

THE EUROPEAN OMBUDSMAN



EXECUTIVE SUMMARY AND STATISTICS

EN

annual report 2006





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## INTRODUCTION

At the start of each year, I sit down to finalise the text of the European Ombudsman's most important publication — the Annual Report. The necessary uninterrupted focus required for the finalisation of such a manuscript is of inestimable value, allowing me not only to take stock of the achievements of the previous twelve months, but also to identify areas for improvement. My intention in the coming pages is to relay the results of that reflection to you.



### **The Ombudsman's primary role — Helping complainants**

The number of complaints received by the European Ombudsman in 2006 remained close to the record high levels reached in 2005 and 2004, thus indicating that complaints to the Ombudsman have now stabilised at the previously unprecedented rate of 320 per month. In the vast majority of cases received in 2006, I was able to help the complainant by opening an inquiry, transferring the case to a competent body, or advising on where to turn for a prompt and effective solution to the problem. The Executive Summary of the Report gives an overview of the cases handled in 2006, while Chapters 2 and 3 of the Report itself analyse and present the cases in greater detail.

### **Many positive results — Best practice cases**

The case summaries included in this Report contain many examples of how the EU institutions and bodies react positively to problems that I bring to their attention. For the first time in this Report, I have identified six star cases which constitute examples of best practice that I wish to highlight. These include a case in which the European Commission agreed to review its interpretation of the Data Protection Directive to take account of a citizen's concerns, a constructive response from the European Investment Bank to an access to documents case, and the decision of the European Parliament to abolish age limits in its traineeship programme. My intention in highlighting these cases is to present models of good administration for all EU institutions and bodies to take inspiration from and to measure their own practices against. More information on these cases can be found in the Executive Summary that follows. The six star cases are also indexed in Annex D of the full Report.

### **Some missed opportunities**

Since I took up the position of European Ombudsman on 1 April 2003, I have been keen to promote a culture of service in the EU administration. Citizens deserve no less. The EU Charter of Fundamental Rights includes the right to good administration and we are duty-bound to respect this promise made to European citizens.

As I have often said, the way in which the public administration reacts to complaints is a key measure of how citizen-focused it is. While progress has been made in many areas, the year 2006 regrettably saw a rise in the proportion of cases that I closed with a critical remark and an equally significant fall in the number of cases in which a friendly solution was reached. The lower rate of acceptance and implementation of the Ombudsman's draft recommendations by the institutions is similarly regrettable.

This development should be a cause for concern for everyone who wants better relations between the European Union and its citizens. Complaints offer an opportunity to put things right and



to demonstrate that the institution or body concerned is serious about respecting the citizen's fundamental right to good administration. I am not sure that the citizen can easily reconcile the statements often made by the institutions that they want to get "closer to the citizen", with the fact that the very same institutions frequently fail to take up the opportunities offered by the Ombudsman to improve relations.

Part of the problem seems to be that the idea that the principles of good administration require more of institutions and of individual civil servants than merely avoiding unlawful behaviour is not yet fully understood and sufficiently internalised by some within the administration. I will continue to emphasise this key point in 2007. Also, with a view to ensuring that my inquiries have a concrete and lasting impact, I intend to carry out and publish studies in 2007 of the follow-up given to all further remarks and critical remarks made in 2006. This should provide further encouragement to the institutions concerned to improve their practices for the benefit of citizens.

### **Working with the institutions to promote a culture of service**

Around 70% of the Ombudsman's inquiries concern the European Commission. It is, therefore, vital that the Commission take a leading role in promoting a service culture. With an eye to attaining this goal, I have embarked upon a cycle of bilateral meetings with each of the European Commissioners designed to underline the key principles of good administration that must be adhered to at every level in the Commission and to focus on areas where my inquiries into complaints have given me cause for concern. The openness and engagement of the 11 Commissioners I have met thus far clearly demonstrate that they appreciate the value of responding constructively to complaints. My meetings with the other EU institutions and bodies were similarly encouraging, and details of these are contained in Chapter 4 of this Report.

### **Promoting subsidiarity in remedies**

Given the significant proportion of complaints that I receive each year which fall outside my mandate, I continued my efforts, throughout 2006, to promote subsidiarity in remedies. Many people who complain to me appear not to be aware of non-judicial remedies available to them within the Member States, or that national and regional ombudsmen may be competent to deal with their complaints, including in cases where EU law is involved. The European Network of Ombudsmen is a key resource in helping national and regional ombudsmen deal with cases involving EU law as effectively as possible. In 2006, over 75% of the complaints I received fell outside my mandate, mainly because they concerned national or regional administrations in the Member States. In the vast majority of such cases, another member of the European Network of Ombudsmen was competent to deal with the matter complained about. In all such cases and with the prior permission of the complainant, I either transferred the complaint directly to the appropriate ombudsman, or advised the complainant on where to turn. While such transfers and advice are undoubtedly of great help to the citizen, it would clearly be preferable for citizens to contact the appropriate ombudsman the first time around.

### **A better targeted communications strategy**

We are therefore working hard, through the European Network of Ombudsmen, to direct citizens to the right ombudsman through the provision of clear and understandable information about the multiple means of redress available to them at the European, national and regional levels. This information is being provided to citizens through links to national and regional ombudsmen on my website, which were used over 44 000 times last year, by information about the Network contained in my publications, and by joint presentations with the relevant national or regional ombudsman during my information visits to Member States.

In addition to the activities being undertaken through the Network, we have been intensifying our communications efforts more generally. During the course of the year, we developed three key strategies for reaching out to the public — a comprehensive media strategy, a plan for radically overhauling the Ombudsman's Internet site, and a carefully-researched policy for better targeting



and reaching out to potential complainants. This last strategy is vital if the current proportion of complaints outside my mandate is to be reduced. The intention behind all three actions is to ensure that all those who might have an admissible complaint to make to the European Ombudsman are aware of how to do so, and that those with a complaint falling outside my mandate know whom to turn to for help. Equally, these communications activities should help raise awareness among the general public about the role of the European Ombudsman in holding the EU administration to account.

### Staff retreat

What is the meaning of good administration from both a conceptual and a procedural point of view, how to further enhance and promote a service culture within the Ombudsman's office, and how to reach out to citizens at large and to target particular, more specialised, audiences were some of the topics discussed in detail during the European Ombudsman's first-ever staff retreat that took place in October 2006. A retreat is an exercise in self-reflection, involving the whole staff of an institution, which aims at developing and strengthening understanding of the institution's values and mission, and at promoting their effective delivery. Every member of staff was encouraged to take an active part in the deliberations, and to express his/her views on the various themes for discussion. There was broad consensus after the retreat that it had clearly proved to be a very productive and worthwhile experience that deserved repeating.

All of the activities I have touched upon in this introduction are included in detail in the Annual Report, while a shorter account of the Ombudsman's work is provided in the Executive Summary and Statistics, which is also published as a separate publication. I hope that both publications will provide you with a full account of the work of the European Ombudsman in 2006 and encourage you to learn more about the institution I have the honour of leading. For my part, I look forward to another challenging year in 2007, with the dual aim of working with the institutions to promote good administration and refocusing my communications efforts so that all those who might need to make use of the European Ombudsman's services are properly and adequately informed of how to do so.

Strasbourg, 22 February 2007

P. Nikiforos DIAMANDOUROS





## EXECUTIVE SUMMARY

The twelfth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2006. It is the fourth Annual Report to be presented by Mr P. Nikiforos DIAMANDOUROS, who began work as European Ombudsman on 1 April 2003.

### STRUCTURE OF THE REPORT

The Report consists of six chapters and four annexes. It starts with a personal introduction by the Ombudsman, in which he reviews the year's main activities and achievements and outlines ideas for the year ahead. This Executive Summary constitutes Chapter 1.

Chapter 2 describes the Ombudsman's procedures for handling complaints and conducting inquiries. It gives an overview of the complaints dealt with during the year, including a thematic analysis of the results of cases closed after an inquiry. This analysis covers the most significant findings of law and fact contained in the Ombudsman's decisions in 2006.

Chapter 3 consists of a selection of summaries of the Ombudsman's decisions for 2006, covering the range of subjects and institutions involved in complaints and own-initiative inquiries. The summaries are organised first by the type of finding or outcome and then by the institution or body concerned. Summaries of decisions following own-initiative inquiries and examples of queries submitted by national and regional ombudsmen are presented at the end of the chapter.

Chapter 4 concerns relations with other institutions and bodies of the European Union. It begins by outlining the value of the Ombudsman's constructive working relations with the institutions and bodies, and goes on to list the various meetings and events that took place in this regard in 2006.

