



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 April 2012

8825/12

OMBUDS	3
INST	279
INF	68
API	49
JUR	225

COVER NOTE

From : Mr P. Nikiforos DIAMANDOUROS, European Ombudsman
Dated : 11 April 2012
To : Mr Uwe Corsepius, Secretary General

Subject : Complaint 531/2012/MMN made by Mr Olivier HOEDEMANN the European Ombudsman

Delegations will find at Annex copy of a letter sent by the European Ombudsman to the Council concerning complaint 531/2012/MMN.



European Ombudsman

0531/2012/MMN
S2012-153412

P. Nikiforos Diamandouros
European Ombudsman

European Council
To the attention of Mr Uwe Corsepius
Secretary-General of the Council of the
European Union
1048 BRUSSELS
BELGIQUE

Strasbourg, 11-04-2012

Complaint 531/2012/MMN

Dear Mr Corsepius,

On 9 March 2012, I received a complaint from Mr Olivier Hoedeman against the European Council concerning a request for access to documents relating to meetings and correspondence with the Institute of International Finance ("IIF").

In his complaint, Mr Hoedeman submitted the following allegation and claim, which I decided to include in my inquiry.

Allegation:

The European Council failed to grant access to documents requested by the complainant pursuant to Regulation 1049/2001, namely the following:

- (i) the minutes (and notes) of meetings with the IIF before, during and after the Euro-zone summits and the European Council summits of 21 July, 23 October and 26 October 2011;
- (ii) correspondence with (representatives of) the IIF before, during and after the Euro-zone summits and the European Council summits of 21 July, 23 October and 26 October 2011; and
- (iii) documents submitted by (representatives of) the IIF before, during and after the Euro-zone summits and the European Council summits of 21 July, 23 October and 26 October 2011.

Claim:

The European Council should grant access to the documents requested by the complainant.

In accordance with Articles 2(2) and 3(1) of the Statute of the European

1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

T. + 33 (0)3 88 17 23 13
F. + 33 (0)3 88 17 90 62

www.ombudsman.europa.eu
eo@ombudsman.europa.eu



Ombudsman, I inform you of this complaint and invite you to submit an opinion on the above allegations and claims by 31 July 2012.

As a preliminary matter, I wish to emphasise that when an EU institution states, in reply to a request for access to documents, that it does not hold the documents to which access is requested, there is normally no reason to doubt the veracity of such a statement. In such a case, there would be no reason for the Ombudsman to open an inquiry. I note, however, that in the present case the European Council subsequently modified its initial statement that it did not hold any relevant documents and identified two relevant documents that could fall within the scope of the request for access.

In view of these circumstances, I take the view that it is appropriate to open an inquiry in order to clarify the situation. I would therefore be grateful if the European Council could, in its opinion, clarify whether it holds any additional documents which fall within the scope of the complainant's request for access. I would also very much appreciate it if the European Council could further explain the reasons why the two documents it identified fall in their entirety within the scope of the exception established in Article 4(1)(a) fourth indent of Regulation 1049/2001.

I will forward your opinion to the complainant for possible observations.

As regards the complainant's allegation that the European Council should have taken minutes of the meetings with the IIF, in case it failed to do so, I decided that this allegation is inadmissible for lack of appropriate administrative approaches.

Enclosed, please find a copy of the complaint.

Yours sincerely,

P. Nikiforos Diamandouros

cc: Mr Hubert Legal and Dr Richard Corbett.

Enclosure (sent by e-mail):

- Copy of complaint 531/2012/MMN

From: olivier@corporateeurope.org
Sent: 09 March 2012 12:40
To: EORRegistry
Subject: [EOWEB#9501] New complaint from: olivier@corporateeurope.org
Follow Up Flag: MMN (EB)
Flag Status: Blue
Attachments: EN.html

Your complaint has been submitted to the European Ombudsman. We will send you an acknowledgement of receipt within a few days.

