

THE EUROPEAN
OMBUDSMAN

ANNUAL REPORT **2004**
EXECUTIVE SUMMARY AND STATISTICS

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FOREWORD

The year 2004 was a rich year as far as the rights of European citizens are concerned. These rights became a reality for an additional 75 million people whose countries joined the European Union on 1 May. One of the first opportunities to exercise these rights came in early June with the European Parliament elections. And of course, mid-June saw the adoption of the Treaty establishing a Constitution for Europe, including the Charter of Fundamental Rights. The process of ratification of the Constitution in all 25 Member States will surely generate lively debate and discussion about what it means to be a citizen of the Union.



From the perspective of the European Ombudsman, 2004 marked the end of the institution's second mandate. From a two person team in Strasbourg in September 1995, has grown an institution that is respected by the EU institutions and bodies and trusted by citizens who are turning to it in ever greater numbers. The past year saw an unprecedented rise of over 50% in complaints received – a clear sign of increasing awareness of the right to complain to the Ombudsman about maladministration.

For me personally, 2004 was ultimately to determine whether I could live up to the promises I had made upon taking up the post of European Ombudsman. As my mandate coincided with the latter part of the 1999-2004 legislative term, I was keen to deliver on the priorities that I outlined on 1 April 2003. These were to enhance the effectiveness of the Ombudsman's Office, to promote the rule of law, good administration and respect for human rights, and to reach out to citizens all over Europe. The enlargement of the Union was the central theme of all three priorities, while my guiding philosophy in addressing them has been to be both "reactive", i.e., responding to complainants, and "proactive", that is, reaching out to the ombudsman's various constituencies through a variety of initiatives designed to maximise service to users.

Delivering on my promises

An ombudsman's office must strive to ensure that all citizens who turn to it receive help or advice, in a timely and appropriate way. With this in mind, we worked hard in 2004 to build up the institution into one that was ready to serve the citizens of 25 Member States in the 21 Treaty languages. By 1 May, we were in a position to do this.

And we got results! In 2004, the Ombudsman was able to help the complainant in nearly 70% of cases 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. But more than that! Following inquiries by the Ombudsman, the institutions settled bills and paid interest, released documents and provided explanations, remedied injustices and apologised for mistakes. In short, the EU institutions and bodies were keen to demonstrate their willingness to work with the Ombudsman for the benefit of citizens.

My second priority involved building on relations with ombudsmen throughout Europe to promote the rule of law, good administration and respect for human rights. With this in mind, I stepped up my information tour and, having visited all ten accession countries by 1 May, went on to Romania, the Netherlands, Portugal and France before the year-end. These visits proved their worth. Each one included meetings with citizens and potential complainants to explain the role of the ombudsman, exchanges of views with public officials to underline the importance of non-judicial remedies and discussions with my ombudsman counterparts to determine how best to defend and promote citizens' rights. To further promote the ombudsman concept, I travelled to Turkey and to Serbia and Montenegro to advise on the establishment of the institution there. All in all, throughout my information tour and other visits, I gave over 30 lectures and presentations and held over 150 meetings with ombudsmen, public officials and other interlocutors.



The information visits were also key to helping deliver on my third priority. Public lectures, meetings and media interviews offered multiple opportunities to inform citizens of their rights and of how best to use them. We continued to intensify our efforts to target information to potential users of the Ombudsman's services by addressing non-governmental organisations, chambers of commerce, law and public administration departments in the academic world and other interest groups at seminars, meetings and conferences. Our range of publications in up to 25 languages was distributed widely and made available electronically to help raise awareness of the Ombudsman throughout Europe.

I would like to think that the European Parliament's decision to re-elect me on 11 January this year constitutes an endorsement of these activities. More generally, I regard the strong support for my candidacy by virtually all the political groups as tangible evidence of the esteem in which Parliament has come to hold this institution. Such broad-ranging, cross-party support is critical as the institution heads into its second decade.

The years ahead

There is no denying that we are at a critical juncture in the development of a citizens' Europe. The Constitution, which I hope will be endorsed by citizens and Parliaments in the 25 Member States, represents a major step forward in a great number of areas. As an Observer at the European Convention which produced the draft Constitution, I fought hard to ensure that citizens' interests be put at the heart of the debate. The right to complain to the Ombudsman indeed features prominently in the text. Beyond that, I believe that a legally binding bill of rights constitutes one of the most significant advances for citizens.

Achieving the potential contained in the Charter requires proactive intervention to make citizens aware of the new possibilities opened for them and to encourage and assist public authorities at all levels of the Union to make the rights and aspirations of the Charter the touchstone for their actions. It particularly behoves the Ombudsman to raise awareness about the Charter as the debate on the Constitution is stepped up throughout the Union. I have already signalled to my interlocutors in the EU institutions and in the Member States my willingness and commitment to perform this task. I see this as an integral part of three challenges facing the Ombudsman in the coming years.

The first challenge is to ensure that citizens' rights under EU law are respected at every level in the Union.

For this to happen, citizens must be aware of their rights. As European Ombudsman, I will continue working to improve the quality of information to citizens and potential complainants about their rights. The sustained increase in complaints and requests for information received by the Ombudsman indicates that we are moving in the right direction, but much more remains to be done.

Equally important in this respect is that public administrations at the European, national, regional and local levels take full account of citizens' rights in their everyday work. The implementation of EU law is, after all, largely the responsibility of administrations in the Member States. When these public administrations fail to take full account of these rights, national and regional ombudsmen have a key role to play, increasingly so as the Charter is made legally binding. I intend to further intensify my co-operation with my counterparts in the Member States by examining the possibility of joint inquiries, as well as exploring the feasibility of a single telephone number across the Union for people wishing to contact the network of ombudsmen. This could be especially useful for citizens who are exercising the right to move and reside freely in the Union.

The second challenge is to ensure that, in everything they do, the EU institutions and bodies conform to the highest standards of administration.

The increasing readiness of the EU institutions and bodies to work with me in resolving citizens' complaints is a constant source of encouragement. All the more so, as the way in which they react to complaints is a key measure of how citizen-focused they are. The more willing the institution is to settle complaints or to accept friendly solutions proposed by the Ombudsman, the better it is for all concerned. For this reason, I intend to carry out an extensive analysis of all the friendly solutions achieved by the Ombudsman since the establishment of the institution, looking for common



characteristics that might help to identify more complaints that could bring about this kind of 'win-win' outcome.

This forms part of my efforts to advance the role of the Ombudsman as a resource capable of contributing to the improvement of the quality of services offered by the Union's administration. The EU institutions and bodies can learn from complaints about how to deliver better services. The result 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, while the institutions should find themselves with fewer complaints in the future. I also intend to launch more inquiries on my own initiative in order to identify problems and encourage best practice.

