

Decision of the European Ombudsman on complaint 2395/2003/GG against the Council of the European Union

Decision

Case 2395/2003/GG - Opened on 18/12/2003 - Recommendation on 09/11/2004 - Special report on 18/12/2003 - Decision on 17/10/2005

A German MEP and a representative of the youth group of the CDU (Christian Democratic Union) complained to the Ombudsman alleging that the Council's Rules of Procedure are not in conformity with Article 1 (2) of the Treaty on European Union (as amended by the Treaty of Amsterdam in 1997) according to which the Council and the other Community institutions and bodies must take decisions as openly as possible.

The Council argued that the degree of openness of its meetings is a political choice to be made by the Council. The Ombudsman disagreed on the grounds that Article 1 (2) of the Treaty on European Union applies to the Council and that although Article 207 of the EC Treaty provides for it to adopt its own Rules of Procedure, it does not provide that the degree to which its meetings in its legislative capacity are to be open to the public should be regarded as a political choice and left to the discretion of the Council.

The Council also argued that Article 1 (2) of the Treaty on European Union merely indicated that the *future* Union should be as open as possible. The Ombudsman took the view that subsequent developments (i.e. since 1997) should also be taken into account. He pointed out that the Council had already adopted new Rules of Procedure in 2000 that provided for increased openness of its meetings as a legislator. In the Ombudsman's view, the Council thus made clear that steps to increase the transparency of its legislative activity had to and could be taken. The adoption of these new Rules of Procedure also confirmed that doing so was and is possible under Community law as it presently stands.

The Ombudsman therefore concluded that the Council had failed to submit any valid reasons as to why it should be unable to amend its Rules of Procedure with a view to meeting in public whenever it is acting in its legislative capacity. The Ombudsman thus forwarded this finding in a special report to the European Parliament, with a recommendation that: *"The Council of the European Union should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity."*

Strasbourg, 17 October 2005



Dear Mr P.,

On 9 December 2003, you and Mr Elmar Brok MEP made a complaint to the European Ombudsman concerning the fact that the meetings of the Council acting in its legislative capacity are only public to the extent foreseen by Articles 8 and 9 of the Council's Rules of Procedure of 22 July 2002.

On 4 October 2005, following an in-depth inquiry into your complaint, including a draft recommendation to the Council, I submitted a special report to the European Parliament, in accordance with Article 3 (7) of the Statute of the Ombudsman. The special report recommended that the council should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity. On the same day, I informed you by letter of the special report.

The Statute of the Ombudsman provides for the submission of a report to the European Parliament to be the final step in an inquiry by the Ombudsman.

I therefore close the file on the complaint.

The Secretary-General of the Council will also be informed of this decision.

Please find enclosed, for your information, a translation of the special report into German.

Yours sincerely,

P. Nikiforos DIAMANDOUROS