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**Draft recommendation to the European Parliament
in complaint 3643/2005/(GK)WP**

(Made in accordance with Article 3(6) of the Statute of the European Ombudsman¹)

THE COMPLAINT

Background

The complainant is a journalist who works for the Maltese weekly newspaper *MaltaToday*. In August 2005, he asked the European Parliament for access to the "published accounts" of its five Maltese Members ("MEPs"). Following an e-mail exchange with Parliament's Register, during which he clarified that his request related to data detailing the payments made by Parliament to the above MEPs, the complainant made a formal request for access under Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents² ("Regulation 1049/2001"). On 15 September 2005, Parliament rejected this request. It argued that the documents in question contained information considered to be personal data pursuant to Article 2 of Regulation (EC) 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³ ("Regulation 45/2001"). Disclosure of the documents in question had to be denied because it would infringe the privacy interests of a third party, within the meaning of Article 4(1)(b) of Regulation 1049/2001.

In a confirmatory application for access, the complainant argued, essentially, that disclosure of the documents would not undermine the protection of the private

¹ Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

² OJ 2001 L 145, p. 43.

³ OJ 2001 L 8, p. 1.

interests of those concerned and that their publication was in the public interest since the MEPs should be open to scrutiny from their constituents.

In its decision on the confirmatory application, dated 13 October 2005, Parliament explained that the request for access concerned documents relating to the financial affairs of different persons, namely, MEPs and parliamentary assistants. Processing of such data was necessary for Parliament's financial management and thus for the performance of a task carried out in the public interest pursuant to Article 5(a) of Regulation 45/2001. However, supplying this information to the public went beyond what was required for the sound functioning of Parliament's administration. Hence the provision of such information was not covered by Article 5(a) of Regulation 45/2001. Parliament added that the exceptions to the general principle of access to documents in paragraph 4(1) of Regulation 1049/2001 were drafted in mandatory terms, so that it was obliged to refuse access if it considered that disclosure of documents would undermine the interests mentioned therein. As to the complainant's argument concerning the need for public scrutiny, Parliament argued that the proper use of public funds was guaranteed by the relevant internal and external checks. Pursuant to Rule 74 of Parliament's Rules of Procedure, the allowances received by MEPs were subject to checks as part of the discharge procedure. The Committee on Budgetary Control and the Court of Auditors enforced the applicable rules on behalf of the public.

Parliament also argued that Rule 5(3) of Parliament's Rules of Procedure stipulated that MEPs were not entitled to inspect the personal files and accounts of other MEPs. Since such access was denied even to MEPs, there was all the more reason that it should be denied in the case of persons from outside Parliament.

Furthermore, Parliament pointed out that Regulation 1049/2001 did not, in any way, oblige the institutions to create documents to respond to an application. When the information requested was not available in one or more existing documents but involved the collation of data from a database, the application went beyond the scope of the Regulation. Databases were not in fact collections of documents but constantly changing sets of data. This applied to the information the complainant had requested as it was contained in an accounting data management system and not in a single document. As a consequence, his request, *stricto sensu*, fell outside the scope of Regulation 1049/2001. However, Parliament added that, in accordance with its policy of transparency, it had examined the application in light of the provisions of the Regulation.

On the basis of these considerations, Parliament rejected the complainant's request.

The complaint to the Ombudsman

In his complaint to the European Ombudsman, the complainant argued that an MEP was a public person who was paid both by national governments and from European funds and thus indirectly by the European taxpayers. The taxpayers should therefore have the right to scrutinise the use of their contributions by having access to

the MEPs' accounts. He also believed that it was in the national interest of Maltese taxpayers to be informed about these matters by a national newspaper. He referred to Article 6 of the EU Treaty and to the Charter of Fundamental Rights. The complainant emphasised that openness strengthened the principles of democracy and fundamental rights and that it helped the Union's citizens in their participation in EU affairs.

Essentially, the complainant alleged that Parliament had wrongfully refused to grant him access to the data concerning allowances granted to the Maltese MEPs. He claimed that he should be granted such access. The complainant specified that the data should show the amounts the MEPs received from Parliament as well as the way in which these amounts were used for the operation of their offices and for the financing of their pensions under Parliament's pension scheme.

THE INQUIRY

The scope of the inquiry

The Ombudsman asked Parliament for an opinion on the complainant's allegation and claim.

However, he specified that the scope of his inquiry was limited to documents or information existing at the date of Parliament's rejection of the complainant's confirmatory application for access to documents.

