

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0363/2002**

30 October 2002

## REPORT

on the Special Report from the European Ombudsman to the European Parliament in complaint 917/2000/GG - "Statewatch"  
(C5-0277/2002 – 2002/2135 (COS))

Committee on Petitions

Rapporteur: Astrid Thors



**CONTENTS**

	<b>Page</b>
MOTION FOR A RESOLUTION.....	5
EXPLANATORY STATEMENT .....	6

## **PROCEDURAL PAGE**

By letter of 30 November 2001, the European Ombudsman forwarded to Parliament its Special Report following the draft recommendation to the Council of the European Union in complaint 917/2000/GG (2002/2135 (COS)).

At the sitting of 1 July 2002 the President of Parliament announced that he had referred the Special Report from the European Ombudsman to the Committee on Petitions as the committee responsible (C5-0277/2002).

The Committee on Petitions had appointed Astrid Thors rapporteur at its meeting of 24 January 2002.

The committee considered the Special Report by the European Ombudsman and the draft report at its meetings of 12 September 2002 and 8 October 2002.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Vitaliano Gemelli, Chairman, Astrid Thors, Vice-Chairman, Felipe Camisón Asensio, Michael Cashman, Marie-Hélène Descamp, Glyn Ford, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Ioannis Marinos, Christian Ulrik von Boetticher, Rainer Wieland, Eurig Wyn and Stavros Xarchakos.

The report was tabled on 30 October 2002.

## MOTION FOR A RESOLUTION

### **European Parliament resolution on the Special Report from the European Ombudsman to the European Parliament in complaint 917/2000/GG (C5-0277/2002 – 2002/2135 (COS))**

*The European Parliament,*

- having regard to the Special Report by the European Ombudsman to the European Parliament (C5-0277/2002)<sup>1</sup>,
  - having regard to Articles 21, 194, 195, 255 and 286 of the EC Treaty,
  - having regard to Articles 1 and 6 of the Treaty on the European Union,
  - having regard to Article 3 (7) of the Statute of the European Ombudsman,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Petitions (A5-0363/2002),
- A. Bearing in mind that the political process within the institutions of the European Union should be a transparent process and that the public should have access to official documents on which political decisions and legislative decisions are based,
- B. bearing in mind the provisions of Council Decision 93/731 governing access to documents held by Council and Regulation (EC) No 1049/2001;
- C. Having regard to the complaint made by "Statewatch".
1. Supports the recommendation by the Ombudsman whereby the Council of the European Union should reconsider the complainant's application and give access to the documents requested, unless one or more of the exceptions contained in Article 4 of Decision 93/731 applies;
  2. Welcomes the published intentions by the Secretary General of Council to implement the Ombudsman's recommendation and requests the Council to report to the competent Committee of the European Parliament in six months time on the further concrete measures taken to implement the Secretary General's decision and the new EU Regulation.
  3. Instructs its President to forward this resolution to the Council and the Commission.

---

<sup>1</sup> OJ C 126, 28.5.2002, p. 21

## EXPLANATORY STATEMENT

Freedom of information, and its corollary, access to documents, has become a leitmotif of parliamentary activity over the years. It has also emerged as a campaigning issue at a time when all political institutions are endeavouring to reconnect with the public, at European, national and local level. Greater and easier access to information will, it is argued, encourage greater public awareness of the political decision-making process. With the advances of information technology, greater transparency must lead to more open democracy and therefore to higher levels of political accountability.

In recent years a number of rules and regulations have been negotiated and agreed between the European institutions regarding public access to documents. Yet the issue remains highly controversial and quite clearly on the most sensitive issues which fall within the competence of the European Union - or one of its current three pillars, certain member states continue to drag their feet. This has a direct impact upon the way the Council approaches this question, and on the way that its General Secretariat is empowered to act.

The complaint introduced by the British non-governmental organisation "Statewatch" highlights the ongoing contradictions of this policy as well as the apparent unwillingness of Council to respond in the first instance to the spirit and the letter of European regulations. The fact that "Statewatch" has a professional interest in accessing precisely those documents which are most sensitive and which deal with justice and home affairs, police cooperation, international cooperation in the fight against crime and so on, merely serves to push the implementation of such regulations to the extreme.

