



**EUROOPAN UNIONIN
NEUVOSTO**

**Bryssel, 19. maaliskuuta 2004 (22.03)
(OR. en)**

6979/04

**OMBUDS 18
INST 66
INF 39
JUR 105**

ILMOITUS: I/A-KOHTA

Lähettiläjä:	Tiedotustyöryhmä
Vastaanottaja:	Pysyvien edustajien komitea (Coreper II) / Neuvosto
Ed. asiak. nro:	6978/04
Asia:	Euroopan parlamentin jäsenen Sabine ZISSENERin ja Andreas KERZin tekemä kantelu Euroopan oikeusasiamiehelle (375/2004/GG)

Valtuuskunnille toimitetaan liitteessä tiedotustyöryhmän kokouksessaan 18.3.2004 hyväksymä ehdotus neuvoston vastaukseksi Euroopan unionin oikeusasiamiehen P. Nikiforos DIAMANDOUROSin neuvostolle lähettämään kirjeeseen, joka koskee Euroopan parlamentin jäsenen Sabine ZISSENERin ja Andreas KERZin tekemää kantelua (375/2004/GG).

Pysyvien edustajien komiteaa pyydetään ehdottamaan neuvostolle, että tämä seuraavassa istunnossaan hyväksyisi vastausehdotuksen esityslistan A-kohtana.

Liite on saatavana ainoastaan englanninkielisenä.

DRAFT

Brussels, ... March 2004

Mr Nikiforos Diamandouros
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F - 67001 Strasbourg Cedex

**Subject: Complaint made by MEP Mrs Sabine ZISSENER and by Mr Andreas KERZ
(375/2004/GG)**

Sir,

Please find hereafter the Council's observations on the above complaint.

1. By letter dated 14 February 2004 addressed to the European Ombudsman, the complainants, Mrs Sabine ZISSENER, Member of the European Parliament, and Mr Andreas KERZ, President of the Junge Union Rheinland-Pfalz, suggested that Articles 8 and 9 of the Council's Rules of Procedure be amended, in order to ensure that the Council, when it convenes in its capacity of legislator, does so in public.
2. In the complainants' view, the transparency of Community affairs, in particular the principle that decisions must be taken as openly as possible as laid down in Article 1(2) of the EU Treaty, is a general principle of law which should be reflected in the Council's Rules of Procedure.

3. The complainants also argue that, although Article 49(2) of the draft Treaty establishing a Constitution for Europe - put forward in Tessaloniki - provides that the Council will meet in public when acting in its quality as a legislator, this clause will only enter into force once the mandate of the Intergovernment Conference is accomplished and upon completion of the subsequent ratification process. In their view, the results achieved by the Convention and reactions at European and national level make it clear that, by operating now a procedural change in its internal rules to hold its meetings in public, the Council would assure much greater transparency of the decision-making process. This would inspire the confidence of citizens and deliver a clear signal as regards the direction the Institution wants to take in this respect.
4. As indicated in its observations on the complaint 2395/2003/GG, the Secretary-General recalls that the provisions laid down in Article 8 of the Council's Rules of Procedure reflect the compromise reached by the Heads of State and Government at the Seville European Council meeting in the framework of a reform process which is "*a substantial change to present practices in the direction of enhancing the efficiency of the institution on the eve of an unprecedented increase in the number of Member States of the Union*".
5. In the Council's view, there is no maladministration. Moreover, the Council would like to point to existing arrangements put in place to ensure adequate information of the public about its activities in the legislative field.

There is no maladministration

6. The Council certainly recognises the great importance of the principle of openness laid down in inter alia Article 1(2) TEU. However, this provision is phrased in general terms that suggest more an *aim* than an absolute rule. The language of this provision is programmatic, as is clear from the phrase "*marks a new stage in the process of creating an ever closer union*".

7. As a second point, the Council submits that its current practice concerning the publicity of its meetings is in accordance with its Rules of Procedure. The complainants did not allege the Council to act in contravention of its Rules of Procedure. Rather, they seem to argue that the Rules of Procedure *themselves* are an instance of maladministration. Whilst admitting that the Statute of the Ombudsman lays down no definition of ‘maladministration’, the Council would submit that in any event, the adoption of its Rules of Procedure is a political and institutional matter: the Council’s Rules of Procedure find their legal basis directly in Article 207(3) of the EC Treaty. Articles 8 and 9 thereof, the provisions targeted by the complainants, were amended following a compromise between the Member States at the Seville European Council.¹
8. The draft Treaty establishing a Constitution for Europe drawn up by the Convention provides for the Council to meet in public when examining and adopting legislative proposals (Article 49). It would seem to the Council that the very fact that any such provision has been included in a (draft) Constitution confirms that the matter is not one of maladministration or administrative practice, but a legal and political question outside the scope of the Ombudsman’s mandate.

Existing arrangements to inform the public about the Council’s legislative activities

9. The Council would point to the existing arrangements for informing the public of the Council’s legislative activities. All Council votes on legislative acts adopted in accordance with the co-decision procedure as well as the final deliberations leading to the final vote are nowadays open to the public through audio-visual means. Similarly, the presentation by the Commission in the Council of its most important legislative proposals is open to the public. The General Secretariat does its utmost to inform the public in advance of the dates and approximate time on which such audio-visual transmissions take place (*inter alia*, through Internet and through the adoption of bi-annual lists of public debates and draft legislation being prepared during the ongoing Presidency).

¹ Annex II, §§ 10 and 11 of the Presidency Conclusions of the Seville European Council of 21 and 22 June 2002.

10. In addition, a great number of legislative documents are made available to the public during the legislative procedure, either under Article 11 of Annex II of the Council's Rules of Procedure or under Regulation 1049/2001. Documents made available pursuant to Article 11 are directly accessible by the public through the Council's public register on Internet.
11. Furthermore, following the adoption of a common position, the approval of a common text by the Conciliation Committee or the final adoption of a legislative act in accordance with Article 251 of the EC Treaty, all the documents concerning the act in question are made directly accessible to the public, unless they fall under the exceptions of Article 4 of EC Regulation No 1049/2001 of the EP and of the Council regarding public access to European Parliament, Council and Commission documents.
12. In the light of the above, the Council submits that no maladministration has occurred and that the issue raised by the complainants reaches beyond the Ombudsman's mandate.

(Complimentary clause)

Signature : Pierre de Boissieu