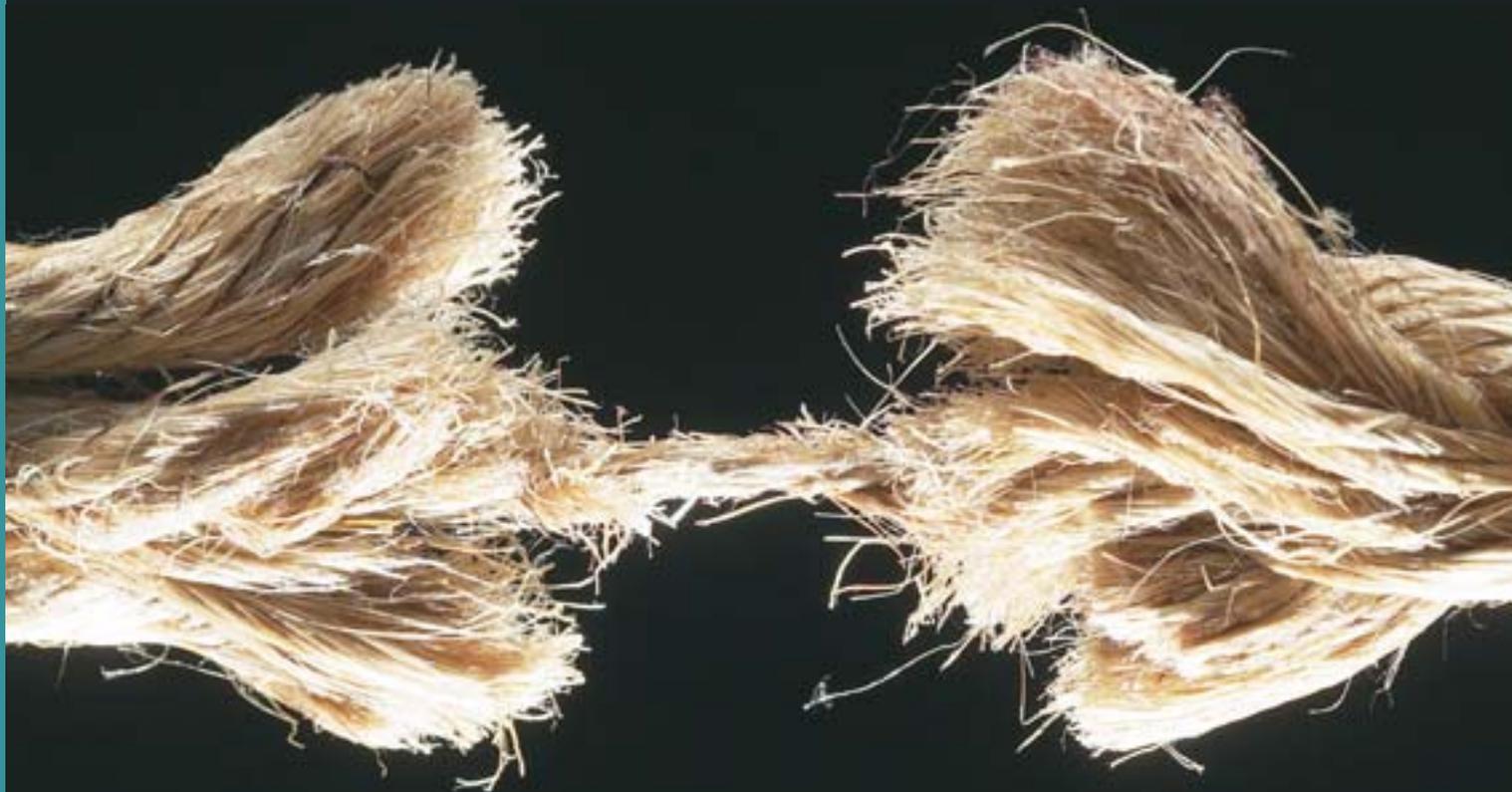


THE EUROPEAN OMBUDSMAN ANNUAL REPORT 2005
EXECUTIVE SUMMARY AND STATISTICS



CELEBRATING 10 YEARS 1995-2005

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INTRODUCTION

The institution of the European Ombudsman celebrated its tenth anniversary in 2005. This important milestone gave us an opportunity to reflect on the achievements of the first ten years and to chart the optimal course of action for the future in co-operation with our key interlocutors. The range of events we organised provided us with rich insights into what was working well and what more could be done in terms of our relations with European Union (EU) institutions and bodies, the ombudsman community, and complainants and citizens more generally. But before going into depth on the various ideas that surfaced, let me first devote some thoughts to the work of the institution over the past ten years.



Since September 1995, the European Ombudsman has handled over 20 000 complaints and helped countless more citizens by answering their requests for information. Upon leaving office, my predecessor, the first European Ombudsman, Mr Jacob SÖDERMAN, could cite, as a major achievement, the degree to which the various EU institutions and bodies were willing to work with him to resolve citizens' complaints. From the abolition of age limits in recruitment to improvements in the area of late payment, and from greater access to documents to growing respect for the EU Charter of Fundamental Rights, the institutions and bodies demonstrated that they were keen to co-operate with the Ombudsman in improving service to citizens. For these accomplishments and, indeed, for many others, we, as citizens of the Union, are forever indebted to Jacob SÖDERMAN.

Beyond working to improve the Union's administration, the institution of the European Ombudsman has made great efforts to develop relations with national, regional and local ombudsmen throughout the Union with a view to ensuring that rights for citizens and residents under EU law, including fundamental rights, become a reality. This co-operation takes place, for the most part, under the aegis of the European Network of Ombudsmen, which has been built up over the past decade into an invaluable mechanism for dealing promptly and effectively with citizens' complaints. The year 2005 gave us the opportunity to take stock of the achievements of the Network since it was established in Strasbourg in 1996 and to determine how to move forward together.

The Ombudsman has worked tirelessly since September 1995 to reach out to citizens to raise awareness of their rights and in particular their right to complain and to seek redress. The success of these initiatives can be seen in the fact that over 300 complaints are now submitted to the Ombudsman every month, with the year 2005 seeing the highest ever number of complaints received.

The Ombudsman's relations with EU institutions and bodies

It would of course be much better if citizens never needed to contact the European Ombudsman and if their complaints were resolved at the earliest possible stage by the administration implicated in the complaint. Citizens do not mind who solves their problem. Often they are simply looking for an explanation, a reason, an apology or advice, and the administration itself is best situated to provide this.

If citizens do feel the need to complain, they want the problem resolved as rapidly and effectively as possible. To my mind, a settlement proposed by the administration is quicker and ultimately more satisfying all round, since it credits the institution with solving the problem, increases its legitimacy in the eyes of the complainant and ensures a win-win outcome for all concerned. Put otherwise, the way in which the public administration reacts to complaints is a key measure of how citizen-focused



it is. This is a key message that I aimed to communicate during the various events we organised with the EU institutions and bodies during our anniversary year.

Each EU institution and body can play its part in improving relations with citizens. Whether it be tackling contractual problems, providing access to documents, or explaining why a candidate has not been selected, we can all learn about how to deliver better services from complaints. The final outcome of this process is that all those who may at some stage have contact with the institutions – not just those who complain – benefit from the Ombudsman's work.

Complaints are often symptoms of more serious, complex or systemic issues or problems. One of the Ombudsman's functions is to identify these and to promote ways of tackling them. As such, the Ombudsman, in addition to serving as an external mechanism of control, also constitutes a valuable resource to managers, a resource capable of helping the administration to better its performance by directing attention to areas for improvement.

An invaluable instrument in this context is the European Code of Good Administrative Behaviour. Approved by the European Parliament in 2001, the Code explains to citizens what they have the right to expect from the European administration. It equally serves as a useful guide for civil servants, encouraging the highest standards of administration. A new edition of the Code was published in 24 languages in 2005. Over 100 000 copies were distributed throughout Europe and beyond. In response, national administrations and local authorities, schools and universities, training centres and public libraries, along with individual citizens, asked for copies for further distribution. This truly is a European success story. The Code has been adapted for national, regional and local administrations from Portugal to Italy, from Wallonia to Greece, and from Romania to Croatia. In light of the fact that the European Code has been taken on board by such a range of administrations throughout Europe, I continue to hope that it can be adopted by all EU institutions and bodies, perhaps in the form of an inter-institutional agreement. The contacts I had in this regard in 2005 with the European Commission President, Mr José Manuel BARROSO, and Vice-Presidents Ms Margot WALLSTRÖM and Mr Siim KALLAS, have been extremely positive and I very much hope that we can make rapid progress in moving this project closer to realisation. This would offer a clear sign of our joint determination to work together for citizens in the years to come.

