entirely within the Ombudsman's mandate.

### The nature of trilogue negotiations

For an act to be adopted under the Ordinary Legislative Procedure, as set out in Article 294 TFEU, the co-legislators must at some point during the procedure agree and adopt the same text. This is only possible if the institutions explain their positions to each other and negotiate a compromise, whether at first, second or third reading. The institutions have therefore established working methods, largely inspired by the practices of conciliation<sup>3</sup>.

Nowadays informal tripartite meetings which take the form of "(informal) trilogues" and "technical meetings" (on technical rather than political elements) are used for much of the inter-institutional legislative activity between the Parliament, Commission and Council. The practical arrangements for the conduct of negotiations between the institutions were agreed in the Joint Declaration of 2007. In its Rules of Procedure the Parliament defined that its negotiation team is led by the Rapporteur and presided over by the Chair of the Committee responsible or a Vice-Chair designated by the Chair and that it comprises at least the Shadow Rapporteurs from each political group. In the trilogues the negotiating team is supported by the relevant EP services, such as the Committee Secretariat, the Legal Service, the Lawyer-Linguists and the Conciliation

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<sup>2</sup> Articles 232 and 295 TFEU provide for the institutional prerogatives of Parliament (and Council) as co-legislators to organise their functioning when exercising their legislative activities by adopting their own rules of procedure and by concluding inter-institutional agreements as they deem appropriate.

<sup>3</sup> Originally legislative "trilogues" only took place in the context of the conciliation procedure but the principle of tripartite meetings and the terminology is used nowadays also for negotiations during the preceding stages of the OLP.

and Codecision Unit. The negotiations follow the principle of "nothing is agreed until everything is agreed", meaning that until the complete text of a proposal has been agreed by the co-legislators changes can be made and parts that were initially considered closed can be reopened again.

The so-called "multi-column document" has emerged as the main working tool for legislative negotiations. It helps participants to keep track of the different proposals of the negotiating parties and to reconcile their positions. It is a shared document between the Institutions, usually containing the three positions while providing a fourth column for comments and possible compromise solutions. It needs to be noted that the column containing the Commission position entails in fact the public Commission proposal and the column containing the Parliament position entails the public Parliament mandate. It is only the fourth column that changes during the negotiations. As a pragmatic working tool, the multi-column document ensures that negotiations progress in an orderly fashion. The use of trilogues and of multi-column documents ensures a non-discriminatory access to information to all participants in the negotiations, thereby allowing all political groups to closely monitor and influence all steps in the negotiations. Their use has therefore significantly strengthened the transparency and accountability of the decision-making process compared to the early days of the codecision procedure and improved the quality of the negotiations and thus of the legislation adopted at EU level.

It needs to be noted that the number of trilogues, their length, the use of additional documents and the language regime fully depend on the urgency, complexity and political nature of the legislative file and on the actors within the Parliament and other Institutions. There is therefore no official or comprehensive list of categories of documents that can be used in trilogues. Any kind of document seeking to facilitate the negotiations is in principle admitted if all the parties consider it to be admissible. For practical reasons documents used in trilogues mainly exist in English. Any agreed text which is formally tabled is then consequently translated into all EU languages. Upon request, interpretation can be provided in the trilogues. This requires however in advance planning and might not always be possible in case of last minute changes or where it is necessary to convene trilogues at short notice.

### **Transparency in Parliament and public access to documents**

The Parliament has a strong track record as regards legislative transparency, openness and accountability and it takes these principles very seriously. Transparency is crucial to ensure a reliable and traceable decision-making process. In 2012 the Parliament revised its Rules of Procedure<sup>4</sup>, making its procedures related to the conduct of inter-institutional negotiations more effective, transparent and inclusive.

As a result, Parliament's negotiating mandates, including the draft reports and the amendments to them, are prepared, discussed and voted in public during committee meetings and plenary sessions. The negotiating mandates are published on the committees' webpage and where possible the meetings are webstreamed. After each trilogue meeting, Parliament's negotiation team is required to report back to

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<sup>4</sup> The AFCO Committee's report (Rapporteur: Enrique Guerrero Salom) was adopted by Plenary on 20 November 2012, and the revised Rules entered into force on 10 December 2012.

the committee responsible and the agreed final text resulting from the trilogue negotiations, is put to a public vote, both in committee and plenary.

