

## **Special Report by the European Ombudsman to the European Parliament following the own initiative inquiry into public access to documents (616/PUBAC/F/IJH)**

Special Report

**Case 616/96/(PD)IJH - Opened on 05/06/1996 - Recommendation on 05/06/1996 - Special report on 05/06/1996 - Decision on 21/09/1998**

In June 1996, the European Ombudsman began an own-initiative inquiry into public access to documents held by Community institutions and bodies other than the Council and the Commission, which had already adopted their own, publicly available, rules governing public access to their documents. [1]

The inquiry was concluded by the Ombudsman's Decision of 20 December 1996. This considered that failure to adopt, and to make easily available to the public, rules governing public access to documents could constitute an instance of maladministration. The Decision included draft recommendations to the institutions and bodies concerned.

The Ombudsman's Decision of 20 December 1996, which contains a full account of the inquiry and of the Ombudsman's reasoning in support of his conclusions and draft recommendations, was presented to the European Parliament in the Annual Report for 1996. *A copy of the Decision is also annexed to this Special Report (Annex 1).*

In accordance with Article 3 §6 of the Statute of the Ombudsman, the Ombudsman informed the Community institutions and bodies concerned of his Decision and of the draft recommendations which he addressed to them. The same provision requires an institution or body so addressed to send a detailed opinion to the Ombudsman within three months.

This Special Report concerns the detailed opinions which have been submitted by the Community institutions and bodies concerned.

For reasons explained below, the Ombudsman makes no formal recommendations in accordance with Article 3 §7 of the Statute. At a number of points, however, the Report draws attention to matters which the European Parliament may wish to pursue further. These points



are printed in bold.

## **A The Ombudsman's inquiry and draft recommendations**

In summary, the inquiry asked fifteen Community institutions and bodies [2] about their situation as regards public access to documents and in particular whether they had issued general rules which are easily available to the public, or internal guidelines to staff, on public access and confidentiality.

On the basis of the information supplied to the Ombudsman by the institutions and bodies, it appeared that one body [3] had already adopted rules and that most, but not all, of the other institutions and bodies intended to do so.

Recalling that the Court of Justice is the highest authority on questions of Community law and taking into account the case-law of the Court [4], the Union's commitment to transparency and the existence of a single institutional framework for the Union, the Ombudsman concluded that failure to adopt and make easily available to the public rules governing public access to documents could constitute an instance of maladministration. He therefore made draft recommendations to the institutions and bodies concerned that they should adopt, and make easily available to the public, rules governing public access to all documents not already covered by existing legal provisions allowing access or requiring confidentiality.

As regards the Court of Justice, the European Parliament and the European Monetary Institute (EMI), the recommendations applied only to administrative documents. (The judicial role of the Court is outside the mandate of the Ombudsman as defined by Article 138e of the EC Treaty and the concept of maladministration does not include the political work of the Parliament. In the case of the EMI, access to documents in the monetary field is regulated by Article 11.2 of its Rules of Procedure).

In accordance with Article 3 (6) of the Statute, the Ombudsman informed each of the institutions and bodies concerned of his draft recommendations and requested a detailed opinion by 30 April 1997.

## **B Responses to the Ombudsman's draft recommendations**

In substance, most of the detailed opinions consist of a copy of the rules governing public access to documents which have been adopted by the institution or body.

The *Court of Auditors*, the *European Investment Bank* and the *European Agency for the Evaluation of Medicinal Products* (EMA) each informed the Ombudsman before 30 April 1997 that it had complied with the recommendations and enclosed a copy of the rules that it had



adopted. In the case of the EMEA, the Ombudsman was informed that the rules had been adopted by the Executive Director on a provisional basis until the end of 1997, and that they could be revised on the basis of practical experience of their operation and after consultation with the Management Board and interested parties.

The *European Centre for the Development of Vocational Training (Cedefop)* and the *European Monitoring Centre for Drugs and Drug Addiction* each informed the Ombudsman before 30 April 1997 that it had accepted the draft recommendations and that it had adopted the Commission's rules and procedures.

Other institutions and bodies requested more time in which to draft rules and to complete the processes necessary for their adoption. As regards the *Court of Justice*, the *European Parliament* and the *European Monetary Institute*, further time appeared necessary in order to enable them to deal separately with their administrative documents. The Ombudsman therefore extended the deadline for detailed opinions to 31 July 1997.

On 3 June 1997, the *European Environment Agency* informed the Ombudsman that it had adopted rules by a Decision dated 16 May 1997.

On 4 June 1997, the *European Monetary Institute* informed the Ombudsman that it had adopted rules for its administrative documents by Decision 9/97 of 3 June 1997.

On 9 June 1997, the *Economic and Social Committee* informed the Ombudsman that it had adopted rules by a Decision dated 27 May 1997.

On 27 June 1997, the *European Foundation for the Improvement of Living and Working Conditions* informed the Ombudsman that the draft rules which it had forwarded to him on 16 October 1996 would be implemented on a provisional basis, pending submission to its Administrative Board in November 1997.

On 23 July 1997, the *Committee of the Regions* informed the Ombudsman that rules would be presented for adoption at the next meeting of its Bureau on 17 September 1997 and that pending the adoption of these rules the Committee would continue to apply the Commission and Council common Code of Conduct as an internal guideline.

On 28 July 1997, the *European Parliament* informed the Ombudsman that it had adopted rules by a Decision dated 10 July 1997.

By an undated letter which the Ombudsman received on 4 August 1997, the *European Training Foundation* enclosed draft rules to be submitted to its Governing Board for approval on 27 October 1997. On 4 November 1997, the Foundation informed the Ombudsman that the rules had been adopted on 27 October 1997.

On 21 November 1997, the *Translation Centre for Bodies of the European Union* sent the Ombudsman the rules that it had adopted on 17 November 1997.



On 23 April 1997, the *Court of Justice* informed the Ombudsman that it was examining a draft regulation on public access to its administrative documents but that more time was necessary to ensure the adoption of a properly-conceived regulation, which was expected to be adopted before the summer of 1997.

After further correspondence, the *Court of Justice* informed the Ombudsman on 21 October 1997 that it had extreme difficulty in establishing a clear separation between documents which relate to its judicial role and those which do not. The Court also informed the Ombudsman that it had instructed its Committee on the Rules of Procedure to study all questions concerning access to judicial documents and that there was a strong possibility that this could result in proposed amendments of the Rules of Procedure of the Court. It was not however, possible to foresee a date for the completion of this work. The letter dated 21 October 1997 appears to constitute the detailed opinion of the Court.

## **C Analysis of responses to the draft recommendations**

### **1 Detailed opinions**

All the institutions and bodies to which the draft recommendations were addressed appear to have sent the detailed opinion foreseen by 3 §6 of the Statute of the Ombudsman. Some asked for additional time in which to complete the procedures for adoption of rules.

### **2 The adoption of rules**

Thirteen of the fourteen bodies to which the draft recommendations were addressed have now adopted rules governing public access to their documents.

The rules adopted by the *European Monetary Institute* relate only to administrative documents, in accordance with the Ombudsman's draft recommendations.

The rules adopted by the *European Parliament* appear to 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.

The detailed opinion of the *Court of Justice* states that a study of all questions concerning access to its documents is continuing. The Ombudsman very much welcomes the fact that the Court has gone further than his draft recommendations by including judicial documents in the scope of the study. It will be of great benefit to European citizens that the rules to be adopted will apply to all documents of the Court. It is regrettable, however, that no timetable for completion of this work has been established.



Since the judicial role of the Court is outside the Ombudsman's mandate, no formal recommendation can be made in accordance with Article 3 §7 of the Statute.

**The European Parliament has the possibility to seek further information from the Court on this matter.**

### 3 The substance of the rules

Many Community institutions and bodies have, quite properly, based their rules about public access to documents on those of the Council and the Commission. [5] By so doing, they have complied fully with the Ombudsman's draft recommendations, which concerned only the existence and public availability of rules. In the present state of Community law, the Ombudsman made no draft recommendations concerning the substance of the rules. It would therefore be inappropriate for this Special Report to make, in accordance with Article 3 (7) of the Statute, a formal recommendation on the matter.

Compared to the provisions governing some national administrations, however, the rules on public access to documents held by Community institutions and bodies are generally quite limited. In particular, they give no right of access to documents held by one body, but originating in another. Nor do they require the establishment of registers of documents which could both facilitate citizens' use of their right of access and promote good administration by preventing the loss of documents.

**The European Parliament has the possibility to examine whether the rules that have been adopted ensure the degree of transparency that European citizens expect of the Union.**

Within a period of two years following the entry into force of the Treaty of Amsterdam, the Parliament will participate in determining the general principles and limits governing the right of access to documents, in a Regulation to be adopted under a new Article 191a of the EC Treaty. [6] Consistency and equal treatment of citizens require that when this Regulation becomes part of Community law, the general principles and limits which it lays down should be applied throughout the Community administration. [7]

### 4 Making the rules easily available to the public

The Ombudsman made a draft recommendation that the rules adopted should be easily available to the public.

The rules of the *European Parliament* have been published in all languages in the *Official Journal* (1997 L 263/27).

The *Court of Auditors* and the *Economic and Social Committee* each forwarded its rules to the Ombudsman in all the official languages of the Community.



The *Committee of the Regions* informed the Ombudsman that it intended to publish its rules in the *Official Journal* .

The rules of the *European Environment Agency* have been published in all languages in the *Official Journal* (1997 C 282/4).

Article 4 of the rules adopted by the *European Training Foundation* foresees publication of the rules in the *Official Journal* .

Article 5 of the rules adopted by the *European Agency for the Evaluation of Medicinal Products* (EMA) provides for the rules to be made public, in particular through the EMA Internet homepage ( <http://www.eudra.org/emea.html> [Link]).

The Ombudsman welcomes the fact that the EMA has also engaged in public consultation on its rules through a workshop to which representatives of, in particular, consumer, press, health care professionals and the pharmaceutical industry were invited and through an invitation to the public to comment on the provisional rules published on its Internet Web site.

The Ombudsman did not recommend any specific method for making rules easily available to the public, considering that each institution and body should make a judgement as to what was appropriate in its particular circumstances. It would not therefore be appropriate for the Ombudsman to make, in accordance with Article 3 §7 of the Statute, a formal recommendation on the matter.

**The European Parliament has the possibility to encourage those institutions and bodies which have not already made their rules available in all the official languages of the Communities to do so.**

The European Parliament and three Community bodies have either published their rules in the *Official Journal* or announced an intention to do so. The *European Agency for the Evaluation of Medicinal Products* has published its rules on its Internet Web site.

**The European Parliament has the possibility to encourage institutions and bodies to publish their rules in an appropriate form.**

## 5 Concluding remarks

The European Ombudsman welcomes the fact that Community institutions and bodies have responded in a positive and cooperative spirit at all stages of the own-initiative inquiry.

The rules that have now been adopted represent a significant step forward in improving the transparency of Community administration, in accordance with the expectations, and to the benefit, of European citizens.



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[1] The Council and Commission adopted a joint Code of Conduct (OJ 1993 L 340/ 41), implemented through Council Decision of 20 December 1993 on public access to Council documents (OJ 1993 L 340/43) and Commission Decision of 8 February 1994 on public access to Commission documents (OJ 1994 L 46/58).

[2] The complete list of institutions and bodies concerned is:

The European Parliament The Court of Justice The Court of Auditors The European Investment Bank The Economic and Social Committee The Committee of the Regions The European Monetary Institute The Office for Harmonization in the Internal Market The European Training Foundation The European Centre for the Development of Vocational Training (Cedefop) The European Foundation for the Improvement of Living and Working Conditions The European Environment Agency The Translation Centre for Bodies of the European Union The European Monitoring Centre for Drugs and Drug Addiction The European Agency for the Evaluation of Medicinal Products

[3] The Office for Harmonization in the Internal Market.

[4] *"So long as the Community legislature has not adopted general rules on the right of public access to documents held by the Community institutions, the institutions must take measures as to the processing of such requests by virtue of their power of internal organization, which authorizes them to take appropriate measures in order to ensure their internal operation in conformity with the interests of good administration."* (Case C-58/94, *Netherlands v Council* , [1996] ECR-I 2169).

[5] Council Decision of 20 December 1993, OJ L 340/43; Commission Decision of 8 February 1994, OJ L 46/58.

[6] *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.*

*3 Each institution referred to above shall elaborate in its own rules of procedure specific provisions regarding access to its documents.*

[7] In this respect, Article 191a and the Ombudsman's recommendations are complementary. The Article creates a specific right of access to documents of three Community institutions. As a



result of the Ombudsman's inquiry, other Community institutions and bodies must also have rules governing such access, in conformity with the interests of good administration as declared by the Court of Justice in Case C-58/94, *Netherlands v Council* , [1996] ECR-I 2169.