A move that I found greatly encouraging in 2005 was the Communication adopted by the Commission introducing a new internal procedure for responding to the Ombudsman's inquiries. This Communication foresees individual Commissioners taking strong political ownership of each case, while maintaining the valuable role of the Secretariat-General. I very much welcome this new procedure which, I understand, aims to enhance the consistency and quality of the Commission's replies, as well as to ensure prompt follow-up of the Ombudsman's recommendations and remarks. As the institution that gives rise to around 70% of the Ombudsman's inquiries, it is vital that the Commission take a leading role in dealing with maladministration and in promoting a service culture with respect to citizens. This Annual Report contains many examples of cases in which the Commission did indeed react promptly and constructively to resolve problems that I brought to its attention.

Co-operation within the European Network of Ombudsmen

Since the early years, the European Ombudsman has co-operated closely with his colleagues at the national, regional and local levels through the European Network of Ombudsmen. The central purpose of the Network remains as valid and important today as it was at the outset: that is, to make citizens' and residents' rights under EU law a living reality.

The implementation of EU law is largely the responsibility of administrations in the Member States. In practice, therefore, respect for rights under EU law depends largely on the quality of their everyday work and on the extent to which supervisory bodies, including ombudsmen, succeed in promoting high quality administration and providing effective remedies when needed. This is becoming even more important in light of the fact that co-operation among the various Member States' administrations and the EU institutions continues to grow in scope and intensity. In order



to protect rights and provide effective remedies, co-operation among administrations needs to be matched by co-operation among ombudsmen.

With this in mind, in 2005 I explored the possibility of further securing and promoting the role of ombudsmen in the evolving European legal and political culture. To do this, I argued that the Network needs to make the added value that citizens derive from co-operation more visible, both to citizens themselves and to policy-makers at all levels in the Union. As regards the latter, there is still much work to be done. We have yet to make a convincing case that diversity should not prevent ombudsmen from being taken fully into account in the many new European policy developments that the Member States' authorities and the EU institutions and bodies continue to produce.

As a contribution to establishing a clearer public identity for our co-operation, I announced that my office plans to invest resources to further develop our use of the internet to communicate both with the public and amongst ourselves. We plan to integrate a "Who can help me?" interactive guide into the European Ombudsman's website to help direct citizens to the appropriate ombudsman, be it at the European, national, or regional level. We will equally work towards developing, within the Network over the next two years, a statement that explains to citizens what they can expect if they turn to an ombudsman in the Network. We could consider adopting the statement at the sixth seminar of national ombudsmen, which will take place in Strasbourg in 2007. While I am fully aware of just how carefully such a statement would need to be drafted, I am persuaded that our shared common understanding of what an ombudsman should be and do is strong enough to make drafting it a realistic objective within the time-frame I have proposed. Such a statement would be valuable not only to citizens who may need the services of an ombudsman outside their own Member State but would also provide a key point of reference in ombudsmen's relations with policy-makers, both collectively and individually. The very process of drafting will surely also promote and deepen our possibilities for mutual learning and thus be valuable in itself. Such an exercise can thus only strengthen the co-operation that has been developed to date.

The Ombudsman's relations with citizens and potential complainants

The European Ombudsman's efforts to work closely with the EU institutions and bodies and with ombudsmen throughout the Union have one overriding objective, namely ensuring an optimal service to citizens. With a view to best serving citizens in the Union, we organised in 2005, as part of our tenth anniversary celebrations, events for the media, NGOs, interest groups, regional and local representation offices, and citizens in general. We felt it would be worthwhile to explore a number of themes likely to help us, in the years to come, to raise awareness about the right to complain to the Ombudsman with a view to improving the performance of the EU administration for the benefit of all.

It was acknowledged that there is much room for improvement in terms of getting the right information out to the right people. The European Ombudsman has two immediate challenges in terms of raising awareness: many people do not know what an Ombudsman is and many people do not know what the EU does. Any information material that we produce must address these two issues in a clear and straightforward way. The Ombudsman must improve his internet presence. We must target potential complainants better. EU institutions should systematically inform people they are in contact with about their right to complain.

The Ombudsman equally needs to get the message across that complaining is very straightforward. Relatively speaking, the Ombudsman offers a fast service and one that is free and flexible. For those who fear negative repercussions from the institutions if they complain, I will continue to make clear that any attempt to disadvantage, or threaten to disadvantage, a person for exercising the right to complain to the Ombudsman would itself be maladministration. EU institutions and bodies should take the necessary steps to ensure that their officials are aware of this and act accordingly.

Conclusion

These are testing times for the European Union. Citizens in France and the Netherlands voted not to ratify the Constitution for Europe, voter turnout at European elections continues to decline, and the



Union is still struggling to address the perception that it is a remote bureaucracy built by a political elite. A recent Eurobarometer revealed that only 38% of the public feels that “my voice counts in the EU”.

The European Ombudsman was established to help bring the Union closer to citizens and to give the EU administration a “human face”. A fundamental aspect of the institution is that the Ombudsman is a physical person, who communicates personally with individual citizens writing to him, reviews their case, and seeks to have their complaint resolved. Each one of these “micro-communications” helps to humanise the EU administration and to bring it closer to the citizen. The Ombudsman is a key part of the structure for building trust between citizens and the institutions. He can help promote a constructive dialogue between the two sides.

As one complainant wrote, “For me, this case has finally ended and I hope that a new page can now open as far as my activities are concerned as they are intimately linked to Europe. I would like to thank you for your helpful mediation. Your institution offers a very important recourse enabling citizens to resolve, in a friendly manner, sensitive problems they may face with the European institutions.”

The Ombudsman cannot work alone. Ensuring a top-class administration is a task that must be tackled in tandem with the EU institutions and bodies. Delivering on promises, providing proper redress mechanisms, learning from mistakes, working openly and allowing for public scrutiny — these are the all important means to building trust among citizens. Equally, the Ombudsman must work concertedly and systematically with his national, regional and local colleagues to ensure that citizens’ rights are fully respected throughout the Union. Finally, he must continue to reach out to citizens and potential complainants so that they become aware of the service he provides.

As European Ombudsman, I will endeavour to build on the achievements of the first decade with a view to truly fulfilling my institutional mandate of bringing the Union closer to citizens and giving the EU administration a “human face”.

Strasbourg, 14 February 2006

P. Nikiforos DIAMANDOUROS



EXECUTIVE SUMMARY

The eleventh Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2005. It is the third 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 five 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 years ahead. This Executive Summary constitutes chapter 1.

Chapter 2 describes the Ombudsman's procedures for handling complaints and conducting inquiries. It highlights important new developments and 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 2005.

Chapter 3 consists of a selection of summaries of those decisions, illustrating the range of subjects and institutions involved in complaints and own-initiative inquiries. It includes summaries of all the decisions mentioned in the thematic analysis of chapter 2. Summaries of decisions on complaints 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 are covered 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, before listing the various meetings and events that took place in this regard in 2005.

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 2005. Annexes B and C give details of the Ombudsman's budget and personnel respectively. Annex D indexes the decisions contained in chapter 3 by case number, by subject matter and by the type of maladministration alleged. Annex E describes the procedure for electing the European Ombudsman and gives an account of the re-election of Mr DIAMANDOUROS in January 2005.

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 and reaching out to citizens to inform them about their rights and about how to exercise those rights.

Complaints and inquiries in 2005

During 2005, the Ombudsman received 3 920 complaints, an increase of 5% compared to 2004¹. A record 59% of all complaints received by the Ombudsman in 2005 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 3 705 cases, while 215 came from associations or companies.

In over 75% 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 338 new inquiries were opened during the year on the basis of complaints (including one joint inquiry dealing with 389 individual complaints). The Ombudsman also began five inquiries on his own initiative.

In 2005, the European Ombudsman dealt with a total of 627 inquiries, 284 of which were carried over from 2004.

As in previous years, most of the inquiries concerned the European Commission (68% of the total). 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 73 inquiries concerning the European Communities Personnel Selection Office (EPSO), 58 concerning the European Parliament and 14 concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (188 cases), unfairness or abuse of power (132 cases), discrimination (103 cases), unsatisfactory procedures (78 cases), avoidable delay (73 cases), negligence (44 cases), 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 (37 cases), and legal error (29 cases).

A total of 3 269 individual requests for information were received by e-mail, compared to around 3 200 in 2004 and 2 000 in 2003.

