



Council of the European Union
General Secretariat

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CM 2663/21

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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

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.