Chapter 5 deals with the European Ombudsman's relations with the community of national, regional and local ombudsmen in Europe and beyond. The activities of the European Network of Ombudsmen are described in detail, while the Ombudsman's participation in seminars, conferences and meetings is also covered.

Chapter 6 provides an overview of the Ombudsman's communications activities. The chapter is divided into six sections, covering the year's highlights, the Ombudsman's information visits, conferences and meetings involving the Ombudsman and his staff, media relations, publications and online communications.

Annex A contains statistics on the work of the European Ombudsman in 2006. Annexes B and C provide details, respectively, of the Ombudsman's budget and personnel. Annex D indexes the decisions contained in Chapter 3 by case number, by subject matter, and by the type of maladministration alleged. It also lists the star cases and all cases closed with a critical remark in 2006.

### SYNOPSIS

#### **The mission of the European Ombudsman**

The office of European Ombudsman was established by the Maastricht Treaty as part of the citizenship of the European Union. The Ombudsman investigates complaints about maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the



Court of First Instance acting in their judicial role. With the approval of the European Parliament, the Ombudsman has defined “maladministration” in a way that requires respect for human rights, for the rule of law and for principles of good administration.

As well as responding to complaints from individuals, companies and associations, the Ombudsman works proactively, launching inquiries on his own initiative, meeting with Members and officials of the EU institutions and bodies, and reaching out to citizens to inform them about their rights and about how to exercise those rights.

### Complaints and inquiries in 2006

During 2006, the Ombudsman received 3 830 complaints. This constitutes a slight decrease (2%) by comparison to 2005<sup>1</sup> but also confirms a stabilisation of complaints at the unprecedented high level attained in 2004. A total of 57% of all complaints received by the Ombudsman in 2006 were sent electronically, either by e-mail or using the complaint form on the Ombudsman’s website. Complaints were sent directly by individual citizens in 3 619 cases, while 211 came from associations or companies.

In almost 70% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem.

A total of 258 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began nine inquiries on his own initiative. He dealt with a total of 582 inquiries in 2006, 315 of which were carried over from 2005.

As in previous years, most of the inquiries, that is 387 or 66% of the total, concerned the European Commission. Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens’ complaints. There were 74 inquiries (13% of the total) concerning the European Personnel Selection Office (EPSO), 49 (8%) concerning the European Parliament and 11 (2%) concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (in 25% of cases), unfairness or abuse of power (19%), unsatisfactory procedures (12%), avoidable delay (9%), discrimination (9%), negligence (8%), legal error (5%), and failure to ensure fulfilment of obligations, that is failure by the European Commission to carry out its role as “guardian of the Treaty” vis-à-vis the Member States (4%).

A total of 3 540 individual requests for information were received by e-mail, compared to around 3 200 in both 2005 and 2004. All received individual replies from an appropriate member of the Ombudsman’s staff.

### The results of the Ombudsman’s inquiries

In 2006, the Ombudsman closed 250 inquiries, 247 of which were linked to complaints and three constituted own-initiatives. An overview of the findings can be found below.

#### *No maladministration*

In 95 cases, the Ombudsman’s inquiry revealed no maladministration. This is not necessarily a negative outcome for the complainant, who at least receives the benefit of a full explanation from the institution or body concerned of what it has done, as well as the Ombudsman’s view of the case. Among the examples of cases in which no maladministration was found in 2006 are the following:

<sup>1</sup> It should be noted that, in 2006, 281 complaints were received on the same subject matter, while in 2005, 335 complaints concerned the same subject matter.



- The Ombudsman received a complaint concerning the European Investment Bank's (EIB) handling of requests for information about its possible financing of a project in the Czech Republic. In its initial reaction to the requests for information, the EIB had observed, in general terms, that its refusal to give access complied with its policy and rules in force at the time. During the course of the Ombudsman's inquiry, it proceeded to provide a more specific explanation, referring to the public interest as regards international relations. The Ombudsman concluded that the EIB had not breached its own rules on access to information and closed the case with a finding of no maladministration. For future purposes, however, he encouraged the EIB to complement an eventual refusal to provide information with an adequate explanation of the reasons for doing so, addressed to the person requesting the information before the problem reaches the stage of becoming a complaint to the Ombudsman. (3501/2004/PB)
- A participant in an open competition organised by the European Personnel Selection Office (EPSO) complained to the Ombudsman that the competition had not been sufficiently transparent and well organised, and that the time-limits for registration for the selection tests had not been respected. Following his inquiry, the Ombudsman found that EPSO had provided the candidates, on a regular basis and in compliance with the call for expression of interest, with information concerning the successive stages of the selection procedure. He concluded that the information provided by EPSO had been clear and adequate and there was no instance of maladministration. (472/2006/DK)
- A Swedish translation bureau complained to the Ombudsman about an invitation to submit a tender issued by the Court of Justice. The invitation contained a requirement not mentioned in the original contract notice, which the bureau could not fulfil. The Ombudsman found that, according to the relevant rules, it was sufficient for certain requirements to be specified only in the invitation to tender and not in the contract notice as well. He concluded that the Court had not, as the complainant alleged, changed the conditions during the procedure, and therefore found no maladministration. (2523/2005/TN)

Even if the Ombudsman does not find maladministration, he may identify an opportunity for the institution or body to improve the quality of its administration in the future. In such cases, the Ombudsman makes a further remark, as he did, for instance in the following cases:

- The Ombudsman found no maladministration with regard to Parliament's decision to reject the complainant's bid following a call for tenders. However, he drew Parliament's attention to a statement it had made with regard to its discretion in call for tender procedures. The Ombudsman pointed out that the statement did not seem to be consonant with the call for tenders in this case, or with the principles of good administration concerning the exercise of discretionary powers. (1315/2005/BB)
- The Ombudsman suggested to the European Personnel Selection Office (EPSO) that, whenever the Appointing Authority expects its response to an appeal, made under Article 90(2) of the Staff Regulations, to be sent after the expiry of the four-month deadline foreseen, it should send a holding reply. This followed an inquiry into a complaint from a candidate who had not succeeded in an open competition. EPSO expressed its regret for the delay in this particular case. The Ombudsman profited from the opportunity provided by this complaint to clarify that he is authorised to examine the legality of a Selection Board's decision. EPSO had contested the Ombudsman's power to do so in this case. (1217/2004/OV)

#### *Cases settled by the institution and friendly solutions*

Whenever possible, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against. The co-operation of the Community institutions and bodies is essential for success in achieving such outcomes, which help enhance relations between the institutions and citizens and can avoid the need for expensive and time-consuming litigation.



During 2006, 64 cases were settled by the institution or body itself, after a complaint to the Ombudsman. Among them were the following:

- The Commission settled a late payment case concerning an exchange programme for pupils between Berlin, Germany, and Halton, United Kingdom, after a local authority in Berlin lodged a complaint with the Ombudsman. The Commission also announced that it had taken steps to improve its administration in the area of town twinning. The Ombudsman welcomed this response but added that it would be appropriate also to pay interest in such cases. (3172/2005/WP)
- The Commission agreed to pay an outstanding salary amount to an official after the Ombudsman investigated the case. The official had fallen ill soon after taking up her duties, and was finally granted a disability pension. The Commission refused to pay her for an extended period, arguing that she had not provided any evidence to indicate that her absence was due to medical reasons. As a result of the Ombudsman's inquiry, the Commission agreed to pay the outstanding salary, plus the interest claimed by the complainant. (106/2005/TN)
- The Committee of the Regions reimbursed travel expenses to a candidate for a job interview and agreed to pay interest, after the Ombudsman looked into the case. In response to the complainant's claim that its reimbursement procedure should be improved, the Committee submitted that the delay had been due to exceptional circumstances and that its procedures did not require revision. In a further remark, the Ombudsman suggested that the Committee's administrative standards would be further improved if it were systematically to follow-up on payment files such as the one at hand. This could be done by contacting applicants if certain necessary documents were missing and, in case of delays, by keeping applicants informed about the delays and their reasons. (800/2006/WP)

If an inquiry leads to a finding of maladministration, the Ombudsman always tries to achieve a friendly solution if possible. In some cases, a friendly solution can be achieved if the institution or body concerned offers compensation to the complainant. Any such offer is made *ex gratia*, that is, without admission of legal liability and without creating a legal precedent.

