



P. NIKIFOROS DIAMANDOUROS

PRESS RELEASE NO. 5/2008

13 May 2008

Ombudsman launches EU-wide consultation on access to databases

The European Ombudsman, **P. Nikiforos Diamandouros**, has launched a consultation process within the *European Network of Ombudsmen* on access to information contained in databases. This follows a complaint from a Danish journalist about the refusal of the European Commission to disclose data on beneficiaries of EU agricultural subsidies. The Commission justified its refusal on grounds of confidentiality. Furthermore, it argued that the EU's rules on access to documents apply to databases only if the data can be easily retrieved.

The Ombudsman was not convinced by this approach. He therefore contacted his colleagues in the Member States to find out about "best practices" at the national level aiming to ensure maximum public access to databases. This consultation is particularly important given that this issue at stake forms part of the current debate on the reform of the EU's rules on access to documents.

Unjustified secrecy concerning beneficiaries of EU agricultural subsidies

In 2005, a Danish journalist asked the Commission to disclose data on beneficiaries of EU agricultural subsidies. The Commission refused access, arguing that the data were confidential. It also stated that the EU's rules on access to documents apply to databases only if the data concerned can be easily retrieved, using existing search tools.

The Ombudsman criticised the Commission for failing to provide adequate justification for its refusal to disclose the data. He also expressed concerns over the Commission's practice of applying the access to documents rules only when the data can be easily retrieved. Given the vast amount of information stored in databases maintained by the EU administration, such a practice would seriously endanger the public's right of access to documents or information.

In light of the anticipated reform of the EU's rules on public access to documents, the Ombudsman has decided to consult his national colleagues in the *European Network of Ombudsmen* on how the issue of access to information in databases is dealt with in their respective countries. The Ombudsman himself has already proposed a general obligation for the EU administration to make new databases as easily accessible as possible. He hopes to be informed until the end of May by his colleagues of national "best practices" aimed at guaranteeing maximum public access to information stored in databases.

The European Network of Ombudsmen

The *European Network of Ombudsmen* was set up in 1996 to help ensure that citizens' complaints are dealt with as quickly and effectively as possible. The Network consists of 90 offices in 31 European countries. Within the Network, ombudsmen transfer complaints to the body best placed to deal with the relevant issue, exchange information on legal issues and promote best practice.

To read the Statement setting out the Network's aims, please go to:

<http://www.ombudsman.europa.eu/liaison/en/statement.htm>

The letter launching the consultation process is available under:

<http://www.ombudsman.europa.eu/letters/en/20080319-1.htm>

The European Ombudsman investigates complaints about maladministration in the EU institutions and bodies. Any EU citizen, resident, or an enterprise or association in a Member State, can lodge a complaint with the Ombudsman. The Ombudsman offers a fast, flexible and free means of solving problems with the EU administration. For more information: <http://www.ombudsman.europa.eu>

For information on the case: Mr Peter Bonnor, Legal Officer, tel: +33 3 88 17 2541

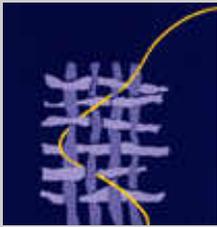
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The European Network of Ombudsmen

Statement

Statement adopted at the Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries, Strasbourg 14-16 October 2007

The European Network of Ombudsmen has prepared this statement to make the European Union (EU) dimension of the work of ombudsmen better known and to clarify the service they provide to people who complain about matters within the scope of EU law.

National and regional ombudsmen make a vital contribution to ensuring that citizens and residents of the EU can know and enjoy their rights. Together with the European Ombudsman, they form the *European Network of Ombudsmen*.

The European Network of Ombudsmen brings together, on a voluntary basis, the national and regional ombudsmen and similar bodies of the Member States of the European Union, the national ombudsmen of the candidate countries and of Iceland and Norway, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. In Germany, committees on petitions at the national and regional level fulfil a similar role to ombudsmen. They are part of the Network.

EU law and policy have an increasing impact on the everyday life of citizens and residents of the Member States. For the most part, they are put into effect by the public authorities of the Member States. National and regional ombudsmen deal with complaints against public authorities of the Member States, including complaints that relate to activities that are within the scope of EU law. The European Ombudsman supervises the EU institutions, such as the European Commission.

The appropriate national or regional ombudsman is responsible for dealing with complaints against public authorities of a Member State, including complaints about a matter falling within the scope of EU law. The European Ombudsman investigates complaints against the European Union institutions and bodies.

Although the powers and responsibilities of different ombudsmen in the Network vary widely, they are all committed to providing the public with a service that is impartial, effective and fair. Within the limits of their mandates, they support the principles on which the European Union is founded.

“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” (Article 6 (1) of the Treaty on European Union).

One of the most important activities of the Network is sharing information about EU law and best practice, so as to offer the best possible service to the public. National and regional ombudsmen in the Network may ask the European Ombudsman for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases.

