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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Decision of the European Ombudsman on Own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues

On 26 May 2015, the European Ombudsman launched an Own Initiative Inquiry vis-à-vis the Council, the Parliament and the Commission concerning the transparency of trilogues. The decision launching the inquiry took the form of a list of 12 questions concerning different aspects of the organization of trilogues, and was sent to the Secretary General. The Council submitted observations by letter of 29 October 2015¹.

The European Ombudsman services also carried out inspections in each Institution on two closed legislative files: the Mortgage Credit Directive and the Clinical Trial Regulation. For the Council, these took place on 12 and 20 November 2015, respectively.

On 12 July 2016, the European Ombudsman notified to the Institutions her decision closing the inquiry². The decision does not find any grounds for maladministration in the conduct of the three Institutions. However, the European Ombudsman addresses to each Institution 8 "proposals", and requests them to provide information by 15 December 2016 on any action they may have decided to take in relation to them.

COREPER is therefore invited, in accordance with Article 19(7)(k) of the Council's Rules of Procedure, to approve the draft letter in Annex, which will be sent by the Secretary General as the Council's reply to the Ombudsman Decision of 12 July 2016.

¹ Reference OI/8/2015/FOR: see docs. 9666/15 and 13281/1/15.

² 13075/16.

DRAFT

Brussels,

Ms Emily O'Reilly

The European Ombudsman

1, avenue du Président Robert Schuman

CS 30403

F-67001 Strasbourg Cedex

Subject: Your decision of 12 July 2016 relating to your own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues

Dear Ms O'Reilly,

Thank you for your letter of 12 July 2016 informing about your decision to close your own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues. The Council welcomes the fact that you found no grounds for maladministration in the way the Council handles the overall trilogue process.

The Council remains convinced that the organisation of the legislative process, and notably of trilogues, is a prerogative of the co-legislators and cannot give rise to instances of maladministration. However the Council attaches great importance to making sure that decisions are taken as openly as possible. As signatory of the 2016 Inter-institutional Agreement on Better law-making, the Council has expressed its strong commitment to "further improving the work done under the ordinary legislative procedure in line with the principles of sincere cooperation, transparency, accountability and efficiency"³. The Council therefore welcomes, in a spirit of sincere cooperation, your proposals for enhanced transparency.

As you know, the practice of informal trilogues developed after the Amsterdam Treaty allowed agreements at the first-reading stage. It is for the co-legislators to decide whether to seek an agreement at this stage or to resort to the full range of the legislative procedure (second and third readings). It is also for them to decide if and when in this process to engage in negotiations.

³ OJ L 123, 12/05/2016, p. 1 (par. 32).

In this context, the Council welcomes that you acknowledge that the Institutions need a space for exchange and explanation in a spirit of trust and confidence. Any measure aimed at enhancing the transparency of the trilogue process should therefore avoid making the process too rigid and formal, which could entail the risk of pushing the “real” negotiation towards other fora. It is in this spirit that we have begun a collective reflection, together with the other Institutions, on the proper follow-up to be given to your proposals.

In particular, the joint database which is foreseen under the Inter-institutional Agreement will be an important tool in that respect. The three Institutions are working on further developing platforms to that end, a work that should be completed by the end of the year. Some more time will be needed to set it up completely.

As regards the publicity of the negotiating mandates before trilogues begin, the Council has initiated internal discussions on the matter.

As regards the inclusion in databases of links to the "minutes or videos of public meetings where trilogues are discussed", if a trilogue is to be discussed at Council level, the discussion will be public and video-streamed in accordance with the Treaty (Article 16(8) TEU).

Furthermore, the Institutions have also started working in order to give concrete follow up to some of your other proposals, i.e. those on the publicity of calendars, agendas, and lists of participants. We will do this while at the same time recalling, in line with our observations the opening of the inquiry, that these proposals concern the organisation of the legislative process, which is an institutional prerogative of the co-legislators.

Finally, your two remaining proposals, namely the identification and publication of four-column tables and the publication of lists of documents tabled during trilogue negotiations, touch on matters currently before the Court of Justice. The Council will therefore await the Court’s decision before deciding which steps to take on their implementation.

I trust that our services will continue to remain in touch, so that you will be regularly informed on the concrete follow-up we are going to give to your proposals.

Your sincerely