During 2006, 28 friendly solutions were proposed. Three cases, including two cases where the proposal had been made in 2005, were closed in the course of the year after a friendly solution had been achieved. At the end of 2006, 27 proposals for friendly solutions were still under consideration. Among the friendly solutions achieved in 2006 were the following:

- The European Investment Bank (EIB) gave partial public access to an audit report, after a complaint was made to the Ombudsman. In addition, it agreed to give the relevant company private access to sections of the report that specifically concerned the group to which the company belonged. The report concerned an EU-funded project in Africa in which the group had participated. The EIB had initially refused access to the report. The Ombudsman welcomed the constructive approach of the EIB as a model for future access to document cases. (1776/2005/GG)
- Following a complaint by a German citizen, the Commission agreed to review its interpretation of the European Data Protection Directive<sup>2</sup>. According to the complainant, the public authorities of the State of Hamburg had unlawfully handed over personal data to enterprises, in knowledge of the fact that the latter would use the data for direct marketing purposes. The Commission had initially stated that the Data Protection Directive did not provide any protection against such an eventuality. After the Ombudsman's intervention, it agreed to review its assessment. (2467/2004/PB)
- After the Ombudsman intervened in the case, the European Aviation Safety Agency (EASA) agreed to cancel the scheduled recovery of allowances paid to the complainant. The Ombudsman

<sup>2</sup>

Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31.



found that EASA had provided the complainant with incomplete information that was liable to mislead him, and proposed as a friendly solution that EASA consider cancelling the recovery of at least part of the allowances. EASA maintained its opinion that no maladministration had taken place, but, "having regard to the unique nature of this case and having the highest regard towards the opinion of the Ombudsman", it cancelled the recovery in full. (1729/2005/(PB))F)

#### *Critical remarks, draft recommendations and special reports*

If a friendly solution is not possible or if the search for such a solution is unsuccessful, the Ombudsman either closes the case with a critical remark to the institution or body concerned or makes a draft recommendation.

A critical remark is normally made if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2006, the Ombudsman closed 41 inquiries with critical remarks. For example:

- The Ombudsman criticised the Commission for not taking further steps to make Germany comply with a judgment of the European Court of Justice concerning the German Packaging Regulation. This followed a complaint from several European beverage companies about the inactivity of the Commission on this matter. The Court had ruled that the German Packaging Regulation for certain drinks constituted a barrier to intra-Community trade. In view of the fact that one of the infringement procedures concerning the German Regulation was still ongoing, the Ombudsman considered that his views, expressed in the critical remark, could usefully be taken into consideration by the Commission in the context of that procedure. (1037/2005/GG)
- The Ombudsman criticised EPSO for failing to give information requested by a candidate in an open competition to help him understand his marks in a translation test he had not passed. EPSO neither argued that the provision of the information would entail an unreasonable administrative burden nor indicated any other valid reasons for its failure to provide the complainant with this information. (674/2004/PB)
- The Ombudsman criticised the Commission for refusing to grant access to documents to the environmental NGO, Friends of the Earth. The documents concerned the scientific matters regarding the safety of genetically modified (GM) foods that the Commission had submitted to the World Trade Organisation. Recalling that the exceptions to public access must be construed and applied strictly, the Ombudsman found that, in this case, the Commission had adopted an impermissibly extensive interpretation of the relevant provisions. (582/2005/PB)

It is important for the institutions and bodies to follow up critical remarks from the Ombudsman, taking action to resolve outstanding problems and thus to avoid maladministration in the future. During 2007, the Ombudsman intends to carry out and publish a study of the follow-up to all critical remarks made in 2006, undertaken by the institutions involved. A similar study on the follow-up given to the 38 cases involving a further remark made in 2006 will also be carried out.

In cases where follow-up action by the Ombudsman does appear necessary, that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution or body concerned, which must respond to the Ombudsman with a detailed opinion within three months.

During 2006, 13 draft recommendations were made. In addition, ten draft recommendations from 2005 led to decisions in 2006. Four cases were closed during the year when a draft recommendation was accepted by the institution. Two cases led to a special report to the European Parliament. Nine cases were closed for other reasons. At the end of 2006, nine draft recommendations were still under



consideration, including one made in 2004. The draft recommendations made in 2006 included the following:

- The Ombudsman urged the Commission to deal as rapidly as possible with a complaint about the European Working Time Directive. A German doctor had complained that Germany was in breach of the Directive, as far as the work of doctors in hospitals and their time spent on call was concerned. The Commission argued that changes to the Directive were under way. The Ombudsman, however, considered that the Commission was not entitled to indefinitely postpone dealing with the complaint on the grounds that the Directive may be amended some time in the future. (3453/2005/GG)
- The Ombudsman called on the Commission to correct inaccurate and misleading information contained in leaflets, posters and a video presentation on air passenger rights. This followed complaints from two airline associations. They criticised the information provided by the Commission on the rights of travellers to compensation and assistance in the event of denied boarding, cancellation of flights or long delays. Although the Ombudsman did not find all the complainants' allegations to be justified, he identified certain inaccurate and misleading statements in the information material and asked the Commission to correct them. (1475/2005/(IP)GG and 1476/2005/(BB)GG)

The Commission's detailed opinion on the Ombudsman's draft recommendation in case 3453/2005/GG was due to be delivered in December 2006, and in cases 1475/2005/(IP)GG and 1476/2005/(BB)GG, in March 2007. Given that these inquiries were still open at the end of 2006, they do not appear in Chapter 3 of the Report.

Among the draft recommendations accepted in 2006 were the following:

- The Commission accepted the Ombudsman's finding that good administrative practice would have required it to seek clarification of statements made at a German Regional Parliament Committee meeting and confirmed that it would endeavour to do so. This followed a draft recommendation in which the Ombudsman urged the Commission to take appropriate steps in order to ascertain whether the sale of a state-owned company in Germany entailed elements of state aid. According to the complainant, this would require a clarification of statements made at the Regional Parliament Committee meeting which suggested that there had been state aid. (642/2004/GG)
- The Commission accepted a draft recommendation in which the Ombudsman called on it to adopt a decision on the complainant's infringement complaint as quickly as possible and communicate its decision to the complainant. A Danish car dealer had turned to the Ombudsman alleging that the Commission had failed to honour its commitment to reach a conclusion on his infringement complaint concerning Denmark's taxation of imported cars. (956/2004/PB)

If a Community institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament. This constitutes the Ombudsman's ultimate weapon and is the last substantive step he takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgment of the Parliament. Two special reports were made in 2006:

- The Ombudsman called on the Council to reconsider the choice of languages used in the websites of the EU Presidencies. This followed a complaint from a German association which claimed that these websites should be available not only in English and French, but also in German. The Council argued that the Member State holding the Presidency is solely responsible for its website. The Ombudsman disagreed and, following the Council's rejection of his draft recommendation, brought the matter before the European Parliament. (1487/2005/GG)
- In a special report to the Parliament, the Ombudsman argued that the Commission's claim that it was unable to reach a political consensus on how to proceed did not relieve it of its duty to deal properly with an infringement complaint. A German provider of sports betting services



had complained to the Commission after the German authorities ordered him to stop offering his services, thus forcing him to close his business. In the complainant's view, this constituted a violation of the freedom to provide services. Following the submission of the special report, the Commission informed Parliament and the Ombudsman that it had taken a decision on the infringement complaint. (289/2005/GG)

### Own-initiative inquiries

The Ombudsman makes use of his power to launch own-initiative inquiries in two main instances. Firstly, he may use it to investigate a possible case of maladministration when a complaint has been submitted by a non-authorised person (i.e., when the complainant is not a citizen or resident of the Union or a legal person with a registered office in a Member State). Five such own-initiative inquiries were opened in 2006. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. He did this on four occasions in 2006, including the following two instances:

- The Ombudsman asked the Commission to investigate the possibility of increased use of mediation to deal with disputes arising under the contracts it funds. The Commission responded positively, by making a commitment to encourage alternative methods of dispute resolution in the future, by inserting an optional mediation clause in its standard procurement contracts. In closing the inquiry, the Ombudsman asked the Commission to provide him with follow-up information by 30 June 2007 concerning both the mediation clause and the institution's efforts to extend the use of mediation to include disputes about grants. The Ombudsman also underlined the importance of recommending the use of mediation in conflicts between contractors and sub-contractors. (OI/1/2006/TN)
- In January 2006, the Ombudsman opened an own-initiative inquiry concerning the European Parliament's rules and policies on upper age limits in its traineeship programme. In his recommendations, the Ombudsman referred to (i) Article 21, on non-discrimination, of the Charter of Fundamental Rights of the European Union, (ii) recent case-law of the Court of Justice, according to which the principle of non-discrimination on grounds of age is a general principle of Community law, and (iii) the Commission's decision, following a recommendation made by the Ombudsman, to abolish age limits in its traineeship programme. The Parliament informed the Ombudsman that, from 15 February 2006, it no longer applied an upper age limit with regard to its traineeship programme. (OI/3/2006/BB)

### Star cases exemplifying best practice

The aforementioned responses of the **European Commission** to the Ombudsman's own-initiative inquiry on mediation (OI/1/2006/TN) and of the **European Parliament** to the own-initiative inquiry into possible age discrimination (OI/3/2006/BB) constitute illustrative examples of best practice that warrant inclusion among the "star cases" featured in the Ombudsman's 2006 Annual Report. They also serve as a model for the other EU institutions and bodies, in terms of how best to react to issues that the Ombudsman raises. The Commission further demonstrated its willingness to work constructively with the Ombudsman in the above mentioned case, by agreeing to review its interpretation of the European Data Protection Directive (2467/2004/PB). In taking on board the Ombudsman's arguments and the complainant's concerns, it showed that it is willing to put the citizen at the centre of its activities. The Ombudsman applauds this behaviour.

