



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 June 2012**

**10828/12**

<b>OMBUDS</b>	<b>6</b>
<b>INST</b>	<b>383</b>
<b>INF</b>	<b>98</b>
<b>API</b>	<b>69</b>
<b>JUR</b>	<b>317</b>

**COVER NOTE**

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From : Mr P. Nikiforos DIAMANDOUROS, European Ombudsman  
Dated : 22 May 2012  
To : Mr Uwe Corsepius, Secretary General

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Subject : Complaint 862/2012/RT made by Mr David PRICE to the European Ombudsman

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Delegations will find at Annex copy of a letter sent by the European Ombudsman to the Council concerning complaint 862/2012/RT.



European Ombudsman

0862/2012/RT  
S2012-155630

**P. Nikiforos Diamandouros**  
European Ombudsman

Mr Uwe Corsepius  
Secretary-General  
Council of the European Union  
1048 BRUSSELS  
BELGIQUE

Strasbourg, 22 -05- 2012

Complaint 862/2012/RT

Dear Mr Secretary-General,

On 26 April 2012, I received a complaint from Mr David Price against the European Council, concerning the refusal to grant him access to the "*legal opinions on the draft of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union*".

In his complaint, Mr Price submitted the following allegation and claim, which I decided to include in my inquiry.

**Allegation:**

1. The European Council failed to handle properly and in a timely manner the complainant's request for access to documents.

**Claim:**

1. The European Council should grant access to the requested documents.

In accordance with Articles 2(2) and 3(1) of the Statute of the European Ombudsman, I inform you of this complaint and invite you to submit an opinion on the above allegation and claim by 31 August 2012.

Enclosed, please find a copy of the complaint.

**Request for inspection of the file**

I have also decided to inspect the documents to which the complainant has requested access and which are in the European Council's possession.

I would therefore appreciate it if, in accordance with Article 3(2) of the

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CS 30403  
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eo@ombudsman.europa.eu



Statute of the European Ombudsman, you could allow my services to inspect the relevant file. I should be grateful if your services could contact Ms Raluca Trasca (tel. + 32 (0)2 284 21 80) of my Office in order to agree on a convenient date for the inspection.

A copy of the inspection report will be forwarded to the complainant and to the Council. I would like to underline that, in accordance with Articles 5(2), 13(2) and 14(2) of the Implementing Provisions of the European Ombudsman, the Ombudsman's inspection will not result in the complainant or any other person obtaining access to any documents which the Council identifies as confidential during the inspection, or to any information contained in such documents.

Yours sincerely,

P. Nikiforos Diamandouros

cc: Mr Hubert Legal  
Director-General of the Legal Service  
Council of the European Union

Dr Richard Corbett

Enclosure (sent by e-mail):

- Copy of complaint 862/2012/RT

**From:** dp@schuman.info  
**Sent:** 25 April 2012 18:51  
**To:** EORegistry  
**Subject:** [EOWEB#9795] New complaint from: **DELETED**  
**Follow Up Flag:** RT (EB)  
**Flag Status:** Blue  
**Attachments:** OmbECnclAccessCorr.doc; OmbECnclAccessCorr.doc; EN.html  
 Your complaint has been submitted to the European Ombudsman. We will send you an acknowledgement of receipt within a few days.

NB - Please note that this e-mail was sent from a notification only e-mail address. If you wish to contact technical support, please use the link below:

[Contact technical support](#)

**Sender**

**From:** **DELETED**  
**Date:** Wednesday, April 25, 2012 6:50:54 PM CEST  
**EOWEB\_COMPLAINT\_ID:** 9795

**Complaint about maladministration**

**Part 1 - Contact information**

**First name:** David  
**Surname:** Price  
**On behalf of (if applicable):**  
**Address line 1:** **DELETED**  
**Address line 2:**  
**Town/City:** **DELETED**  
**County/State/Province:**  
**Postcode:** **DELETED**  
**Country:** **DELETED**  
**Tel.:** **DELETED**  
**Fax:**  
**E-mail address:** **DELETED**



**Part 2 - Against which European Union (EU) institution or body do you wish to complain?**

European Council

**Part 3 - What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.**

I requested documents orally on 30 January 2012 to a chief press officer at the European Council. I was directed to other officials without result. I was told to apply on the European Council web site. I did so on 2 February. There is a fifteen-day time limit under the Regulation 1049/2001.