Parliament's opinion

In its opinion, Parliament first recalled what information it had given the complainant during his initial contacts with Parliament's Register: The Register had informed the complainant that there were no published accounts. It had described the system which currently existed, in the absence of a Statute for MEPs. This was a hybrid system based on the MEPs' salaries paid by national authorities and on the "*various secretarial allowances, reimbursement of travel expenses, etc.*" paid by Parliament from its budget. The complainant had then received a copy of the rules governing the secretarial allowances and the reimbursement of travel expenses.

Following an exchange of e-mails, the Register had informed the complainant that the information relating to the payments made to MEPs by Parliament was included in a database. The information was collected purely for accounting purposes and was neither published nor distributed, except to the auditing bodies or institutions provided for in the relevant rules.

In addition to the rules concerning allowances, Parliament had sent the complainant the aggregate figure for the amounts disbursed to MEPs in the form of secretarial and other allowances. However, what the complainant had actually wanted to obtain, according to Parliament, was the breakdown for each MEP of the amounts received in respect of each allowance (for example the salaries actually paid to assistants) and the details of travel undertaken in connection with the MEPs' activities. Parliament submitted that it continued to consider that the detailed breakdown of these

figures was covered by Article 4(1)(b) of Regulation 1049/2001 because these accounting documents related not only to MEPs but also to third parties, such as assistants whose relationship with MEPs was governed by a contract under private law. Parliament submitted that it was not allowed to interfere in that relationship and limited itself to the role of accountant.

As to the complainant's argument that Maltese MEPs should be subject to control by Maltese taxpayers, Parliament submitted that MEPs were subject to specific checks carried out by the bodies responsible for ascertaining whether their financial management complied with the rules in force. Public scrutiny concerning the proper use of public European funds was guaranteed by effective audits carried out by the Committee on Budgetary Control and by the Court of Auditors. The MEPs' allowances were subject to checks as part of the discharge procedure in accordance with Article 74 of Parliament's Rules of Procedure.

In addition, Parliament recalled that Article 5(3) of its Rules of Procedure stipulated that MEPs did not have access to personal files and accounts concerning other MEPs. As such access was denied to other MEPs, Parliament argued that it was *a fortiori* denied to persons from outside Parliament, such as the complainant.

Parliament added that the complainant was furthermore able to have direct access, via the Internet, to the "Declaration of financial interests" of each of the five Maltese MEPs.

The complainant's observations

No observations were received from the complainant.

The Ombudsman's inspection of the file

On the basis of the information he had received up to that point, the Ombudsman proceeded to a preliminary assessment of the complaint. He noted that, although it could have been argued that the complainant's request concerned access to information rather than access to documents, both the complainant and Parliament based their reasoning on Regulation 1049/2001.

However, from Parliament's submissions, it was not yet entirely clear to the Ombudsman what exactly were the documents or information to which the complaint related.

Therefore, the Ombudsman decided, pursuant to Article 3(2) of the Ombudsman's Statute, to ask Parliament to give his services access to these documents or information.

On 14 December 2006, Mr C., Head of the Unit "Members' Allowances" of Parliament's Directorate-General for Finance, received the Ombudsman's representatives. He explained that there are four different types of allowances for MEPs that are handled by his unit, namely, (i) the allowance for general expenditure,

(ii) the assistants' allowance, (iii) travel allowances and (iv) the so-called subsistence allowance. He stated that data concerning these allowances are recorded in three databases, namely, (a) a database called **INDE** for general expenditure, (b) a database called **CID** for the assistants' allowance and (c) a database called **MIME** for the travel and subsistence allowances.

By way of example and on a confidential basis, Mr C. showed the Ombudsman's representatives printouts of extracts of these three databases for individual MEPs.

- (a) The printouts of the database **INDE** showed the name of the MEP concerned, the amount he received as a general expenditure allowance, the amount of contributions to the MEPs' pension scheme to be deducted from the allowance and the MEP's bank account details. Mr C. explained that the allowance was paid as a lump sum that was the same for all MEPs, but that the amount of pension contributions to be deducted varied according to individual factors (such as age and the chosen scheme) and obviously equalled zero for MEPs who did not participate in the MEPs' pension scheme. He stated that Parliament's *Social Rights* Unit was responsible for determining these amounts.

In reply to the question from the Ombudsman's representatives whether the amount of the lump sum was made public, Mr C. stated that it was not public as such, but that certain media had published the amount that had been fixed for the year 2005.

