



P. NIKIFOROS DIAMANDOUROS

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## 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

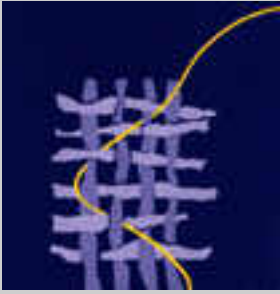
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## Database consultation

Strasbourg, 19 March 2008

Dear Colleague,

As a member of the *European Network of Ombudsmen*, I am contacting you and all our national colleagues in an attempt to obtain useful information on a most important issue of openness in public administration. My request concerns the question of rules on public access to documents and information, and their application to databases. The background to my request is the following.

In 2005, I received a complaint against the European Commission which, amongst other things, raised the issue of whether a large database and/or dispersed information in it could be considered to constitute a 'document' within the broad definition of that term provided in Regulation 1049/2001 regarding public access to Parliament, Council and Commission documents<sup>(1)</sup>. In my decision in that case, published on 10 December 2007 (copy enclosed), I concluded that the Commission's position as regards the application of Regulation 1049/2001 to databases in general was not satisfactory. Taking into account, inter alia, the fact that the foregoing issue is discussed in the course of the planned reform of Regulation 1049/2001<sup>(2)</sup>, I also noted in that decision that I would actively consider consulting the

national ombudsmen's offices in the European Network of Ombudsmen, in order to try to find out what answers have been given to this new kind of problem brought up by technological developments and to be made aware of the "best practices" followed at the national level, with an eye to guaranteeing an adequate level of public access to information stored in databases.

Consulting the European Network of Ombudsmen was a possibility that I had also shortly beforehand referred to in a speech to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. In that speech, I noted, amongst other things, the following:

*Given the vast amount of information contained in public databases, it cannot be considered acceptable that the content of databases is simply not covered by the Community legislation implementing the fundamental right of public access to documents.*

*Unless the Community legislator decides to adopt legislation giving a right of access not only to documents but also to information more generally - and this may not necessarily be advisable - the revised Regulation 1049/2001 ought to contain specific and clear rules in respect of the content of databases.*

*Given that there are technical as well as legal problems in this area, I proposed in my response to the Commission's Green Paper the introduction of a general obligation to take the needs of transparency into account whenever the Administration designs new databases.*

*However, a satisfactory solution is also needed for the very many existing databases.*

Upon further reflection, I have concluded that consulting the national members of our network is indeed relevant, and that doing so is likely to give all parties concerned valuable insight into how the above matter could best be dealt with. I would, thus, be most grateful if you could provide me with information on the following issues, as they pertain to your country:

*1. Any existing legislation, administrative practices, jurisprudence or ombudsman 'case-law' or academic works that specifically address the issue of citizens' access to "documents" or information contained in databases maintained by the public*

*Administration.*

*2. Any ongoing initiatives or procedures concerning this issue, such as draft legislation, or cases pending before the courts or the ombudsman.*

*3. Information on any rules or administrative practices, under which public Administration, acting in a proactive way, has to take properly into account the principle of transparency in its activities when establishing and/or formulating its databases and, in particular, the research tools and working methods allowing the retrieval of data contained therein.*

Needless to say, if you have any relevant information on rules or practices in countries other than your own, I would be most grateful to receive this also. I am very well aware that not all national ombudsmen or similar bodies are necessarily dealing with this matter. If, however, you find that you would be able to contribute useful information, I would be most grateful to receive it. Furthermore, if you think that it would be appropriate to pass my request on to a specialised body in your country, you are most welcome to do so.

I would be grateful to receive your reply this spring, if at all possible before the end of May.

As you already know, my services are able to deal with all the EU's official languages. You therefore do not need to translate either your correspondence or any materials that you may wish to enclose. Of course, to the extent that official translations already exist, I would be grateful to receive them.

Please note that under the rules applicable to the European Ombudsman, the present letter and your eventual reply will, in principle, be public. To avoid any misunderstandings, please therefore only provide information that is public.

In terms of follow-up on the information sent in reply to my present request, I currently envisage publishing a report on the matter.

If you have any queries concerning this consultation, please contact my Legal Officer in charge, Mr Peter Bonnor. I myself am, of course, also available for any queries or comments that you may wish to draw to my attention.

I thank you very much in advance for your co-operation.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: copy of the European Ombudsman's decision on complaint  
1693/2005/PB

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(1) Official Journal 2001 L 145, p. 43.

(2) See [http://ec.europa.eu/transparency/revision/index\\_en.htm](http://ec.europa.eu/transparency/revision/index_en.htm)



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