



## **Transparency of the Council Legislative Process - Report on the European Ombudsman's inspection of documents and meetings**

Report - 23/01/2018

**Case** OI/2/2017/TE - **Opened on** 10/03/2017 - **Recommendation on** 09/02/2018 - **Special report on** 16/05/2018 - **Decision on** 15/05/2018 - **Institutions concerned** Council of the European Union ( Closed after Special Report ) | Council of the European Union ( Maladministration found ) |

### **Strategic Inquiry OI/2/2017/TE**

**Title: Transparency of the Council Legislative Process**

**Date: Tuesday, 23 January 2018**

**Physical location: Brussels, Justus Lipsius building**

### **Inspection carried out by:**

- Mr Fergal O'Regan, Head of Coordination of Public Interest Inquiries
- Ms Tanja Ehnert, Strategic Inquiries
- Mr Jan Stadler, Inquiry Unit 4
- Mr Maximilian Kemp, Strategic Inquiries

### **Introduction and procedural information**

The Ombudsman representatives introduced themselves, thanked all Council representatives for their cooperation and then set out the objective and purpose of the present inspection within the context of the Ombudsman's strategic inquiry on the



transparency of the Council legislative process.

They then outlined the legal framework which applies to the Ombudsman's office when carrying out inspections and informed the Council staff present that if they identified any documents to be confidential, the applicable rules provide that these documents will not be disclosed without the prior agreement of the Council. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended [1].

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.

## **Purpose of the inspection meeting**

The objective of the inspection was to inspect three Council legislative files closed in 2016, namely the Data Protection Regulation [2], the Decision on tackling undeclared work [3] and the Directive on the accessibility of websites and mobile applications of public sector bodies [4]. The aim was to obtain an overview of the General Secretariat of the Council (GSC)'s practice regarding the recording, marking and disclosing of preparatory documents relating to the legislative process.

## **Inspection of the files**

The Council representatives provided full access to the Ombudsman representatives to the documents in the above-mentioned files. They also explained the structure and nature of the files provided to the Ombudsman representatives.

The Ombudsman representatives obtained copies of the following documents tabled during the meeting:

- Documents related to the Data Protection Regulation

- o A list of documents [5] :

- § 12682/12 (conf.)

- § 18031/13 (conf.)

- § 15712/14 (conf.)

- § 15712/1/14 REV 1 (DE) (conf.)

- § DS [6] 1675/12



§ DS 1197/14

§ DS 1367/15

§ DS 1386/15

§ DS 1384/15

o Email correspondence concerning publication of preparatory documents:

§ 2012/0011 (COD) - 16/1281-jj - (conf.)

o Email correspondence concerning access requests to documents:

§ ref. 15/1605 [7] (conf.)

§ ref. 12/1467 (conf.)

§ ref.12/467 (conf.)

§ ref. 12/1678 (conf.)

§ ref. 13/1712 (conf.)

§ ref. 13/0379 (conf.)

§ ref. 13/2095-2185-2187 (conf.)

§ ref. 15/1835 (conf.)

§ ref. 15/1972 (conf.)

§ ref. 15/0817 (conf.)

§ ref. 13/0895-0896 (conf.)

§ ref. 13/0937 (conf.)

§ ref. 13/1649 (conf.)

§ ref. 13/1263 (conf.)

§ ref. 13/1553 (conf.)

§ ref. 13/1579 (conf.)



§ ref. 13/1730 (conf.)

§ ref. 13/1767 (conf.)

§ ref. 13/1786-1789 (conf.)

§ ref. 13/1832-1880 (conf.)

§ ref. 13/1830-1843 (conf.)

§ ref. 13/1915-1938 (conf.)

§ ref. 13/2023 (conf.)

§ ref. 13/2061-2067-2074-2075-2076-2085 (conf.)

§ ref. 13/2108 (conf.)

§ ref. 13/2095-2185-2187 (conf.)

§ ref. 13/2204 (conf.)

§ ref. 13/2228 (conf.)

§ ref. 13/2234 (conf.)

§ ref. 14/0346-0347 (conf.)

§ ref. 15/2978 (conf.)

§ ref. 14/0733-0738 (conf.)

§ ref. 14/0075 (conf.)

§ ref. 14/0085 (conf.)

§ ref. 14/0156 (conf.)

§ ref. 14/0625-0629-0644-0645 (conf.)

§ ref. 14/0216-0230 (conf.)

§ ref. 14/0295-0318 (conf.)

§ ref. 14/0346-0347 (conf.)