NB - Please note that this e-mail was sent from a notification only e-mail address. If you wish to contact technical support, please use the link below:

[Contact technical support](#)

Sender

From: olivier@corporateeurope.org
Date: Friday, March 9, 2012 12:39:45 PM CET
EOWEB_COMPLAINT_ID: 9501

Complaint about maladministration

Part 1 - Contact information

First name: Olivier
Surname: Hoedeman
On behalf of (if applicable):
Address line 1: Rue d'Edimbourg 26
Address line 2:
Town/City: Brussels
County/State/Province:
Postcode: 1050
Country: Belgium
Tel.: +32 (0)2 893 0930
Fax:
E-mail address: olivier@corporateeurope.org



Part 2 - Against which European Union (EU) institution or body do you wish to complain?

European Council

Part 3 - What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

On 27 October 2011, Olivier Hoedeman requested a number of documents under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001. These documents were:

- all minutes (and other notes) of discussions with (representatives of) the Institute of International

Finance (IIF) before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011.

- correspondence with (representatives of) the Institute of International Finance before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011.

- documents submitted by (representatives of) the Institute of International Finance before, during and after the Euro Summits and European Council summits of July 21st, October 23rd and October 26th 2011.

The European Council's response on 12th December 2011 was not satisfactory/failed to deal with key points [?]. On 30th December 2011, Olivier Hoedeman asked for an internal review. He received a second response on 14th February 2012, which again failed to deal with key points. I am contacting the Ombudsman in order to complain about the way the European Council handled this request.

A full history of this request and all correspondence is available online:
http://www.asktheeu.org/en/request/the_role_of_the_institute_of_int#incoming-104

Part 4 - What do you consider that the EU institution or body has done wrong?

In its response on 12th December 2011, the Council argued that neither the General Secretariat of the Council, the Council or the European Council held documents corresponding to the request other than those which were already public.

It also stated: "The contacts which took place with representatives of the Institute of International Finance (IIF) before, during and after the above-mentioned summits, consisted of discussions between one Member State, namely Greece and private investors holding Greek bonds, to the degree that they are represented by the IIF".

Following this reply, Mr. Hoedeman requested an internal review and explained that there was ample evidence that the discussions involved not only Greece, but also the European Council more generally, including German Chancellor Angela Merkel and French President Nicolas Sarkozy. This can be seen from, for instance, the Wall Street Journal's article "Deepening Crisis Over Euro Pits Leader Against Leader".

(<http://online.wsj.com/article/SB10001424052970203391104577124480046463576.html>).

More evidence can be found in a document by IIF dated 22/09/2011 (attached) in which IIF states: "The elements of a possible approach to PSI (private sector involvement) were developed and were finally agreed with key Euro Area and Greek Officials, and eventually with the Heads of the Euro Area States/Governments and EU Institutions/IMF at their meeting of July 21, following negotiations led by IIF Board Chairman Josef Ackermann".

After the July summit, the Greek media mentioned a conference call involving the IIF's general director, Charles Dallara, with top EU officials such as Eurogroup chair Jean-Claude Juncker and European Commissioner Olli Rehn, in which the implementation of the July summit decisions were discussed (Athens News, "Venizelos: EU summit decisions must be quickly applied", 09/08/2011, <http://www.athensnews.gr/portal/11/45974>).

And Dallara's name appears again in media coverage of the Euro summits in October, when, according to media reports, there were two encounters in the office of Council President Herman Van Rompuy. The President of France, Nicolas Sarkozy, the Chancellor of Germany, Angela Merkel, and the representatives of the banks were also present. These encounters were described as crucial and decisive for the outcomes of the summits (Missé, Andreu, "Asuman la quita del 50% o preparense", en El País, 30/10/2011, http://www.elpais.com/articulo/economia/Asuman/quita/preparense/elpepieco/20111030elpepieco_5/Tes).

Bloomberg reported that "Europe's leaders took the unusual step of summoning the banks' representative, managing director Charles Dallara of the Institute of International Finance, into the summit to break the deadlock over how to cut Greece's debt" (Neuger, James G. and Bodoni, Stephani, "EU Sets 50% Greek Writedown, \$1.4T in Crisis Fight", Bloomberg, 27/10/2011, <http://www.bloomberg.com/news/2011-10-27/europe-leaders-set-50-greek-writedown-1-4-trillion-in-debt-crisis-fight.html>).

When questioned by German non-profit watchdog organisation LobbyControl in October 2011, the IIF said by email (see document attached) that it "had sought to facilitate discussions between a wide array of private investors, including non-member IIF firms, and the official sector, including EU officials, the European Central Bank and the IMF.