The results of the Ombudsman’s inquiries

In 2005, the Ombudsman closed 312 inquiries, of which 302 were inquiries into complaints and ten were own-initiative inquiries. The findings were as follows:

No maladministration

In 114 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 or receives an apology. For example:

- The European Commission explained the reasoning behind its decision not to pursue an inquiry against the Spanish authorities concerning alleged discrimination based on sexual orientation. The specific problems encountered by the complainants — a Spanish national and an Argentine national — fell outside the scope of Community law, it said. In line with the Commission’s

¹ It should be noted that 335 of these complaints were on the same subject and were treated in a single joint inquiry (see summary of case 3452/2004/JMA and others in the sub-section entitled “no maladministration”).



suggestion to seek redress at the national level, the complainants lodged a complaint with the Spanish Ombudsman. (1687/2003/JMA)

- Following a complaint from the European Citizen Action Service (ECAS), the Ombudsman found that the Commission's minimum standards for consultation of interested parties on the future of the structural funds were sufficiently clear and that, in the case in question, the Commission had complied with them. He did not, however, exclude the possibility that the minimum standards could be expressed more clearly or that a more cross-sectoral and holistic approach to consultation could be appropriate in some cases and informed ECAS of the possibility of making such suggestions to the Commission. (948/2004/OV)
- The Ombudsman's inquiry into the free lending of books from public libraries helped clarify both the reasons for the Commission's decision to start infringement proceedings against Spain and the possibilities to correctly implement the relevant Community Directive without undermining this free lending. The Ombudsman was acting on the basis of 389 complaints which alleged that the Commission's decision to pursue this case against Spain undermined the existence of public libraries as a basic public service and went against the fundamental rights of citizens to have access to culture. The inquiry was closed when the Ombudsman was informed that the Commission had referred the matter to the European Court of Justice. (3452/2004/JMA and others)

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 suggested that the Commission review its internal rules on telephone logs in the framework of calls for tender. This followed his inquiry into the propriety of a telephone conversation that had taken place between the Commission services and the complainant's rival bidder. The Ombudsman found no evidence of impropriety but noted that it would have been easier for the Commission to deal with the complainant's concerns if it had been able to produce a written record of the telephone conversation in question. (1808/2004/JMA)
- Following an inquiry into complaints that the Commission and the Council failed to ensure a sufficient number of parking spaces for people with disabilities near their main buildings in Brussels, the Ombudsman welcomed their requests to the Belgian authorities to ensure additional parking places and asked to be kept informed of the results. He invited the Council, in addition, to reconsider its policy of limiting access to its own parking spaces for disabled people on grounds of security and, in this regard, suggested it follow the example of the Commission. (2415/2003/JMA and 237/2004/JMA)
- With a view to improving the efficiency and transparency of its relationship with citizens, the Ombudsman stated that the Commission could clarify its procedures for dealing with complaints concerning the use of EU financial assistance. This followed his inquiry into the Commission's handling of a complaint concerning the reduction of a grant by the regional authorities of Madrid. As a result of the Ombudsman's inquiry, the Commission agreed to provide information to the complainant, acknowledging and apologising for its delay in informing him about its handling of his case. (274/2004/JMA)
- The European Personnel Selection Office (EPSO) agreed to include in future notices of competition clarification that (i) an invitation to attend the pre-selection tests does not imply that the candidate's eligibility has been fully checked and (ii) the written tests of candidates who are subsequently found to be ineligible will not be marked. This followed a further remark made by the Ombudsman in light of an inquiry into a complaint from a Hungarian citizen who had applied to take part in an open competition for assistant translators. The Ombudsman felt that including this information would help to avoid misunderstandings and to improve relations with candidates. (839/2004/MHZ)



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, in turn, help enhance relations between the institutions and citizens and can avoid the need for expensive and time-consuming litigation.

During 2005, 89 cases were settled by the institution or body itself following a complaint to the Ombudsman. Among them were the following:

- The Commission settled a late payment case with a German science journalist, explained the reasons for the delay and agreed to pay interest. It confirmed that it had, in the meantime, taken measures to accelerate payments to experts. The complainant subsequently pointed out that he had been paid within only 30 days for his latest contract. (1266/2005/MF)
- The Council assisted the Ombudsman in settling a case concerning the termination of the contract of a civilian IT expert in the European Union Police Mission (EUPM) in Sarajevo with the result that the EUPM agreed to pay the complainant the salary due to the normal end of his contract. As regards the complainant's claim that the Council should clear him of all allegations against him, the Ombudsman stated that the complainant was entitled to regard the Ombudsman's finding in his earlier case as clearing his name, as the Ombudsman had confirmed in that case that the complainant's rights of defence had not been respected. (471/2004/OV)
- The Commission released two letters it had sent to the United Kingdom authorities in the framework of an infringement procedure, as well as the United Kingdom's response and apologised for the undue delay in handling the application for these documents. Following further inquiries, the Commission also agreed to give the complainants access to three CD-ROMs containing the information the United Kingdom authorities had sent to the Commission to support their case. The infringement procedure concerned the United Kingdom authorities' alleged failure to follow Community law regarding a large landfill site near the complainants' homes. (3381/2004/TN)

When the Ombudsman finds maladministration, he 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 precedent.

During 2005, 22 friendly solutions were proposed. Seven cases were closed in 2005 after a friendly solution had been achieved (including one case where the proposal was made in 2004). At the end of 2005, 18 proposals for friendly solutions were still under consideration, including two cases in which the Ombudsman asked the Commission to re-examine its earlier rejections of proposals that were made in 2004. Among the friendly solutions achieved in 2005 were the following:

- The Commission agreed to pay compensation of EUR 596 to a complainant whose case was not handled properly and in a timely fashion. It acknowledged that due to several misunderstandings and administrative errors, the complainant had not been paid in due time. It added that a number of elements identified by the Ombudsman as well as the exceptional circumstances of the case had led it to propose the amount of EUR 596 as compensation to the complainant. This sum corresponded to the interest accrued on the outstanding payment. (1772/2004/GG)
- Following the Ombudsman's inquiry into Parliament's information campaign in Finland for the European elections held in June 2004, the institution promised that its information office in Helsinki would ensure that even greater care was taken in future in the use of languages. The Swedish Assembly of Finland had complained that posters used as part of the information campaign had been published only in the Finnish language. Parliament acknowledged the



shortcomings of the campaign, as well as the fact that the proportion of the Finnish population that speaks Swedish is not relevant to the status of that language as an official language of the EU or to its status under the Finnish Constitution. (1737/2004/TN)

- The Commission agreed to pay a Portuguese citizen EUR 1 000 in a spirit of conciliation after it acknowledged that it could have taken adequate measures to inform her about the impossibility of her starting to work before the date she actually took up her position. The complainant alleged unfairness by the Commission because it had taken the decision that she could not work as a call-centre operator only after she had started her job. She also contested the rules invoked by the Commission which led it to deem her ineligible to work as an operator. The Commission did not share the Ombudsman's view as to possible maladministration on its part as regards the application of the rules in question to the complainant's case. (1336/2003/IP)

Critical remarks, draft recommendations and special reports

When a friendly solution is not possible, the Ombudsman may close the case with a critical remark or make a draft recommendation.

A critical remark is normally made if it is no longer possible for the institution concerned to eliminate the instance of maladministration, the maladministration appears to have no general implications and 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 avoid maladministration in the future. In 2005, the Ombudsman made 29 critical remarks. For example:

- The Ombudsman criticised the Council for failing to deal with a request for public access to documents properly and carefully. This followed an inquiry which revealed that, contrary to the Council's initial response to the complainant concerning the number of relevant documents, many additional documents in fact existed. As a result of the Ombudsman's investigation, the complainant was given access to the additional documents. As the Council had introduced new internal rules in this area, the Ombudsman stated that he trusted that problems of the sort identified in the present case would no longer occur in the future. (1875/2005/GG)
- The Ombudsman criticised the Commission in a case of late payment to a small German company which was a sub-contractor in the Galilei project. This inquiry revealed a more general problem, namely that the relevant contractual framework neither required nor encouraged the main contractor to claim interest on behalf of sub-contractors if there was late payment by the Commission. The Ombudsman therefore suggested that the Commission consider altering its standard contracts so that payment of interest in such cases would become automatic. The Commission confirmed that it would strive to take the interests of small and medium-sized enterprises into account in future standard contracts, to the extent that this is compatible with the Community's financial interests and the legislative provisions in force. (530/2004/GG)
- The Ombudsman criticised OLAF in respect of its handling of information that a German official had submitted to it about suspected illegalities at a Community body. The complainant alleged lack of information from OLAF regarding the period that could reasonably be deemed necessary for it to investigate his complaint. The Ombudsman found that the rules required OLAF to provide the whistle-blower with information as to the period of time within which it expected to conclude its investigation. (140/2004/PB)

It is important for the institutions and bodies to follow-up critical remarks from the Ombudsman, taking action to resolve outstanding problems and avoid maladministration in the future. During 2005, the Commission informed the Ombudsman of its follow-up on 18 critical remarks, including:

- A case in which the Ombudsman criticised the Commission for failing to provide an adequate explanation for the length of an investigation, which had taken just under three years. The



Commission, which had referred to general factors, such as a heavy workload, that may cause delays, informed the Ombudsman that it would endeavour to give a more precise explanation should a similar case arise in the future. (2229/2003/MHZ)

- A case in which the Ombudsman criticised the response of the Commission's Representation in Copenhagen to a complainant's request for information about the processing of data relating to him. The Commission expressed its regret that its Representation had breached the Community's data protection rules and stated that it would remind the Representation that the data protection rules must always be respected. (224/2004/PB)

In cases where maladministration is particularly serious, or has general implications, or if it is still possible for the institution concerned to eliminate the maladministration, the Ombudsman normally makes a draft recommendation. The institution or body concerned must respond to the Ombudsman with a detailed opinion within three months.

