



FRANS TIMMERMANS
First Vice-President

Brussels, **16 DEC. 2016**

Dear Ms O'Reilly,

**Subject: Own-initiative inquiry concerning transparency or trilogues,
ref. OI/8/2015/JAS**

Thank you for your letter of 12 July 2016 addressed to President Juncker regarding the above-mentioned case.

I am pleased to enclose the comments of the Commission on this inquiry.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,

Enclosure

Ms Emily O'REILLY
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F-67001 STRASBOURG Cedex

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

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 – to which the Commission replied – and requested to inspect two closed trilogue files. The inspections at the Commission's premises took place on 14 and 16 September 2015.

The Ombudsman closed her inquiry with a decision of 12 July 2016 which included a series of recommendations to the European Parliament, the Council and the Commission.

II. THE COMMISSION'S REPLY

General remarks

The Commission wishes to recall that the organisation of trilogues in the legislative process and the modalities under which such trilogues are conducted is shared between the three institutions and lies, first and foremost, with the co-legislators. The Commission will therefore hereafter express its views while noting that many of the specific recommendations of the Ombudsman are primarily for the European Parliament and the Council to respond to.

The present Commission came to office with a commitment to enhanced transparency, reflected in its Political Guidelines and put into practice through several initiatives. Since December 2014, the Commission publishes information on the meetings of Commissioners, their Cabinet members and Directors General with interest representatives. Greater access has been given to documents relating to the negotiations for a Transatlantic Trade and Investment Partnership with the United States and other international trade negotiations. Following a Commission proposal, an Interinstitutional Agreement (IIA) on Better Law-making was signed in April 2016 which further bolsters transparency through a series of measures regarding openness of the EU decision making process. New rules on expert groups, with reinforced transparency requirements, were adopted in May 2016. In September 2016, the Commission presented a proposal for an IIA on a mandatory Transparency Register covering the European Parliament, the European Commission and, for the first time, the Council.

In this context, the Commission welcomes the impetus towards greater transparency provided by the Ombudsman's inquiry, which goes in the same direction as the Commission's initiatives mentioned above, in particular the IIA on Better Law-Making. The latter includes a commitment to setting up a joint database to provide information on the whole legislative

process in a way that is easily accessible for a general audience without specialist background knowledge.

Transparency of the EU legislative process

The Commission welcomes the Ombudsman's generally positive assessment of the EU legislative process as regards transparency and that the Ombudsman recognises the progress already made in improving the transparency of trilogues.

In follow-up to the Ombudsman's proposals to further increase this transparency through the proactive publication of additional documents and information, a coherent approach between the three institutions concerned is needed. Much can be achieved through making more accessible information which is already public in one form or another but which can be quite hard to find for the non-expert. The joint database under development will become the major tool in this regard, and will also provide a common venue for the institutions to make available any other details. It will be designed to be easily approachable for the general public. The joint database will, however, take some time to develop and implement. The three institutions are already reflecting on how to make better use of their existing IT systems in making more information accessible.

Regarding steps to make further details public in a proactive way, it is necessary to take into account that the Institutions need a space for exchange and explanation in a spirit of trust and confidence. Over-formalising them could become counterproductive in terms of transparency as it could push the “real” negotiation into other forums. Much of the value of the trilogue process lies in its informality and flexibility. Greater transparency should not come at the price of making the process excessively rigid and formal. The Commission welcomes the fact that the Ombudsman acknowledges the need to find an appropriate balance.

Some of the issues addressed by the Ombudsman, in particular regarding public access to specific documents, touch upon matters currently being examined by the EU General Court. On these, the Commission considers it would be appropriate to express a position after the judgement of the Court in the relevant case.

Recommendations of the Ombudsman

- 1. The Ombudsman proposes that the institutions make publicly available a “Trilogue calendar” identifying forthcoming Trilogues. They should also refer to Trilogues in databases on legislative files.***

The Commission would have no objection if one or other of the co-legislators were to publish an indicative schedule of trilogues already planned; if so, in due course this could also be included in the future joint database.

- 2. The Ombudsman proposes that both co-legislators make proactively available, before Trilogue negotiations begin, their positions on the Commission proposal, regardless of the level at which the position has been adopted internally and regardless of the legislative proposal.***

This recommendation is not addressed to the Commission.

3. *The Ombudsman proposes that the institutions make available general summary agendas before or shortly after Trilogue meetings.*

The Commission would have no objection if the co-legislators wish to publish after each trilogue an outline agenda with a list of the subjects actually discussed.

4. *The Ombudsman proposes that the institutions make proactively available four-column documents, including the final agreed text, as soon as possible after the negotiations have been concluded.*

The final agreed text is already made public, at the latest, when it is considered in the co-legislator's formal decision making processes, though often not in the four-column document format. The future joint database will help to make this more accessible.

The question of the possible publication of four-column documents more broadly is closely linked with issues currently being examined by the General Court in a pending case (*T-540/15 De Capitani/Parliament*). The Commission considers it would be appropriate to express a position after the judgement of the Court.

5. *The Ombudsman proposes that the institutions include, in legislative databases and calendars dealing with Trilogues, links to any minutes or videos of the institutions' public meetings where a Trilogue has been discussed.*

This recommendation does not directly concern the Commission, as these public meetings are those of the co-legislators. However, the Commission would welcome any work by the two institutions in this direction. The future database, if practical, could provide a place to centralise access to such information.

6. *The Ombudsman proposes that the institutions make proactively available a list of the representatives who are politically responsible for decisions taken during a Trilogue, such as the MEPs involved, the responsible Minister from the Council Presidency and the Commissioner in charge of the file. If the power to take decisions is delegated to civil servants, their identities should also be disclosed proactively.*

Trilogues do not take any decisions. The three institutions have adapted their formal decision making processes to enable them to follow the progress of trilogues, agree mandates for negotiators and approve – or not – the tentative agreements reached informally in trilogues. The decisions are taken via the co-legislators formal channels and compromises reached at trilogues cannot be taken for granted until formally adopted. It is also a political decision for the co-legislators as to whether to use the trilogue process at all, or to use the full range of the formal legislative procedure.

Political and administrative responsibility for trilogues lies, on the Commission side, with the respective Member of the Commission and the relevant Directorate General. The Commission agrees that this could be made to make this publicly clearer, by identifying alongside other

information published on the trilogues concerned, the responsible Commissioner and Directorate General.

7. *The Ombudsman proposes that, for the purposes of facilitating requests for public access to documents, the institutions make available as far as possible lists of documents tabled during Trilogue negotiations.*

The Commission considers it would be appropriate to express a position after the judgement of the Court in the case mentioned above.

8. *The Ombudsman encourages the institutions to work together to make as much Trilogue information and documentation as possible publicly available through an easy-to-use and easy-to-understand joint database.*

The joint database mentioned in the General Remarks section above is intended to serve this purpose, as well as making more accessible information on the rest of the EU legislative process.