A further example of a constructive response from the institutions in 2006 came in case 106/2005/TN, cited above, where the Commission agreed to settle the outstanding amount due to an official as part of her salary, as well as pay interest. The **European Aviation Safety Agency** (EASA) provided an example of a true service culture when, despite maintaining its opinion that no maladministration had taken place, it agreed to the Ombudsman's friendly solution (see 1729/2005/JF above). Finally, the innovative way in which the **European Investment Bank** (EIB) complied with the complainant's request for access to an audit report, in case 1776/2005/GG, whilst at the same time protecting the



legitimate interests of third parties, constituted an example of responding to a complaint that could serve as a model for future access to documents cases.

### Further analysis

The final section of Chapter 2 of the Annual Report contains reviews of these and other cases from the perspective of the following thematic categories: (i) openness, including access to documents and information, as well as data protection; (ii) the Commission as guardian of the Treaty; (iii) tenders, contracts and grants; and (iv) personnel matters, including recruitment.

Chapter 3 of the Report contains summaries of 59 out of a total of 250 decisions closing cases in 2006. The summaries reflect the range of subjects and institutions covered by the Ombudsman's inquiries and the different types of finding.

Decisions closing cases are normally published on the Ombudsman's website (<http://www.ombudsman.europa.eu>) in English and, if different, the language of the complainant.

### Relations with EU institutions and bodies

Constructive relations with EU institutions and bodies are essential for the Ombudsman effectively to carry out his work for citizens. Co-operation takes the form of regular meetings and joint events. The Ombudsman uses the opportunities offered by these meetings to explain his role in promoting good administration within the institutions and bodies.

Of particular importance in 2006 were the bilateral meetings held with European Commissioners to discuss the operation of the Commission's new procedure for dealing with the Ombudsman's inquiries, introduced in November 2005. In June, the Ombudsman also had a highly productive meeting with the Commission staff responsible for co-ordinating the handling of the Ombudsman's inquiries. Key to facilitating all of these meetings were Commission Vice-President Margot WALLSTRÖM, responsible, *inter alia*, for relations with the Ombudsman, and Commission Secretary-General Catherine DAY. Ms WALLSTRÖM also addressed the Ombudsman's staff in Strasbourg in December, where she gave an overview of the efforts the Commission has been making to improve its relations with the citizen.

The Ombudsman continued to build on his constructive working relations with MEPs in 2006. In addition to a series of individual meetings with Members, Mr DIAMANDOUROS participated, in the course of the year, in four meetings of the Committee on Petitions in 2006, during which he presented his Annual Report and Special Reports, which covered a range of subjects. At the Committee's request, the Ombudsman was also represented by a member of his staff at each of the meetings held by the Committee during the year in question.

The Ombudsman continued to reach out to the other institutions and bodies in 2006. In March, he met with the Presidents of the Court of Justice, the Court of First Instance and the Civil Service Tribunal, the President of the Court of Auditors, and the President of the European Investment Bank, in Luxembourg. In October, he met with the Directors of the European Agency for Reconstruction and the European Centre for the Development of Vocational Training in Greece. Throughout the year, he also made presentations about his work to various groups of staff members of European institutions in Brussels, Luxembourg, and Strasbourg.

With a view to ensuring the best possible service to citizens, the Ombudsman signed a number of important agreements during 2006.

In March, he signed a new agreement with the Parliament, which covers co-operation in areas such as buildings policy, information technology and communications. The new agreement should enable the Ombudsman to make the most judicious use of the resources granted to his Office, while ensuring him absolute autonomy in his work.

Another important agreement signed in 2006 was the Memorandum of Understanding with the European Data Protection Supervisor. The purpose of the agreement is to ensure the consistent



treatment of complaints concerning data protection and to avoid unnecessary duplication. The Ombudsman and the Data Protection Supervisor, Mr Peter HUSTINX, signed the Memorandum of Understanding in Brussels on 30 November<sup>3</sup>.

Earlier that day, the Ombudsman signed an agreement with the Spanish government to enable citizens to complain to the European Ombudsman in any of the co-official languages in Spain (Basque, Catalan/Valencian, and Galician). In signing the agreement, the Ombudsman aligned his practice with the June 2005 conclusions of the Council of the EU which provide for the use of these languages to facilitate Spanish citizens' communications with EU institutions. The Permanent Representative of Spain to the EU, Ambassador Carlos BASTARRECHE SAGÜES, signed the agreement on behalf of the Spanish government.

### Relations with ombudsmen and similar bodies

The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to ensure that citizens' complaints about EU law are dealt with promptly and effectively. This is particularly important given that many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. In many cases, an ombudsman in the country concerned can provide an effective remedy. This co-operation is equally vital for tracking important developments in the world of ombudsmen, exchanging information about EU law and sharing best practice. For the most part, this co-operation takes place under the aegis of the European Network of Ombudsmen, although the European Ombudsman also participates in conferences, seminars and meetings outside of the Network.

#### *The European Network of Ombudsmen*

The European Network of Ombudsmen now comprises almost 90 offices in 31 countries, covering the national and regional levels within the Union, as well as the national level in the applicant countries for EU membership plus Norway and Iceland. The Network serves as an effective mechanism for co-operation on case handling. When possible, the European Ombudsman transfers cases directly to national and regional ombudsmen or gives suitable advice to the complainant. During 2006, the Ombudsman advised 828 complainants to turn to a national or regional ombudsman and transferred 363 complaints (of which 270 on the same subject) directly to the competent ombudsman.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or, if more appropriate, channels the query to another EU institution or body for response. In 2006, two such queries were received (one from a national and one from a regional ombudsman) and three were closed (including two brought forward from 2005). Details of the queries are provided in Chapter 3.

The Network is equally active in sharing experiences and best practice — goals which it endeavours to achieve via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service.

Seminars for national and regional ombudsmen are held in alternate years and organised jointly by the European Ombudsman and a national or regional counterpart. The Fifth Seminar of Regional Ombudsmen of EU Member States, organised by the Local Government Ombudsman for England, Mr Tony REDMOND, and the European Ombudsman, took place in London from 19 to 21 November. Around 80 participants, from each of the six countries in which there are ombudsmen at the regional level (namely Belgium, Germany, Spain, Italy, Austria and the United

<sup>3</sup>

Memorandum of Understanding between the European Ombudsman and the European Data Protection Supervisor; OJ 2007 C 27, p. 21.



Kingdom<sup>4</sup>), attended the event. The theme of the Seminar was “Working together to promote good administration and defend citizens’ rights in the EU”. The programme included sessions on EU law, promoting good administration, complaint-handling and ombudsmen working together.

Liaison officers, who act as the first point of contact for the Network within the offices of the national ombudsmen, also meet every two years. The fifth Seminar of the liaison officers took place from 18 to 20 June in Strasbourg. Entitled “Upholding fundamental rights — Sharing best practice”, the Seminar aimed to provide a forum for an exchange of views among liaison officers on best practice within their institutions, as well as for discussion on their work in promoting fundamental rights. The Seminar equally provided an opportunity for the liaison officers to review the functioning of the Network and to suggest ways to improve it. All in all, 28 participants from 26 European countries attended the Seminar, including, for the first time, representatives from the national ombudsman institutions of Bulgaria, Croatia and Romania.