- § ref. 14/0450-0474 (conf.)
- § ref. 14/0558-0560 (conf.)
- § ref. 14/0892 (conf.)
- § ref. 14/0581 (conf.)
- § ref.14/0848-0868-0869-0870 (conf.)
- § ref. 14/0760-0778 (conf.)
- § ref. 14/0905-0941 (conf.)
- § ref. 14/0951 (conf.)
- § ref. 14/0905-0941 (conf.)
- § ref. 14/1025 (conf.)
- § ref. 14/1059 (conf.)
- § ref. 14/1181 (conf.)
- § ref. 14/1226 (conf.)
- § ref. 14/1232 (conf.)
- § ref. 14/1251 (conf.)
- § ref. 14/1352 and 14/1366 (conf.)
- § ref. 14/1482 (conf.)
- § ref. 14/1612 (conf.)
- § ref. 14/1607 (conf.)
- § ref. 14/1654 (conf.)
- § ref. 14/1647 (conf.)
- § ref. 14/1672 (conf.)
- § ref. 14/1704 (conf.)



§ ref. 14/1719 (conf.)

§ ref. 14/1801 and 14/1828 (conf.)

§ ref. 14/1867 (conf.)

§ ref. 14/1911-1920-1923-1924-1935-1936 (conf.)

§ ref. 14/1964 and 14/1990 (conf.)

§ ref. 14/2234, 14/2250 and 14/2251 (conf.)

§ ref. 14/2149 and 14/2131 (conf.)

§ ref. 14/2086, 14/2087 and 14/2109 (conf.)

§ ref. 14/2149 and 14/2131 (conf.)

§ ref. 14/2174 (conf.)

§ ref. 14/2183 and 14/2202 (conf.)

§ ref. 14/2234, 14/2250 and 14/2251 (conf.)

§ ref. 14/2426 (conf.)

§ ref. 14/2451 (conf.)

§ ref. 15/0009 (conf.)

§ ref. 15/0083 (conf.)

§ ref. 15/02015 (conf.)

§ ref. 15/0226 (conf.)

§ ref. 15/0354 (conf.)

§ ref. 15/0382 and 15/0364 (conf.)

§ ref. 15/0451 (conf.)

§ ref. 15/0505 (conf.)

§ ref. 15/0083 (conf.)



§ ref. 15/0129, 15/0138 and 15/0139 (conf.)

§ ref. 15/0215 and 15/0167 (conf.)

§ ref. 15/0261 (conf.)

§ ref. 15/0305 (conf.)

§ ref. 15/0382 and 15/0364 (conf.)

§ ref. 15/0440 and 15/0468 (conf.)

§ ref. 15/0510 (conf.)

§ ref. 15/0620 (conf.)

§ ref. 15/758 (conf.)

§ ref. 15/0789, 15/0790 and 15/0829 (conf.)

§ ref. 15/0913 and 15/0914 (conf.)

§ ref. 15/0955 and 15/1047 (conf.)

§ ref. 15/1064 (conf.)

§ ref. 15/1091 (conf.)

§ ref. 15/1154 (conf.)

§ ref. 15/1131 (conf.)

§ ref. 15/1261 (conf.)

§ ref. 15/1210 (conf.)

§ ref. 15/1260 (conf.)

§ ref. 15/1259 (conf.)

§ ref. 15/1396 (conf.)

§ ref. 15/1386 (conf.)

§ ref. 15/1331 (conf.)



§ ref. 15/1329 (conf.)

§ ref. 15/1392 (conf.)

§ ref. 15/1406 (conf.)

§ ref. 15/1425 and 15/1444 (conf.)

§ ref. 15/1464 (conf.)

§ ref. 15/1501 (conf.)

§ ref. 15/1493 and 15/1495 (conf.)

§ ref. 15/1511 (conf.)

§ ref. 15/1531 (conf.)

§ ref. 15/1596 (conf.)

§ ref. 15/1718 (conf.)

§ ref. 15/1756 (conf.)

§ ref. 15/1795 (conf.)

§ ref. 15/2386, 15/2396 and 15/2411 (conf.)

§ ref. 15/2457 (conf.)

§ ref. 15/2245 and 15/2246 (conf.)

§ ref. 15/2300 (conf.)

§ ref. 15/2386, 15/2396 and 15/2411 (conf.)

§ ref. 15/2426 (conf.)

§ ref. 15/2489 (conf.)

§ ref. 15/2556-2557-2558-2580 (conf.)

§ ref. 15/2675 and 15/2665 (conf.)

§ ref. 15/2759 (conf.)





§ ref. 15/2720 (conf.)

§ ref. 15/2829, 15/2835, 15/2774, 15/2773 (conf.)

§ ref. 15/2859 (conf.)

§ ref. 15/2912 (conf.)

§ ref. 15/2929 (conf.)

