



Press and Information

General Court of the European Union  
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Judgment in Case T-540/15  
De Capitani v European Parliament

## **The European Parliament must in principle grant access, on specific request, to documents relating to ongoing trilogues<sup>1</sup>**

*The work of the trilogues constitutes a decisive stage in the legislative process*

In 2015,<sup>2</sup> Mr Emilio De Capitani asked the European Parliament for access to documents drawn up by the Parliament or made available to it which contain information concerning the positions of the institutions on ongoing co-decision procedures. The request related, in particular, to the multi-column tables drawn up in connection with trilogues.

Those tables generally contain four columns: the first contains the text of the Commission's legislative proposal, the second the position of the Parliament as well as the amendments that it proposes, the third the position of the Council and the fourth the provisional compromise text or the preliminary positions of the Presidency of Council in relation to the amendments proposed by the Parliament.

By a decision of 8 July 2015, the Parliament granted full access to five multi-column tables of the seven which it was able to identify as covered by the applications lodged. As for the other two, the Parliament granted access only to the first three columns of the tables, thereby refusing to disclose the fourth column. The Parliament took the view that the fourth column of the documents at issue contained provisional compromise texts and preliminary positions of the Presidency of Council, the disclosure of which would have actually, specifically and seriously undermined the decision-making process of the institution as well as the inter-institutional decision-making process in the context of the ongoing legislative procedure.

Mr De Capitani brought an action before the General Court against the decision of the Parliament, which had, in the meanwhile, granted access to the documents at issue in 2016 by making them available to the public through the register of parliamentary documents, since the legislative procedure to which they related had been closed.

In today's judgment, the General Court finds, first of all, that even after the making available to the public of the documents at issue, Mr De Capitani did not lose his interest in bringing proceedings, since the alleged unlawfulness is liable to recur in the future independently of the circumstances which gave rise to the action brought.

Next, as regards access to the fourth column of trilogue tables concerning an ongoing legislative procedure and emphasising that the principles of publicity and transparency are inherent to the EU legislative process, the General Court finds that no general presumption of non-disclosure can be upheld on the basis of the nature of a legislative procedure.

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<sup>1</sup> A trilogue is an informal tripartite meeting in which the representatives of the Parliament, the Council and the Commission take part. The aim of such exchanges is to reach a prompt agreement on a set of amendments acceptable to the Parliament and the Council, which must subsequently be approved by those institutions in accordance with their respective internal procedures.

<sup>2</sup> The initial application was made on 15 April 2015. Following the refusal of the Parliament because of the very large number of documents covered, Mr De Capitani lodged a confirmatory application on 19 June 2015 limiting the scope of the initial application.

The General Court notes in that regard that recourse is frequently had to trilogues and that the legislature itself recognises them as an integral part of the legislative procedure, being used in 70 to 80% of legislative procedures. In addition, trilogue meetings are held in camera and the agreements reached in those meetings, usually reflected in the fourth column of trilogue tables, are subsequently adopted — mostly without substantial amendment — by the co-legislators. Trilogue documents are subject to the same rules as set out above, since it is precisely openness in the legislative process that contributes to conferring greater legitimacy on the institutions in the eyes of EU citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole. Access to such documents must therefore be possible on specific request lodged pursuant to the regulation regarding public access to European Parliament, Council and Commission documents,<sup>3</sup> unless the institution concerned proves that it is reasonably foreseeable and not purely hypothetical that full access to the documents at issue is likely to undermine, specifically and actually, its decision-making process.

The General Court notes in that regard that there can be no possibility of the decision-making process being seriously undermined unless a risk of external pressure materialises through the expression of public opinion. If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information. The General Court notes that, in the present case, the legislative proposal at issue concerned the rights of citizens and that the fourth column contained text relating to classic legislative work.

The work of the trilogues constitutes a decisive stage in the legislative process, which entails exemplary adherence to the public's right to access that work and the strict application of the exceptions provided for in the regulation regarding public access to European Parliament, Council and Commission documents.

The General Court therefore annuls the decision by which the Parliament rejected the request for access to the documents on the basis that none of the grounds relied on, considered separately or as a whole, demonstrates that full access to the documents at issue was likely to undermine, under the conditions set out above, the decision-making process at issue.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery*

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<sup>3</sup> 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 2001 L 145, p. 43).