

## **Report on the European Ombudsman's inspection of documents concerning Own-Initiative Inquiry OI/8/2015/JAS involving the European Commission**

Correspondence - 15/09/2015

**Case** OI/8/2015/JAS - **Opened on** 26/05/2015 - **Decision on** 12/07/2016 - **Institutions concerned** European Parliament ( No further inquiries justified ) | Council of the European Union ( No further inquiries justified ) | European Commission ( No further inquiries justified ) |

**Institution or body concerned:** European Commission

**Date and time:** 14 September 2015, 9.30-14:30

**Location:** Brussels, DG FISMA, SPA2 Building

**Inspection carried out by :**

- Mr Fergal Ó Regan, Head of Complaints and Inquiries Unit 2
- Mr Jan Stadler, Complaints and Inquiries Unit 2
- Ms Rosita Agnew, Own-initiative inquiries coordinator (present until 10.30)

### **Introductory and procedural aspects**

The Ombudsman representatives introduced themselves, thanked all services [1] for their cooperation and then set out the objective and purpose of the present inspection within the context of the Ombudsman's own-initiative inquiry on trilogues.

They then outlined the legal framework which applies to the Ombudsman's services when they carry out inspections and informed the Commission staff present that if they identify any documents as confidential, the applicable rules provide that no access may be granted to those documents [2] . The Ombudsman representatives further explained that a report on the inspection would be prepared, sent to the Commission and published on the Ombudsman's website.

### **Objective of the inspection**



The objective of the inspection was to inspect the Commission's file on the trilogues concerning the Mortgage Credit Directive [3] .

## **The inspection of the file**

The Commission representatives provided full access to the Ombudsman representatives to the above-mentioned documents, with the exception of several four-column tables. Of the latter, only two were produced due to their large individual size. The Ombudsman's services agreed to this approach.

At the beginning of the inspection, the Commission representatives provided general information about the Mortgage Credit Directive, explaining its legislative timeline and objectives. The Commission representatives also explained the structure and nature of the files provided to the Ombudsman representatives.

The Ombudsman representatives then proceeded to a thorough inspection of the documents provided by the Commission in order to get a better understanding of the different types of documentation usually produced in connection with trilogues.

The contents of the files that were inspected were as follows:

### **Documents tabled for trilogue sessions:**

- 1st political trilogue, 12/07/12
- Invitation to the trilogue, containing:
  - the draft agenda,
  - document 'CARRP [4] : trilogue overview' (conf.)
  - 4CT [5] Version 9 July 2012
- Decisions and actions document (conf.)
- 1st technical meeting, 25-26/07/12
  - Draft agenda
- 2nd technical meeting, 20-21/09/12
  - Draft agenda
- 2nd political trilogue, 02/10/12
  - Draft agenda, including:
    - Annex: list of proposals from technical meeting (conf.)
- 4CT Version 31 July+25 September 2012 (not req.)
- Decisions and actions document (conf.)



- 3rd technical meeting, 04/10/12
- 4CT Version 4 October 2012 (not req.)
  
- 4th technical meeting, 18-19/10/12
- Draft agenda
- 4CT Version 24 October 2012 (not req.)
  
- 5th technical meeting, 06/11/12
- 4CT Version 23 November 2012 (not req.)
  
- 6th technical meeting, 16/01/13
- Draft agenda
- CTT [6] drafting on advisory services (conf.)
- 4CT Version 18 December 2012 (not req.)
- 4CT Version 21 January 2013 (not req.)
  
- 7th technical meeting, 30/01/13
- Draft agenda with track changes
- Table with Presidency and EP response to silence procedure closing on 17/01/13 (conf.)
- CTT response to written procedure closing on 17/01/13 (conf.)
- 4CT Version 31 January 2013 (not req.)
  
- 8th technical meeting, 12/02/13
- Draft agenda
- CTT working document re. ESIS [7] , parts A and B (conf.)
- Extract on knowledge and competence (conf.)
- Working documents on ESIS, parts A and B revised after meeting (conf.)
- 4CT Version 13 February 2013 (not req.)
  
- 3rd political trilogue, 20/02/13
- Invitation to the trilogue (conf.), containing the draft agenda
- The draft agenda includes the following annexes:
  - Annex 1a: Council non-paper (conf.)
  - Annex 1b: EP non-paper (conf.)
  - Annex 2: non-paper from the technical group (conf.)
- Clarifications on EP drafting suggestions (conf.)
  
- 9th technical meeting, 21/02/13
- Draft agenda
- 4CT Version 20130214TG (not req.)
  
- 10th technical meeting, 26-27/02/13
- Draft agenda with track changes
- 'List of items' for item 1 with track changes (conf.)



