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NOTE

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: 7091/21; 7688/21; 7688/21 ADD 1

Subject: Complaint No 360/2021/TE - European Ombudsman final decision
- Approval of the reply letter

1. By letter of 26 February 2021, the European Ombudsman opened an inquiry into complaint 360/2021/TE concerning the Council's refusal to grant public access documents concerning trilogue negotiations on the proposal for a Regulation on type approval of motor vehicles emissions (interinstitutional file 2019/0101 COD).
2. Following the Council's reply of 24 March 2021¹ to the European Ombudsman's invitation to provide additional observations and the transmission by the Council of relevant documents requested by the European Ombudsman², the European Ombudsman made a solution proposal by letter of 18 June 2021.³

¹ Document 7091/21.

² Documents 6707/21 and 8496/21

³ Document 10138/21.

3. The case concerns the Council's refusal to grant full public access to documents WK 11807/20, ST 12384/2020, ST 12384/2020 REV1, WK 13001/20, ST 13041/20 and WK 14199/20 concerning trilogue negotiations on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information on draft legislation for vehicle emissions.
4. The Council had released to the public the greatest part of those documents, but refused to grant access to some limited parts thereof, since their disclosure would undermine the ongoing decision-making process pursuant to Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001. The Council explained both in its confirmatory decision and before the European Ombudsman, that the requested documents were internal documents drawn-up as part of preliminary consultations within the Council's preparatory instances and that the specific passages that had not been disclosed pertained to the exchange of views necessary for determining beforehand the Council's position and negotiation strategy to be presented in a subsequent trilogue meeting.
5. In its letter of 18 June 2021, the Ombudsman agrees with the Council's reasoning and acknowledges that releasing details on the Council's negotiating strategy, while negotiations on the relevant parts of the legislative text are ongoing, could seriously undermine its negotiating position and, as a consequence, the ongoing decision-making process.
6. The Ombudsman however proposes to give access to three other documents, dated 06.10, 26.10 and 01.12.2020. Those documents were the ones shared with the European Parliament and used as basis for the discussions in the first, second and third trilogue meetings. These three documents had not been identified as falling within the scope of the access to document request and therefore no decision had been taken by the Council on their release. However, those documents have already been made public by the European Parliament following an access to documents request.

7. The General Secretariat proposes to follow the proposal of the Ombudsman. These three documents notably reflect provisional compromises that have been reached in trilogue negotiations or compromise proposals that have been shared with the Council's counterparts in the negotiations and should be released. This solution is also in line with the judgment of the General Court of 22 March 2018, *De Capitani v Parliament* (T-540/15, EU:T:2018:167).
8. Delegations will find herewith a Council's draft reply letter to the Ombudsman. Further to the views expressed by delegations, the draft reply will be submitted to Coreper/Council for approval.

DRAFT LETTER

Brussels,

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

Subject: Ombudsman's proposed solution of 18 June 2021 in case 360/2021/TE

Dear Ms O'Reilly,

The Council refers to the Ombudsman's proposed solution of 18 June 2021 in case 360/2021/TE concerning the Council decision-making process on a draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

On behalf of the Council, I wish to thank you for the good cooperation between our services on this inquiry and I note with pleasure the positive solution you suggest.

The Council takes note of the Ombudsman's proposal that the Council discloses to the applicant the three 4-column documents shared with the European Parliament ahead of the first, second and third trilogue on this file.

The Council has decided to follow your proposal and therefore to grant to the applicant access to the documents concerned.

Yours sincerely,

For the Council
The President