



**COUNCIL OF
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NOTE

from : General Secretariat

to : Delegations

Subject : Replies to European Ombudsman enquiries addressed to the European Council or to the Council in relation to public access to documents: procedure

1. The purpose of this note is to inform Delegations of the procedure for replying to enquiries from the European Ombudsman in relation to public access to documents of the European Council and of the Council.

2. The following should be noted:
 - a. the procedure to answer Ombudsman's enquiries in relation to public access to European Council documents is being applied for the first time (cf. doc. 12904/12);
 - b. to ensure consistency in the procedures and practices applied in answering Ombudsman's enquiries, the existing practice concerning Council documents is being changed (cf. point 8 below).

3. This note deals with responses to Ombudsman enquiries. It does not cover the processing of applications for public access to documents held by the European Council or by the Council under Regulation No 1049/2001¹ and under the Rules of Procedure (hereinafter referred to as "RoP") of the European Council or of the Council².
4. The Ombudsman, on his own initiative or following a complaint, conducts all the enquiries which he considers justified to clarify any suspected maladministration in the activities of the Union institutions and bodies (Article 3(1) of the Ombudsman's Statute³).
5. When enquiries relate to activities of the European Council or the Council, the Ombudsman addresses them to the Secretary-General of the Council. Article 240 TFEU provides that the Council is assisted by a General Secretariat under the responsibility of the Secretary-General. Article 235 TFEU provides that the European Council shall be assisted by the General Secretariat of the Council.
6. As Ombudsman enquiries relate to administrative matters, they fall within the responsibility of the Secretary-General as head of the administration serving both institutions who replies to such enquiries in respect of the European Council and Council.
7. As regards Ombudsman enquiries addressed to the Council in relation to public access to documents, the existing practice is that the replies are first approved by the Council, although not *legally required*. This practice differs from the one used for replying to enquiries in relation to areas other than public access to documents, where there is no prior approval by the Council of the Secretary-General's reply.

¹ 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 (OJ L 145 of 31.5.2001, p. 43). See also Article 15(3) TFEU.

² Annex II of the Rules of Procedure of the Council (Council Decision No 2009/937/EU, OJ L 325 of 11.1.2009, p. 35) and Article 10 of the Rules of Procedure of the European Council (European Council Decision No 2009/882/EU, OJ L 315 of 2.12.2009, p. 51).

³ Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ L 113 of 4.5.1994, p. 15; OJ L 92 of 9.4.2002, p. 13; OJ L 189 of 17.7.2008, p. 25).

8. In order to ensure consistency among procedures for replying to Ombudsman enquiries, the Secretary-General will from now on reply to the Ombudsman enquiries addressed to the Council, without further steps than those legally required⁴, in the area of public access to documents.

This procedure does not however preclude that:

- a. If relevant, the European Council or Council may be consulted on an ad hoc basis at the appropriate level prior to the finalisation of the reply to the Ombudsman.
- b. The President of the European Council or the President of the Council and the European Ombudsman may decide to contact each other directly.
- c. The European Council and the Council will respectively be kept informed, in an appropriate manner and at the relevant level, of Ombudsman enquiries addressed to the European Council and to the Council and of the replies by the Secretary-General.

⁴ Annex II of the Rules of Procedure of the Council (Council Decision No 2009/937/EU, OJ L 325 of 11.1.2009, p. 35) and Article 10 of the Rules of Procedure of the European Council (European Council Decision No 2009/882/EU, OJ L 315 of 2.12.2009, p. 51).