- Draft agenda with track changes
- 'List of items' for item 1 with track changes (conf.)
- CTT suggestions for draft compromise on tying (conf.)
- EP non-proposal on scope for discussion (conf.)
- EPTT [8] document on APRC [9] (conf.)
- Table with Presidency and EP response to silence procedure closing on 11/02/13 (conf.)
- CTT comments on silence procedure (conf.)
- 4CT Version 27 February 2013 (not req.)
  
- 4th political trilogue, 06/03/13
- Invitation to the trilogue, containing:
  - the draft agenda
- 4CT Version 5 March 2013 (not req.)
  
- the draft agenda includes the following annexes:
  - Annex 1: EP non-paper on scope (conf.)
  - Annex 2: Extract from 4CT (conf.)
  - Annex 3: Extract from 4CT (conf.)
  - Annex 4: Commission non-paper on tying and bundling (conf.)
  - Annex 5: technical group non-paper on foreign currency loans (conf.)
  - Annex 6: Extract from 4CT (conf.)
  - Annex 7: Extract from 4CT (conf.)
  
- 11th technical meeting, 12-13/03/13
- Draft agenda
- Table with the Presidency and EP responses to silence procedure, with track changes (conf.)
- Commission comments on silence procedure (conf.)
- CTT working documents for item 3 on early repayment, flexible and reliable markets, property valuation and tying and bundling (conf.)
- EPTT suggestions on financial education and general requirements for item 3 (conf.)
- PTT [10] working documents on reflection period for item 4 and remuneration for item 3 (conf.)
- CTT working document for items 3 and item 5 (conf.)
- EP lawyers-linguists suggestions (conf.)
  
- 5th political trilogue, 19/03/13
- Invitation to the trilogue, containing:
  - the draft agenda
- 4CT Version 14 March 2013 (not req.)
  
- The agenda includes the following annexes:
  - Annex 1: proposal on scope from previous political trilogue (conf.)
  - Annex 2a: Commission non paper on the APRC (conf.)
  - Annex 2b: non paper on total cost of credit (conf.)
  - Annex 3a: Commission services non-paper on competent authorities, authorisation and



supervision (conf.)

- Annex 3a (sic): Presidency non-paper on competent authorities, authorisation and supervision (conf.)

- Annex 3b: Indicative and non-exhaustive list of possible EP issues re. competent authorities, authorisation and supervision (conf.)

- Draft agenda with track changes

- The revised agenda includes the following annexes:

- Annex 1: proposal on scope from previous political trilogue (conf.)

- Annex 2a: early repayment: compromise proposals from Commission, Council and EP (conf.)

- Annex 2b: flexible and reliable markets - Commission compromise proposal (conf.)

- Annex 2c: arrears and foreclosures (conf.)

- Annex 3a: conduct and business obligations (conf.)

- Annex 3c (3b): knowledge and competence (conf.)

- Annex 3c: tying and bundling (conf.)

- Annex 3d: advisory services and credit intermediary definition: open issues (conf.)

- Annex 4a: property valuation (conf.)

- Annex 4b: foreign currency loans (conf.)

- Annex 5a: financial education (conf.)

- Annex 5b: reflection period (conf.)

- Annex 5c: delegated acts (conf.)

- Annex 6a: APRC (conf.)

- Annex 6b: total cost of credit/mortgage registration fees (conf.)

- Annex 6c: APRC extract 4-column table (conf.)

- Annex 7a: competent authorities, authorisation and supervision: Commission non-paper (conf.)

- Annex 3a (7b): Presidency non-paper (conf.)

- Annex 3b (7c): competent authorities, authorisation and supervision - indicative and non-exhaustive list of possible EP issues (conf.)

- Annex 7d: general requirements (conf.)

- Annex 8a: explanatory documents/correlation tables (conf.)

- Annex 8b: transitional arrangements (conf.)

- Annex 8c: 2.g.iii. Sanctions Article EP 24/Council 29 (conf.)

- Annex 8d: 2.g.iv. Imperative nature of the Directive (conf.)Article EP29/Council 32

- Annex 9: 2.h. Level of harmonisation (conf.)

- EP follow-up document (conf.)

- COM follow-up document (conf.)

- 12th technical meeting, 11/04/13

- 4CT Version 27 March 2013 (not req.)

- 4CT 20130411tc (not req.) and competent authorities non paper, after discussions (conf.)

