

Special report from the European Ombudsman to the European Parliament following the draft recommendation to the European Commission in Complaint 676/2008/RT

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The European Parliament adopted a resolution on the Special Report by the European Ombudsman following his draft recommendation to the European Commission in complaint 676/2008RT.

The complaint: on 1 March 2007, a non-governmental organisation acting in the field of environmental protection asked the Commission for access to information and documents held by the Directorate-General for Enterprise and Industry and the former Vice-President of the Commission responsible for Enterprise and Industry, relating to meetings between the Commission and representatives of car manufacturers at which the issue of the Commission's approach to carbon dioxide emissions from cars had been discussed. The documents related to meetings between the European Commission and car manufacturers at which the issue of the Commission's approach to carbon dioxide emissions from cars was discussed. The Commission granted access to 15 out of 18 letters sent to then-Commissioner Günter Verheugen, but refused access to three letters sent by the German car manufacturer Porsche on the grounds that their disclosure would undermine protection of the company's commercial interests on the basis of the first paragraph of Article 4(2) of Regulation 1049/2001.

The Ombudsman's services inspected the three letters from Porsche AG as well as an exchange of e-mails between the Commission and Porsche in which the Commission informed Porsche that it intended not to disclose the three letters. The Ombudsman, on the basis of the inspection, concluded that the Commission had wrongly refused full access to the letters from Porsche AG and that it considers that this was an instance of **maladministration**.

In addition, the Ombudsman made a draft recommendation to the Commission setting out the details of his factual and legal analysis, in which he stated that the Commission should grant access to the three letters sent by Porsche AG to the former Vice-President, Günter Verheugen, in their entirety or consider partially disclosing them.

Subsequently, the Ombudsman asked the Commission to give a detailed opinion within three months, that is, by 31 January 2009, however the Commission did not give its opinion within the deadline provided. Instead, it requested six extensions of the deadline for submitting its detailed opinion on the Ombudsman's draft recommendation, and whereas, in July and again in September 2009, the Ombudsman informed the Commission Secretariat of his intention to present a Special Report to Parliament if he did not receive an answer to his draft recommendation.

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Lastly, the new Commission, once it had had taken office, did indeed grant access to the letters, but whereas this occurred more than 15 months after the draft recommendation had been issued rather than the three months stipulated in the Ombudsman's Statute, the **Commission breached its obligation to cooperate with the Ombudsman** sincerely and in good faith during his inquiry into case 676/2008/RT.

Parliament underlines that the Commission met the original deadlines for replying to complaints in only four of the 22 cases involving access to documents dealt with by the Ombudsman in 2009. Whereas in 14 of these 22 cases it submitted its reply more than 30 days late, and in six cases it submitted its reply at least 80 days late.

A risks eroding trust in the Commission: Parliament endorses the European Ombudsman's critical remarks and his recommendation to the Commission in relation to complaint 676/2008/RT. It recognises that the **excessive delays** in responding to the Ombudsman in this case constitute a breach of the Commission's duty of sincere cooperation as envisaged in the Treaty. It is very concerned at the **general practice of delay and obstruction by the Commission** in respect of the Ombudsman's inquiries in cases involving access to documents.

Overall, Parliament considers that the Commission's uncooperative attitude in this and other cases **risks eroding citizens' trust in the Commission** and undermining the ability of the European Ombudsman and the European Parliament to adequately and effectively supervise the Commission, and that it as such, runs counter to the very principle of the rule of law upon which the European Union is founded.

Parliament requests that the Commission give an undertaking to the European Parliament that it will fulfil its duty of sincere cooperation with the European Ombudsman in future. In the case that the Commission fails to give such an undertaking and/or persists in its uncooperative practices towards the Ombudsman, Parliament may **sanction the Commission, and that such sanctions may include inter alia placing a portion of the Commission's budget for administrative expenditure into reserve.**