The *European Ombudsmen — Newsletter* continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2006. The two issues, published in April and October, included articles on the supremacy of EU law, the mutual recognition of qualifications in the EU, European environmental law and access to environmental information, the role of ombudsmen in supervising prisons, universal access to broadband internet, discrimination in access to employment, freedom of expression, children’s rights, and migration and asylum problems. The Ombudsman’s Internet discussion and document-sharing fora continued to develop during the year, enabling offices to share information through the posting of questions and answers. Several major discussions were initiated, on issues as diverse as the independent monitoring of prisons, permanent resident status for immigrant children born in the EU, combating discrimination and promoting equal treatment, and the right to vote in local elections in the EU. In addition, the Ombudsman’s electronic news service — Ombudsman Daily News — was published every working day, and contained articles, press releases and announcements from offices throughout the Network.

Information visits to ombudsmen in the Member States and applicant countries have also proved highly effective in terms of developing the Network and constitute an excellent means of raising awareness of the range of communications tools it makes available. In the course of 2006, the European Ombudsman visited his ombudsman colleagues in Luxembourg (March), Spain (May), Northern Ireland (November), and Bulgaria (November).

### Meetings

During the year, the Ombudsman’s efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsmanship, discussing interinstitutional relations and exchanging best practice, he attended 28 events organised by national and regional ombudsmen and met with a wide range of ombudsmen and representatives of ombudsman institutions from within the EU and further afield.

### Communications activities

Reaching out to citizens is an activity central to the Ombudsman’s function. Efforts to spread information concerning the right to complain about maladministration were further intensified in 2006. Around 120 presentations were made by the Ombudsman and his staff during conferences, seminars and meetings that took place during the year. The Ombudsman’s visits to Luxembourg, Spain, Northern Ireland, and Bulgaria, gave him a further opportunity to promote awareness among citizens in these countries.

Media activities were stepped up in 2006, with 22 press releases distributed to journalists all over Europe. Among the issues covered were the choice of languages for EU Presidency websites, transparency in the area of lobbying and subsidies, a complaint about failure to implement the

<sup>4</sup> The countries are listed in the EU’s protocol order; that is, alphabetically, based on the name of each country in its own language. This protocol order is used throughout this publication.



Working Time Directive properly, and lack of openness in the functioning of the Council. The Ombudsman gave over 40 interviews to journalists from the print, broadcast, and electronic media in Brussels, Strasbourg, and further afield. He also presented his work and responded to questions during press conferences and meetings.

Material about the work of the Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament in May. New editions of two important communications tools were published in 2006: the complaint guide and form entitled *The European Ombudsman: Could he help you?* became available in 23 languages, and *The European Ombudsman: At a glance* brochure in 25 languages. A French edition of the Ombudsman's commemorative volume entitled *The European Ombudsman: Origins, Establishment, Evolution*, was produced in both hardback and softback editions in November. The Ombudsman continued to distribute copies of his other publications during the year, most notably *The European Code of Good Administrative Behaviour* in 25 languages. The Code was produced in Macedonian in 2006 to help promote good administration in the Former Yugoslav Republic of Macedonia.

The Ombudsman's website was regularly updated with decisions, press releases, and details of his communications activities. In May, the website, together with those of the other EU institutions, bodies and agencies, migrated to the new dot.EU top-level domain. The official address is now: <http://www.ombudsman.europa.eu>

From 1 January to 31 December 2006, the Ombudsman's website received 416 533 unique visitors. The English-language pages of the site were the most consulted, followed by the French, Spanish, German and Italian pages. In terms of the geographical origin of visits, the greatest number of visitors came from Italy, followed by Sweden, the United Kingdom, Spain and Germany. The links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 44 000 visits were made to the links pages during 2006, clearly demonstrating the added value for citizens of the European Ombudsman's work in coordinating the European Network of Ombudsmen.

### Internal developments

The Ombudsman continued his efforts in 2006 to ensure that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages. Preparations were equally made in anticipation of Bulgaria's and Romania's accession on 1 January 2007.

On the staff front, the Ombudsman appointed his first Secretary-General on 1 August 2006, following an open recruitment procedure. A third principal legal supervisor was also recruited for the Legal Department to help further strengthen the procedures for case-management and quality control.

The establishment plan of the Ombudsman showed a total of 57 posts in 2006, compared to 51 posts for 2005. This increase was mainly due to the preparations for accession of Bulgaria and Romania and to the implementation of the decision to achieve full autonomy from Parliament's services with regard to the Ombudsman's staff management. No increase is foreseen in the 2007 budget adopted by the budgetary authorities in December 2006.

With a view to developing and strengthening understanding of the institution's values and mission, and to promoting their effective delivery, the Ombudsman organised a staff retreat in October 2006. This was the first time in its brief history that the institution undertook such an activity.

As part of the preparation for the retreat, members of staff were invited to express their views on the overall functioning of the office and on the broader impact of the Ombudsman's work so far, by participating in a self-assessment exercise. This took the form of a questionnaire in which staff members evaluated different aspects of the European Ombudsman's work procedures and methods in the various sectors of the institution's activities, as well as the Ombudsman's achievements for citizens at large. An additional aim of this important activity was to provide for enhanced risk management within the institution, as required under the EU's internal control standards.



The results of the questionnaire, along with other background materials, served as a foundation upon which to frame discussions during the event, which focused on (i) the meaning of good administration both from a conceptual and a procedural point of view, (ii) how to reach out to citizens at large and how to target particular, more specialised, audiences, and (iii) how to further enhance and promote a service culture within the Ombudsman's office. Every member of staff was encouraged to take an active part in the deliberations. There was broad consensus after the retreat that it had clearly proved to be a very productive and worthwhile experience that deserved repeating.

The Ombudsman adopted a new budget structure for the year 2007. Total appropriations for 2007 are EUR 8 152 800 (compared to EUR 7 682 538 in 2006).



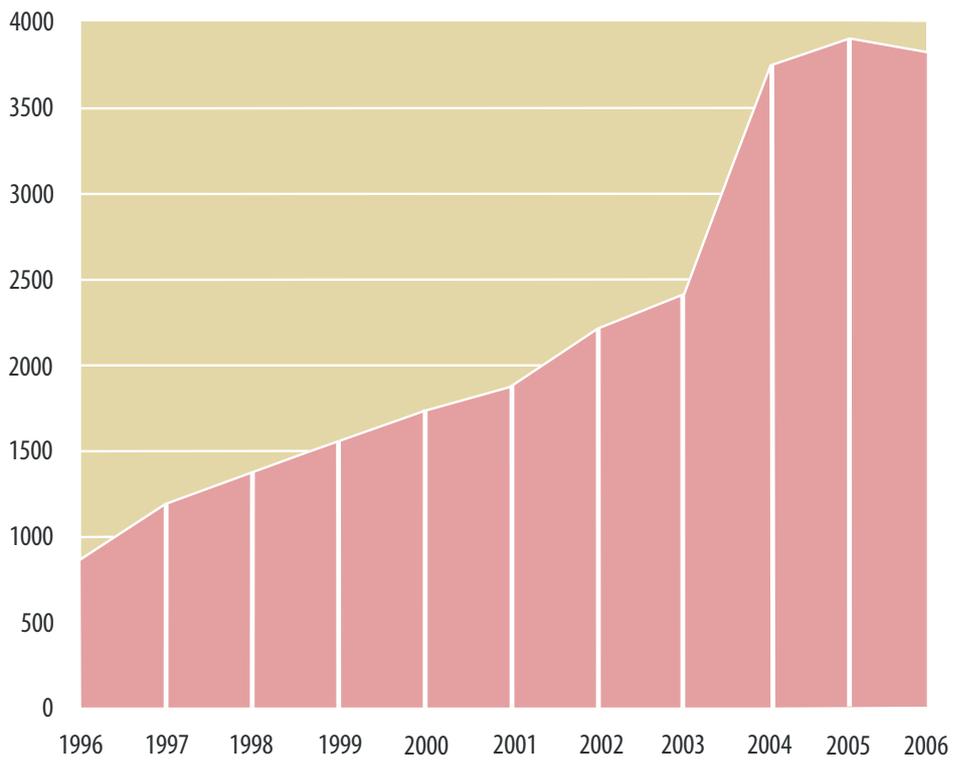
# STATISTICS

## 1 CASES DEALT WITH DURING 2006

**1.1 TOTAL CASELOAD IN 2006..... 4 422<sup>1</sup>**

- inquiries not closed on 31.12.2005..... 315<sup>2</sup>
- complaints awaiting decision on admissibility on 31.12.2005 ..... 270
- complaints received in 2006..... 3 830<sup>3</sup>
- own-initiatives of the European Ombudsman..... 9

**Number of complaints received 1996-2006**



<sup>1</sup> Of which 281 complaints on the same subject matter.