It is not surprising in this context that the Ombudsman felt obliged to intervene and conduct his own investigation into this matter.

The Ombudsman has produced a detailed special report of his findings (917/2000/GG) which includes a recommendation which he would like to see Parliament approve in the form of a resolution. His report details the nature of the "Statewatch" complaint and cites the communications from Council in defence of their position.

What is the nature of the complaint? In January 1999 "Statewatch" wrote to Council seeking disclosure of all documents distributed at a meetings of Justice & Home Affairs Councils in that month. It had obtained the agendas for these meetings and the 'outcome of proceedings'. It noticed discrepancies in the lists of documents distributed according to both papers and it learnt, furthermore, that other documents were distributed at these meetings which had not been cited anywhere. Council had in fact provided "Statewatch" with a number of additional documents following the introduction of the complaint - 79 in all. A further 15 documents were withheld.

A second application was made for access to documents which were circulated at a meeting of the working group "The Police Cooperation Working Party (Experts meeting - Interception of telecommunications)" in September 1998. This meeting concerned discussions on a document ENFOPOL 98, which concerned the extension of telecommunications surveillance to cover e-mails and mobile phones.

The Ombudsman identified two substantial allegations:

- a: The Council failed to provide the documents requested by "Statewatch"
- b: Council failed to provide a list of all documents available at the meetings.

The Council, for its part, had also been contacted earlier by "Statewatch" for access to EU-US Task Force documents in 1997 which had been refused access on the basis that they were not the sole responsibility of Council but also of the United States. The Ombudsman formulated critical remarks on this occasion also.

On this occasion, the Council, in its opinion submitted to the Ombudsman, considered that the complaint "raised a question of principle relating to the way in which the Council operated". It differentiated between preparatory documents representing a certain degree of finality, and papers which represented preliminary reflections of individuals or small groups. For the former group of documents the Council was willing to place them on the register; for the latter category the Council considered their referencing to be an excessive administrative burden. The Council furthermore considered that listing all documents on agendas and 'outcomes' was impractical.

"Statewatch" on the other hand, dismissed such considerations believing that the reflections of a single person could indeed be influential and supported the view that it was a citizen's right to know who was responsible. As regards the administrative burden, this was not a compatible argument with good administrative behaviour.

The Ombudsman refers to Regulation EC 1049/2001 concerning the register of documents, which provides for reference for 'each' document in order to make citizen's rights effective. It refers to all documents and makes no distinction between - as the Ombudsman points out - their shelf life or their importance. A legal duty therefore exists which must be respected.

Ultimately the Council has accepted both the Ombudsman's recommendations. However, the Ombudsman is not convinced by the assurances he has been given and for that reason seeks Parliament's support for the following

*"The Council of the European Union should reconsider the complainant's application and give access to the documents requested, unless one or more of the exceptions contained in Article 4 of Decision 93/731 applies."*

#### **The Committee's debate on the subject.**

In the course of the discussion on the Ombudsman's special report, on which Mr Tony Bunyan from "Statewatch" also participated, the Committee questioned Mr Hans Brunmayr, Director in the Secretariat of the Council. He was able to inform the Committee of the response from Council to the Ombudsman's findings. He stated that Council, under pressure from the Parliament and the Court of Justice has developed a new culture of transparency. The Secretary General of the Council, Mr Solana, reported to the Seville Summit on the issue of transparency, particularly in the context where Council acts as co-legislator with the Parliament.

Mr Brunmayr went on to insist that Council now has a functioning register of all documents in line with Regulation 1049/2001 and that 300,000 visits had been made to the register in 2001 - industry and consultancy firms being the major customers. ( The comprehensive table at the end of this document provides details of this.) Moreover, he informed members of the Committee that the Deputy Secretary General of the Council, Mr de Boissieu, had instructed all officials to act in conformity with the Ombudsman's recommendations following the "Statewatch" complaint. All COREPER, Council and Working Party agendas are now available with comprehensive document references. Members were also informed about the partial disclosure of certain Council documents which have now been made available with the names of member states deleted where this has been requested by national authorities.

