



Brussels, 7 May 2021  
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8496/21

LIMITE

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JUR 256  
INST 174

#### 'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Complaint 360/2021/TE to the European Ombudsman - Inspection by the Ombudsman of additional documents held by the Council in the framework of her inquiry - Approval of a letter

1. In their letter of 26 February 2021<sup>1</sup>, the Ombudsman's services informed the General Secretariat of the Council that they had received a complaint concerning the Council's decision of 16 February 2021 confirming a refusal to grant full public access to certain documents related to trilogue negotiations on motor vehicle emissions.
2. For recall, by its decision of 16 February 2021<sup>2</sup>, the Council replied to the confirmatory application of the complainant (under ref. 01/c/01/21) by granting partial access to documents WK 11807/20, 12384/2020, 12384/2020 REV1, WK 13001/20, 13041/20 and WK 14199/20 pursuant to Articles 4(3), first subparagraph, and 4(6) of Regulation (EC) No 1049/2001.

<sup>1</sup> ST 8127/21

<sup>2</sup> CM 1454/21, ST 5122/21

3. In their letter of 26 February 2021, the Ombudsman's services further informed the General Secretariat of the Council of the Ombudsman's decision to open an inquiry of the matter, for the purpose of which they requested an inspection of the concerned WK documents. They also invited the Council to provide additional views in relation to the inquiry, should it deemed it necessary.
4. It is recalled that, in accordance with the first subparagraph of Article 3(2) of the Ombudsman's Statute, "*The Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested from them and give him access to the files concerned.*" Coreper previously already agreed to arrangements regarding the Ombudsman's inspections in the framework of the latter's inquiry into a number of complaints.
5. Coreper approved the letter to the Ombudsman authorising the inspection of the abovementioned WK documents held by the Council in relation to complaint 360/2021/TE on 10 March 2021<sup>3</sup>. The Council provided its additional views as requested by the Ombudsman on 20 April 2021<sup>4</sup>.
6. By letter of 29 April 2021<sup>5</sup>, the Ombudsman informed the General Secretariat of the Council of her decision to inspect the following additional documents : "*Four-column documents that the Council shared with Parliament during the trilogue negotiations in question, including the dates on which these documents were transmitted*".
7. Those documents include the 4-column documents shared with the European Parliament ahead of the first, second and third trilogue on this file. It is to be noted that following an access to documents request, the European Parliament has granted public access under Regulation (EC) 1049/2001 to those documents. However, to this date those documents have not been made public by the Council.

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<sup>3</sup> ST 6707/21

<sup>4</sup> ST 7091/21, CM 2663/21

<sup>5</sup> ST 8481/21

8. Coreper could also allow the consultation by the Ombudsman of those additional documents.  
In view of the exceptional circumstances related to the Covid-19 crisis, it appears appropriate that no inspection meeting requiring physical presence is organised, but the documents could be transmitted to the case-handler of the European Ombudsman by the responsible services of the General Secretariat of the Council.
  9. Coreper is therefore invited to approve, in accordance with Article 19(7)(k) of the Council's Rules of Procedure, the text of the letter in the ANNEX to be sent to the Ombudsman in reply to the letter of 29 April 2021.
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DRAFT

Brussels,

Ms Emily O'Reilly  
European Ombudsman  
1, Avenue du Président Robert Schuman  
B.P. 403  
F-67001 Strasbourg Cedex

**Subject: Inspection of documents held by the Council in relation to complaint 360/2021/TE**

Dear Ms O'Reilly,

Thank you for your letter of 29 April 2021 regarding a complaint concerning the Council's decision of 16 February 2021 by which it replied to a confirmatory application pursuant to Regulation (EC) No 1049/2001 by granting partial access to documents WK 11807/20, 12384/2020, 12384/2020 REV1, WK 13001/20, 13041/20 and WK 14199/20.

Having already received the non-redacted versions of the abovementioned WK documents on 10 March 2021, as well as the Council's additional views in relation to your inquiry on 20 April 2021, you request to inspect the following additional documents : "Four-column documents that the Council shared with Parliament during the trilogue negotiations in question, including the dates on which these documents were transmitted".

I am pleased to inform you that Coreper has agreed to allow the consultation by your services of those documents. Those documents, that are dated, include the 4-column documents shared with the European Parliament ahead of the first, second and third trilogue on this file.

This implies that members of your staff designated to consult the documents concerned may receive a copy of the requested documents. An acknowledgment will be signed by your staff members upon consultation in order to record the fact that the consultation has taken place in relation to the said documents. It is understood that the information thus collected shall be treated as confidential and that it would be destroyed after serving the purpose of reporting to you. My responsible services will contact you in order to arrange for this consultation.

Yours sincerely,

President of Coreper