There were a few cases in 2004 in which the institution's response to the Ombudsman's inquiries could have been better. I issued my first special report to Parliament after the Commission failed to provide a convincing explanation for differences in the grading of press officers in its delegations in third countries and rejected a draft recommendation to reconsider the relevant rules. This followed a complaint alleging discrimination on the grounds of nationality. I hope that in reviewing the Ombudsman's work in 2004, Parliament will take account of the very positive co-operation that the Commission and the other institutions have shown in the vast majority of cases and encourage them to extend it to all cases in the future. In this way, we can work together to promote the highest standards of administration.

The third challenge is to guarantee that the Ombudsman institution serves the citizen in the most efficient and effective way possible.

The European Ombudsman is the guardian of good administration. In this regard, a key instrument at his disposal is the European Code of Good Administrative Behaviour. As called upon by the European Parliament when it approved the text in 2001, the Ombudsman uses the Code in examining whether there is maladministration.

Notwithstanding the positive influence the Code has had, I continue to believe that a law on good administration, applying to all EU institutions and bodies, holds many advantages. Its adoption would underline, for both citizens and officials, the importance of the principles laid down in the Code. It would help eliminate the confusion currently arising from the parallel existence of different codes of good administrative behaviour for most institutions and bodies. Finally, and most importantly, it would go some way towards making the citizens' fundamental right to good administration, as laid down in Article 41 of the Charter (Article II-101 of the Constitution), a reality. I will therefore continue in my efforts to encourage the European Commission to propose, as rapidly as possible, a law to promote good administration by the Union institutions and bodies.

Conclusion

I would like to summarise my vision for the next five years of the European Ombudsman institution. My ambition is for all EU citizens to have the means to be aware of their rights and to know how to ensure that their EU rights are fully respected. This goal can only be realised through close co-operation, both with EU institutions, especially the European Parliament, and with national and regional ombudsmen in the Member States. I am further reassured in the knowledge that I can rely on the enthusiasm and dedication of my staff. Mindful of the heavy responsibilities that Parliament's recent, broad endorsement places upon me, I look forward to making that ambition a reality, as the institution moves into its second decade, by continuing to serve citizens of the EU diligently, dynamically, effectively and, most importantly, fairly and impartially.

P. Nikiforos DIAMANDOUROS



EXECUTIVE SUMMARY

The tenth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2004. It is the second 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 his future priorities. 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 2004.

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 2004.

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 2004. 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.

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 includes 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.

The right to complain to the Ombudsman is included in the Treaty establishing a Constitution for Europe, which is currently in the process of ratification by the EU Member States.

Complaints and inquiries in 2004

The total number of complaints received in 2004 was 3 726. This represents an increase of 53% compared to 2003. Of this 53% overall increase, 51% is accounted for by complaints from the 10 new Member States that joined the Union on 1 May 2004. The remaining 49% represents an increase in complaints sent from the 15 old Member States and from elsewhere in the world, reflecting greater awareness of the European Ombudsman in the EU and beyond.

For the first time ever, more than half of the complaints were sent to the Ombudsman electronically, either by e-mail or using the complaint form on the Ombudsman's website. Complaints were sent directly by individual citizens in 3 536 cases, while 190 complaints came from associations or companies.

In nearly 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 351 new inquiries were opened during the year, including eight inquiries on the Ombudsman's own initiative.

Most of the complaints that led to an inquiry were against the European Commission, with 375 cases accounting for 69% of all inquiries opened. As 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 58 complaints against the European Communities Personnel Selection Office (EPSO), 48 against the European Parliament and 22 against the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (127 cases), discrimination (106 cases), avoidable delay (67 cases), unsatisfactory procedures (52 cases), unfairness or abuse of power (38 cases), failure to ensure fulfilment of obligations, that is failure by the Commission to carry out its role as "Guardian of the Treaty" vis-à-vis the Member States (37 cases), negligence (33 cases), and legal error (26 cases).

The year 2004 also saw the largest ever increase in requests for information to the Ombudsman. Over 3 200 individual requests were received by e-mail, compared to around 2 000 in both 2003 and 2002.

The results of the Ombudsman's inquiries

In 2004, the Ombudsman closed 251 inquiries. Of these, 247 were inquiries into complaints and four were own-initiative inquiries. The findings were as follows:

No maladministration

In 113 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 acted rapidly and constructively to correct a mistake which had led it to reject a pre-proposal from a German consultant for missing the submission deadline. The pre-proposal was selected and, after the Ombudsman's intervention, the complainant was granted the same number of days as other promoters to prepare his full proposal. (221/2004/GG)



- The Commission provided a useful explanation of the relevant legal framework in response to allegations from a Greek insurance company that it had failed to ensure the correct transposition of certain directives into Greek national legislation. The company chairman wrote to the Ombudsman to thank him for his inquiry, which had drawn his attention to the possibilities open to him to take further action on the matters of substance. (841/2003/(FA)OV)

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 confirmed that, on the basis of the exceptions provided for in its rules on access to documents, the Commission was right to refuse access to certain documents about World Trade Organisation (WTO) negotiations. The documents had been requested by the environmental organisation "Friends of the Earth". Given the expectations of many citizens for greater openness in this important policy area, however, he encouraged the Commission to consider additional means that might render these negotiations more transparent for citizens, and thus facilitate public access to the exchanges among the parties. (1286/2003/JMA)
- Following a complaint to the Ombudsman, the European Parliament explained to a Spanish citizen why his application for a traineeship had been rejected. With a view to promoting higher standards of administration, the Ombudsman remarked that Parliament could consider providing more specific information on the criteria by which traineeship applications are assessed. He also suggested that Parliament consider revising its rules to make clear that the list of names of persons who accept the offer of a traineeship will be a public document. (821/2003/JMA)
- The founder of a German animal rights organisation was refused access to parts of a mission report drawn up by the Commission's Food and Veterinary Office. While the Ombudsman agreed with the Commission's decision to refuse access, he remarked that it would be useful to record non-confidential information separately from confidential information, as far as practically possible. This could simplify the granting of partial access, he said. The Commission subsequently confirmed that its rules on access to documents had led to a clearer separation of confidential and non-confidential documents. (1304/2003/PB)

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 2004, 65 cases were settled by the institution or body itself following a complaint to the Ombudsman. Among them were the following:

- The Commission paid invoices totalling EUR 17 437 to a small German company, which turned to the Ombudsman after it had sent the institution seven reminders. The Commission explained that the delay was due to technical changes to budgetary procedures and gave reassurances that the establishment of a financial unit meant that matters had now been reviewed. After the Ombudsman pointed out that small and medium-sized companies are particularly vulnerable to the effects of delays in payment, the Commission also agreed to pay interest. (435/2004/GG)
- Shortly after the Ombudsman opened an inquiry, the Parliament admitted an Italian policeman to a recruitment procedure in the field of general security. The candidate had twice contacted the Parliament to contest its decision to reject his application, pointing out that his experience of almost five years should satisfy the relevant criteria. He complained to the Ombudsman after the Parliament failed to reply. (1600/2003/ADB)

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 2004, 12 friendly solutions were proposed. Five cases were closed when a friendly solution was achieved (including 2 cases where the proposal was made in 2003). At the end of 2004, 11 proposals were still under consideration. Among the friendly solutions achieved in 2004 were:

- A case in which the Commission gave a complainant access to the results he had obtained in a road test. The complainant had applied for an auxiliary post as a driver at the Commission and unsuccessfully asked for the disclosure of his results after he was informed that he had failed the test. The Ombudsman found that the Commission had not submitted any reasons as to why the complainant should not be given access to his own results. (1320/2003/ELB)
- A case in which the Commission supplied Corporate Observatory Europe, a European research and campaign group, with a list of documents concerning World Trade Organisation (WTO) negotiations on investment. The complainant, whose request for documents had been rather general, thus received the information needed to make a more precise request. (415/2003/TN)

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 2004, the Ombudsman made 36 critical remarks. For example:

- The Ombudsman criticised the Parliament's failure to take adequate measures to promote effective compliance with its rules on smoking on its premises. This followed a complaint from a Danish official working in the Parliament. The Ombudsman pointed out that, in view of the possible adverse health effects of exposure to smoke, Parliament should pay particular attention to this issue as it also raised potential issues of legal liability. (260/2003/OV)
- The Ombudsman deplored the attitude displayed by the Commission in a case concerning the recruitment of a Swedish citizen. The Commission refused to consider reviewing the complainant's classification, which the Ombudsman had found to be unfair. The fact that the Commission did not comment on an alleged internal misunderstanding concerning the availability of a post was not in conformity with its obligations under EU law, he added. (1435/2002/GG)
- The Ombudsman criticised the European Personnel Selection Office (EPSO) for failing to properly justify its decision to draft correspondence to candidates in an open competition only in English, French or German. The complainant alleged that this decision violated the principle of equality of official languages and working languages contained in the relevant rules. Given that this was an "actio popularis" complaint, the Ombudsman stated that it was not appropriate to look for a friendly solution. (2216/2003/MHZ)

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 2004, the Commission informed the Ombudsman of its follow-up on 11 critical remarks, including:

- Apologising and pursuing the case in question after the Ombudsman criticised it for not giving a convincing explanation as to why it had taken no action for almost two years. This followed two complaints concerning state aids granted by the Portuguese Government which, according to the complainant, the Commission had failed to deal with properly. (2185/2002/IP)



- Expressing regret that a complainant's expectations had not been addressed in writing in an adequate and unambiguous way and confirming that its principles of good administration had since been outlined more clearly. The Ombudsman had criticised the Commission for refusing to reimburse costs estimated at EUR 170 000 for secretarial services provided by a Dutch institute. (1986/2002/OV)

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 2004, 17 draft recommendations were made. In addition, five draft recommendations from 2003 led to decisions in 2004. Seven cases were closed during the year when a draft recommendation was accepted by the institution. One case led to a special report to the European Parliament. Five cases were closed for other reasons. At the end of 2004, nine draft recommendations were still under consideration. The following were among those that were accepted in 2004:

- The European Anti-Fraud Office (OLAF) provided a detailed explanation in response to the Ombudsman's call that it review its inquiry into the so-called "Blue Dragon" case. The Ombudsman's investigation had revealed a number of points that gave rise to concern about the adequacy of OLAF's inquiry into allegations made by the directors of the Blue Dragon company. In view of the information OLAF provided about an on-going investigation being carried out by the Commission, the Ombudsman found it reasonable for OLAF not to re-open its own inquiry. (1769/2002/(IJH)ELB)
- The Commission granted compensation of EUR 21 000, on a purely ex gratia basis, to a small UK company after the Ombudsman found that it had given the company insufficient time to prepare a proposal in the framework of a research and development contract. This ultimately led to the proposal being deemed ineligible due to an error it contained. The Commission stressed that it was anxious not to harm small and medium-sized enterprises and acknowledged that exceptional circumstances had made it difficult for the complainant to execute the contract correctly. (1878/2002/GG)
- OLAF gave three documents to a complainant and explained that the other documents she had requested did not exist, after the Ombudsman intervened. The complainant, an official who had been working for the Institute for Transuranium Elements (ITU) in Karlsruhe, requested the documents as part of the inquiry into her allegations of severe irregularities in the work of the ITU. (220/2004/GG)

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 judgement of the Parliament. There was one special report made in 2004:

- The Ombudsman submitted a special report to Parliament after the Commission failed to provide a coherent and convincing explanation for differences in the grading of press officers in its delegations in third countries and rejected a draft recommendation to reconsider its rules on the classification of these posts. A Pakistani national, who worked as Press and Information Officer at the Commission's delegation in Islamabad, alleged that by being classified in a lower group, he had been discriminated against on the basis of his nationality. (OI/2/2003/GG)

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). Eight such own-initiative inquiries



were opened in 2004, including six on the basis of complaints made before 1 May by citizens of the countries that joined the Union on that date. Four of these inquiries were closed during the year. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. Two such own-initiative inquiries were closed with positive results during the year, namely:

- The Commission took action to improve the administration of the European Schools, seeking to identify and tackle the most serious operational weaknesses. The Ombudsman welcomed its response to his inquiry into good administration in the Schools and, in particular, its commitment to co-operation with parents. He further encouraged it to seek to ensure that the Schools themselves acknowledge, as part of their core mission, the need to empower parents and win their trust. The Ombudsman opened this inquiry following a series of complaints expressing a sense of frustration and disempowerment on the part of parents whose children attended the Schools. (OI/5/2003/IJH)
- The Commission agreed to introduce an internal complaints procedure for seconded national experts, following an own-initiative inquiry. After the Ombudsman highlighted that the Commission had not given a definite timetable for action, the Commission indicated that the complaints procedure could be adopted by March 2005. Seconded national experts are national or international civil servants, or persons employed in the private sector, who are working temporarily for European institutions. The Ombudsman opened the inquiry after he was alerted to the fact that these experts may not have access to an internal complaints procedure. (OI/1/2003/ELB)

Further analysis

These, and other cases, are reviewed from the following thematic perspectives in the final section of chapter 2 of the Annual Report: access to documents and data protection, the Commission as “Guardian of the Treaty”, contracts and grants, and recruitment and staff issues. Since almost 70% of the Ombudsman’s inquiries concern the Commission, the section concludes with an evaluation of the Commission’s relations with the Ombudsman and with complainants, as reflected in the decisions of 2004 and in the Commission’s responses during that year to further remarks and critical remarks. The Ombudsman draws Parliament’s attention to a number of cases where the Commission could have responded more positively and states that he would welcome initiatives by Parliament designed to encourage the Commission to extend to all future cases the good co-operation that it exhibited in the vast majority of cases in 2004.