IIF also stated explicitly that "Mr. Dallara and an IIF team had extensive meetings with very senior European government officials over several weeks". Yet the Council claimed in its first response to Mr. Hoedeman that only the Greek government had met with the IIF.

In its response to LobbyControl, the IIF mentioned the involvement of three of its representatives (Joseph Ackerman, Charles Dallara and Baudouin Prot) in encounters with a range of EU officials during the summit. Nonetheless, the minutes of these meetings have not been disclosed.

We believe that there must be documents related to all the above-mentioned encounters (including correspondence before and after, minutes and notes, etc.). These are examples of the kind of documents that should be covered by our request for access to documents, but which the Council has refused to release.

On 14th February 2012, Mr. Hoedeman received a reply from the European Council, in which this institution acknowledged that "diverse direct contacts have necessarily occurred between the various entities involved in the negotiations" and "documents may have been communicated between various entities". However, it only identified one document corresponding to the request, which is quite surprising. Media reports show the IIF was very active in the summits and it doesn't appear credible that there are no more documents. This is why I believe this is a case of unjustified refusal of access to information. In the first response from the Council not even this one document was mentioned, which is also a sign of maladministration.

As has been shown above and as the Council itself admits in his letter, "diverse direct contacts and meetings must have occurred", and therefore, I assume notes must have been taken. Consequently, there should be minutes from these encounters. If meetings took place but no minutes were taken, this would also indicate maladministration.

It also seems worrying to me that the Council argued that it is "only as far as the European Council or its General Secretariat received and actually hold any documents which have been exchanged in the negotiations that such documents come under the scope of the Regulation 1049/2001". This seems a far too limited interpretation of Regulation 1049/2001. Arguing that parts of the Summit (such as the meetings with the IIF) can be defined as not being part of the Council's summit raises serious questions creating a dangerous grey area where EU transparency rules do not apply.

The document which the Council refers to is "an email containing a letter from Mr. Charles Dallara and Mr. Jean Lemierre, representatives of the IIF, to Mr. Evangelos Venizelos, Greek Minister of Finance, has been sent by Mr. Charles Dallara to the President of the Euro Summit relating to the agreement reached at the October 2011 Euro-Summit and its follow-up". The Council refuses to release this document, arguing that its disclosure "would be detrimental to the protection of the public interest".

I believe this refusal of access to information is maladministration. The document consists of an email and a letter attached. I can hardly imagine the exceptions referred to by the Council can apply to the content of the email, nor do I believe they can apply to the letter as a whole. So this document (or rather these two documents, the email and the attachment), or at least part of it should have been released.

The European Council states it has consulted the third-party author of the document, in accordance with article 4, paragraph 4 of Regulation 1049/2001, with a view to assessing whether an exception is applicable. According to the European Council, the originator of the document said its disclosure would undermine the protection of the public interest.

I find this argument flawed, because I do not believe paragraph 4 of article 4 can apply to a decision where the public interest is being assessed, but only to the exceptions where a personal interest (privacy, commercial interests, integrity of the individual) may be in danger. As this is not the case, I consider the Council was not under any obligation to take into account the opinion of this third-party.

Part 5 - What, in your view, should the institution or body do to put things right?

Regarding the above-mentioned document(s), I would like to request the Ombudsman to assess it in order to

clarify if its disclosure is really as dangerous and damaging as the Council claims. I believe the email should be disclosed in any case, as well as the letter, with parts of it redacted if the Ombudsman considers that this is really necessary.

Apart from that, I believe there must be more documents corresponding to the request and would ask the European Council to identify these and release them. This should include, but not be limited to, the minutes from all the meetings referred to above.

Part 6 - Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes (please specify)

Yes, as stated before, the Council was first contacted on 27th October 2011, and then again on 30th December 2011. In its last response (14th February 2012), the Council informed us that, pursuant to article 8 (1) of Regulation (EC) 1049/2001, we had the option of making a complaint to the Ombudsman.

Part 7 - If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Part 8 - Has the object of your complaint already been settled by a court or is it pending before a court?

No

Part 9 - Please select one of the following two options after having read the information in the box below:

Please treat my complaint publicly

Part 10 - Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes
