

~ THE EUROPEAN OMBUDSMAN

P. NTKIFOROS DIAMANDOUROS

Mr Tony Bunyan
Statewatch
PO Box 1516
London N 16 OEW
ROYAUME-UNI

Strasbourg, 05 -07- 2007

Complaint 320X/20Q6/GG

Dear Mr Bunyan,

I refer to your e-mail of 27 June 2007 in which you submitted, on behalf of Statewatch, observations on the Commission's opinion in this case.

Please find enclosed a copy of a letter I have addressed to the Commission and in which I ask the latter for further information concerning this case.

In your observations, you extended the scope of your original allegation by questioning whether the Commission acted correctly by setting up several registers rather than one single one. As you will see, I have asked the Commission to comment on this further allegation.

In your observations, you also submitted a new allegation concerning the Commission's alleged failure to comply with Article 12 of the Regulation. For the reasons set out in my letter to the Commission, I consider that the appropriate prior approaches have not yet been made with regard to this allegation. This allegation will therefore not be taken up for inquiry in the present case. You are of course free to submit a new complaint concerning this issue after having made the appropriate prior approaches to the Commission.

Yours sincerely,

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P. Nikiforos DIAMANDOUROS

Enclosure:

THE EUROPEAN OMBUDSMAN

P. NIKIFOROS DIAMANDOUROS

Mr Jose Manuel Barroso
President of the European Commission
B- 1049 Brussels
BELGIQUE

Strasbourg, G 5 -07- 2001

Complaint 3208/2006/GG

Mr President,

On 27 June 2007, the complainant in this case has forwarded to me its observations on the Commission's opinion on its complaint. A copy of these observations, on which the Commission may wish to comment, is enclosed.

As regards the scope of the inquiry

The original complaint concerned the Commission's alleged failure to comply with Article 11 of Regulation 1049/2001, i.e., the question whether the Commission has set up a proper public register of documents. In its observations, the complainant extends the scope of this allegation by questioning whether the Commission acted correctly by setting up several registers rather than one single one. Given the close link of this further allegation to the original one, I **take the view that it should be examined in the present inquiry**. I should therefore be grateful if the Commission could submit a supplementary opinion concerning this new allegation (see point 4 below).

In its observations, the complainant also submits a new allegation concerning the Commission's alleged failure to comply with Article 12 of the Regulation. Although the question as to whether the Commission is providing direct access to documents as required by Article 12 is to some extent related to the issue raised in the original complaint, the two issues should nevertheless be distinguished. The complainant does not seem to have raised the issue of compliance with Article 12 with the Commission yet. Nor does the Commission seem to have been confronted with this issue in another case yet. I therefore take the view that the appropriate prior approaches have not yet been made with regard to this issue. This issue will therefore not be taken up for inquiry in the present case. The complainant is of course free to submit a new complaint concerning this issue after having made the appropriate prior approaches to the Commission.

Request for further information

In the light of the complainant's observations, it appears that further information is necessary in order to enable me to deal with this complaint. Accordingly, I would greatly appreciate it if you could provide me with the following information:

For the following reasons, further inquiries appear to be necessary:

- (1) In its opinion, the Commission submitted that Regulation 1049/2001 has a particular focus on the legislative activity of the Community institutions and that its legislative activity was well covered by public registers. The Commission further noted that it "will continue to gradually extend the scope of its public registers". However, in its report of 30 January 2004 on the implementation of Regulation 1049/2001 (COM(2004) 45 final, p. 38), the Commission noted the following with regard to its register and the registers of Parliament and of the Council: "The documents covered by these registers, in particular that of the Commission, are to be gradually extended. Initially, the Commission focused on the registration of legislative documents which are also the documents for which direct access is a priority under Article 12(2) of the Regulation." This statement would appear to suggest that the extensions of the scope of the register that are envisaged here concern documents other than those relating to the legislative activity of the Commission. However, the extensions carried out until now would essentially appear to be limited to the Commission's activity concerning legislation. Could the Commission therefore please specify if it considers that its register(s) only need to list documents concerning its involvement in the legislative process of the Communities and, if so, what the reasons for this belief are ?
- (2) In its opinion, the Commission stressed that under Regulation 1049/2001, the registers were intended to assist applicants in identifying relevant documents. Recital 14 of Regulation 1049/2001 provides as follows: "In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents." However, in its report of 30 January 2004 on the implementation of Regulation 1049/2001 (COM(2004) 45 final, p. 39) the Commission noted that whereas the "vast majority" of applications for access at Parliament and at the Council arise from the consultation of the registers~ at the Commission "only a small number of applications concern documents identified in the two registers, that of the COM, C and SEC documents and that of the President's mail. (...) Moreover, the applications sent to the Commission do not usually concern legislative activities, but rather the monitoring of the application of Community law." In its Green Paper of 18 April 2007 on "Public Access to documents held by institutions of the European Community. A review" (COM(2007) 185 final), the Commission itself acknowledged that "[t]here is room for improvement as regards the scope of the registers, in particular those of the Commission". Could the Commission please explain why it nevertheless considers that its present approach to Article 11 of Regulation

1049/2001 is in conformity with the letter and the spirit of that Regulation?

- (3) In its reply to the Ombudsman's request for information in case 2350/2005/GG, the Commission submitted that given the very wide definition of the term "document" in Regulation 1049/2001, it would be "impossible" to operate a comprehensive register. However, in its opinion the Commission stated that each of its DGs or administrative units had its own internal register of documents. Could the Commission please explain why these internal registers cannot be used to extend the scope of the register(s) set up under Article 11 of Regulation 1049/2001 ?
- (4) In its observations, the complainant appears to allege that the Commission has also failed to comply with Article 11 of Regulation 1049/2001 by offering several rather registers than one single one. Could the Commission please provide a supplementary opinion on this new allegation?

I should very much appreciate it if the Commission could provide me with its answers to the above questions by 15 September 2007.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: - Complainant's observations of 27 June 2007
(sent by e-mail)