



**Council of the European Union**  
General Secretariat

**Brussels, 19 April 2021**

**CM 2663/21**

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PROCED**

**COMMUNICATION**

**WRITTEN PROCEDURE**

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Subject: PUBLIC ACCESS TO DOCUMENTS  
– Complaint 360/2021/TE - Confirmation of the agreement on the reply to the European Ombudsman  
– Outcome of the written procedure initiated by CM 2662/21

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Delegations are informed that the written procedure opened by CM 2662/21 on 14 April 2021 was completed on 19 April 2021 and that the majority of delegations agreed to the draft reply to the European Ombudsman on the Complaint 360/2021/TE, as set out in document 7091/21.

The statement by the Netherlands and Sweden is reproduced in the Annex to this CM.

**Statement by The Netherlands and Sweden**

The Netherlands and Sweden cannot concur with the draft reply to the request for additional observations of the Council as regards the inquiry of the European Ombudsman into complaint 360/2021/TE that disclosure of the documents concerned would seriously undermine the ongoing decision-making process. Considering the restrictive interpretation of this exception by the Court regarding documents that relate to legislative procedures (De Capitani case, T-540/15),

The Netherlands and Sweden believe that it is not sufficiently motivated that there is an actual and concrete risk that full disclosure would seriously undermine the institution's ongoing decision-making process and this risk is reasonably foreseeable and not only hypothetical. Furthermore, The Netherlands and Sweden believe there is an overriding public interest in disclosure considering the subject-matter of the documents involved and the criticism which the Council has received on this matter in the past.

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