- (b) The printouts of the database **CID** showed the amount that the MEP concerned had requested to be paid to his or her assistants each month. Apart from the name of the MEP, they showed the assistants' names and the amounts each of them received according to their contracts with the MEP. In other cases, the name of a company was indicated instead of the names of assistants. Mr C. explained that the contracts MEPs concluded with their assistants were not necessarily work contracts, but could also be service contracts. He explained that the amounts paid to assistants on behalf of MEPs under this allowance varied, up to a certain fixed ceiling. The printouts showed, for each month, this maximum budget and the portion of it that had been used as well as the amount that had not been used. Mr C. explained that each month's unused budget could be used at any time up to the end of the year, when it would expire. He also explained that the required proof for the amounts to be paid to assistants were their contract with the MEP and proof of their social security coverage. He stated that, therefore, his unit did not receive the assistants' salary slips.

In reply to the question whether it would be possible to produce extracts of the database that did not reveal the assistants' names, Mr C. stated that this was not a standard operation but that it could be done using filters or a query tool such as *Business Objects*.

(c) Mr C. explained that the printouts from the database **MIME** firstly showed the allowance paid for the MEPs' travels between their place of origin and their working places, that is, Brussels and Strasbourg. He stated that this allowance was paid in a lump sum, which was calculated on the basis of the relevant distance and the chosen means of transport. The lump sum would also be reimbursed if the actual costs of travel were lower. However, MEPs were required to produce their boarding passes in order to be reimbursed for air travel. Secondly, the database showed the MEP's subsistence allowance, an allowance granted for days spent working for Parliament. Mr C. explained that this allowance was granted on the basis of lists the MEPs signed when, for example, attending the committees of which they were a member. The amount of the allowance was the same for every MEP. Thirdly, the database showed reimbursements for other travel expenses, which, according to Mr C., were made on the basis of proof of the costs actually incurred. The headings that appeared in the example presented to the Ombudsman's representatives included the following: air travel, "*frais divers*" (miscellaneous expenses), hotel costs and taxi charges. A more detailed printout showed the dates and places of travel as well as the connection used. Concerning the subsistence allowance, the more detailed printout showed the name of the committee attended.

Mr C. explained that the database also contained more details for headings such as *frais divers*. He confirmed that there were no data concerning third parties in this database. Travel expenses of assistants, for example, could not be reimbursed under this allowance.

In reply to a question from the Ombudsman's representatives as to whether, apart from these allowances and apart from pensions, Parliament made any other payments to MEPs, Mr C. stated that this was not the case at his level but that the *Social Rights* Unit also paid medical expenses as well as language and computer courses. In addition, the imprest account officers of other Directorates-General could on some occasions be entitled to make advance payments for MEPs during their missions abroad. However, those would subsequently have to be verified and approved by Mr C.'s unit.

A report on the inspection was sent to the complainant and to Parliament.

The complainant's observations

Commenting on the inspection report, the complainant confirmed that his request for access to documents related to the four types of allowances registered in the three databases that the Ombudsman's representatives had inspected. He reiterated his view that the information contained in the databases should be made public because the European taxpayers were entitled to control the use of their contributions. Furthermore, Maltese MEPs were accountable to the Maltese voters for the way in which they spent the money they received from the European budget in connection with their duties.

The complainant also emphasised that, as Mr C. had pointed out, it was possible to release detailed information on the MEPs' payments to their assistants without revealing the assistants' names. Such a course of action would allow the release of the requested information without breaching Article 4(1)(b) of Regulation 1049/2001. He argued that, given that detailed information contained in the three databases could be made public without releasing the names of third parties, the request for access did not go beyond the scope of Regulation 1049/2001.

The complainant asked the Ombudsman to consider whether the release of the requested information could undermine the protection of the privacy or integrity of the individuals concerned and to ascertain whether it would pose a real risk of serious harm to their protected interests.

The complainant added that, should parts of a document not be accessible, the rest of the document should be disclosed.

The Ombudsman's consultation of the European Data Protection Supervisor

The Ombudsman's considerations

Following careful analysis of the information that had been provided to him by the complainant and by Parliament, the Ombudsman considered that the present case left room for divergent views as to the correct interpretation and application of data protection rules. More specifically, it required that a balance be struck between openness and the right to privacy, a situation the European Data Protection Supervisor ("EDPS") had discussed in his Background Paper on public access to documents and data protection⁴.