<sup>2</sup> Of which three own-initiative inquiries of the European Ombudsman and 312 inquiries based on complaints.

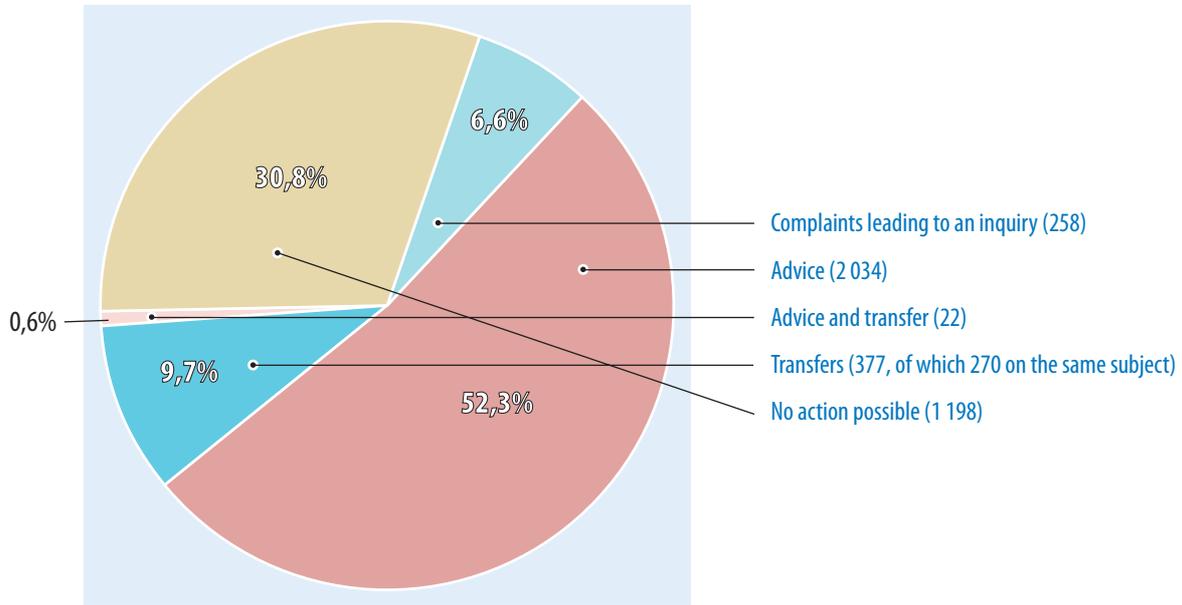
<sup>3</sup> Of which 281 complaints on the same subject matter, as mentioned in footnote 1.



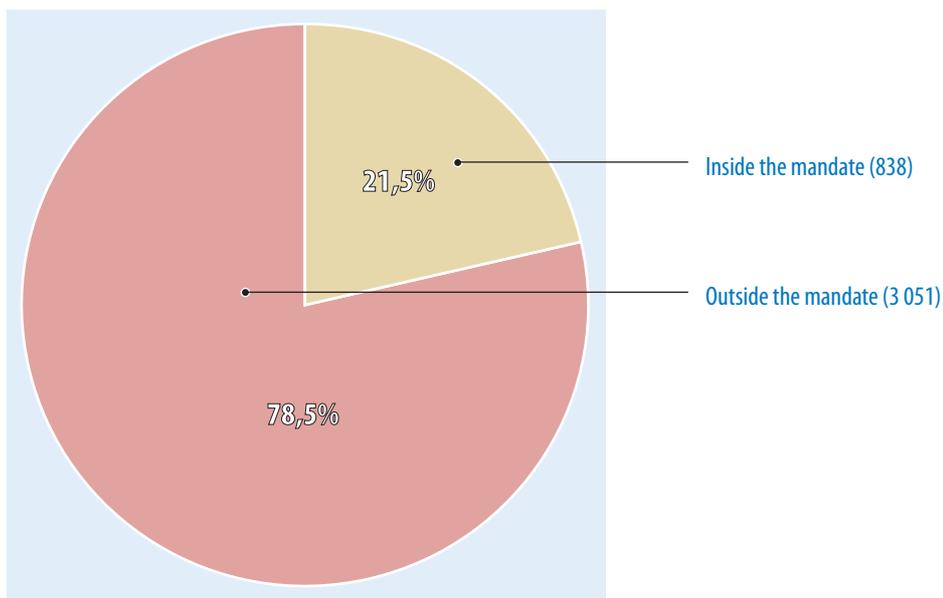
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED .....95%

