

## **Speech of the European Ombudsman -Committee on Institutional Affairs, speech by the European Ombudsman, Jacob Söderman**

Speech

Mr Chairman!

I am very grateful for the opportunity to address the Committee on Institutional Affairs today.

Article 138e of the EC Treaty gives the European Ombudsman power to initiate inquiries on his own initiative, as well as in response to complaints. Within the limits of my mandate, I have tried to use the own-initiative power so as to promote transparency in the Union. I have initiated three inquiries into subjects where complaints appeared to indicate citizens' general dissatisfaction at lack of transparency.

The own-initiative inquiry into the procedures used by the European Commission in dealing with complaints from citizens about infringements of Community law by member states was initiated and closed during 1997. Full information about the inquiry is included in the Annual Report for 1997, which will be available in its printed form during the July session week in Strasbourg.

Another own-initiative inquiry to promote greater transparency concerns the procedures used by the Community institutions for recruitment of staff. This inquiry was launched in November 1997 and is still continuing.

Finally, there is the own initiative inquiry into public access to documents, launched in June 1996. On 20 December 1996, I made draft recommendations to 14 Community institutions and bodies that they should adopt, and make easily available to the public, rules concerning public access to documents. The draft recommendations and the reasons for them were fully explained in the Annual Report for 1996.

All 14 institutions and bodies to which the draft recommendations were addressed have now sent a detailed opinion, as required by Article 3 (6) of the Statute. The detailed opinions are the subject of the first Special Report by the Ombudsman to the European Parliament, which I presented to President Gil-Robles on 15 December 1997. Copies of the Special Report have been made available to you and, in addition, I would like to take this opportunity to inform you about some aspects of the Report.



13 of the institutions and bodies concerned have now adopted rules about public access to documents. In the case of the European Monetary Institute, the European Parliament and the Court of Justice, the draft recommendations concerned only administrative documents.

In accordance with the draft recommendations, the European Monetary Institute adopted rules concerning administrative documents. Now that it has been established, the European Central Bank will also have to consider the adoption of rules on public access to documents.

The rules adopted by the European Parliament apply to all documents, not just administrative ones. The Ombudsman welcomes the decision of the Parliament to include all documents within the scope of its rules.

Only the Court of Justice has not yet adopted rules on public access to documents. According to the Court's detailed opinion, it is studying all questions concerning access to its documents. It is regrettable that no timetable for the completion of this work has yet been established.

Since the judicial role of the Court is outside the Ombudsman's mandate, no formal recommendation was made in accordance with the Statute of the Ombudsman. However, the European Parliament has the possibility to seek further information from the Court on this matter.

Many institutions and bodies have based their rules on those previously adopted by the Council and Commission. By doing so, they have fully complied with my draft recommendations, which concerned only the existence and public availability of the rules.

Of course, once rules are established and made publicly available they are subject to scrutiny and debate. The European Parliament has the possibility to examine whether the adopted rules ensure the degree of transparency that the European citizens expect of the Union.

In this context, it is worth noting that the Commission and Council rules are quite limited compared to the rules governing some national administrations. In particular, the rules do not require registers of documents to be maintained. Nor do they give any right of access to documents held by one body, but originating in another. In the future these weaknesses must be addressed before one can speak about true openness in the Community administration. As regards registers, there has recently been a very promising development. At the FIDE Congress in Stockholm earlier this month, it was explained that the Council already has a register of documents and that it will publish the register before the end of this year. It is to be hoped that other Community institutions and bodies will follow this good example.

My last point concerns the draft recommendation that the rules adopted should be easily available to the public. Some institutions have published their rules in all official languages in the *Official Journal*, some intend to do so. Some have them available on the Internet, some in their offices.

The European Parliament might encourage those institutions and bodies which have not yet



done so to make their rules available in all official languages and to publish them in an appropriate form. It could also recommend the institutions and bodies to raise the quality of their rules.

Mr Chairman!

Before concluding, I will briefly comment on the achievements of the Treaty of Amsterdam in relation to transparency.