- 6th political trilogue, 22/04/13

- Invitation to the trilogue, containing

- the draft agenda



- 4CT Version 18 April 2013 (not req.)
- The draft agenda includes the following annexes:
  - Annex 0: extract from 4CT containing Council proposal (conf.)
  - Annex 1a: technical group proposal based on previous Commission non-paper on APRC (conf.)
  - Annex 1aa: technical group and EP proposals on warning in advertising (conf.)
  - Annex 1b: technical group non-paper on mortgage registration fees (conf.)
  - Annex 2: arrears and foreclosures (conf.)
  - Annex 3: extract from 4CT including Council and EP proposals (conf.)
  - Annex 4: extract from 4CT including Council and EP proposals (conf.)
  - Annex 5: extract from 4CT including technical group proposal (conf.)
  - Annex 6: technical group proposal (conf.)
  - Annex 7a: extract from 4CT (EP proposals) (conf.)
  - Annex 7b: extract from 4CT - technical group proposal (conf.)
- After last trilogue
- 4CT Version 26 April 2013, entitled 20130426tc (3 documents: recitals, articles, annexes)
- Letter from the COREPER [11] chairman to the chairwoman of the EP ECON committee [12] , 08/05/13 (conf.)

## Emails exchanged:

- CTT cover email with drafting on advisory services attached (conf.)
- CTT comments to written procedure launched on 17/12/12 (conf.)
- CTT cover email with comments on ESIS working documents attached (conf.)
- CTT email with comments on silence procedure ending 11/02/13 attached (conf.)
- EPTT cover email with extract on knowledge and competence attached
- EPTT email with clarifications on drafting
- EPTT email with non-proposal on scope attached
- CTT comments on parts under silence procedure launched on 15 February 2013 (conf.)
- CTT cover email with working documents for items on the agenda attached (conf.)
- EPTT cover email with lawyer-linguists' suggestions for items on the agenda (conf.)
- CTT cover email with working documents for items on the agenda attached (conf.)
- EPTT email with drafting suggestions for items on the agenda (conf.)
- CTT cover email with revised non-paper on APRC attached (conf.)

## Internal documents:

- GRI [13] fiche: SI(2012) 141/2, dated 25 May 2012 (conf.)
- GRI fiche: SI(2012) 341/3, dated 29 June 2012 (conf.)
- Report - SG email sent on 13 July 2012 (conf.)
- Report - DG [14] email to Cabinet sent on 13 July 2012 (conf.)



- Report - DG email to Cabinet sent on 27 July 2012 (conf.)
- Report - SG email sent on 3 October 2012 (conf.)
- Report - DG email to Cabinet sent on 3 October 2012 (conf.)
- Report - SG email sent on 21 February 2013 (conf.)
- Report - DG email to Cabinet sent on 21 February 2013 (conf.)
- GRI fiche: SI(2013) 101/4, dated 5 March 2013 (conf.)
- Report - SG email sent on 8 March 2013 (conf.)
- Report - DG email to Cabinet sent on 8 March 2013 (conf.)
- GRI fiche: SI(2013) 130, dated 14 March 2013 (conf.)
- Report - SG email sent on 21 March 2013 (conf.)
- Report - DG email to Cabinet sent on 21 March 2013 (conf.)
- GRI fiche: SI(2013) 202, dated 17 April 2013 (conf.)
- Report - SG email sent on 23 April 2013 (conf.)
- Report - DG email to Cabinet sent on 23 April 2013 (conf.)

In a brief discussion following the inspection of the files, the Ombudsman representatives were able to obtain clarification on certain aspects of the documents provided. They asked the Council and Parliament representatives present to provide two additional four-column documents at the following inspections.

The Ombudsman representatives asked for and obtained copies of the documents provided by the Commission [15] .

The Commission staff stated that, for the purposes of the inspection, the documents marked above as 'conf.' were confidential. The applicable rules provide that no access may be granted to those documents by the Ombudsman [16] . This is without prejudice to the right of citizens to request public access to these documents in accordance with Regulation 1049/2001 [17] .

Finally, the Ombudsman's services expressed their gratitude for the good cooperation of all three institutions involved and present.

The meeting then ended.

Brussels, 15 September 2015

Mr Jan Stadler Legal Officer (case handler)

Mr Fergal Ó Regan Head of Unit

[1] A representative each from the Council of the EU and the European Parliament attended along with their colleagues from the Commission.



[2] Articles 13(3) and 14(2) of the European Ombudsman's Implementing Provisions.

[3] 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) No 1093/2010; OJ 2014 L 60, p. 34.

[4] The Mortgage Credit Directive used to be referred to as Directive on Credit Agreements Relating to Residential immovable Property (CARRP).

[5] Four-column table.

[6] Commission technical team.

[7] European Standardised Information Sheet.

[8] European Parliament technical team.

[9] Annual Percentage Rate of Charge.

[10] Presidency technical team.

[11] Committee of Permanent Representatives.

[12] European Parliament Committee on Economic and Monetary Affairs.

[13] Inter-institutional relations group.

[14] Directorate-General.

[15] The Ombudsman did not request copies of certain documents, indicated in the list as 'not req.', since these documents were readily available from other sources, will be obtained either from the Parliament or the Council or were otherwise not required for the inquiry.

[16] Articles 13(3) and 14(2) of the European Ombudsman's Implementing Provisions.

[17] 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.