During 2005, 20 draft recommendations were made. In addition, eight draft recommendations from 2004 led to decisions in 2005. Nine cases were closed during the year when a draft recommendation was accepted by the institution. Three cases led to a special report to the European Parliament. Six cases were closed for other reasons. At the end of 2005, 11 draft recommendations were still under consideration, including one made in 2004. The following were among those that were accepted in 2005:

- The Commission agreed to pay compensation of EUR 56 000 to a French journalist. This was the biggest compensation payment ever resulting from a complaint to the Ombudsman. It followed his finding that the Commission had failed to respect the complainant's reasonable expectations. The Commission had cancelled its financial contribution to the complainant's project. (2111/2002/MF)
- The Commission abolished the age limit of 30 years as one of the selection criteria in its in-service traineeship programme. This followed a complaint concerning the rules governing the programme. The Ombudsman noted that several other Community institutions and bodies apply an age limit in their traineeship programmes. He therefore announced that he would launch an own-initiative inquiry into these programmes. (2107/2002/(BB)PB)
- The Commission agreed to give public access to a letter that the Portuguese Minister of Finance had sent it concerning the Portuguese excessive deficit procedure. The Commission had refused a Member of the European Parliament access to the letter on the grounds that its disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of Portugal. The Ombudsman approached the Portuguese authorities who informed him that, in the country's current budgetary situation, the letter did not contain elements which could affect Portugal's economic and financial policy. (116/2005/MHZ)

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. Three special reports were made in 2005:

- The Ombudsman submitted a special report to Parliament after the Council failed to give valid reasons for refusing to meet in public whenever it is acting in its legislative capacity. The Ombudsman's inquiry into this matter followed a complaint from German MEP, Mr Elmar BROK, and a representative of the youth group of the CDU (Christian Democratic Union), in which they alleged that the Council's Rules of Procedure are not in conformity with the Treaty on European Union according to which the Council and the other Community institutions and bodies must take decisions as openly as possible. The Ombudsman recommended that



the Council should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity. (2395/2003/GG)

- The Ombudsman sent a special report to the European Parliament concerning statements that the European Anti-Fraud Office (OLAF) made in the context of an inquiry he carried out. The inquiry concerned allegations of bribery, made by OLAF, that were likely to be understood as directed against a particular journalist. The journalist then submitted a further complaint to the Ombudsman, alleging that the information provided by OLAF during that inquiry was liable "to mislead the European Ombudsman and to manipulate the inquiry". In his special report, the Ombudsman recommended that OLAF acknowledge that it had made incorrect and misleading statements in its submissions during the Ombudsman's inquiry. The Ombudsman considered that the case raised an important issue of principle, affecting the trust of citizens in the EU institutions and bodies. (2485/2004/GG)
- The Ombudsman sent a special report to the European Parliament after he found unjustified discrimination in the differing financial treatment of EU staff who have children with special educational needs. He had made a draft recommendation that the Commission should take the necessary steps to ensure that parents of children with special educational needs who are excluded from the European Schools because of their degree of disability should not be required to contribute to the educational costs of their children. While the Commission's response expressed its willingness in principle to review the current policy, subject to budgetary constraints which could be tackled in the budget process, the Ombudsman concluded that this did not amount to an unequivocal acceptance of the draft recommendation. (1391/2002/JMA and others)

Own-initiative inquiries

The Ombudsman makes use of his power of own initiative 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). Three such own-initiative inquiries were opened in 2005. 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 two occasions in 2005, including in the following instance:

- The Ombudsman launched an own-initiative inquiry into the issue of granting candidates access to the evaluation criteria established by selection boards. This followed three cases he dealt with in 2005 concerning the information available to candidates in recruitment competitions. EPSO's responses in these cases gave detailed additional information that would help the complainants concerned to understand their marks. As the cases raised important factual and legal issues of a more general nature, the Ombudsman decided to open an own-initiative inquiry. (OI/5/2005/PB)

Further analysis

These and other cases are reviewed from the following thematic perspectives in the final section of chapter 2 of the Annual Report: openness and data protection; the Commission as "guardian of the Treaty"; tenders, contracts and grants; and personnel matters, including recruitment.

Chapter 3 of the Report contains summaries of 65 out of the total of 312 decisions closing cases in 2005. 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 in the language of the complainant, if different.



Relations with EU institutions and bodies

Constructive working relations with EU institutions and bodies are essential for the Ombudsman to achieve positive results for citizens. This co-operation takes the form of regular meetings and joint events, during which the Ombudsman and his interlocutors gain a greater understanding of each other's work, explore how best to defend and promote citizens' rights and identify areas in which they can work together in the future.

The Ombudsman used the occasion of the tenth anniversary of the institution to build on the constructive relations that were developed during the first decade. On 17 November 2005, he held a formal dinner for the Presidents and Secretaries-General of EU institutions, along with the Heads of the Union's bodies and agencies. Over 45 people attended the dinner, representing EU institutions, bodies and agencies from all over the Union. The aim of the event was to highlight the Ombudsman's determination jointly to work with all EU institutions, bodies and agencies in the coming years to improve the quality of the EU administration. In light of the fact that the Commission accounts for around 70% of the inquiries carried out by the Ombudsman, the Commission President, Mr José Manuel BARROSO, was invited to deliver the keynote address. During his address, the Commission President outlined the benefits of the new internal procedure adopted by the Commission for responding to the Ombudsman's inquiries. The Ombudsman used the occasion to outline his role not only as an external mechanism of control but also as a valuable resource to managers — a resource capable of helping administrations to better their performance by directing attention to areas for improvement.

The Ombudsman reiterated this message during a range of other meetings he held with Members of the institutions and bodies and their officials in 2005. These events included presentations of his work, during which he offered guidance on how best to respond to complaints and how to improve procedures. Of particular salience in this regard was the meeting with the College of Commissioners on 25 May. In addition, during the meetings that took place in 2005, initiatives were explored with a view to enhancing interinstitutional co-operation and to exchanging information and best practice with key interlocutors. Further meetings saw discussion of the Ombudsman's priorities and the resources necessary to achieve these priorities, with a particular focus on the institution's budget for 2006.

The Ombudsman reports annually to the European Parliament and keeps Members regularly informed of his activities by providing them with copies of his publications throughout the year. Nine publications were made available to MEPs in 2005. There is a fruitful working relationship between the Ombudsman and Parliament's Committee on Petitions, including mutual transfer of cases when appropriate, so as to offer the most effective service possible to European citizens. The Ombudsman also advises complainants who are seeking a change in European law or policy of the possibility to address a petition to the Parliament. Relations between the Ombudsman and the Committee on Petitions went from strength to strength in 2005, with the MAVROMMATIS Report on the Ombudsman's activities for 2004 highlighting the importance of these constructive working relations. At a meeting of the Committee on Petitions on 12 October 2005, the Ombudsman, in accordance with Rule 195(3) of Parliament's Rules of Procedure, undertook to appear before the Committee at his own request, whenever he presents a special report to Parliament.

Relations with ombudsmen and similar bodies

The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to make sure that citizens' complaints about EU law are dealt with promptly and effectively. 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 equally participates in conferences, seminars and meetings outside of the Network.