Chapter 3 of the Report contains summaries of 59 out of the total of 251 decisions closing cases in 2004. The summaries reflect the range of subjects and institutions covered by the Ombudsman’s inquiries and the different types of finding. The relevant cases have been chosen because they contain new findings of law, new material concerning the competence or procedures of the Ombudsman, or findings of fact that are of general importance or interest.

All the Ombudsman’s decisions following inquiry, with the exception of a few confidential cases which cannot be satisfactorily anonymised, are published on the Ombudsman’s website (<http://www.euro-ombudsman.eu.int>) in English and in the language of the complainant if different.

Relations with European Union institutions and bodies

Constructive working relations with the European Union 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 met with Members and officials of the institutions and bodies on more than 30 occasions in 2004. These events included presentations of the Ombudsman’s work, during which he offered guidance on how best to respond to complaints and how to improve procedures. This



activity, another instance of the Ombudsman's proactive dimension, forms part of the institution's dual role, as both a mechanism of external control and a resource to help improve the quality of administration. Initiatives were explored with a view to enhancing interinstitutional co-operation, most notably with regard to ensuring that everyone who might have reason to complain to the Ombudsman receives information about how to do so. Further meetings took place to discuss the Ombudsman's priorities and the resources necessary to achieve these priorities, with a particular focus on the budget for the institution.

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. Eight publications were made available to MEPs in 2004. 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 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. The DE ROSSA Report on the Ombudsman's *Annual Report 2003* included a proposal for the Committee to become a full member of the European network of ombudsmen. The Ombudsman welcomed this proposal and made arrangements for its rapid implementation.

Relations with ombudsmen and similar bodies

Working closely with his counterparts at the national, regional and local levels is a key priority for the European Ombudsman. This helps ensure that citizens' complaints are dealt with promptly and effectively. It is equally vital for tracking important developments in the world of ombudsmen, exchanging information about EU law and sharing best practice.

Network

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 29 countries, covering the national and regional levels within the Union and 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 State 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 2004, the Ombudsman advised 906 complainants to turn to a national or regional ombudsman and transferred 54 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.

If requested to do so, the European Ombudsman also assists national and regional ombudsmen with their inquiries by replying to queries about EU law, or by channelling the query to an appropriate EU institution or body for response. In 2004, queries were received from the Regional Ombudsman of Veneto (Italy), the Irish Ombudsman and the Ombudsman of Cyprus.

The network is equally active in terms of sharing of experiences and best practice. This occurs via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Preparations for the fifth Seminar of national ombudsmen in the EU Member States and Candidate Countries began in earnest in 2004, with the European Ombudsman and his Dutch counterpart, Mr Roel FERNHOUT, meeting three times with a view to ensuring that this Seminar, to take place in The Hague in September 2005, is a great success. The *European Ombudsmen - Newsletter* continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2004. The two issues, published in April and October, covered topics such as the new Constitution for Europe and its implications for ombudsmen, problems encountered by those who want to make use of their right to freedom of movement, and obstacles faced by people with disabilities. In terms of the Ombudsman's electronic discussion forum, the document and discussion fora really took off 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 television coverage of ombudsmen to the rights of ombudsmen to visit prisons, with most national offices contributing to one or many of these discussions. 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.

Co-operation within the network was further intensified in 2004, as a result of the Ombudsman's information visits to the Member States and applicant countries. Ombudsmen throughout Europe gave invaluable assistance in organising these visits, which systematically provided for in-depth meetings between the ombudsmen to explore new ways of working together for the benefit of citizens. By the end of 2004, the Ombudsman had visited all 25 Member States since taking office in April 2003.

Meetings

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European network of ombudsmen. As an active member of an array of ombudsman organisations, he participated in conferences and seminars in Europe and beyond, including the eighth International Ombudsman Institute (IOI) World Conference in Quebec City, Canada. He was keen to attend events organised by national and regional ombudsmen or to ensure that his Office was represented at such events. In the context of his work to promote the rule of law, respect for human rights and good administration, the Ombudsman attended a number of events in 2004, notably in Turkey and Serbia and Montenegro, aimed at establishing new ombudsman institutions. Also in this regard, the Ombudsman continued to make the *European Ombudsmen - Newsletter*, the electronic discussion forum and the daily news service available to the broader membership of the European Region of the IOI.

Communications activities

The overriding goal of the Ombudsman's efforts to work constructively with EU institutions and bodies and with his fellow ombudsmen is to ensure the best possible service to citizens. Key to achieving this goal is raising awareness among citizens about their rights and, in particular, their right to complain to the Ombudsman. Much was done in this regard during the year.

The Ombudsman stepped up his information visits to the Member States, accession and applicant countries in 2004. During each of these visits, he met citizens, potential complainants, administrators, members of the judiciary and senior political representatives. The visits proved an excellent means of improving citizens' awareness about their rights. Moreover, they helped raise the profile of the Ombudsman's work among key members of the judicial, legislative and executive branches at the national and regional levels and enriched the valuable collaboration the Ombudsman enjoys with his counterparts in the Member States and applicant countries. The support of the ombudsman offices in the countries concerned, as well as the European Parliament Offices and European Commission Representations and Delegations, made a critical contribution to the success of these visits.

In addition to the events that took place during the information visits, the Ombudsman and his staff addressed over 70 conferences, meetings and groups throughout Europe during the year, to discuss issues such as the EU's efforts to communicate with citizens, the Constitution for Europe and the rights of people with disabilities. These meetings helped raise awareness of the Ombudsman's work among potential complainants and interested citizens alike.

Media activities were stepped up in 2004, with press releases issued every 11 days on average. The Ombudsman gave over 40 interviews to journalists from the print, broadcast and electronic media in Strasbourg, Brussels and during his information visits further afield. He also presented his work and responded to questions during press conferences, briefings, meetings and working lunches.

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. The Brussels Open Day on 1 May was used to launch *The European Ombudsman - At a glance* leaflet in 24 languages, while his



complaint form and brochure was made available in all Treaty languages shortly after enlargement. For the first time, the Ombudsman's Annual Report was made available in 20 languages, while a user-friendly *Executive Summary & Statistics* publication made the Report more widely accessible.