· Documents related to the Decision on tackling undeclared work

o A list of documents:

§ 9008/14

§ 9008/1/14 REV 1 (MT)

§ 9232/14

§ 9299/14

§ 9578/14

§ 9912/14

§ 9920/14

§ 9921/14

§ 10182/14

§ 10132/14

§ 10558/14

§ 10558/14 ADD 1

§ 10558/14 COR 1

§ 10558/14 COR 2

§ 10558/14 ADD 1 COR 1

§ 10620/14 (EN/PT)



§ 10887/14

§ 10558/1/14 REV 1

§ 10558/14 ADD 1 REV 1

§ 10871/14

§ 10871/14 ADD 1

§ 11074/14 (EN/IT)

§ 11418/14 (EN/ES)

§ 11531/14 (EN/DE)

§ 11927/14

§ 11927/14 COR 1

§ 13297/14

§ 13297/14 ADD 1

§ 13589/14 (EN/IT)

§ 13667/14

§ 13667/14 ADD 1

§ 13667/14 COR 1

§ 13893/14 (EN/RO)

§ 13246/15

§ 13246/15 COR 1

§ 5675/16

§ PE 64/15

§ PE 64/1/15 REV 1 (PT)

§ 5967/16



§ PE 64/2/15 REV 2

o Email correspondence concerning publication of preparatory documents:

§ 2014-0124 (COD) - 17-0130-jj (conf.)

o Email correspondence concerning access to documents:

§ ref. 14/1051 (conf.)

· Documents related to the Directive on the accessibility of websites and mobile applications of public sector bodies

o A list of documents:

§ 17344/12

§ 17344/12 ADD 1

§ 17344/12 ADD 2

§ 5727/13 (EN/PT)

§ DS 1179/13

§ 9691/13

§ 9762/13

§ 10089/13

§ 6835/14

§ 10016/14

§ 13862/14

§ 15491/14

§ 15512/14

§ 5418/15

§ 7116/15

§ 7888/15



§ 8435/15

§ 8850/15

§ 8977/15

§ 13204/15

§ 13886/15

§ 14164/15

§ 14663/15

§ 14164/15 COR 1

§ 15127/15

§ 15127/1/15 REV 1

§ 5474/16

§ 5669/16

§ 5919/16

§ 6169/16

§ 6561/16

§ 6796/16

§ 6958/16

§ 7552/16

§ 7816/16

§ 7897/16

§ 7897/1/16 REV 1

§ 8897/16

§ 9043/16



§ 9464/16

§ 9465/16

§ 9389/16

§ 9389/16 ADD 1

§ 10790/16

§ 9389/1/16 REV 1

§ 9389/1/16 REV 1 ADD 1

§ 11407/16

§ 11616/16

§ 13683/16

§ PE 38/16

§ 13919/16

§ 5747/17

§ 11080/17

o Email correspondence concerning publication of preparatory documents:

§ 2012/0340 (COD) -17/0177-jj (conf.)

o Email correspondence concerning access to documents

§ ref. 13/1113 (conf.)

§ ref. 14/1877 (conf.)

§ ref. 14/2279 (conf.)

§ ref. 15/0116 (conf.)

§ ref. 15/0647 (conf.)

§ ref. 15/1015 (conf.)



§ ref. 15/2534 (conf.)

§ ref. 15/2685 (+15/2787) (conf.)

§ ref. 16/0016 (conf.)

§ ref. 16/0181 (conf.)

§ ref. 16/0308 (conf.)

§ ref. 16/0367 (conf.)

§ ref. 16/0480 (conf.)

§ ref. 16/0599 (conf.)

§ ref. 16/0892 (conf.)

§ ref. 16/0963 (conf.)

§ ref. 16/1009 (conf.)

· Internal Note 2/15 - Subject: Workshop on the principles governing the drafting of documents relating to the Council's on-going legislative activities - Summary and main conclusions (conf.)

The Council staff stated that, for the purposes of the inspection, the documents marked above as 'conf.' were confidential. The applicable rules provide that those documents will be deleted from the Ombudsman's files shortly after the inquiry has ended [8] . This is without prejudice to the right of citizens to request public access to these documents in accordance with Regulation 1049/2001 [9] . The documents not marked as 'conf.' are already accessible to the public.

Finally, the Ombudsman's services expressed their gratitude for the good cooperation of the Council representatives involved and present.

The meeting then ended.

Fergal O'Regan

Head of Coordination of Public Interest Inquiries

Tanja Ehnert



Legal Officer, Strategic Inquiries

Brussels/Strasbourg, 9 February 2018

[1] In accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces>

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

[3] Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work.

[4] Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.

[5] The documents related to the Data Protection Regulation which are available in the Council's Documents Register were not handed over by the Council given their very high number (381).

[6] Document de séance.

[7] Reference of the access to document request under 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.

[8] In accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces>

[9] 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.