

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

Correspondence - 18/01/2018

**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:** Council of the European Union

**Date and time:** 12 November 2015, 10:00-12:00

**Location:** Brussels, Justus Lipsius building

**Inspection carried out by :**

- Mr Fergal Ó Regan, Head of Inquiry Coordination
- Ms Rosita Agnew, Head of Strategic Inquiries

### **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 Council staff present that if they identified any documents to be 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 Council and published on the Ombudsman's website.

### **Objective of the inspection**

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



## The inspection of the file

The Council representatives provided full access to the Ombudsman representatives to the documents in the above-mentioned file.

Following a general discussion on the subject of the inquiry, the Council representatives provided information about the legislative process leading to the adoption of the Mortgage Credit Directive. The Council 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 Council in order to get a better understanding of the different types of documentation usually produced in connection with trilogues.

As most of the documents tabled for the individual trilogue meetings had already been obtained during the inspection of the Commission's file [4], the Ombudsman services asked only for, and obtained, copies of the following internal Council documents [5] :

- Council General Approach of 30 May 2012 (ST 10587/12) (not req.)
- Meeting of the WP [6] on Financial Services of 6 July 2012
- CM [7] 3777/12
- MCD [8] Provisional Agenda 6 July 2012
- MCD flash note 6 July WP (conf.)
  
- Meeting of the WP on Financial Services of 26 September 2012
- CM 4487/12
- MCD provisional Agenda 26 September 2012
- Mortgage Credit Directive - Flash note for the 26 September WP meeting
- 4-columns document of 31 July 2012 (not req.)
  
- Meeting of the WP on Financial Services of 19 November 2012
- Email of 14 November 2012 to announce the meeting
- MCD provisional Agenda 19 November 2012
- 4-columns document of 24 October 2012 (not req.)
- Annex : list of proposals from technical trilogues which will be deemed approved unless objections are raised
- Email of 16 November 2012 to announce the cancellation of the meeting
  
- Meeting of the WP on Financial Services of 18 January 2013
- CM 5892/12
- Agenda for WP at Expert Level on 18.01.2013
- New EP provisions
- Non-paper on EP new Articles for Presidency (conf.)



- Meeting of the WP on Financial Services of 29 January 2013
- CM 1249/13 & 1249/1/13 REV 1
- Agenda
- Article 4(1)
- Article 5(1)
- New EP provisions- compromise text 24.01.13 (clean version) (conf.)
- New EP provisions- compromise text with track changes 24.01.13 (conf.)
  
- Meeting of the WP on Financial Services of 13 February 2013
- CM 1452/13
- Agenda
- Knowledge and competence extract
- Knowledge and competence provisions (7 February 2013)
- New EP provisions- compromise text (clean version) 07.02.13 (conf.)
- New EP provisions- compromise text with track changes 07.02.13 (conf.)
  
- Meeting of the WP on Financial Services of 4 March 2013
- CM 1790/13
- Agenda
- 01-03-2013- Pre-contractual information - reflection period
- DK 4CT [9] APRC [10] technical trilogue 26 Feb 2013 (not req.)
- Draft compromise proposal on "Tying and related unfair commercial practices" (conf.)
- EP non-paper - Remuneration - Article 5 (conf.)
- EP non-paper Scope revised 2013.02.22 CARRP [11] TG [12] with comments (conf.)
- Non-paper from the technical group (conf.)
- Pre-contractual information - reflection period (conf.)
- Presidency comments on Article 5 (conf.)
  
- Meeting of the WP on Financial Services of 11 March 2013
- CM 1914/13
- Agenda
- Article 18b Arrears and Foreclosure (with track changes) (conf.)
- Idem (clean version) (conf.)
- Draft compromise on "Early Repayment" (conf.)
- Presidency Flash Report - MCD Political Trilogue, 6 March (conf.)
- Draft proposal on Flexible and Reliable Markets points 3 and 5 (conf.)
- Presidency Note on Advisory Services (8.03.2013) (conf.)
- Idem (11.03.2013) (conf.)
- Presidency note on APRC (08.03.2013) (conf.)
- Presidency note on Knowledge and Competency (07.03.2013) (conf.)
- Presidency note on Reflection period (07.03.2013) (conf.)
- Presidency note on Remuneration (07.03.2013) (conf.)
- Draft proposal on Property Valuation (conf.)
- Scope after 06.03.2013 trilogue (conf.)
- Compromise proposal on "Tying and related unfair commercial practices" (conf.)