The European Parliament's Legislative Observatory<sup>5</sup>, Parliament's legislative transparency tool, is currently being amended so that it is possible to make public the different stages of inter-institutional negotiations on individual files. Trilogue meetings are not systematically announced publicly, as trilogue dates may change at rather short notice. However, the regular and required reporting back in committee allows for political and public follow-up.

The European Parliament is currently working on IT solutions to make publicly available documents related to trilogue negotiations once agreement has been reached and Parliament has adopted its position<sup>6</sup>. It should be noted that any result of trilogues becomes a formal text that is tabled and put to the vote in both committee and Plenary. Therefore the final outcome of the negotiating process always becomes a public document before Parliament adopts its position in Plenary. Consolidated compromise texts are generally publicly available on the European Parliament website in advance of the committee vote, and always ahead of the vote in plenary.

Documents related to conciliation and the third reading of the Ordinary Legislative Procedure (Article 294(10) to (14) TFEU) are systematically published in the public register of Parliament's documents, following signature of the final act by the co-legislators. Joint texts approved by the Conciliation Committee as well as other documents of general character concerning conciliation procedures are also published on Parliament's public register website.

Until 23 September 2015, Parliament received 15 applications seeking public access to specific documents used in trilogues and 5 requests for consultations from the Commission or the Council, in the framework of the Memorandum of Understanding (agreed between the services of the three Institutions on the application of Article 4(4) of Regulation (EC) No 1049/2001).

For your further information a list of files is annexed for which legislative negotiations are ongoing.

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<sup>5</sup> The Legislative Observatory (OEIL) is a publicly accessible database. It analyses and monitors the inter-institutional decision-making process in the European Union. It enables users to monitor the work of the European Parliament at various stages from parliamentary committees to plenary sessions. In other words, the database covers all the reports examined and voted on in plenary, be they legislative, budgetary or non-legislative.

<sup>6</sup> Parliament interprets 'adopted its position' as a decision taken by Plenary.

## ANNEX

On 29/09/2015 Parliament was participating in the following negotiations under the ordinary legislative procedure<sup>7</sup>:

	Title	COD Nr
1.	European platform to enhance cooperation in the prevention and deterrence of undeclared work	2012/0124
2.	European network of employment services, workers' access to mobility services and the further integration of labour markets - EURES	2014/0002
3.	EU Stabilisation and Association process: application of exceptional trade measures with regard to Bosnia and Herzegovina	2014/0197
4.	Simplifying the acceptance of certain public documents in the EU	2014/0119
5.	Provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (3 <sup>rd</sup> Criminal proceedings file)	2013/0409
6.	Personal data protection: processing and free movement of data (General Data Protection Regulation)	2012/0011
7.	Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure	2013/0402
8.	Fight against fraud to the Union's financial interests by means of criminal law	2012/0193
9.	Indices used as benchmarks in financial instruments and financial contracts	2013/0314

<sup>7</sup> The files on the list are indicated on the basis of the following criteria (i) negotiations have started (1st trilogue has taken place), (ii) the most recent trilogue was under the 8th legislative term and (iii) negotiations are not yet concluded.

10.	High common level of network and information security across the Union	2013/0027
11.	Statistics relating to external trade with non-member countries: Commission delegated and implementing powers	2013/0279
12.	European Union Agency for Law Enforcement Cooperation and Training (Europol)	2013/0091
13.	Third-country nationals: conditions of entry and residence for the purposes of research, studies, pupil exchange, training, voluntary service and au pairing. Recast	2013/0081
14.	Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial	2013/0407
15.	Criminal proceedings: procedural safeguards for children suspected or accused	2013/0408
16.	Multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks	2014/0285
17.	Statistics of goods transport by inland waterways; Commission delegated and implementing powers	2013/0226
18.	Rail transport statistics: collection of data on goods, passengers and accidents	2013/0297
19.	Fight against terrorism and serious crime: use of passenger name record (PNR) data	2011/0023
20.	Protective measures against pests of plants	2013/0141