It concerned an urgent matter of great public interest – the legal basis for the new financial treaties and whether they fall within the European rule of law, in particular whether the European Court of Justice may act.

These documents should have been available immediately as they are at the centre of a public debate on which parliaments have to make a decision in the near future.

I did not receive a written reply until 16 March 2012. This goes far beyond the fifteen day limit of the Regulation 1049/2001

As the reply involved a total refusal to send me even a comma of the document, I appealed on 30 March 2012 pointing out at length the arguments used to refuse the document were inadequate and unsubstantial.

As of today, some four weeks after my appeal for urgent action, I have not received a reply. This is an extremely urgent matter and refusal to supply information immediately for public debate is a constraint and barrier to democracy and the possible legality of the treaties. Great political pressure is being placed on public and parliaments for a quick decision.

#### **Part 4 - What do you consider that the EU institution or body has done wrong?**

Urgent matters should be treated urgently and at the very least within the legal limits of the Regulation 1049/2001.

#### **Part 5 - What, in your view, should the institution or body do to put things right?**

The European Council should take action to change its information access system to make urgent documents available immediately -- especially those needed for public debate.

#### **Part 6 - Have you already contacted the EU institution or body concerned in order to obtain redress?**

Yes (please specify)

See correspondence about request and appeal.

#### **Part 7 - If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable

#### **Part 8 - Has the object of your complaint already been settled by a court or is it pending before a court?**

No

#### **Part 9 - Please select one of the following two options after having read the information in the box below:**

Please treat my complaint publicly

#### **Part 10 - Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?**

Yes

## 1. My Request introduced on 2 February

From: David H Price [mailto:**DELETED**]  
Sent: Thursday, February 02, 2012 4:00 PM  
To: PRESSE PRESIDENT  
Subject: Role of ECJ in ESM and other treaties

Hello

I was told there were two legal opinions (at least, maybe three) from Council services on the insertion, application and operation of the European Court of Justice in the ESM and ESFS and other euro treaties pacts etc. I would be grateful if you could send me as soon as possible a copy of these and any other legal advice on this institutional topic.

Many thanks.

David Price  
Editor  
Bron Communications  
[www.schuman.info](http://www.schuman.info)  
Eurdemocracy.

## 2. the following day I received this acknowledgement

Subject: Ref. 12/0191-csm/mf - RE: Role of ECJ in ESM and other treaties

From:  
SECRETARIAT DGF Access <Access@consilium.europa.eu>

To:

**DELETED**

Date:  
Fri, Feb 3, 2012 10:51 am

Dear Mr Price,

Thank you for your message dated 2 February 2012 to PRESSE PRESIDENT. The Transparency team of the General Secretariat has received and registered your request for access to documents.

All requests for access to documents are treated on the basis of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. You will receive a reply to your request within 15 working days.

Yours sincerely,

For the General Secretariat of the Council

Transparency Team - Access to documents  
Tel. +32-2-281 6710

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From: David H Price [mailto:**DELETED**]  
Sent: Thursday, February 02, 2012 4:00 PM  
To: PRESSE PRESIDENT  
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Many thanks.

David Price  
Editor  
Bron Communications  
[www.schuman.info](http://www.schuman.info)  
Eurdemocracy.

### 3. Eventual reply of DG Access

Subject: 12/0191-mf/ls/mi

From:  
SECRETARIAT DGF Access <Access@consilium.europa.eu>  
To:  
**DELETED**  
Date:  
Fri, Mar 16, 2012 3:03 pm

[12-0191en.pri.mf-ls-mi.doc](#)

Please find attached a letter from the General Secretariat of the Council concerning your request for access under Regulation 1049/2001.