Therefore, the Ombudsman decided to consult the EDPS on this case, pursuant to Parts C and D of the Memorandum of Understanding between the EDPS and the Ombudsman⁵. Accordingly, the Ombudsman asked the EDPS for his view on the question as to whether and, if so, to what extent, the data requested by the complainant could be released.

In particular, the Ombudsman noted that Parliament had argued that certain documents could not be released because they contained personal data concerning third persons, especially the names of the MEPs' assistants. However, Parliament did not appear to have considered the possibility of granting partial access to such data, for example by deleting the assistants' names. In the context of payments to assistants, it also appeared that such payments, which are made every month on behalf of the respective MEP, vary up to a certain fixed ceiling. The Ombudsman's representatives had been informed that each month's unused budget under this allowance could be used at any point up to the end of the year, when it would expire. Therefore, it could

⁴ "Public Access to Documents and Data Protection", Background Paper Series n° 1, July 2005. The paper is available on the EDPS's website (www.edps.europa.eu/EDPSWEB/edps/lang/en/pid/21).

⁵ OJ 2007 C 27, p. 21.

be asked whether it would not be possible to give access at least to certain aggregate figures, such as the information whether and to what extent MEPs exhausted their budget under this allowance for a given year. Furthermore, and as far as the MEPs themselves are concerned, Parliament did not appear to have considered whether, in the event that the documents in question contained sensitive data concerning its MEPs, to ask them for their opinion on the effects of a potential disclosure of the data.

The EDPS's reply

In his reply, the EDPS recalled that, in his background paper, he had extensively discussed situations in which an institution takes a decision on a request for public access to documents containing personal data. In such situations, the institution had to take into account the fundamental nature of both the right to public access and the right to data protection. This resulted in a balanced approach. However, it was quite often not evident whether, under specific circumstances, public access must be granted to personal data.

Against this background, the EDPS made a number of observations concerning the case at hand.

First, he stated that it had to be taken into consideration that the case primarily dealt with the personal data of MEPs. Although the position of MEP did not mean that MEPs should be denied protection of their privacy, the basic consideration in a transparent and democratic society had to be that the public had a right to be informed about their behaviour. The MEPs had to be aware of this public interest. In the present case, this was even more evident because it dealt with the expenditure of public funds, entrusted to the MEPs. The EDPS pointed out that, in Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Others*⁶, the Court of Justice explicitly recognised the objective of monitoring the proper use of public funds as a justification for interference with privacy.

The EDPS furthermore stated that, as far as the personal data of the MEPs' assistants were concerned, the outcome had to be more nuanced. Also in this respect, the public's right to information was predominant, but exceptions designed to protect the assistants' legitimate interests were needed. According to the EDPS, an example of this could be that disclosure of the name of an assistant, in relation to the MEP for whom he or she worked, could reveal the assistant's political views. This was sensitive data within the meaning of Article 10 of Regulation 45/2001. The EDPS stated that, at first sight, the solution the Ombudsman had suggested in his considerations, namely, to blank out the assistants' names, would adequately protect the assistants' rights. The EDPS also took the view that, if, for specific reasons, this solution did not satisfy the justified interests of the data subjects, access to aggregate figures, as mentioned by the Ombudsman, could be considered.

⁶ Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk and Others* [2003] ECR I-4989.

As to the possibility of asking the MEPs about their opinion on the effects of potential disclosure of data, the EDPS stated that, in general, he fully endorsed the use of this option. However, he added that, in the present case, he was not convinced of its usefulness, in so far as it concerned data relating to the MEPs themselves. The EDPS stated that it seemed obvious that these data had to be disclosed. However, the EDPS considered that it could be useful to ask about the effects of potential disclosure of the data relating to assistants.

The Ombudsman forwarded copies of the EDPS's reply to Parliament and to the complainant.

Parliament's comments

Parliament answered that it had examined the EDPS's opinion in great detail. However, it again drew the Ombudsman's attention to the arguments it had advanced in its opinion on the present case. Parliament emphasised that it was important that audits of the use of public funds were carried out internally as well as outside the institution, as the Bureau had pointed out in its decision on the complainant's request for access. These audits had to be carried out by independent organisations such as the European Court of Auditors and in accordance with the institutional procedures guaranteeing both respect for regulations governing the use of public funds and freedom of action for the MEPs.