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. The website (<http://www.euro-ombudsman.eu.int>) was transformed from a linguistic point of view during the year, with the site's homepages and navigation pages, previously in 11 languages, made available in 10 new languages - the nine languages of the new EU Member States and Irish.

10th anniversary preparations

With an eye to the 10th anniversary of the institution in 2005, the Ombudsman organised a workshop in Strasbourg, bringing together individuals who had played an important role in its founding. The "Founders' Workshop" gave rise to lively discussions, allowing valuable information to be derived about the origins, establishment and early development of the institution. A publication commemorating the 10th anniversary, inspired by the findings of the "Founders' Workshop", is expected to be produced in 2005.

Internal developments

During the first four months of 2004, the Ombudsman built on the work that had been carried out in recent years to prepare the Office for enlargement. Strenuous efforts ensured that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages as from 1 May.

The number of posts in the Ombudsman's establishment plan rose from 31 in 2003 to 38 in 2004, 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 2003-5. An increase to 51 posts is foreseen in the 2005 budget adopted by the budgetary authorities in December 2004.

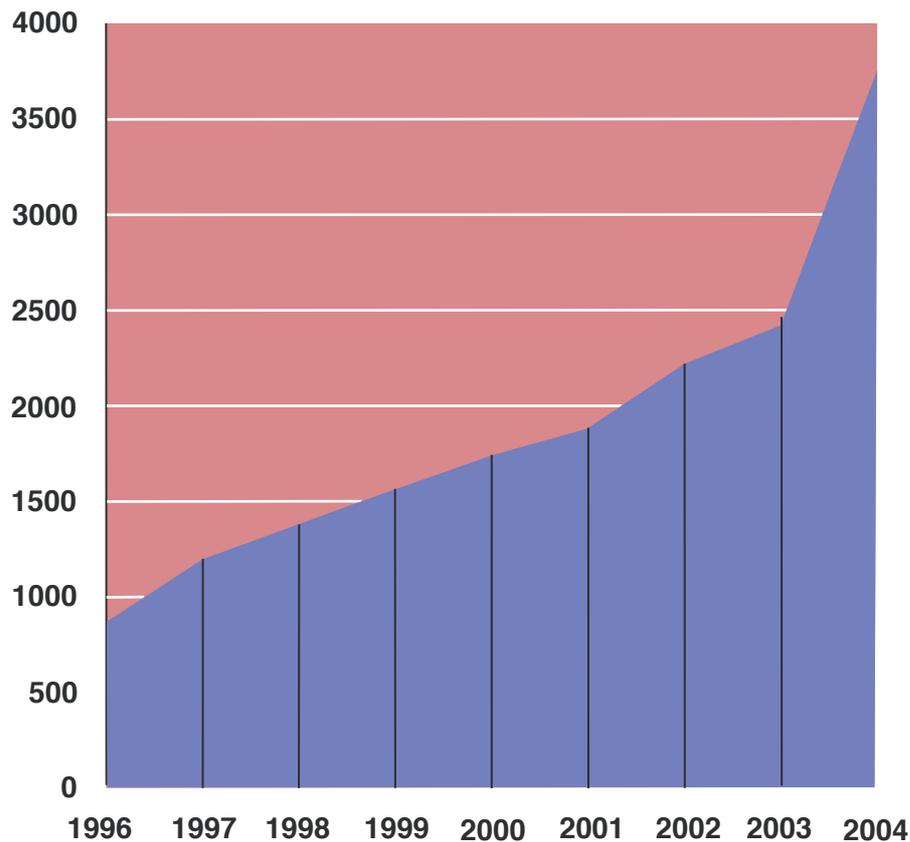
The Ombudsman's new complaints database became fully operational during the year and enabled the Office to successfully face the challenge that came with an unprecedented increase in the number of complaints and the expansion in the range of languages covered. Coupled with an improved deployment of human resources and a continued upgrading of the information technology infrastructure in the Office, these initiatives allowed for an enhanced service to citizens in 2004.



STATISTICS

1 CASES DEALT WITH DURING 2004

1.1 TOTAL CASELOAD IN 2004	4 048
– inquiries not closed on 31.12.2003	183 ¹
– complaints awaiting decision on admissibility on 31.12.2003.....	131
– complaints received in 2004	3726
– own initiatives of the European Ombudsman	8



Increase in Complaints 1996 - 2004

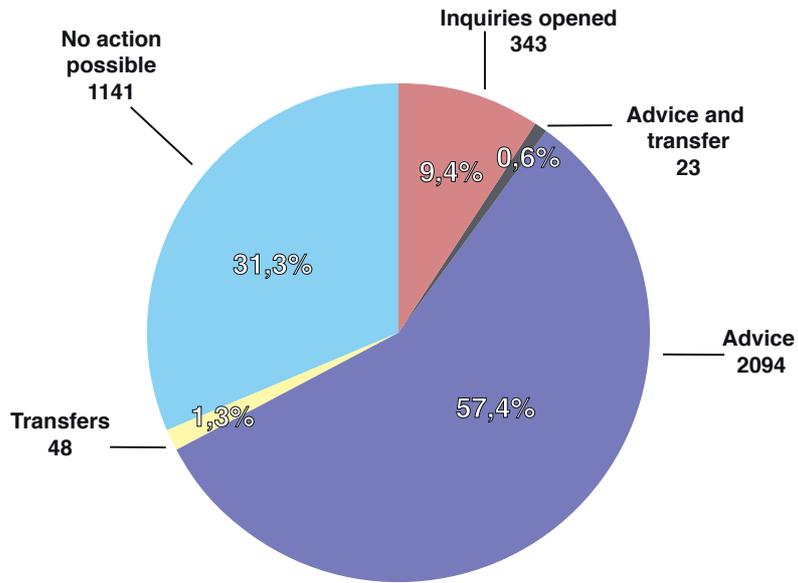
¹ Of which four own initiative inquiries of the European Ombudsman and 179 inquiries based on complaints.