The European Network of Ombudsmen

The European Network of Ombudsmen, which has steadily developed into a powerful collaboration tool, is of prime importance to the European Ombudsman. The Network now comprises almost 90 offices in 30 countries, covering the national and regional levels within the Union, as well as the national level in the applicant countries for EU membership, Norway and Iceland. There is an effective mechanism for co-operation on case handling. 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. When possible, the European Ombudsman transfers cases directly to national and regional ombudsmen or gives suitable advice to the complainant. During 2005, the Ombudsman advised 945 complainants to turn to a national or regional ombudsman and transferred 91 complaints directly to the competent ombudsman. The ombudsmen in the Network are also well placed to help inform citizens about their rights under EU law and about how to exercise and defend those rights.

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 channels the query, if appropriate, to another EU institution or body for response. In 2005, four queries were received (two from national and two from regional ombudsmen) and three were closed (including two brought forward from 2004).

The Network is equally active in terms of sharing experiences and best practice. This occurs via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service.

National ombudsmen seminars are held every two years, organised jointly by the European Ombudsman and a national counterpart. The fifth seminar, organised by the Dutch National Ombudsman, Mr Roel FERNHOUT, and the European Ombudsman, took place in The Hague, the Netherlands, from 11 to 13 September 2005. The seminar included a gala dinner to mark the tenth anniversary of the European Ombudsman institution, which gave Mr DIAMANDOUROS an opportunity to thank his colleagues for their invaluable support during the institution's first decade.

This was the first seminar to include ombudsmen from the candidate countries and the first after the Union's biggest ever enlargement. All 25 EU Member States were represented at the meeting, as were Croatia, Romania, Iceland and Norway. The theme of the seminar – "The role of ombudsman institutions and similar bodies in the application of EU law" – was seen as highly relevant for ombudsmen throughout the enlarged Union. As supervisory bodies, ombudsmen have a critical role to play in ensuring the full and correct application of EU law in the Member States. The discussions in The Hague focused on how best ombudsmen can work together to properly play their part. Important conclusions were drawn regarding future co-operation between members of the Network and progress on these initiatives will be reviewed at the next seminar of national ombudsmen that will take place in Strasbourg in 2007.

The *European Ombudsmen – Newsletter* continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2005. The two issues, published in April and October, covered topics such as the future Fundamental Rights Agency of the EU, access to documents and data protection, discrimination and obstacles to free movement, prison-related problems in a number of Member States, healthcare provision, and problems faced by immigrants. The Ombudsman's electronic document and discussion 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 free lending of books by public libraries to making ombudsmen's decisions public on the Internet. And the Ombudsman's electronic news service – *Ombudsman Daily News* – was published every working day, including articles, press releases and announcements from offices in every country covered by 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.

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 a number of 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

Ever keen to raise awareness among citizens about their right to complain, the Ombudsman used the occasion of the tenth anniversary of the institution to organise or host a number of events aimed at increasing knowledge about his role. On 28 October, the *Institut des hautes études européennes* of Strasbourg's *Université Robert Schuman* organised a colloquium entitled *Le Médiateur européen: bilan et perspectives* ("The European Ombudsman – assessment and perspectives"). Over 80 academics, students, lawyers, EU staff and other participants attended the event, which was opened by the Senator and Mayor of Strasbourg, Ms Fabienne KELLER. On 6 December, the Ombudsman held two events in Brussels under the heading "The European Ombudsman: 10 years, 20 000 complaints – too many? too few?" Organised in association with the European Journalism Centre, the events took the form of a press seminar and public workshop aimed at the media, NGOs, interest groups, regional and local representations, and citizens interested in the Ombudsman's work. The discussions during these events raised key issues for the Ombudsman to reflect on as the institution embarks on its second decade.

The Ombudsman continued his information visits to the Member States in 2005 with a visit to the United Kingdom in November. During this visit, the Ombudsman met citizens, potential complainants, administrators, members of the judiciary and senior political representatives. This visit proved an excellent means of improving citizens' awareness about their rights, raising the profile of the Ombudsman's work among key members of the judicial, legislative and executive branches and enriching the valuable collaboration the Ombudsman enjoys with his ombudsman counterparts in the United Kingdom.

The Ombudsman and his staff continued their efforts to present the work of the institution during conferences, seminars and meetings in 2005, with around 120 such presentations taking place during the year. These meetings helped raise awareness of the Ombudsman's work among potential complainants and interested citizens alike.

Media activities continued apace, with 17 press releases distributed to journalists all over Europe. The Ombudsman gave over 50 interviews to journalists from the print, broadcast and electronic media in Strasbourg, Brussels 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. The Brussels Open Day on 30 April was used to launch *The European Ombudsman's tenth anniversary postcard* in 24 languages. The Ombudsman also produced a commemorative volume to mark the tenth anniversary. Entitled *The European Ombudsman: Origins, Establishment, Evolution*, this publication was produced in both hardback and softback editions and was launched in The Hague as part of the Fifth seminar of national ombudsmen. A new-look version of *The European Code of Good Administrative Behaviour* was also published in 24 languages in 2005. Over 100 000 copies of the Code were distributed to ombudsmen, MEPs, heads of EU institutions and bodies, Commission Representations and Parliament Offices in the Member States, the EU relays and networks, public administrations at the national and regional levels in the Member States, and citizens and organisations that have shown



a particular interest in the work of the EU institutions. Great interest was shown in this publication, with requests for many thousands of additional copies being received by the end of the year.

These publications were all made available on the Ombudsman's website, along with decisions, press releases, statistics and details of his communications activities, which were posted on a regular basis. A new section of the website devoted entirely to the tenth anniversary of the institution was created in 2005. This contained the *Commemorative Volume*, as well as several documents relating to the tenth anniversary events. Another new section of the site was created containing historical documents connected to the establishment of the Ombudsman institution.

From 1 January to 31 December 2005, the homepages of the Ombudsman's website were visited 304 300 times. The English-language version of the site was the most consulted with 71 166 visits, followed by the French, Italian, Spanish, German and Polish versions. In terms of the geographical origin of visits, the greatest number of visitors came from Belgium (27 517 visits), followed by Italy, Spain, France, Germany and Poland.

Internal developments

The Ombudsman continued his efforts in 2005 to ensure that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages.

The Ombudsman's Administration and Finance Department was overhauled in 2005, with its division into four sectors — the Administration Sector, the Finance Sector, the Complaints-Handling Sector and the Communications Sector. The aim of this restructuring was to allow for greater specialisation within the individual sectors, with co-ordination ensured by the Head of the Department. Within the Legal Department, procedures for case-management and quality control were strengthened, to ensure consistent monitoring and reliable handling of larger numbers of complaints by a larger team of Legal Officers.

The number of posts in the Ombudsman's establishment plan rose from 38 in 2004 to 51 in 2005, as foreseen in the multi-annual budget plan adopted by Parliament in 2002. This plan provided for a phased introduction of new posts connected to enlargement in 2003-05. An increase to 57 posts is foreseen in the 2006 budget adopted by the budgetary authorities in December 2005. This increase is mainly due to the next enlargement of the European Union (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. One of the priorities of this tenth year of the institution was in fact to revisit the existing co-operation agreements with Parliament, with an eye to adapting them to the new realities. A new agreement was scheduled to be signed in early 2006 with the aim of maintaining intensive co-operation with the Parliament in all the domains where substantial economies of scale and budgetary savings are possible.

The Ombudsman presented the budget for the year 2006 according to a new budget structure (nomenclatures). The aim of this new structure is to increase transparency and to facilitate enhanced control by the budget authority, by allowing for better oversight of expenditure of similar nature, which in the structure used to date was spread over several titles or chapters. Total appropriations for 2006 are EUR 7 682 538 (compared to EUR 7 312 614 in 2005).

