



Ombudsman criticises Council in case of public access to documents on defence cooperation

The European Ombudsman, **P.Nikiforos Diamandouros**, has criticised the Council of the European Union for failing to deal with a request for public access to documents properly and carefully. This follows an inquiry which revealed that, contrary to the Council's initial response to the complainant concerning the number of relevant documents, many additional documents in fact existed. As a result of the Ombudsman's investigation, the complainant was given access to the additional documents. As the Council has introduced new internal rules in this area, the Ombudsman trusts that problems of the sort identified in the present case will no longer occur in the future.

The case

In March 2005, the complainant asked the Council of the European Union for any documents related to a specific agreement between EU Member States in the field of defence cooperation. Following the Council's initial response, he insisted that, considering the scope of the agreement and that the drafting process had lasted for two years, more than the document itself and the three revisions thereof must exist. He accused the Council of not fully complying with its obligations under Regulation 1049/2001 on public access to documents. The Council replied that "following a thorough examination, no further documents of relevance to the application had been identified." The complainant maintained his view that more documents must exist.

After the intervention of the Ombudsman and an intensive search, the Council confirmed that indeed ten revisions of the document existed. According to the Council, they had not been included in the electronic archive and had thus been considered as "annulled during production". The Council apologised to the complainant for the "clerical error" in this matter.

The Ombudsman argued that the maladministration identified in this case was more serious than that. He stated that he failed to understand why the documents concerned had not been identified earlier and how the department in charge could, as the Council claimed, have assumed that they had been annulled. He concluded that the Council had failed to deal with the complainant's request properly and carefully and that this constituted maladministration. In the light of the Council's assurances regarding its new rules, he closed the case with a critical remark.

The complainant had also asked for a list of sensitive documents. It was only after repeated requests that the Council stated that no sensitive documents on the matter existed. In his decision, the Ombudsman added that it would be useful if, in future cases, the Council provided such information to applicants as soon as possible. To read the decision, please visit:

<http://www.euro-ombudsman.eu.int/decision/en/051875.htm>

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