1.3 CLASSIFICATION OF THE COMPLAINTS

1.3.1 According to the type of action taken by the European Ombudsman to benefit the complainants

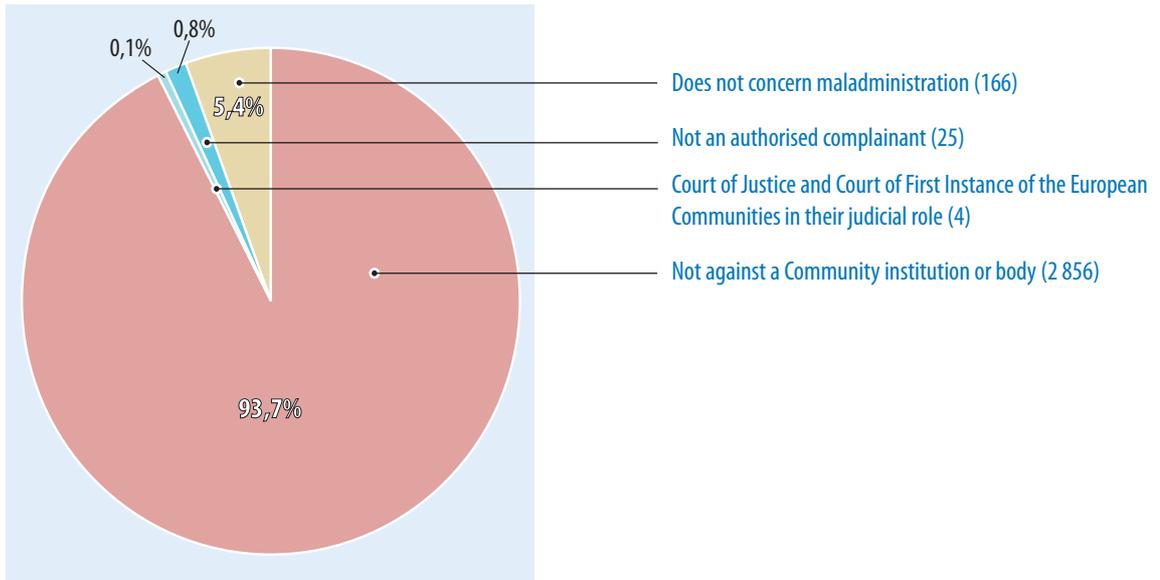


1.3.2 According to the mandate of the European Ombudsman



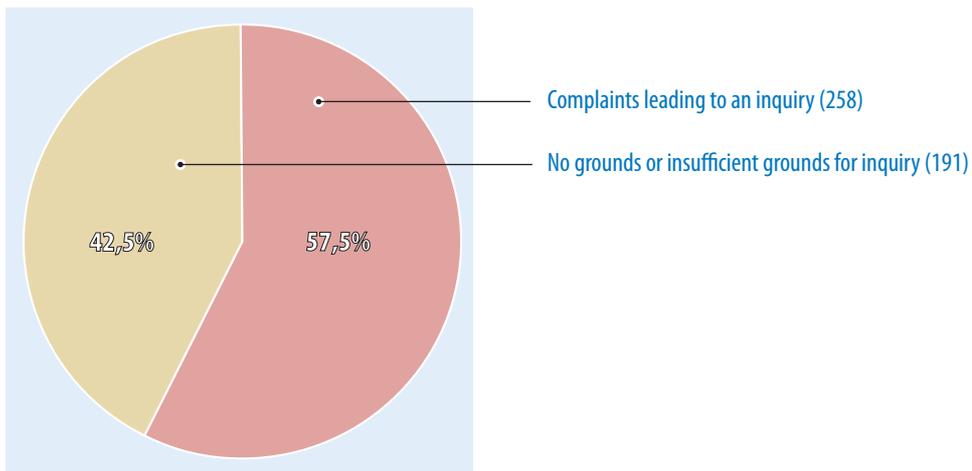


### OUTSIDE THE MANDATE

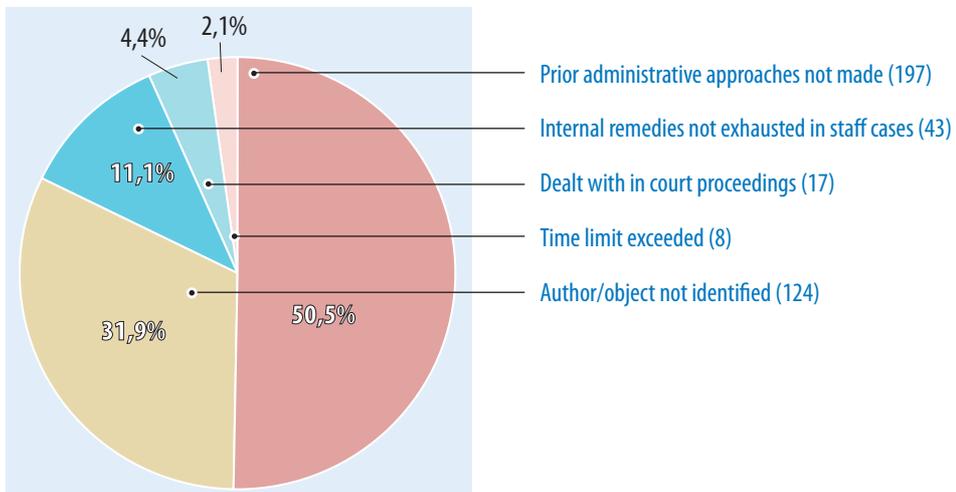


### INSIDE THE MANDATE

#### Admissible Complaints



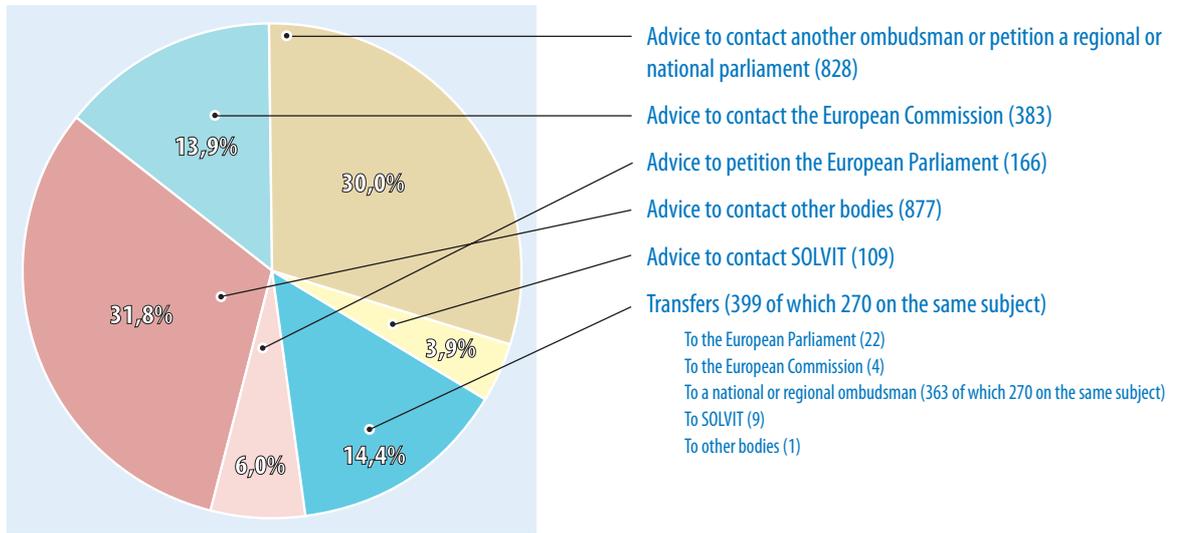
#### Inadmissible Complaints





## 2 TRANSFERS AND ADVICE

(In certain cases, more than one advice was given)

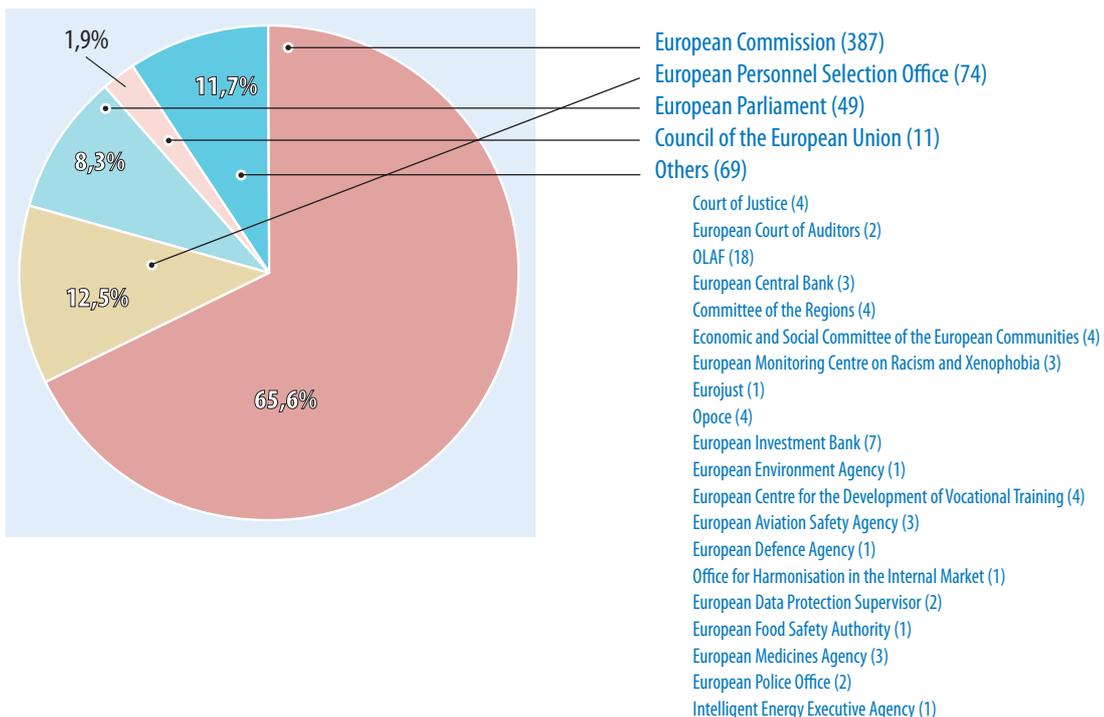


## 3 INQUIRIES DEALT WITH IN 2006 ..... 582

In 2006, the European Ombudsman dealt with 582 inquiries. Of these, 267, of which nine own-initiatives, were initiated in 2006, while 315, of which three own-initiatives, were carried over from 2005.

### 3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

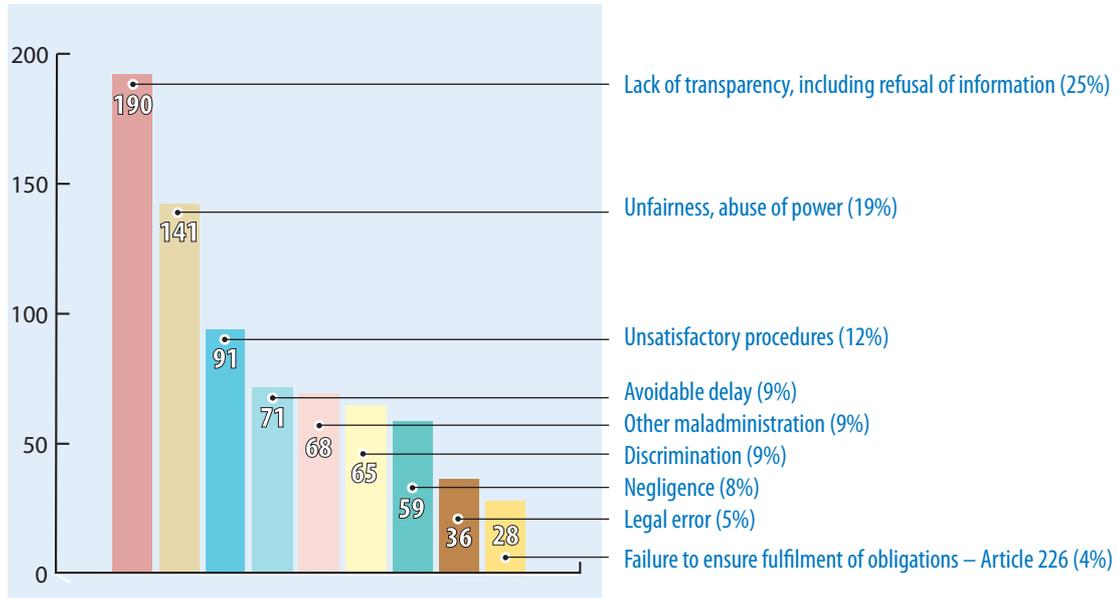
(In some cases, the inquiry concerned two or more institutions or bodies)