The role and purpose of ombudsmen

The ombudsmen in the Network are independent and impartial persons, established by constitution or law, who deal with complaints against public authorities.

They try to achieve an appropriate outcome for each complaint. Having investigated a complaint and found it to be justified, an ombudsman may criticize what has taken place and state how, in his or her opinion, the case should have been properly handled. In many countries, the ombudsman may also propose remedies, which may include, for example, reviewing a decision, giving an apology, or providing financial compensation. Some ombudsmen may try to achieve a friendly solution to a complaint.

In some cases, the complainant may have the choice between going to an ombudsman or to a court. Normally, however, an ombudsman cannot deal with a complaint if a court is dealing or has dealt with the matter. Unlike a court, an ombudsman does not make legally binding decisions, but the public authorities usually follow the ombudsman’s recommendations. If they do not, the ombudsman can, for example by notifying Parliament, draw political and public attention to the case.

As well as responding to complaints, ombudsmen also work proactively to raise the quality of public administration and public services. They encourage good administration and respect for rights, suggest appropriate solutions to systemic problems, spread best practice and promote a culture of service-mindedness.

Ombudsmen encourage public authorities to regard complaints as an opportunity to communicate effectively with the complainant and to put right any deficiencies in their service. Correspondingly, most ombudsmen do not investigate a complaint unless the body complained against has first been given a reasonable opportunity to deal with the matter itself.

The precise grounds on which an ombudsman can act vary within the Network, but normally include: violation of rights, including human and fundamental rights; other unlawful behaviour, including failure to respect general principles of law; and failure to act in accordance with principles of good administration. Examples of maladministration that an ombudsman can help correct include unreasonable delay, failure to follow established policy or procedures, lack of impartiality, unfairness, giving inaccurate information or advice, inconsistency, and discourtesy.

Service to the public

The ombudsmen in the Network are committed to treating all members of the public with courtesy and respect. They aim to be accessible and service-minded, fair, impartial, consistent and effective.

Within the limits set by law and by the need to respect privacy and legitimate reasons for confidentiality, ombudsmen in the Network aim for transparency in their actions and decisions. They publish the criteria which they apply in dealing with complaints, give reasons for their decisions and report publicly on their activities.

The ombudsmen in the Network seek to maintain an appropriate balance between the thoroughness and the

speed of their inquiries, taking account of the interests of the complainant and of the need to make effective use of resources.

Accessibility

The ombudsmen in the Network seek to facilitate free and equal access for everyone who is entitled to make use of their services.

Complaints may normally be addressed to an ombudsman directly.

An ombudsman's services are normally free of charge to the complainant.

Where exceptions to the above principles are imposed by law, the ombudsman seeks to minimise their adverse impact on complainants, as far as possible.

Handling of complaints

The ombudsmen in the Network aim to deal promptly and effectively with complaints. They take into account the relevant provisions of EU law, including general principles of law, such as respect for fundamental rights. The Charter of Fundamental Rights of the European Union may provide a useful point of reference in this regard.

Each complaint received is carefully analysed with a view to securing an appropriate outcome.

If a complaint is inadmissible, the ombudsman informs the complainant rapidly, explaining clearly the reason or reasons. If possible, the ombudsman advises the complainant of another body that could help.

Some ombudsmen use a simplified procedure, if preliminary analysis indicates that the complainant's problem could be solved rapidly, for example by a telephone call.

If there is a full investigation of the complaint, the ombudsman provides information to the complainant about the investigation, or ensures that the complainant can easily obtain such information. Relevant information could, for example, concern:

- the procedure used;
- the scope of the investigation, including what issue or issues are being investigated; and
- the progress of the investigation.

At the conclusion of the investigation, the ombudsman issues a written report or decision that normally sets out:

- the ombudsman's findings;
- whether the ombudsman considers the complaint to be justified in whole or in part and the reasons for this view; and
- the ombudsman's recommendations, if any, to the public authority concerned.

Publication of information

The ombudsmen in the Network publish easily understandable information, in widely accessible forms. Such information may include, for example:

- who is entitled to complain;
- against which public authorities a complaint may be lodged;
- the kinds of activity that can be the subject of a complaint, including activities within the scope of EU

- law;
- the conditions of admissibility of complaints;
- how to complain;
- what language or languages can be used to complain;
- (*if appropriate*) the conditions under which the ombudsman uses a simplified procedure;
- how to obtain individual advice about the possibility to complain (e.g., telephone hotline); and
- the possible outcomes and remedies if the complaint is found to be justified.

The European Ombudsman has undertaken to facilitate wide access to the information published by the national and regional members of the Network.

The European Ombudsman's website <http://www.ombudsman.europa.eu> contains information about the Network and links to the homepages of its members. The information is also available on request from the European Ombudsman's Office (tel. +33 3 88 17 23 13).

An ever-improving service to the public

The ombudsmen in the Network are committed to continuously improving the service that they provide to the public. To this end, this Statement will be regularly reviewed, at least every two years, with the aim of ensuring that it reflects evolving best practice.



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