The complainant's observations

In his observations, the complainant emphasised again that the principles at stake in his complaint were transparency and accountability. He agreed that internal and external audits had to be carried out in accordance with institutional procedures. However, it had to be ensured that MEPs could be held accountable for their actions by the people who had elected them. The complainant added that, since MEPs belonged to Europe's most senior representatives, it was their right to be paid good professional rates. However, he considered that the public was entitled to know just what these rates were.

The complainant stated that he was pleased to note that the EDPS had concluded that the data concerning the MEPs themselves had to be disclosed. He fully agreed with the EDPS's opinion that the MEPs had to be aware of the public interest in being informed about their behaviour and that this was even more evident in his case because it concerned the expenditure of public funds. The complainant thanked the Ombudsman for his efforts in this case.

THE DECISION

1 Public access to data concerning allowances granted to MEPs

1.1 The complainant, a journalist who works for the Maltese weekly newspaper *MaltaToday*, asked the European Parliament for access to the "published

accounts" of its five Maltese Members ("MEPs"). In an e-mail exchange between the complainant and Parliament's Register, it was clarified that his request related to data detailing the payments made by Parliament to its MEPs. Parliament rejected the complainant's application and confirmatory application, arguing that the documents in question contained information considered to be personal data pursuant to Article 2 of Regulation (EC) 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁷ ("Regulation 45/2001"). Disclosure of the documents would infringe the privacy interests of a third party, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents⁸ ("Regulation 1049/2001"). As to the complainant's argument concerning the need for public scrutiny of the activity of the MEPs, Parliament argued that the proper use of public funds was guaranteed by the relevant internal and external checks carried out by the Committee on Budgetary Control and the Court of Auditors. Parliament also argued that Rule 5(3) of its Rules of Procedure stipulated that MEPs were not entitled to inspect the personal files and accounts of other MEPs. Therefore, *a fortiori*, such access had to be denied to persons outside Parliament. Parliament added that Regulation 1049/2001 did not oblige it to create documents in order to respond to an application. When the information requested was not available in one or more existing documents but involved the collation of data from a database, the application went beyond the scope of the Regulation. This applied to the information the complainant had requested as it was contained in an accounting data management system and not in a single document. As a consequence, his request, *strictu sensu*, fell outside the scope of Regulation 1049/2001. However, Parliament stated that, in accordance with its policy of transparency, it had examined the application in light of the provisions of the Regulation.

- 1.2 In his complaint to the Ombudsman, the complainant argued that an MEP was a public person who was paid both by national governments and from European funds and thus indirectly by the European taxpayers. The taxpayers should therefore have the right to scrutinise the use of their contributions by having access to the MEPs' accounts. He emphasised that openness strengthened the principles of democracy and fundamental rights and that it helped the Union's citizens in their participation in EU affairs.
- 1.3 In its opinion, Parliament maintained its position. It stated, in particular, that it could not give access to the documents at issue because they related not only to MEPs but also to third parties, such as assistants, whose relationship with MEPs was governed by a contract under private law. Parliament submitted that it was not allowed to interfere in that relationship and thus limited itself to the role of an

⁷ OJ 2001 L 8, p. 1.

⁸ OJ 2001 L 145, p. 43.

accountant. It also maintained that public scrutiny concerning the proper use of European funds was guaranteed by effective audits carried out by the Committee on Budgetary Control and by the Court of Auditors.

- 1.4 An inspection by the Ombudsman's services showed that the complainant's request concerned four types of allowances for MEPs, recorded in three databases by Parliament's Directorate-General for Finance. In particular, database **INDE** records allowances for general expenditure, database **CID** records allowances for the MEPs' assistants, and database **MIME** records travel and subsistence allowances.
- 1.5 The Ombudsman notes that both the complainant and Parliament base their reasoning in the present case on the provisions contained in Regulation 1049/2001, relating to access to *documents*, although it could have been argued that the complainant's request concerned access to *information*. Therefore, the Ombudsman will also base his considerations exclusively on legislation relating to access to documents.
- 1.6 According to the fourth recital of Regulation 1049/2001, its purpose is "*to give the fullest possible effect to the right of public access to documents*".