### 3.2 TYPE OF MALADMINISTRATION ALLEGED

(In certain cases, two or more types of maladministration are alleged)

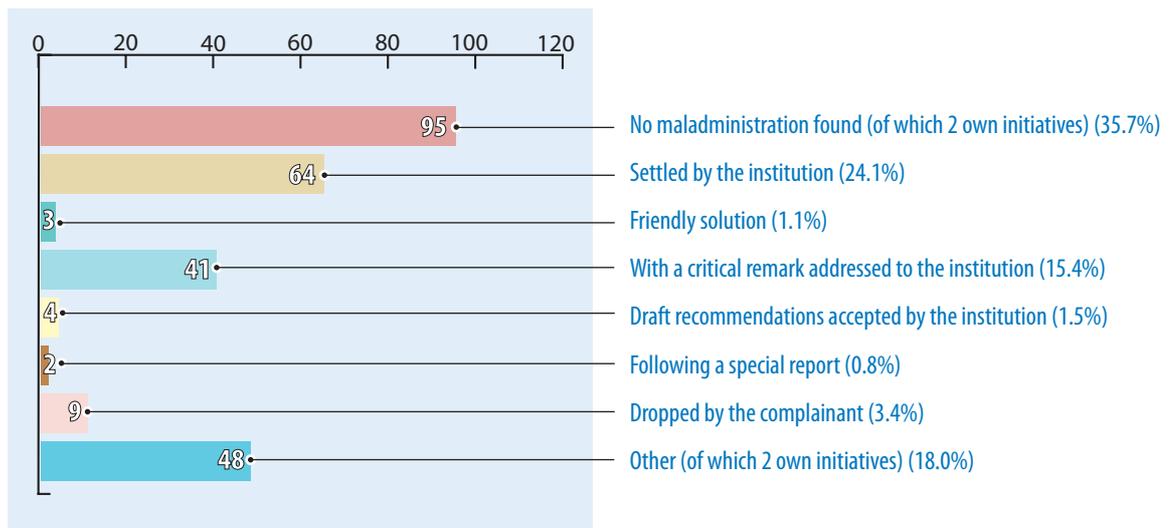


### 3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2006

– Proposals for friendly solutions.....	28
– Draft recommendations .....	13
– Special reports .....	2

### 3.4 INQUIRIES CLOSED ..... 250<sup>4</sup>

(Inquiries were closed on one or more of the following bases)



<sup>4</sup> Of which three own-initiatives of the Ombudsman.



## 4 ORIGIN OF COMPLAINTS REGISTERED IN 2006

### 4.1 WHO COMPLAINS?

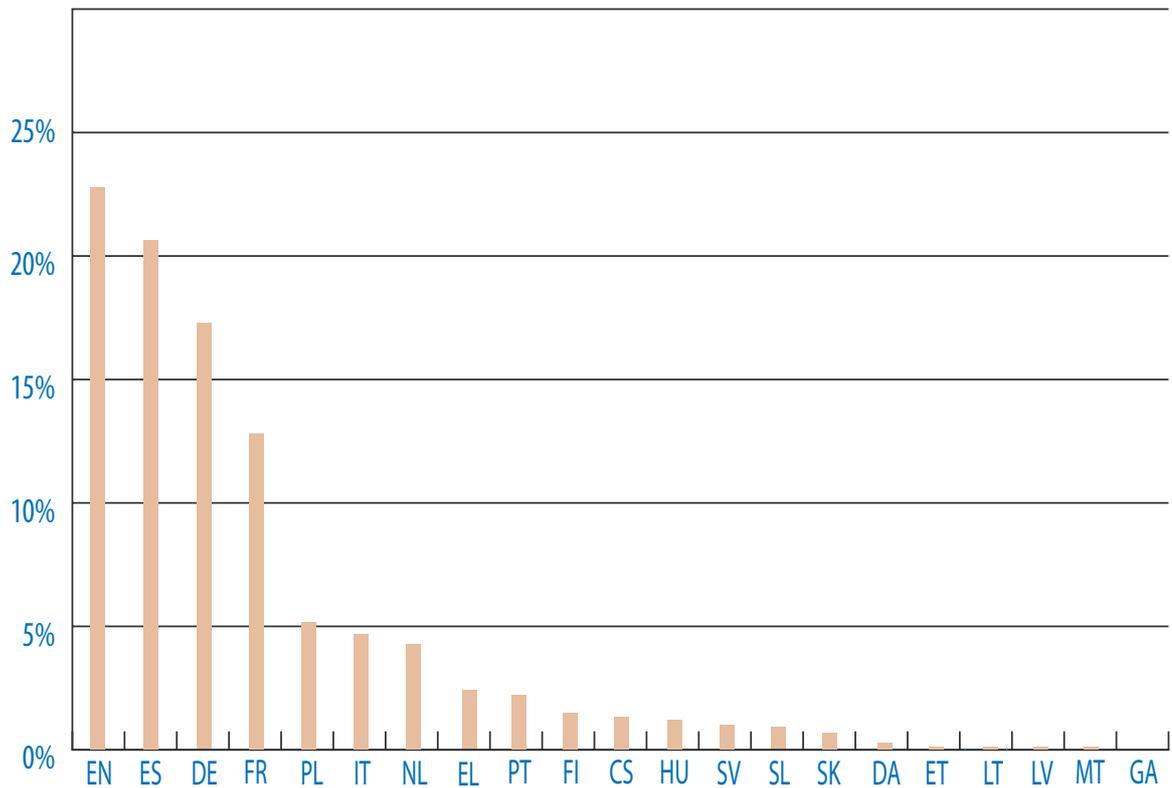


Companies and associations  
5.5% (211)



Individual citizens  
94.5% (3 619)

### 4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS





## 4.3

## GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Ratio <sup>1</sup>
Luxembourg	54	1.4	0.1	14.2
Malta	33	0.9	0.1	10.0
Cyprus	44	1.1	0.2	7.6
Belgium	241	6.3	2.3	2.8
Slovenia	44	1.1	0.4	2.7
Spain	781	20.4	9.4	2.2
Finland	74	1.9	1.1	1.7
Ireland	47	1.2	0.9	1.4
Austria	81	2.1	1.8	1.2
Greece	105	2.7	2.4	1.1
Portugal	96	2.5	2.3	1.1
Hungary	72	1.9	2.2	0.9
Slovakia	37	1.0	1.2	0.8
Czech Republic	67	1.7	2.2	0.8
Germany	537	14.0	17.8	0.8
The Netherlands	106	2.8	3.5	0.8
Poland	228	6.0	8.2	0.7
Sweden	53	1.4	1.9	0.7
Estonia	7	0.2	0.3	0.7
France	335	8.7	13.6	0.6
Latvia	12	0.3	0.5	0.6
Denmark	20	0.5	1.2	0.4
Italy	207	5.4	12.7	0.4
United Kingdom	147	3.8	13.0	0.3
Lithuania	9	0.2	0.7	0.3
<b>Others</b>	291	7.6		
<b>Not known</b>	102	2.7		

<sup>1</sup> This figure has been calculated by dividing the percentage of complaints by the percentage of population. Where the quotient is greater than 1, this indicates that the country in question submits more complaints to the Ombudsman than might be expected given the size of its population. All percentages in the above table have been rounded to one decimal place.



## HOW TO CONTACT THE EUROPEAN OMBUDSMAN

### BY MAIL

The European Ombudsman  
1, avenue du Président Robert Schuman  
B.P. 403  
FR-67001 Strasbourg Cedex  
France

### BY TELEPHONE

+33 3 88 17 23 13

### BY FAX

+33 3 88 17 90 62

### BY E-MAIL

[eo@ombudsman.europa.eu](mailto:eo@ombudsman.europa.eu)

### WEBSITE

<http://www.ombudsman.europa.eu>

THE EUROPEAN OMBUDSMAN INVESTIGATES COMPLAINTS  
AGAINST THE INSTITUTIONS AND BODIES OF THE EUROPEAN UNION



THE EUROPEAN OMBUDSMAN AND HIS PERSONNEL

[www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)