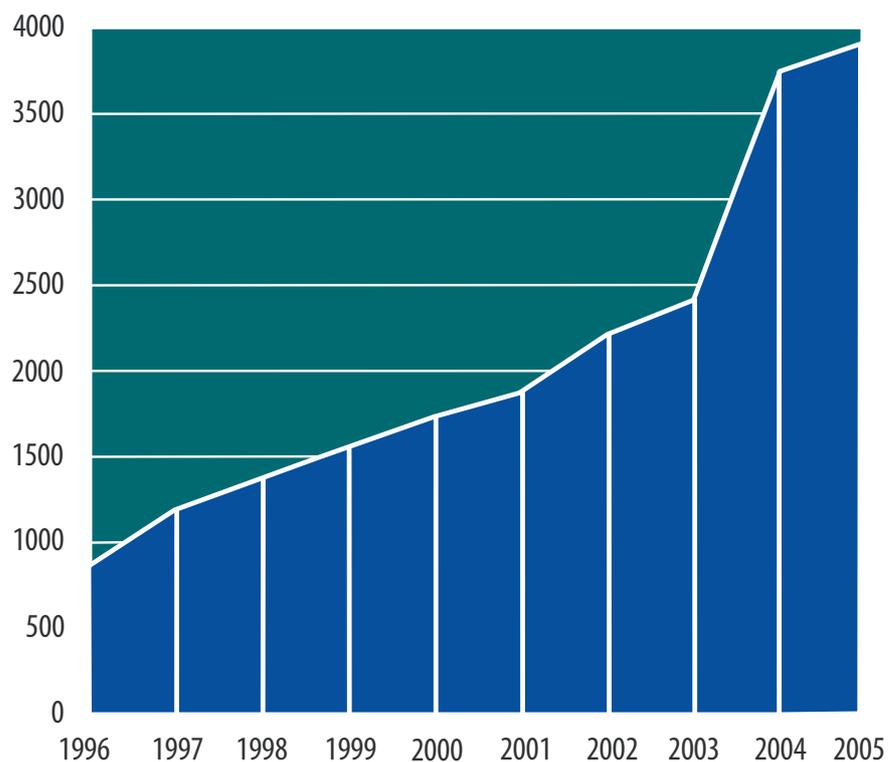


STATISTICS

1 CASES DEALT WITH DURING 2005

1.1	TOTAL CASELOAD IN 2005	4 416¹
	– Inquiries not closed on 31.12.2004	284 ²
	– Complaints awaiting decision on admissibility on 31.12.2004	207
	– Complaints received in 2005.....	3 920 ³
	– Own-initiatives of the European Ombudsman.....	5

Increase in complaints 1996-2005



¹ Of which 389 complaints on the same subject-matter, which were dealt with as a joint inquiry (54 brought forward from 2004, and 335 received in 2005).

² Of which eight own-initiative inquiries of the European Ombudsman and 276 inquiries based on complaints.

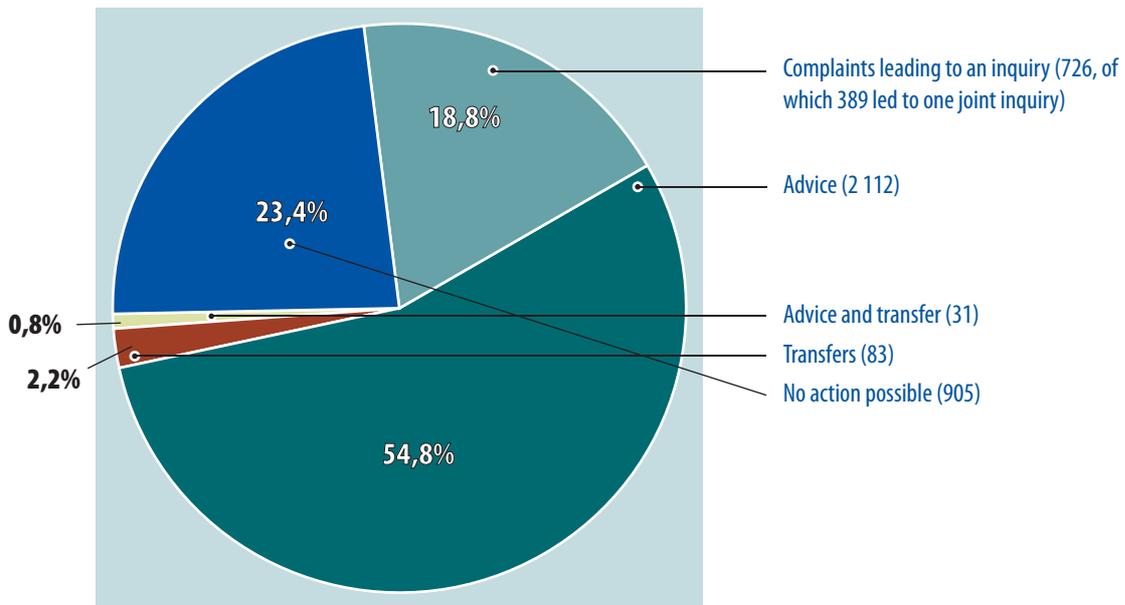
³ Of which 335 complaints on the same subject-matter, as mentioned in footnote 1.



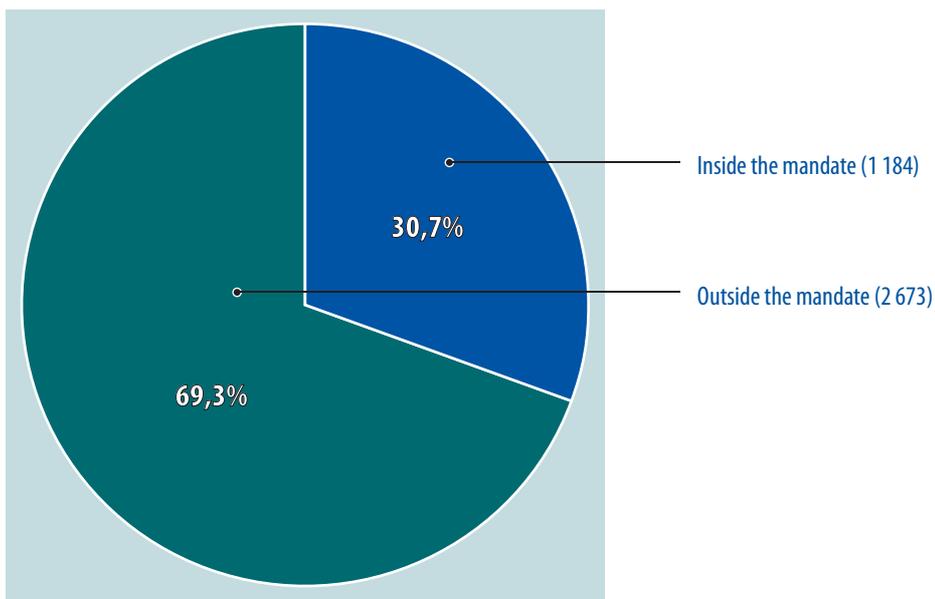
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED 93%

