European Ombudsman: access to the documents published by the European institutions. Special report

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OBJECTIVE: a special report by the European Ombudsman concerning public access to documents held by the Community Institutions and bodies. SUBSTANCE: pursuant to Article 3(7) of the Rules of Procedure of the European Ombudsman, the Ombudsman, Jacob Söderman, has taken the initiative of drawing up an initial special report to Parliament on public access to documents held by the Community Institutions and Agencies. This report follows a survey carried out in June 1996 on the same subject which concluded on 20 December 1996 with a series of recommendations by the Ombudsman. The 1996 survey concluded in particular that omitting to adopt rules governing public access to documents and make them easily accessible to the public could constitute a case of maladministration. It was recommended that the Institutions put such rules in place and inform the Ombudsman by 30 April 1997. The various Institutions concerned (15 Community Institutions or Agencies, excluding the Council and the Commission which have had a code of conduct on this subject since 1993 and 1994) responded to the Ombudsman's recommendations and presented reasoned opinions which are the subject of this special report. The enquiry in 1996 revealed that only one Community body (the Office for Harmonization in the Internal Market) had adopted rules concerning public access to documents, and the other Institutions intended to take action in this area. With regard to the Court of Justice, the European Parliament and the European Monetary Institute, access to documents is concerned only with administrative documents (the Court's judicial activity is not covered by the Ombudsman's Rules of Procedure and the concept of maladministration cannot apply to Parliament's political activity; in the case of the EMI, access to documents in the monetary field is strictly regulated). All the other Institutions communicated their own rules governing public access to documents before the end of 1997, although some of them were granted extra time to enable them to draw up access rules. At present, 13 Community bodies have adopted rules governing public access to documents. The rules adopted by the EMI are concerned only with administrative documents and those relating to Parliament apply to all documents and not only to administrative documents. With regard to the Court of Justice, the Ombudsman stresses that this Institution has experienced some difficulties in drawing a clear distinction between documents related to its judicial activity (which cannot be divulged) and others. The Court has therefore embarked on a study of this subject and will make proposals when this is completed. With regard to the activity of the Court, the Ombudsman cannot make any formal recommendations. However, the Ombudsman hopes that the study will be extended to all documents, not only administrative documents. He also suggests that Parliament ask the Court for further information on this subject. He suggests as well that Parliament, in view of its prerogatives in this area, determine whether the rules adopted by the Community Institutions guarantee a degree of transparency which citizens have a right to expect. Within two years from the time when the Treaty of Amsterdam comes into force, Parliament, pursuant to the new Article 191a of the Treaty, should participate in determining general principles and limits governing the right of access to Community documents. The Ombudsman calls for this legislation to apply to all the institutions. The Ombudsman, on the basis of the particular case of the European Agency for Evaluation of Medicinal Products (which made it possible for all interested parties such as consumer associations, the press and individuals to express their views on its transparency rules through the Internet), suggests that Parliament encourage the other Institutions to publish their relevant rules in an appropriate form, the Official Journal of the Communities or any other means, in all the Community's official languages.