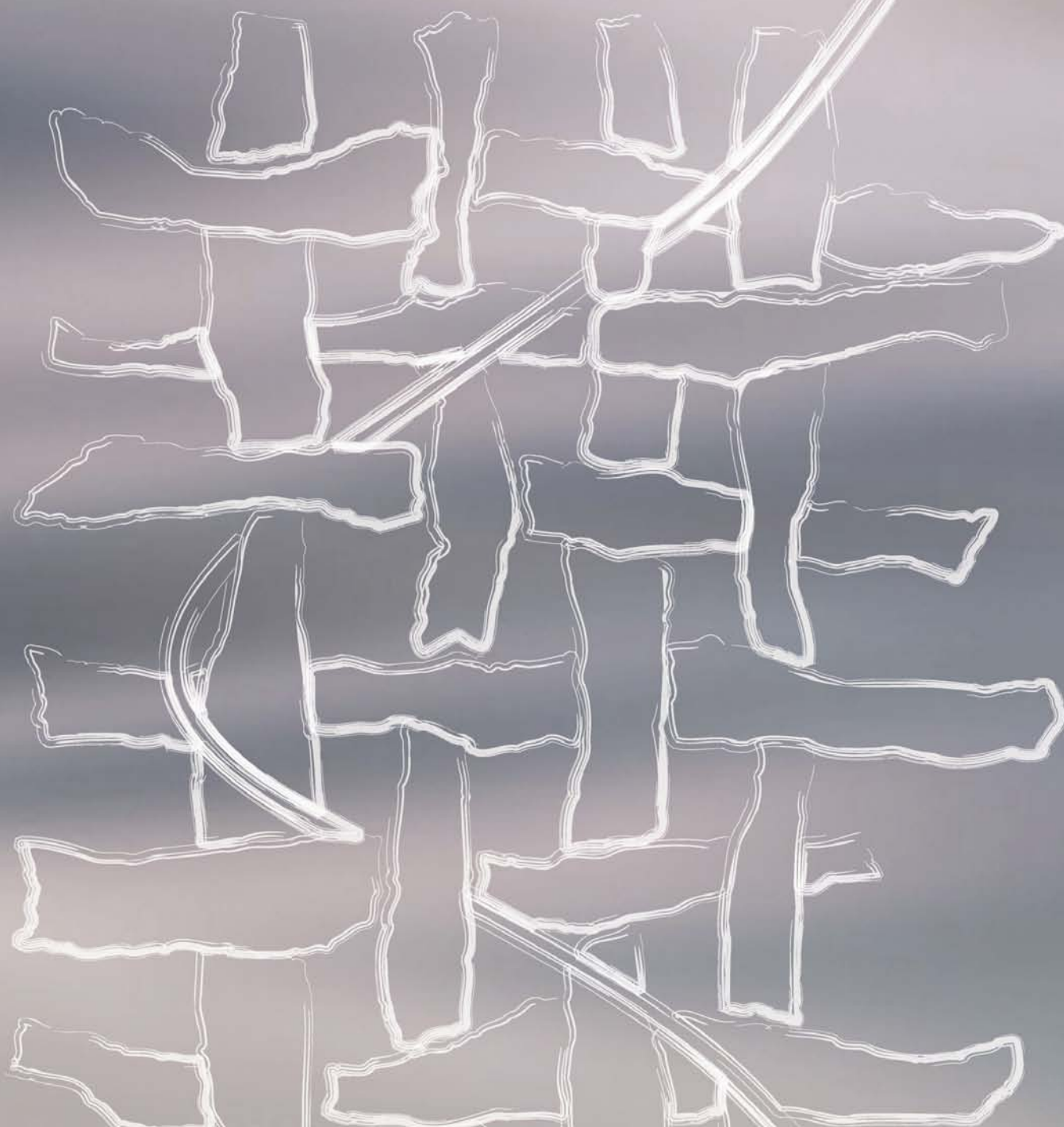


THE EUROPEAN  
OMBUDSMAN



ANNUAL REPORT 2003  
EXECUTIVE SUMMARY AND STATISTICS



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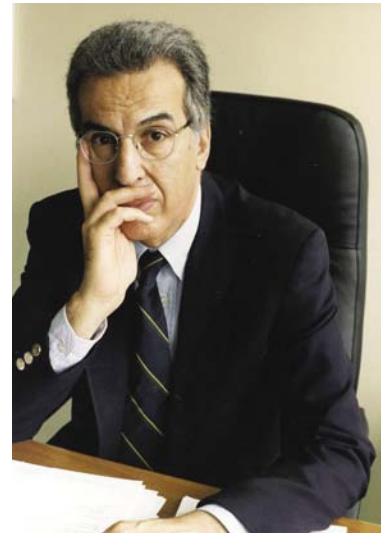
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## FOREWORD

The Annual Report is the European Ombudsman's most important publication. The Report provides an account to the European Parliament and to European citizens of the Ombudsman's work during the year. It details the results achieved for complainants and, more generally, for citizens and residents of the European Union.