1.3 CLASSIFICATION OF THE COMPLAINTS

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

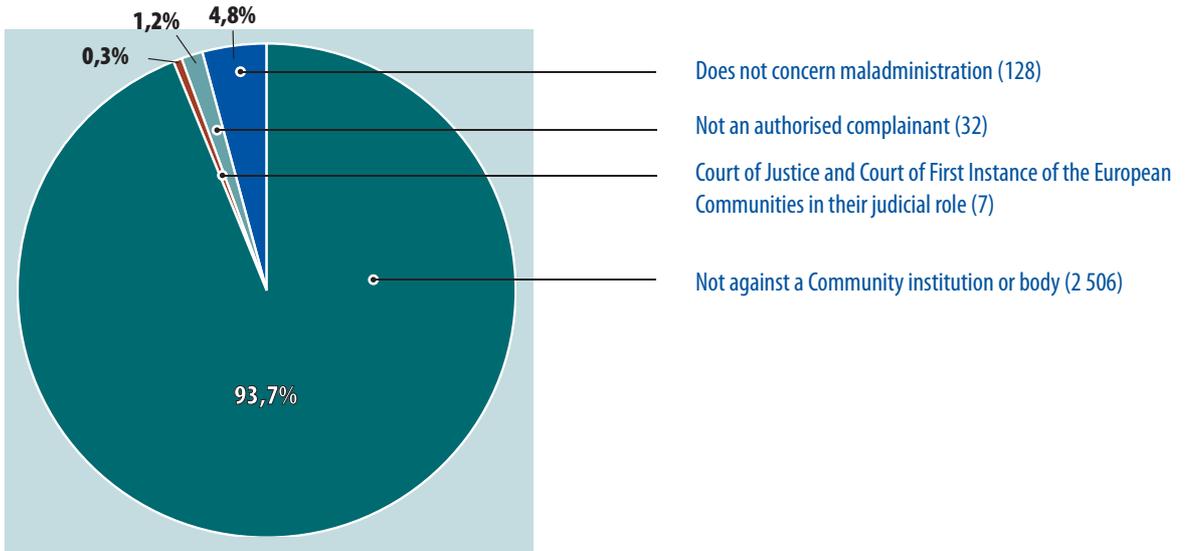


1.3.2 According to the Mandate of the European Ombudsman



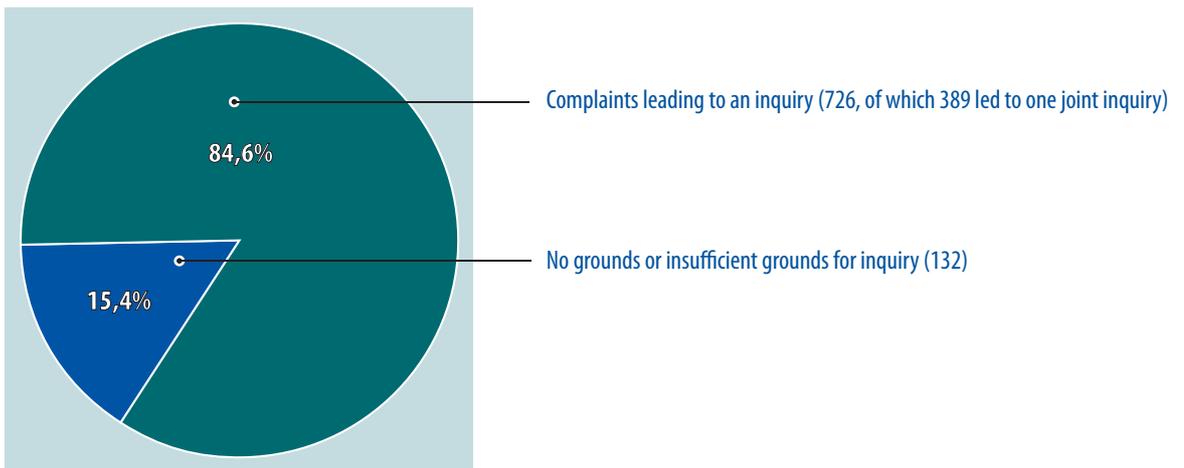


OUTSIDE THE MANDATE

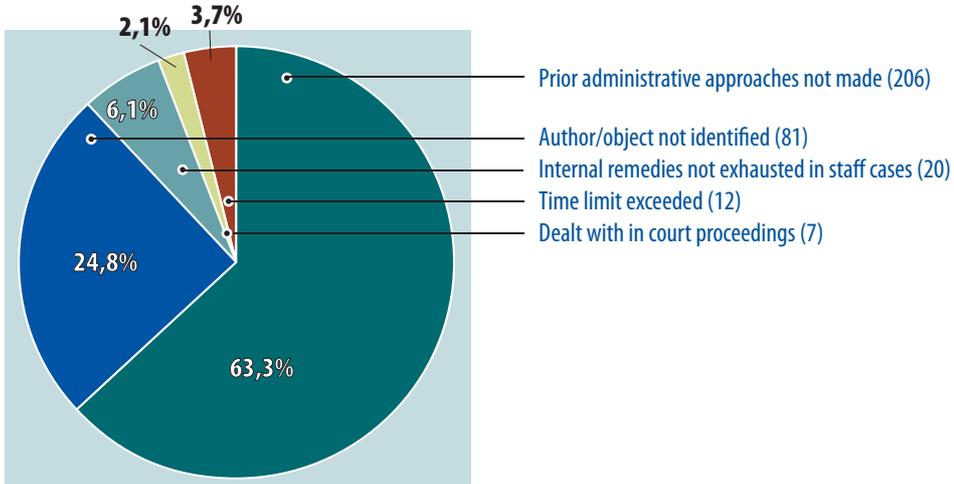


INSIDE THE MANDATE

Admissible Complaints



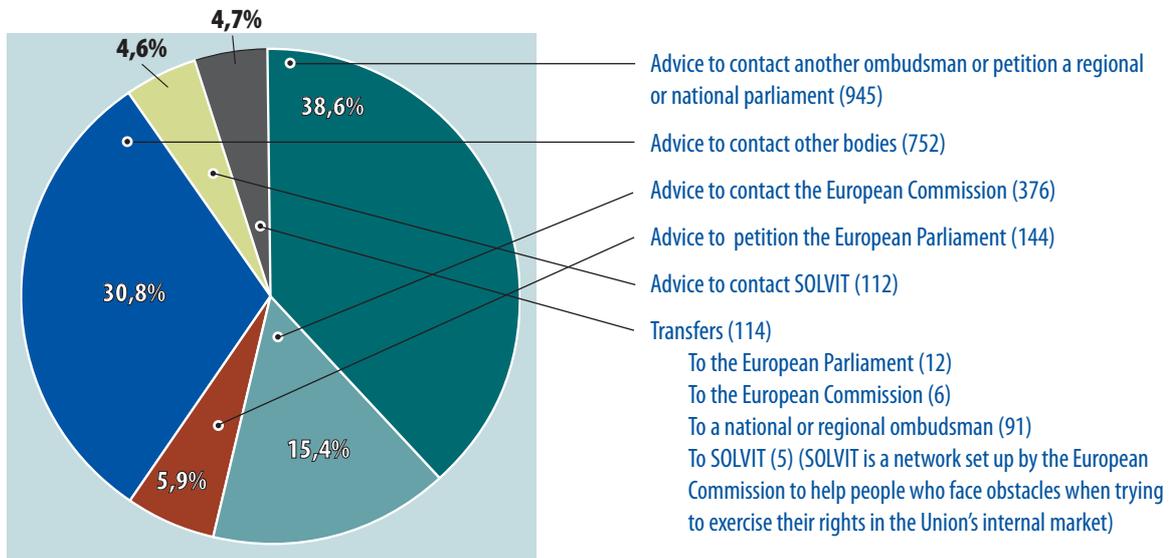
Inadmissible Complaints





2 TRANSFERS AND ADVICE

(In some cases, more than one advice can be given)

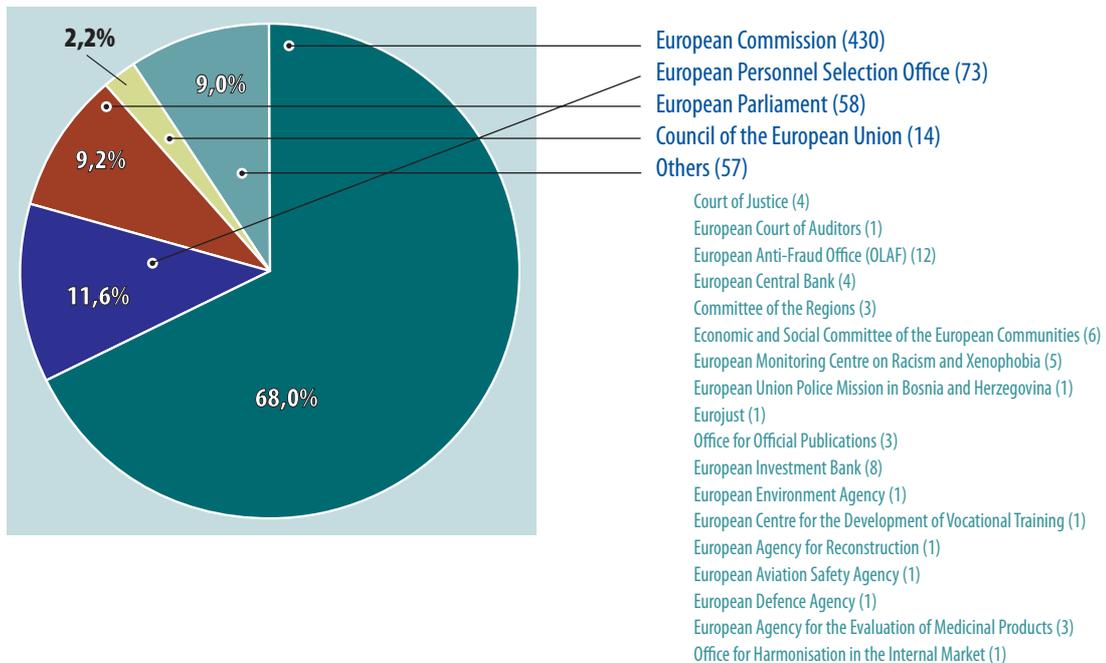


3 INQUIRIES DEALT WITH IN 2005 627⁴

In 2005, the European Ombudsman dealt with 627 inquiries. Of these, 343 were initiated in 2005 (of which five own-initiatives) and 284 were not closed on 31.12.2004.