- Meeting of the WP on Financial Services of 18 March 2013
- CM 1981/13 & 1981/1/13 REV 1
- Agenda
- COM [13] Services Non-Paper on APRC (not req.)
- Presidency Paper: 15 March 2013 (conf.)
- Commission Services Non-Paper on "Early Repayment" (not req.)
- Presidency draft compromise on "Early Repayment" (conf.)
- Arrears and foreclosure - Presidency compromise proposal (clean version) (conf.)
- Idem (with track changes) (conf.)
- COM Services Non-Paper on Property Valuation (not req.)
- Property Valuation - Presidency compromise amended (clean version) (not req.)
- Idem (with track changes) (not req.)
- Property Valuation - Presidency compromise (not req.)
- Financial Education - EP non-paper (not req.)
- General Requirements - EP non-paper (not req.)
- Presidency note on Correlation tables (15.03.2013) (conf.)
- Flexible and Reliable Markets points 3 and 5- COM proposal (not req.)
- Presidency note on Advisory services (14.03.2013) (not req.)
- Presidency note on Outcome of technical trilogues (15.03.2013) (conf.)
- Presidency note on Reflection period (15.03.2015) (not req.)
- Presidency note on Remuneration (not req.)
- Presidency note on Knowledge and competence provisions (14.03.2013) (not req.)
- Tying and related unfair commercial practices (not req.)
- FX loans [14] revised text from TG 13.03.13 (not req.)
- Presidency Note on Competent Authorities Authorisation and Supervision (not req.)
- Presidency Paper on Final provisions (15.03.2013) (not req.)
- 4-columns document - TABLE 1 : RECITALS - 13.03.2013 (not req.)
- 4-columns document - TABLE 2 : ARTICLES - 13.03.2013 (not req.)
- 4-columns document - TABLE 3 : ANNEXES - 13.03.2013 (not req.)
- Presidency note on Remuneration (not req.)
- Revised Presidency Paper on Final provisions -18.03.2013 (not req.)
  
- Post meeting papers
- Article 18b Arrears and Foreclosure (clean version) (not req.)
- Idem (with track changes) (not req.)
- Presidency Draft compromise on "Early Repayment" (clean version) (not req.)
- Idem (with track changes) (not req.)
- Presidency Draft proposal on Property Valuation (clean version) (not req.)
- Idem (with track changes) (not req.)
- Presidency proposal on Knowledge and Competence Provisions (18.03.2013) (clean version) (not req.)
- Idem (with track changes) (not req.)
- Tying (Art. 8a) (clean version) (not req.)
- Idem (with track changes) (not req.)



- Tying and Bundling amended text following WP 180313 (not req.)
- Follow-up late March 2013
  - Authorisation and supervision (27.03.2013) (not req.)
  - 4-columns document - TABLE 1 : RECITALS (27.03.2013) (not req.)
  - 4-columns document - TABLE 2 : ARTICLES (27.03.2013) (not req.)
  - 4-columns document - TABLE 3 : ANNEXES (27.03.2013) (not req.)
  - Commission Services Non Paper on APRC (27.03.2013) (not req.)
  - Presidency MCD note (27.03.2013) (conf.)
- Meeting of the Working Party on Financial Services of 10 April 2013
  - CM 2282/13
  - Agenda
  - Arrears and Foreclosure Presidency compromise wording following political trilogue 19.03.13 (not req.)
  - Authorisation and supervision (27.03.2013) (not req.)
  - 4-columns document - TABLE 1 : RECITALS (27.03.2013) (not req.)
  - Commission Services Non Paper on APRC (27.03.2013) (not req.)
  - Flash Report on MCD Trilogue 19 March 2013 (conf.)
  - Flash Report on MCD (27.03.2013) (conf.)
- Follow-up 15 April 2013
  - Follow-up Authorisation and supervision (not req.)
  - Follow-up on competent authorities (not req.)
  - 4-columns document - TABLE 1 : RECITALS (11.04.2013) (not req.)
  - 4-columns document - TABLE 2 : ARTICLES (11.04.2013) (not req.)
  - 4-columns document - TABLE 3 : ANNEXES (11.04.2013) (not req.)
  - Recital 14(d) - Property valuation (not req.)
  - Presidency Flash Note - 15.04.2013 (conf.)
- 22 April 2013 trilogue follow-up
  - 30 April version MCD consolidated text (not req.)
  - 4-columns document - TABLE 1 : RECITALS (26.04.2013) (not req.)
  - 4-columns document - TABLE 2 : ARTICLES (26.04.2013) (not req.)
  - 4-columns document - TABLE 3 : ANNEXES (26.04.2013) (not req.)
- COREPER [15] 8 May 2013
  - Letter to the Chairwoman of the Economic and Monetary Affairs Committee (not req.)
  - Document 8894/2/13 REV 2 of 6 May 2013 ("I" Item Note)
  - Document 8895/13 (+ COR 1 & 2) of 3 May 2013 : Text provisionally agreed with the EP (not req.)
- COREPER 27 November 2013
  - Letter to the Chairwoman of the Economic and Monetary Affairs Committee (conf.)
  - Document 16698/13 ("I" Item Note)



- Document 16330/13 of 25 November 2013 (Note to delegations) (not req.)

The Council 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, 25 November 2015

Ms Rosita Agnew Head of Strategic Inquiries

Mr Fergal Ó Regan Head of Inquiry Coordination

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

[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] Please see the relevant inspection report.

[5] The Ombudsman did not consider it necessary to request copies of certain documents, indicated in the list as 'not req.', since these documents were not required for the inquiry, already contained within other documents or otherwise readily available from other sources. Some documents were not obtained in their entirety as they are publicly available on the Council register.

[6] Working party.

[7] Communication.



[8] Mortgage Credit Directive.

[9] Four-column table.

[10] Annual Percentage Rate of Charge.

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

[12] Technical group.

[13] European Commission.

[14] Foreign exchange loans.

[15] Committee of Permanent Representatives.

[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.