The Report underscores the importance of the Ombudsman's relationship with the European Parliament. By examining and debating the Report, Parliament evaluates and amplifies the impact of the Ombudsman's work. The Report, in turn, enhances Parliament's ability to call the Union's institutions and bodies to account. As far as the institutions and bodies themselves are concerned, the Report serves as a valuable resource for self-regulation, highlighting areas for improvement within the administration.



To make the Annual Report more accessible, I decided this year to include an Executive Summary and to publish it separately for wide distribution. The Executive Summary offers a representative selection of cases dealt with in 2003 and provides highlights regarding the Ombudsman's relations with the citizen, the EU institutions and the community of ombudsmen in Europe and worldwide. Statistics relating to complaints received, inquiries opened, advice given and results achieved are presented in an easy-to-read, concise format.

Complementing our wish to make the Ombudsman's work more accessible is our commitment to make best use of public money and to respect the environment. By producing an executive summary and limiting the print-run of the complete Annual Report, we hope to have acted in the best interests of the citizen. The complete Annual Report will continue to be sent to Members of the European Parliament, to the other European institutions, bodies and agencies, to my ombudsman colleagues and to the European Commission's relays and networks. The Executive Summary will be distributed to a much wider audience, including non-governmental organisations, consumer associations, professional organisations and universities. This makes for a more rational use of resources.

If you would like a copy of the complete Annual Report in any of the Union's 20 official languages, please contact the European Ombudsman's Office, or download it from my website at:

<http://www.euro-ombudsman.eu.int/report/en/default.htm>

P. Nikiforos Diamandouros





## EXECUTIVE SUMMARY

The ninth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2003.

It is the first Annual Report to be presented by P. Nikiforos Diamandouros, whom the European Parliament elected as European Ombudsman on 15 January 2003, following the announcement by the founding European Ombudsman, Jacob Söderman, of his decision to retire. Mr Diamandouros took office on 1 April 2003, and so this report covers the work of Mr Söderman from 1 January to 31 March and of Mr Diamandouros from 1 April to the end of 2003.

### STRUCTURE OF THE REPORT

The report consists of six chapters and five annexes. Chapter 1 is a personal introduction by the Ombudsman in which he pays tribute to his predecessor, reviews the year's main activities and achievements and explains his objectives.

Chapter 2 describes the Ombudsman's procedures for analysing and conducting inquiries into complaints and gives an overview of the complaints dealt with in 2003.

Chapter 3, the bulk of the report, consists of a selection of the Ombudsman's decisions following inquiries. The chapter consists mainly of decisions on complaints, organised first by the type of finding or outcome and then by the institution or body concerned. Decisions following own-initiative inquiries and queries from ombudsmen in the Member States are dealt with separately.

Chapter 4 concerns relations with other institutions of the European Union, as well as the Ombudsman's participation as an Observer at the Convention on the future of Europe.

Chapter 5 deals with the European Ombudsman's relations with the community of national, regional and local ombudsmen in Europe, in both current and future Member States.

Chapter 6 deals with information and communication activities. The chapter is divided into five sections, covering the year's highlights, conferences and meetings in current and future Member States, other events such as lectures to visitor groups, media relations and online communications.

Annex A contains statistics on the work of the European Ombudsman in 2003. 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 contains information on the process of electing the Ombudsman.

### 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 launches inquiries on his own-initiative and reaches out to empower citizens by informing them of their rights and of how to exercise their rights.

### **Complaints and inquiries in 2003**

The total number of complaints received in 2003 was 2 436, a 10% increase compared to the previous year, due in part to a concerted effort to inform citizens of their rights. Nearly half the complaints were sent to the Ombudsman electronically, either by e-mail or using the complaint form on the Ombudsman's website.

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

A total of 253 new inquiries were opened during the year. The Ombudsman also dealt with a large number of requests for information, of which 2 538 were sent by e-mail.