## Conclusions:

It would appear that there have been positive developments within Council in the recent period as a result of the Ombudsman's activity on the one hand and parliamentary pressure on the other. It will no doubt take some time to confirm these developments as the facts are tested in practice over the coming months. Nevertheless, this is welcome. This rapporteur therefore considers that the Ombudsman's recommendation should be supported by the Parliament, which, at the same time should note the new approach being implemented by the Council Secretariat.

**January 2002**

## STATISTICS ON PUBLIC ACCESS TO COUNCIL DOCUMENTS

### 1. Number of applications

1998	1999	2000	2001
338	889	1.294	1.234

### 2. Number of documents considered following initial applications

1998	1999	2000	2001
3.984	6.747	7.032	7.950

### 3. Documents provided by the General Secretariat of the Council at the initial stage

1998	1999	2000	2001
2.947	5.406	5.862	6.319 <sup>(1)</sup>

### 4. Number of confirmatory applications (confirmatory applications may be made if initial application is refused)

<sup>(1)</sup> Based on 7219 documents considered.



1998	1999	2000	2001
36	43	38	21

**5. Documents released by the Council following confirmatory applications**

1998	1999	2000	2001
338	238	37	33 <sup>(2)</sup>

**6. Rate of document release for the procedure as a whole**

1998	1999	2000	2001
82,4%	85,6%	83,9%	88,0% <sup>(3)</sup>

---

<sup>(2)</sup> Based on 130 documents considered.

<sup>(3)</sup> Based on considered documents.

**7. Professional profile of applicants**

	1998	1999	2000	2001
Members of the European Parliament	5%	2%	2%	0,5%
Lobbies	12%	8%	10%	7,5%
Lawyers	12%	9%	9%	9%
Journalists	2,5%	2%	2%	2%
University research workers	35%	24%	25%	27%
Industry	4,5%	10%	10%	14%
Other (libraries, other institutions, third country missions, undeclared professional origin)	29%	45%	42%	40%

**8. Geographical spread of applicants**

	1998	1999	2000	2001
Belgium	33%	34%	28%	27,5%
Denmark	4%	2%	1%	1%
Germany	13%	11%	13%	14%
Greece	-	1%	0,5%	0,5%
Spain	6%	4,5%	5,5%	6,5%
France	9%	9%	9%	6,5%
Ireland	1%	1%	1%	1%
Italy	4%	5%	6,5%	8,5%
Luxemburg	2%	1%	0,5%	1,5%
Netherlands	5%	6%	4,5%	4,5%
Austria	7%	1,5%	1%	2,5%
Portugal	-	1,5%	1%	1%
Finland	0,5%	1%	1%	1%
Sweden	0,5%	2%	1,5%	2%
United Kingdom	10%	9%	9%	9%
Third countries (United States, Norway, Switzerland, Japan) + unspecified	5%	10,5%	17%	13%

**9. Subject of applications <sup>(1)</sup>**

	1998	1999	2000	2001
Legal questions	0,3%	2%	5%	3%
Agriculture, Fisheries	1,5%	6%	5%	4,5%
Internal Market	3%	5%	10%	14,5%
External Relations - CFSP	4%	9%	7%	7,5%
Functioning of the institutions	3%	4%	4%	3,5%
Economic and Monetary Policy	2,5%	6%	10%	8%
Justice and Home Affairs	77%	37%	29%	29,5%
Environment	3,5%	9%	6%	4,5%
Social Policy	2,5%	2%	6%	7%
Transport	0,6%	2%	3%	3,5%
General policy questions (IGC, European Council)	0,1%	1%	2%	1%
Others	2%	17%	13%	13,5%

**10. Reasons for refusal of access <sup>(2)</sup>**

	1998	1999	2000	2001
Protection of public interest, protection of the individual and privacy, protection of confidentiality in commercial and industrial matters and protection of the Community's	12%	47%	40,7%	41,9%
Protection of the confidentiality of Council's proceedings	51%	30%	33,1%	44,5%
Several reasons together	0,5%	1%	0,1%	0,2%
Not a Council document / other author	36%	19%	25,6%	12,1%
Other reasons	1,3%	3%	0,5%	1,3%

<sup>(1)</sup> Certain applications refer to more than one area.

<sup>(2)</sup> With reference to the initial replies by the General Secretariat.