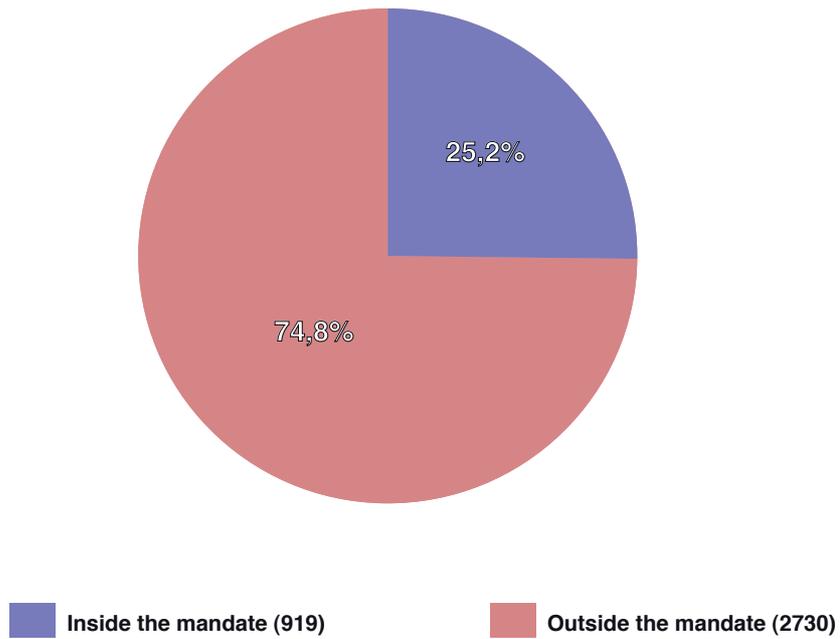
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED.....94,6%

1.3 CLASSIFICATION OF THE COMPLAINTS

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

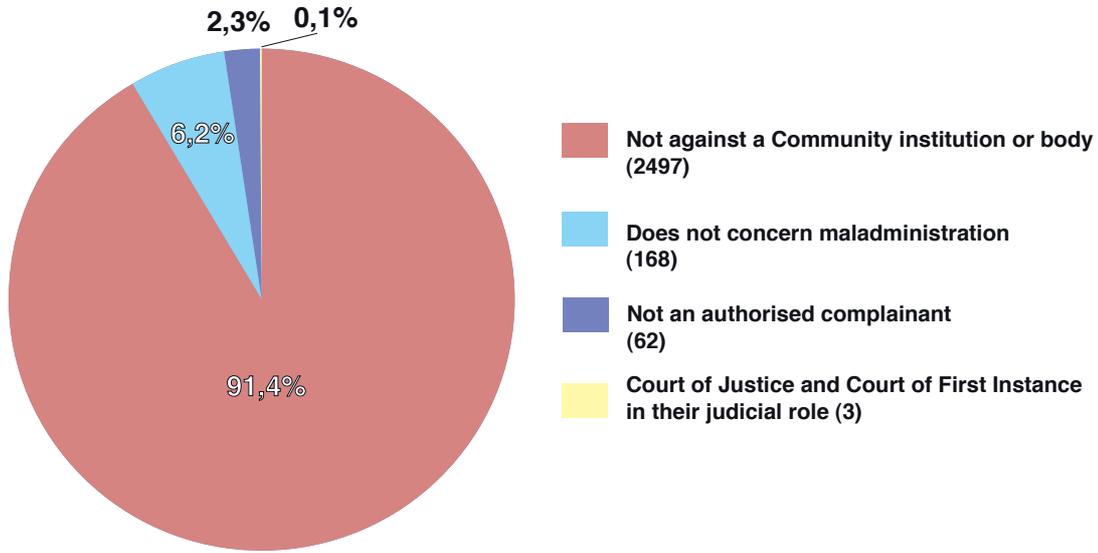


1.3.2 According to the Mandate of the European Ombudsman



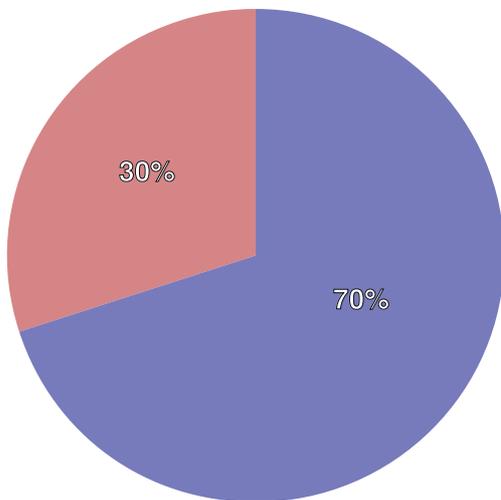


OUTSIDE THE MANDATE



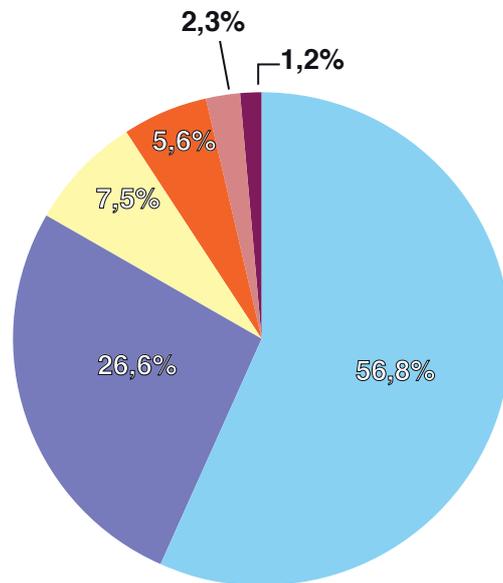
INSIDE THE MANDATE

Admissible complaints



- Inquiries initiated (343)
- No grounds or insufficient grounds for inquiry (147)

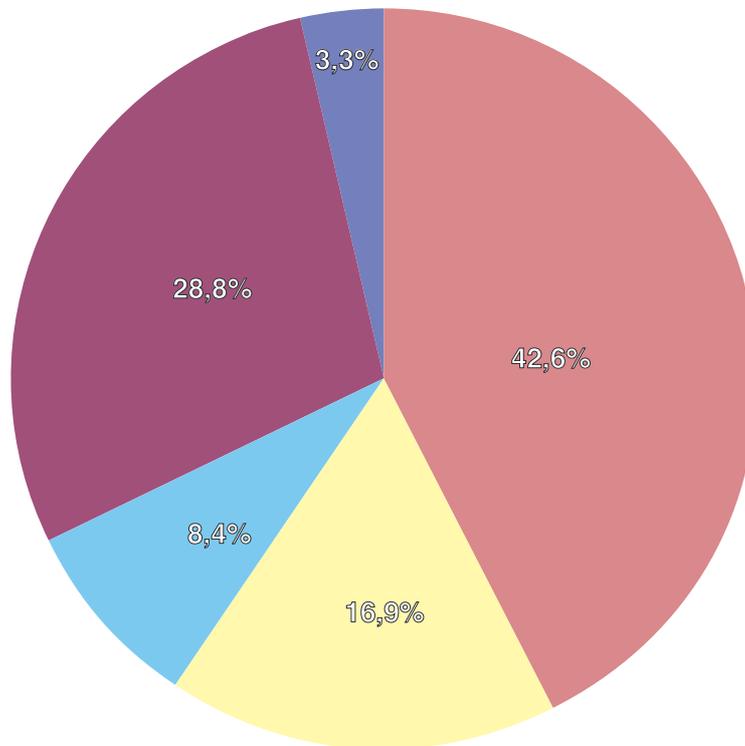
Inadmissible complaints



- Prior administrative approaches not made (243)
- Author/object not identified (114)
- Internal remedies not exhausted in staff cases (32)
- Being dealt with or already settled by a court (24)
- Time limit exceeded (10)
- Alleged facts are or have been the subject of legal proceedings (5)