### **The results of the Ombudsman's inquiries**

The Ombudsman made decisions closing 180 cases following inquiries. Chapter 3 of the Annual Report contains a selection of these decisions, illustrating the range of inquiries in terms of subject matter, type of outcome and the institutions and bodies concerned. For practical reasons, decisions are included in the report only if 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, 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 the language of the complainant and in English.

### ***No maladministration***

In 87 cases, the Ombudsman's inquiry revealed no maladministration. Such a finding is not always negative for the complainant, who at least has the benefit of a full explanation from the institution or body concerned of its actions. For example:

- A complainant who asked the Council for access to documents of the European Convention accepted the Council's explanation that it did not possess the documents concerned. The complainant also found it useful that the Council had clarified its institutional relationship with the Convention. Furthermore, the complaint led to the agendas and minutes of the Praesidium of the European Convention being published on the Convention's website as soon as it had finished its work (1795/2002/IJH).
- The Court of Auditors acknowledged that a complainant's request for documents had not been dealt with according to its rules on access. The Court undertook to invite the complainant to provide a detailed indication of the information he needed and to examine the request in accordance with the rules (1117/2003GG).
- A complainant drew the attention of the European Anti-Fraud Office (OLAF) to alleged irregularities in an EU-funded project. OLAF investigated but did not report the results to the complainant, who then complained to the Ombudsman. OLAF informed the complainant about the results of the investigation during the Ombudsman's inquiry (1625/2002/IJH).

### ***Cases settled by the institution***

In 48 cases, the Ombudsman's inquiry resulted in the institution or body concerned settling the case to the full satisfaction of the complainant. For example:

- Following a complaint to the Ombudsman made on behalf of Stockholm University, the Commission made the final payment due under a research project, apologised for the delay in



doing so and agreed to pay interest. The Commission also assured the Ombudsman that the financial procedure in which the delay had occurred was now functioning satisfactorily (1173/2003/(TN)IJH).

- A sub-contractor was paid for its services after the Ombudsman intervened in the case. The Commission explained that it could not pay the main contractor involved in the project because of problems with the final report that it had submitted. Once the main contractor submitted the corrected final report, the Commission made the final payment. The main contractor then paid the sub-contractor, who thanked the Ombudsman for his help (1960/2002/JMA).

### *Friendly solutions*

One of the things that distinguishes an ombudsman from a court is the possibility of mediation, which can lead to a positive-sum outcome that satisfies both parties. When the European Ombudsman finds maladministration, he looks for a friendly solution, if possible. This may involve suggesting that the institution concerned should offer compensation to the complainant, without necessarily admitting liability or setting a precedent.

While seven proposals for friendly solutions were still under consideration at the end of 2003, four were achieved in the course of the year. These included:

- A case in which the Commission agreed to pay additional ex gratia compensation to a complainant in view of the exceptional nature of the case, although it considered that it had no legal obligation to do so. The complainant worked for the institution and alleged that the Commission had failed to pay her the entire amount of the secretarial allowance to which she was entitled (1166/2002/(SM)IJH).
- A case in which the Commission agreed to review its decision to seek reimbursement of over € 37 000 from a grant made to a German association. The Commission expressed its willingness, in the context of a final out-of-court settlement, to abandon its claim if and to the extent it could be shown that the funds had been used in the overall interest of the ultimate beneficiaries of the project. The association maintained its view that there had been no breach of contract on its part, but considered that a friendly solution to its complaint had been brought about (0548/2002/GG).

### *Critical remarks*

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 used if the maladministration appears to have no general implications, it is no longer possible for the institution concerned to eliminate it, and no follow-up action by the Ombudsman seems necessary. Twenty critical remarks were made during the year. For example:

- The European Anti-Fraud Office (OLAF) published a press release containing allegations of bribery that were likely to be understood as directed against a particular journalist. The journalist complained to the Ombudsman, who took the view that OLAF had acted disproportionately, since no sufficient factual basis for the allegations was available for public scrutiny. The Ombudsman finally considered that a critical remark could constitute adequate satisfaction for the complainant (1840/2002/GG).
- A complainant's contract with the European Union Police Mission in Sarajevo was terminated for alleged misconduct. The Ombudsman took the view that it was the Council's responsibility to ensure that the Mission's actions respected the rule of law and fundamental rights. A fundamental right of the complainant was infringed because he was not given the opportunity to express his views on the supposed facts of his case. Since the contract had been terminated more than a year earlier, it was not appropriate to propose a friendly solution and so the Ombudsman closed the case with a critical remark (1200/2003/OV).