When the Treaty comes into force, it will insert into the EC Treaty a new Article 191a (1) , which reads as follows:

*"1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3. 2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam. 3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."*

I would like to stress that the Amsterdam Treaty shows that there is a will within the Union for greater transparency. This is not only underlined by the new Article 191a. Two very significant developments of principle are included in amendments to Articles A and F of the Treaty on European Union).

Article A is amended so as to bring the Union's commitment to transparency (previously embodied in Declaration 17 attached to the final Act of the Maastricht Treaty) into the Treaty itself as one of the constitutive principles of the Union. As amended, Article A reads:  
*This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken **as openly as possible** and as closely as possible to the citizen.*

Furthermore the first paragraph of Article F will read as follows:

*The Union is founded on the principles of liberty, **democracy** , respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.* It is difficult to understand how there could be openness and democratic government without sufficient public access to documents held by the administration. Furthermore the fundamental freedoms to which Article F refers include the freedom of expression. Citizens and their Parliamentary representatives can only express their opinions on issues of public administration effectively if they know what the administration is doing and why. This possibility also requires sufficient access to documents held by the administration.

Thus it seems that the Amsterdam Treaty, when it comes into force, will strengthen and deepen the principle of transparency, now upheld by the jurisprudence of the Court.

A number of people have asked me about the relationship between the proposed new Article 191a and the recommendations of my own-initiative inquiry into public access to documents.



This question is now important because the Regulation governing the right of access to documents is to be determined by the Council through the co- decision procedure with the European Parliament.

In reply, I have emphasised that the new Article 191a of the EC Treaty will create for citizens a positive right of access to documents of the Parliament, Council and Commission. This means that both the Regulation concerning general principles and limits and the Rules of Procedure of each institution will be subject to review by the Court of Justice to determine whether the content of the rules about public access to documents is legally valid.

As I have already explained, my initiative was concerned with the *existence* of rules about public access to documents founded on the general principle of transparency and good administrative behaviour. The point of the Ombudsman's recommendations is that even those institutions and bodies for which there is no positive *right* of access to documents must have *rules* about such access. Once rules have been adopted, failure to apply them correctly and consistently could be maladministration.

The proposed Article 191a and the Ombudsman's recommendations are, therefore, complementary. They have different objectives and - except in the case of the European Parliament - they apply to different institutions and bodies. Once the Amsterdam Treaty comes into effect, the Parliament will have to consider whether the content of the rules which it has already adopted meets the additional test of the new Article 191a and of the new Regulation. More generally, my opinion is that consistency and equal treatment of European citizens will require the standards established by the Regulation to be applied throughout the Community administration.

I should mention at this point that the principles on which the Ombudsman's recommendations are based will apply to any new Community bodies that may be established. Furthermore, once the Amsterdam Treaty comes into effect the principle will also apply to Europol (2) , since the new Treaty will extend the Ombudsman's mandate to the revised "third pillar" concerning police and judicial cooperation in criminal matters. Naturally, Europol has legitimate reasons for keeping some documents confidential. However, its rules on public access can make provision for this.

Finally, even if it falls outside of the scope of this special report I feel obliged to draw your attention to the fact that transparency is not only a question of public access to documents. According to the constitutional principles which are common to the Member states of the Union, meetings of legislative bodies discussing and adopting laws should be public. To me, therefore, it is difficult to see how the present practice can continue in the Union whereby only one institution - the European Parliament - carries out its legislative work in public, whilst the other two institutions operate more or less behind closed doors.

The Amsterdam Treaty enshrines the principles of openness and democracy. The Council in particular should, therefore, consider opening its legislative meetings to the public, especially when it finally adopts Community legislation binding on European citizens. This issue was also



discussed at the FIDE Congress in Stockholm, where many participants emphasised the need for legislative procedures at the European level to be more transparent.

Mr Chairman!

Distinguished Members of the Committee!

I hope that the outcome of this hearing will be of great importance for promoting the rights of European citizens and the aspirations which citizenship of the Union embodies.

Thank you for your attention.

(1) (to become Article 255 in the new numbering).

(2) At present, only the Europol Drugs Unit has been fully established: Joint Action of 10 March 1995 95/73/JHA, 1995 OJ L 62/1. For the Europol Convention see 1995 OJ C 316/1.