2 TRANSFERS AND ADVICE



 Advice to contact ombudsman or petition a regional or national parliament (906)

 Advice to contact the European Commission (359)

 Advice to petition the European Parliament (179)

 Advice to contact other bodies (613)

 Transfers (71)

To the European Parliament (13)

To the European Commission (4)

To a national or regional ombudsman (54)

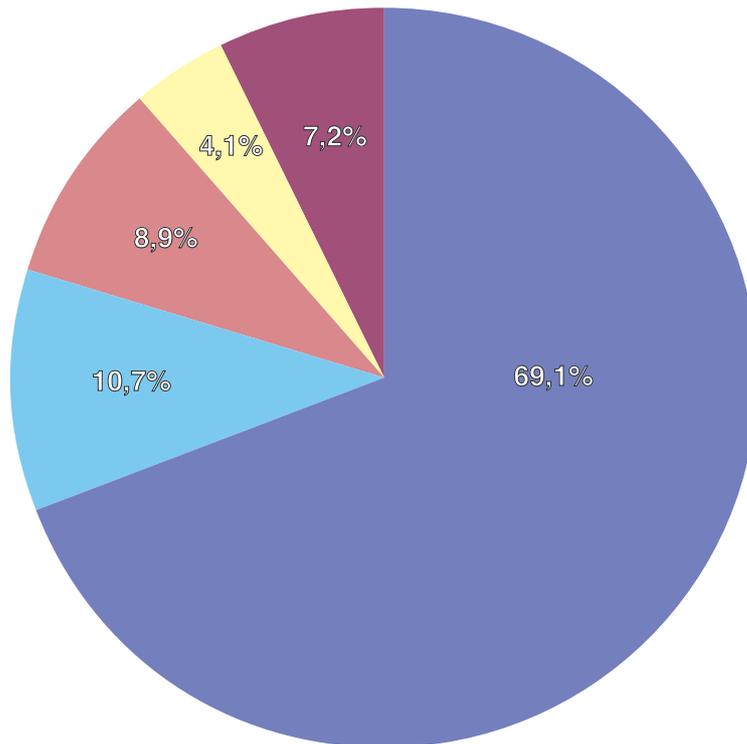


3 INQUIRIES DEALT WITH IN 2004534

In 2004, the European Ombudsman dealt with 534 inquiries, 351 inquiries initiated in 2004 (of which eight own initiatives) and 183 inquiries not closed on 31.12.2003.

3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

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



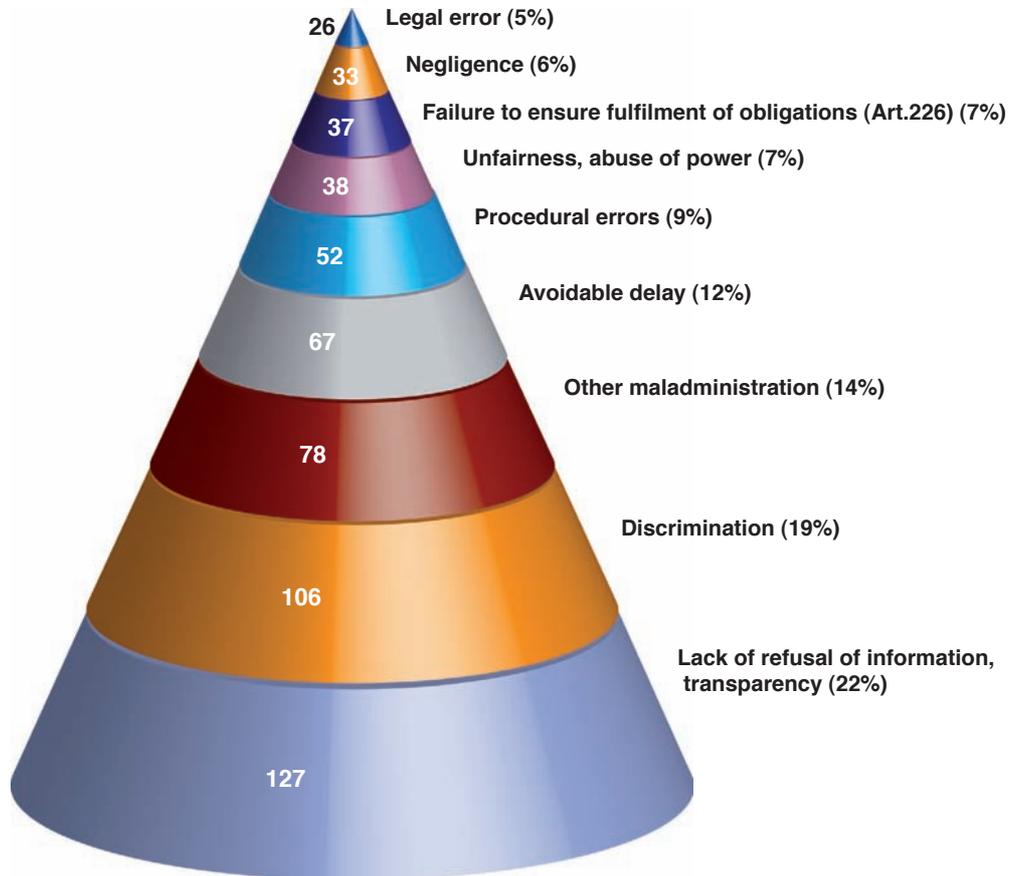
	European Commission (375)
	European Communities Personnel Selection Office (58)
	European Parliament (48)
	Council of the European Union (22)
	Others (39)

European Investment Bank	7
European Anti-Fraud Office (OLAF)	5
Committee of the Regions of the European Union	5
European Central Bank	4
Court of Justice of the European Communities	3
European Court of Auditors	3
European Economic and Social Committee	3
European Monitoring Centre on Racism and Xenophobia	2
European Food Safety Authority	1
European Union Police Mission in Bosnia Herzegovina	1
Eurojust	1
Europol	1
Publications Office of the European Communities	1
European University Institute	1
European Environment Agency	1