Article 4(1)(b) of the Regulation, which Parliament evoked in order to support its position, provides as follows:

"The institutions shall refuse access to a document where disclosure would undermine the protection of: (...) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

Article 5 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data provides:

"Personal data may be processed only if:

- (a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or*
- (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or*
- (c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or*
- (d) the data subject has unambiguously given his or her consent, or*
- (e) processing is necessary in order to protect the vital interests of the data subject."*

- 1.7 According to the established case-law of the Community Courts, (i) exceptions to the general right of access to documents laid down in Regulation 1049/2001 are to be applied and interpreted restrictively⁹; (ii) the institution concerned, where it refuses access, must assess in each individual case whether the relevant document falls within the exceptions foreseen;¹⁰ and (iii) the possibility of granting partial access to information not covered by the relevant exceptions has to be considered¹¹.
- 1.8 Given that the present case requires that a balance be struck between openness and the right to privacy, the Ombudsman decided to consult the European Data Protection Supervisor ("EDPS") on whether and, if so, to what extent, the data requested by the complainant could be released. In his reply, the EDPS recalled that, as he had pointed out in his Background Paper on public access to documents and data protection¹², when institutions have to decide on a request for public access to documents containing personal data they have to take into account the fundamental nature of both the right to public access and the right to data protection.

In relation to the MEPs' personal data, the EDPS pointed out that, although the position of MEP did not mean that MEPs should be denied protection of their privacy, the basic consideration had to be that the public had a right to be informed about their behaviour. The MEPs had to be aware of this public interest. In the present case, this was even more evident because it dealt with the expenditure of public funds, entrusted to the MEPs. Therefore, according to the EDPS, it seemed obvious that the data concerning the MEPs themselves had to be disclosed.

As regards data concerning the MEPs' assistants, the EDPS stated that the outcome had to be more nuanced. In their case, the public's right to information was predominant as well. However, exceptions to protect the assistants' legitimate interests were needed. The EDPS pointed out, as an example, that disclosure of the assistants' names in connection with the MEPs for whom they worked could reveal the assistants' political views, which constituted sensitive data within the meaning of Article 10 of Regulation 45/2001. According to the EDPS, the blanking out of the assistants' names would constitute adequate protection of the assistants' rights. The EDPS also took the view that, if, for specific reasons, this solution did not satisfy the justified interests of the data subjects, access to aggregate figures could be considered.

⁹ See, for example, Case T-84/03 *Turco v Council* [2004] ECR II-4061, paragraph 60.

¹⁰ See, for example, Joined Cases C-174/98 P and C-189/98 P *Netherlands and Van Der Wal v Commission* [2000] ECR I-1, paragraph 24.

¹¹ See Case C-353/01 P *Mattila v Commission* [2004] ECR I-1073, paragraph 30.

¹² "Public Access to Documents and Data Protection", Background Paper Series n° 1, July 2005. This paper is available on the EDPS's website (www.edps.europa.eu/EDPSWEB/edps/lang/en/pid/21).

- 1.9 The Ombudsman notes that the EDPS's position is broadly similar to that consistently taken by himself in relation to public access to documents. The Ombudsman has repeatedly pointed out the great importance of public access to documents with respect to transparency, accountability and democracy in the European Union.¹³ Access to documents held by public authorities allows citizens to gain an insight into decision-making processes and to scrutinise the administrative functioning of these authorities. In the present case, the standards of transparency must be particularly high, given that it concerns (i) the use of public funds to which citizens contribute by way of their taxes and (ii) the behaviour of elected representatives of these citizens.
- 1.10 Bearing the above in mind, the Ombudsman will first review the accuracy of the arguments Parliament advanced in order to support its refusal to grant the complainant access to the data he requested. In light of his conclusions, he will then discuss the different sets of data at issue individually and take a position as to which information, if any, contained in the three databases held by Parliament should be released.
- 1.11 In relation to Parliament's arguments against disclosure of the data, the Ombudsman considers that he has to distinguish between the MEPs themselves and third parties.
- 1.12 As the EDPS clearly states, MEPs have to be aware of the public interest in their behaviour, particularly if this behaviour is, as in the present case, connected with the use of public funds. Therefore, he takes the view that, in this aspect of the case, openness should prevail over the right to privacy as laid down in Article 4(1)(b) of Regulation 1049/2001.
- 1.13 As to Parliament's argument that specific checks by the Committee on Budgetary Control and the Court of Auditors ensured that public funds were used correctly, the Ombudsman recalls that Regulation 1049/2001 does not require applicants to give reasons for their application for access to documents. Therefore, the Ombudsman regards as invalid the argument put forward by an institution examining an application that the same end the applicant wishes to achieve by requesting access to certain documents may be achieved by other means. The Ombudsman therefore considers that Parliament's reference to financial checks by the responsible bodies is not relevant in the context of this case.
- 1.14 The Ombudsman also notes that Parliament additionally referred to Rule 5(3) of its Rules of Procedure, which provides that MEPs may not have access to the personal files and accounts of other MEPs. As such access was denied to other MEPs, it was *a fortiori* denied to persons from outside Parliament. The Ombudsman recalls that Parliament's Rules of Procedure have been adopted by