3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

(In some cases, two or more institutions or bodies are concerned by one inquiry)

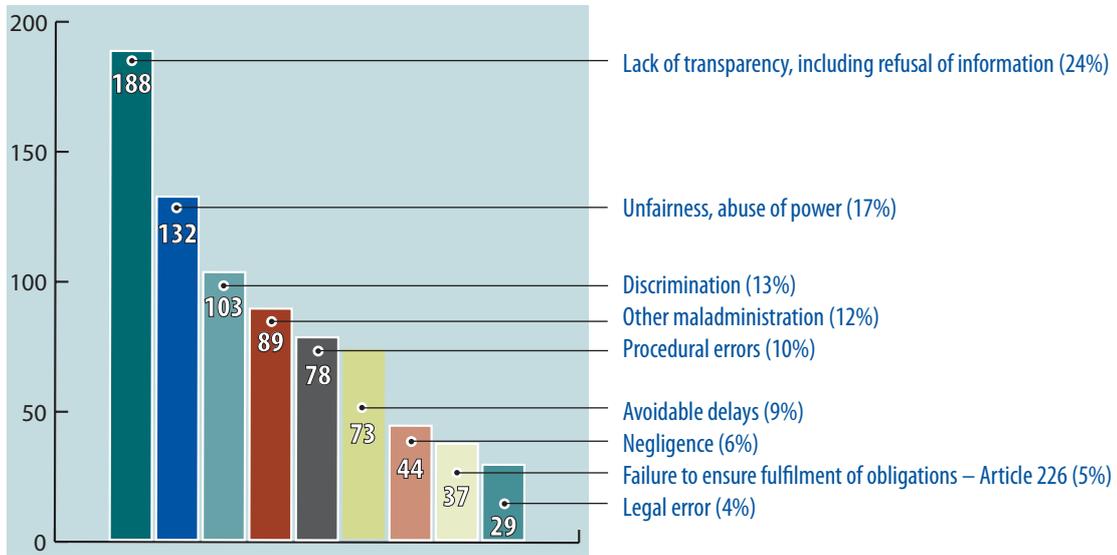


⁴ As previously noted, the 389 cases mentioned in the footnotes to 1.1 above were dealt with in a single joint inquiry.



3.2 TYPE OF MALADMINISTRATION ALLEGED

(In some cases, two types of maladministration are alleged)

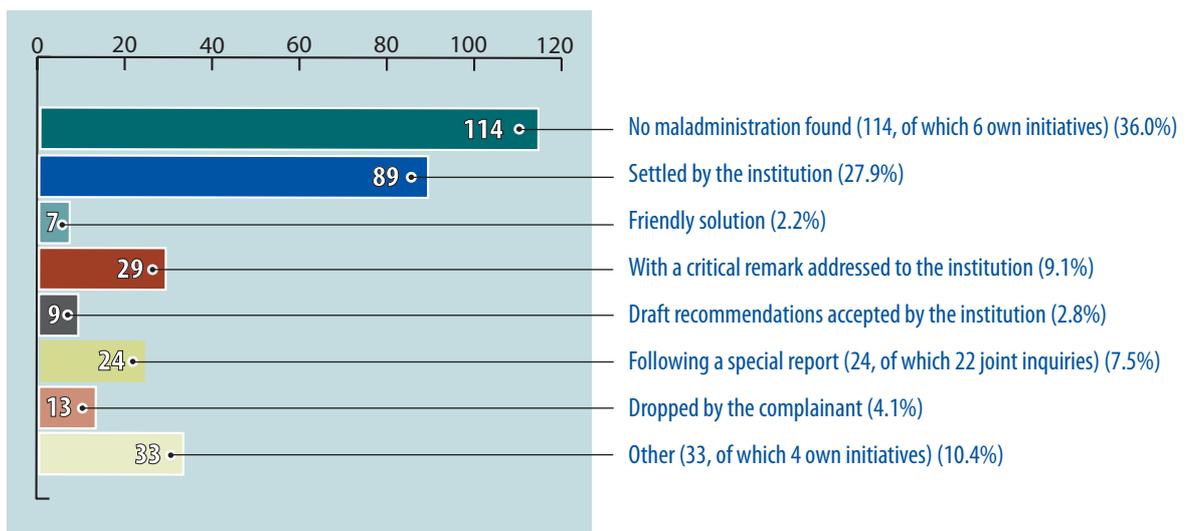


3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2005

– Proposals for friendly solutions.....	22
– Draft recommendations	20
– Special reports	3 ⁵

3.4 INQUIRIES CLOSED WITH REASONED DECISION..... 312⁶

(An inquiry can be closed for one or more of the following reasons)



⁵ One of the special reports concerned 22 complaints.

⁶ Of which ten own-initiative inquiries of the Ombudsman.



4 ORIGIN OF COMPLAINTS REGISTERED IN 2005

4.1 SOURCE OF COMPLAINTS

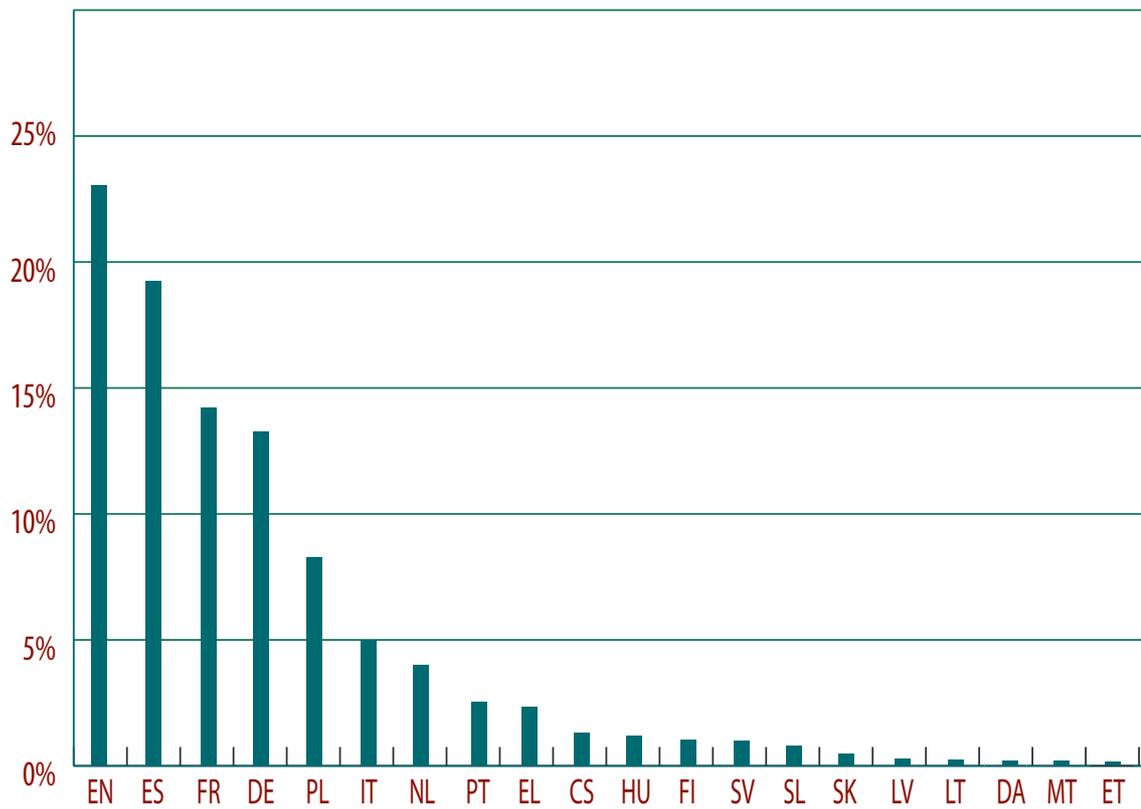


Companies and associations
5.5% (215)



Individual citizens
94.5% (3 705)

4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS





4.3

GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Rate ¹
Malta	40	1.0	0.1	11.6
Cyprus	57	1.5	0.2	8.7
Luxembourg	33	0.8	0.1	8.5
Belgium	252	6.4	2.3	2.8
Slovenia	47	1.2	0.4	2.8
Spain	775	19.8	9.5	2.1
Ireland	64	1.6	0.9	1.8
Greece	134	3.4	2.4	1.4
Portugal	114	2.9	2.3	1.3
Finland	55	1.4	1.1	1.2
Poland	346	8.8	8.3	1.1
Austria	75	1.9	1.8	1.1
Czech Republic	80	2.0	2.2	0.9
Sweden	69	1.8	2.0	0.9
Hungary	76	1.9	2.2	0.9
Lithuania	24	0.6	0.7	0.8
The Netherlands	103	2.6	3.5	0.7
France	380	9.7	13.2	0.7
Slovakia	32	0.8	1.2	0.7
Latvia	13	0.3	0.5	0.7
Germany	410	10.5	17.9	0.6
Italy	215	5.5	12.7	0.4
United Kingdom	197	5.0	13.1	0.4
Estonia	4	0.1	0.3	0.4
Denmark	16	0.4	1.2	0.4
Others	309	7.9		

¹ This figure has been calculated by dividing the percentage of complaints by the percentage of population. Where it 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.



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THE EUROPEAN OMBUDSMAN INVESTIGATES COMPLAINTS ABOUT MALADMINISTRATION BY INSTITUTIONS AND BODIES OF THE EUROPEAN UNION



www.ombudsman.europa.eu