3.2 TYPE OF MALADMINISTRATION ALLEGED

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



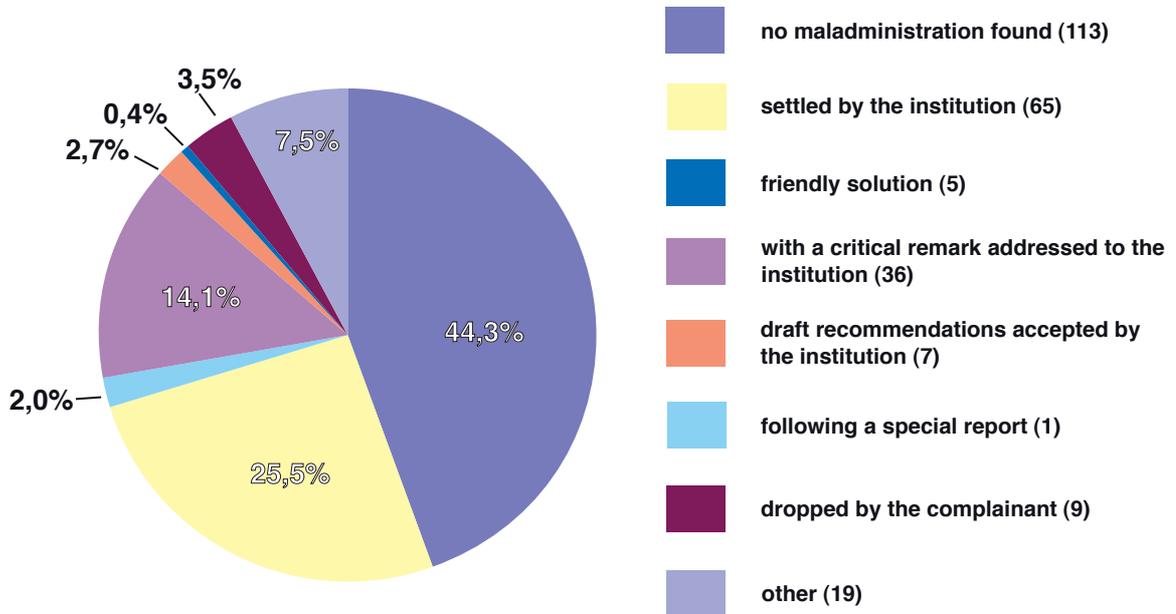
3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2004

– proposals for friendly solutions	12
– draft recommendations	17
– special reports	1



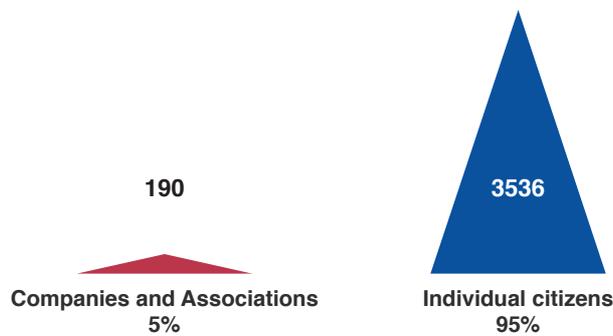
3.4 INQUIRIES CLOSED WITH REASONED DECISION 251²

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



4 ORIGIN OF COMPLAINTS REGISTERED IN 2004

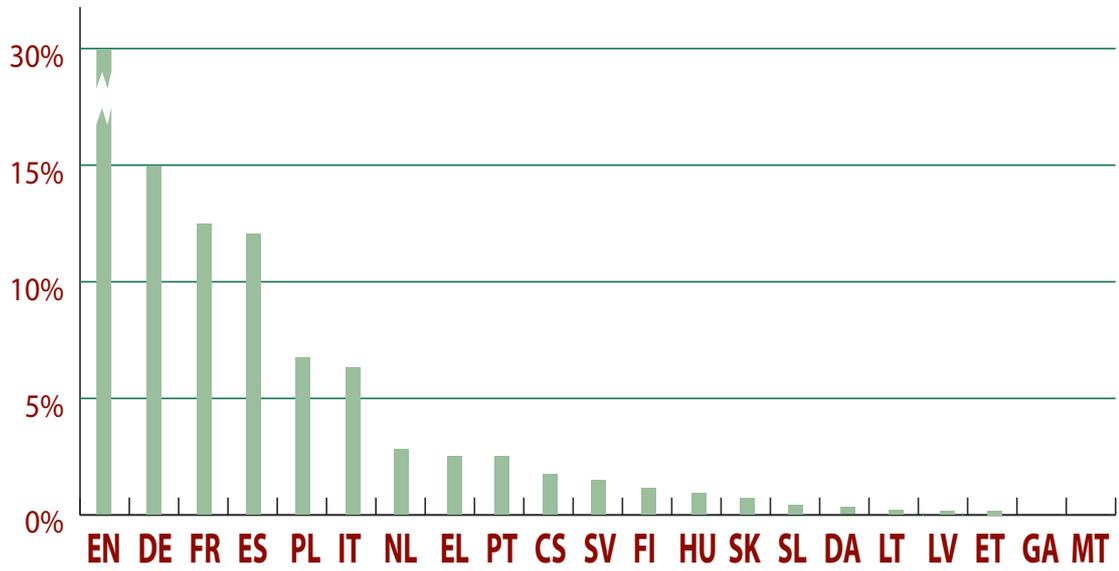
4.1 SOURCE OF COMPLAINTS



² Of which four own initiatives of the Ombudsman.



4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS





4.3 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Rate ³
 Malta	38	1,0	0,1	11,7
 Luxembourg	40	1,1	0,1	10,9
 Cyprus	59	1,6	0,2	10,0
 Belgium	268	7,2	2,3	3,2
 Slovenia	38	1,0	0,4	2,3
 Finland	73	2,0	1,1	1,7
 Ireland	53	1,4	0,9	1,6
 Greece	129	3,5	2,4	1,4
 Spain	482	12,9	9,2	1,4
 Portugal	116	3,1	2,3	1,4
 Slovakia	52	1,4	1,2	1,2
 Czech Republic	98	2,6	2,2	1,2
 Sweden	84	2,3	2,0	1,2
 Austria	69	1,9	1,8	1,1
 Poland	285	7,6	8,3	0,9
 Denmark	32	0,9	1,2	0,7
 Germany	464	12,4	18,0	0,7
 The Netherlands	88	2,4	3,5	0,7
 Hungary	53	1,4	2,2	0,6
 Lithuania	18	0,5	0,8	0,6
 Estonia	7	0,2	0,3	0,6
 France	303	8,1	13,5	0,6
 Italy	269	7,2	12,6	0,6
 Latvia	9	0,2	0,5	0,5
 United Kingdom	195	5,2	13,0	0,4
Others	404	10,9		

3

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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ISBN 92-95022-69-6



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