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## OPINION OF THE LEGAL SERVICE<sup>1</sup>

From:	Legal Service
To:	COREPER
Subject:	European Ombudsman's Own Initiative Inquiry OI/8/2015/FOR against the Council concerning transparency of trilogues - Scope of the Ombudsman's mandate

**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (03.09.2015)**

### I. INTRODUCTION

1. On 26 May 2015 the European Ombudsman launched an Own Initiative Inquiry (OII) against the Council of the EU, the European Parliament and the European Commission as regards the transparency of the trilateral informal meetings that the three Institutions usually hold in the framework of the ordinary legislative procedure, and which are commonly referred to as "trilogues".<sup>2</sup>

<sup>1</sup> This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

<sup>2</sup> ST 9488/15.

2. In the letter opening the OII, the Ombudsman asked the Council to reply by 30 September 2015 to a set of 12 questions, regrouped under four themes: "ongoing trilogues" (questions 1 to 3); "trilogue documents held by the institutions" (questions 4 to 6); "public access to trilogue documents" (questions 7 to 9) and "language regime" (questions 10 to 11). The Ombudsman further informed the Council of her intention to inspect two closed trilogue cases, concerning respectively the Mortgage Credit Directive<sup>3</sup> and the Clinical Trials Regulation.<sup>4</sup>
3. At its meeting on 17 June 2015 COREPER requested the Council Legal Service (CLS) to give its opinion on whether - and to what extent - the Ombudsman's requests fall within the scope of her mandate, as defined by the Treaties.

## II. LEGAL ANALYSIS

4. The scope and the conditions for the exercise of the power of inquiry of the European Ombudsman are defined by Article 228(1) TFUE. According to that provision:

*"A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints (...) concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them.*

*In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. (...)"*

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<sup>3</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) n. 1093/2010 (OJ L60, 28.2.2014, p. 34).

<sup>4</sup> 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 (OJ L 158, 27.5.2014, p. 1).

5. In similar terms, the Ombudsman's Statute provides as follows:<sup>5</sup>

Article 1(2): "*The Ombudsman shall perform his duties in accordance with the powers conferred on the Community institutions and bodies by the Treaties.*"

Article 2(1): "*Within the framework of the aforementioned Treaties and the conditions laid down therein, the Ombudsman shall help to uncover maladministration in the activities of the Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role, and make recommendations with a view to putting an end to it.*" (...)

Article 3(1): "*The Ombudsman shall, on his own initiative or following a complaint, conduct all the enquiries which he considers justified to clarify any suspected maladministration in the activities of Community institutions and bodies.*" (...)

6. The current own initiative inquiry raises two orders of problems in relation to the scope and the conditions for the exercise of the Ombudsman's powers of inquiry as defined by the above provisions: (i) whether and to what extent the inquiry concerns a possible instance of maladministration, and therefore falls within the Ombudsman's mandate and (ii) whether there are sufficient grounds for the Ombudsman to open an inquiry. The two aspects will be addressed in turn.

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<sup>5</sup> The Ombudsman Statute has been adopted by decision of the European Parliament in accordance with the special legislative procedure foreseen in Article 228(4) TFUE on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and subsequently amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).