¹³ See, for example, the text of the Ombudsman's lecture at the School of Advanced International Studies of the Johns Hopkins University in Bologna, Italy on 17 October 2006. The text is available on the Ombudsman's website (www.ombudsman.europa.eu/speeches/en/2006-10-17b.htm).

Parliament itself in order to organise its internal functioning. He considers that they cannot be applied directly to Parliament's relations with citizens. Thus, they do not appear to constitute an appropriate legal basis for rejecting the complainant's application for access.

1.15 The Ombudsman thus considers that the arguments put forward by Parliament are not convincing and that, therefore, Parliament's refusal to grant the complainant access to the data he requested, in so far as they relate exclusively to MEPs, was not justified. This constitutes maladministration.

1.16 In so far as personal data of MEPs' assistants are concerned, the Ombudsman recalls that he noted, in his letter to the EDPS, that Parliament did not appear to have considered the possibility of granting partial access to documents containing such personal data, for example by deleting the assistants' names. The EDPS has confirmed that the blanking out of the assistants' names would adequately protect their rights, unless there were specific reasons as to why this solution would not satisfy their legitimate interests. Therefore, the Ombudsman considers that Parliament would not have had to disclose the assistants' names. However, its failure to consider the possibility of granting partial access to documents containing personal data of assistants, for example by blanking out the assistants' names, also constitutes maladministration.

1.17 In the Ombudsman's view, the consequences for the data contained in the individual databases are the following.

The **INDE** database for general expenditure does not appear to contain any data relating to persons other than the MEPs themselves. The Ombudsman considers it to be obvious that the amount of the lump sum paid to all MEPs for their general expenditure should be disclosed, if it is not already public. The MEPs' bank account details, which also appear on the excerpts of this database, should of course not be disclosed.

As regards deductions from the lump sum for the MEPs' pension scheme, the Ombudsman notes that the EDPS has not commented on this issue in particular. However, it has to be noted that the Ombudsman is currently dealing with another complaint concerning public access to the list of names of all MEPs who participate in the MEPs' pension scheme.¹⁴ The Ombudsman's inquiry into that case is still pending. Therefore, he considers that he should await the outcome of that case before making recommendations in relation to the question whether Parliament should also give access to data that are connected with the participation of MEPs in the MEPs' pension scheme.

As regards the **CID** database recording allowances for the MEPs' assistants, the Ombudsman takes the view that, as pointed out above, the assistants' names should not be disclosed. However, in so far as the Ombudsman can see, there do

¹⁴ Complaint 655/2006/SAB (confidential).

not appear to be any specific reasons, as mentioned by the EDPS, which would require further anonymisation beyond the blanking out of the assistants' names. Therefore, the Ombudsman considers that, in the absence of any specific reasons against such disclosure, access should be granted to the relevant excerpts from this database, excepting references to the assistants' names, which should be deleted.

As regards the **MIME** database recording travel and subsistence allowances for MEPs, the Ombudsman notes that, as Parliament's representative confirmed, the database does not contain any data concerning third persons. He therefore considers that full access to the data contained in this database should be granted.

2 Conclusion

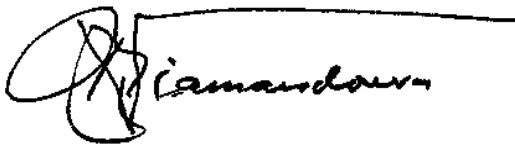
On the basis of the above considerations, the Ombudsman concludes that Parliament's wrongly rejected, in its entirety, the complainant's application for access to the data contained in its databases **INDE**, **CID** and **MIME**. This constitutes maladministration.

The draft recommendation

Parliament should (i) reconsider the complainant's application for access to data detailing the allowances granted to the Maltese MEPs and (ii) grant the complainant access to these data according to the considerations set out above.

Parliament and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, Parliament shall send a detailed opinion by 31 December 2007. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 24 -09- 2007



P. Nikiforos DIAMANDOUROS