Yours sincerely,

General Secretariat of the Council of the European Union  
Transparency Service - Access to documents

The enclosed reply said that one document had been identified and refused any access at all.

#### 4. My Reply and appeal

Subject Re: 12/0191-mf/lS/mi

From:

David H Price **DELETED**

To:

Access <Access@consilium.europa.eu>

Date:

Fri, Mar 30, 2012 2:54 pm

ECnclFiscalTreatyLegalOpInfoReq12-0191en.doc

Dear Mr Thomsen,

Thank you for your reply to my request of 2 February 2012 for the Legal Opinions on the draft treaty for the Fiscal Compact. This is an urgent matter and of great importance to all European citizens as it concerns legislation and a treaty that is presently under consideration by a number of Parliaments of Member States. I first made my request directly to officials of the Council press service but was told that I would have to request the document formally through the web service of the Council. This involved a period UP TO fifteen days before delivery, even though it was an extremely urgent matter.

You state that 'On 23 February 2012, the time-limit for replying to your application was extended by 15 working days.' I would like to point out that this delay was not caused by me but simply that the reply from the Council was not originally executed within the statutory 15 days as required by Community law. I was told by an official on the phone that the Council had failed to respect the deadline. In effect the Council gave itself extra time. I am in no way to blame.

You write that the Council has decided that not a word, not a comma, of any document will be released. This is not acceptable. I request that all documents in full should be released.

As to the substance of your reply I am asking for an immediate release, if necessary following a re-evaluation of grounds of the refusal to supply the Legal Opinions on the draft Fiscal Compact treaty aka 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union'. You have identified only one document which you refer to as document 5788/12. I was told by your press office there were at least two.

My reasons are the following: ....



07/05/2012

0862/2012/RT  
E2012-155207

**BEYER Severine**

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**From:** David H Price **DELETED**  
**Sent:** 04 May 2012 15:54  
**To:** Euro-Ombudsman  
**Subject:** Re 0862/2012/RT Ref. 09/c/02/12 PRO (Confirmatory application)  
**Attachments:** 120425.Price.01en.PRO.doc

Dear Ombudsman,

After I had introduced my complaint about the extensive delays of the European Council to reply to my urgent request for informaton, I received a further letter from the Secretariat DGF Access -- the same day.

This postpones the decision and possible delivery of the urgent information until 22 May 2012. By delaying the decision for the supply of urgent information originally requested in January, this makes a nonsense of having a public discussion about matters of vital importance to the public. I delayed writing to you until I had a reference number for the complaint.

Yours sincerely,

David Price

-----Original Message-----

**From:** SECRETARIAT DGF Access <Access@consilium.europa.eu>  
**To:** **DELETED**  
**Sent:** Wed, Apr 25, 2012 3:51 pm  
**Subject:** Ref. 09/c/02/12 PRO (Confirmatory application)

Dear Mr Price,

Please find attached a letter from the General Secretariat of the Council extending the time limit for the Council to reply to your confirmatory application for public access under Regulation 1049/2001.

Yours sincerely,

General Secretariat of the Council of the European Union  
Transparency Service - Access to documents



**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

*Directorate-General F  
Press  
Communication  
Transparency*

*- Access to Documents/  
Legislative transparency*

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B - 1048 BRUSSELS  
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Fax: (32 2) 281 63 61  
E-MAIL:  
[access@consilium.europa.eu](mailto:access@consilium.europa.eu)

Brussels, 25 April 2012

**Mr David Price**

e-mail: **DELETED**

**Ref. 09/c/01/12 PRO**

Dear Mr Price,

Thank you for your email of 30 March 2012 by which you make a confirmatory application for public access to Council document 5788/12 pursuant to Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (Official Journal L 145 of 31.05.2001, p. 43).

Due to the complexity of the examination of the confirmatory application and exceptional constraints in the timetable for meetings of the various Council bodies involved in the examination of your application, a decision by the Council can only be taken during the second half of May 2012.

The time limit for the Council to reply to your application has therefore to be extended by 15 working days (until 22 May 2012), in accordance with Article 8(2) of the Regulation.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

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