- The Ombudsman criticised the European Parliament for not complying with the obligation to be courteous in relations with the public. The criticism concerned an e-mail sent in response to inquiries about a call for tenders. The complainant had alleged that the tone of the e-mail was inappropriate and created an impression of arrogant behaviour (1565/2002/GG).

#### *Draft recommendations*

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 makes a draft recommendation. The institution or body concerned must respond to the Ombudsman with a detailed opinion within three months.

Nine new draft recommendations were made during 2003. While the outcome of four of these was not yet known at the end of the year, the institutions concerned accepted three, as well as another two that had been made in 2002. For example:

- A complainant failed to obtain the pass mark in a written test in a competition organised by the Council. When the Council refused to allow her access to her own marked examination script, she turned to the Ombudsman. After an inquiry, the Ombudsman made a draft recommendation in favour of access, which the Council accepted. This brought the Council into line with the Commission and the Parliament who agreed in 1999 and 2000, respectively, to give candidates access to their own marked examination scripts (2097/2002/GG).

#### *Own-initiative inquiries*

Two own-initiative inquiries were closed with positive results during the year:

- The European Personnel Selection Office reversed its decision to exclude a Cypriot citizen from a recruitment competition following a complaint about technical difficulties with its electronic registration system. The Ombudsman opened this case as an own-initiative inquiry, because the complainant was neither a citizen nor resident of the Union (OI/4/2003/ADB).
- The Commission agreed to adopt a new procedure to inform unsuccessful bidders in tender procedures rapidly and provide for a reasonable delay before the contract is signed. This is to give bidders time to request the reasons for the award decision and challenge the decision through legal proceedings. The new procedure is outlined in a Commission Communication of 3 July 2003. The Ombudsman considered that the new procedure complies with the case law of the Court of Justice and suggested that the Commission should systematically inform unsuccessful tenderers of their right to challenge award decisions (OI/2/2002/IJH).

Five own-initiative inquiries were launched in 2003, four of which were still open at the year end. Two are based on complaints which indicated the possibility of a systemic problem. The first concerns the internal dispute resolution procedures available to national experts who are seconded to the Commission. The other concerns the activity of the Commission to promote the good administration of the European Schools.

A third own-initiative into a possible systemic problem concerns the integration of persons with disabilities, in particular as regards the measures implemented by the Commission to ensure that persons with disabilities are not discriminated against in their relations with the institution.

#### *Relations with other European Union institutions and bodies*

To help achieve positive results, the Ombudsman has developed constructive working relations with the EU institutions and bodies. In 2003, the Ombudsman met with members and officials of eight institutions, including the Presidents of Parliament, the Court of Justice, the European Investment Bank and the Court of Auditors, the College of Commissioners, and the Directors General of the Commission. During these meetings, the Ombudsman emphasised that his role includes mediation





and that friendly solutions are a positive outcome both for the complainant and the institution or body concerned.

The active co-operation of the institutions and bodies is also essential in ensuring that everyone who might have reason to complain to the Ombudsman receives information about their right to do so and how to exercise that right. The Commission responded positively to the Ombudsman's suggestion to extend its provision of such information to applicants for, and recipients of, grants and subsidies, beginning with those covered by a recent Communication.<sup>1</sup>

The Ombudsman has a close and effective working relationship with the Committee on Petitions of the European Parliament, including a process of mutual transfer of cases when appropriate. The Ombudsman also frequently advises complainants of the possibility to address a petition to the European Parliament, especially if the complainant wants a change in European law or policy.

The Ombudsman participated actively in the Convention on the Future of Europe to ensure that citizens' rights were given a central place in the Draft Treaty establishing a Constitution for Europe. During his tenure, Mr Söderman successfully argued for the incorporation of the Charter of Fundamental Rights in the Draft Constitutional Treaty and both he and Mr Diamandouros pressed for explicit recognition of the role of ombudsmen and other non-judicial remedies. Although this latter goal was not realised within 2003, the Ombudsman will continue to consider it an item of high priority and persist in his efforts to have it included in the final text of the Constitution.

### **Co-operation with ombudsmen throughout Europe**

The European Ombudsman co-operates with an extensive network of ombudsmen and similar bodies in Europe. The network now covers 90 offices in 30 countries, comprising offices at the national and regional levels within the European Union and at the national level in the applicant countries for EU membership, Norway and Iceland.

Co-operation through the network concerns both complaint handling and provision of information to citizens. Many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. Although these complaints are outside the mandate of the European Ombudsman, in many cases an ombudsman in the State concerned can provide an effective remedy. The European Ombudsman transfers cases directly to national and regional ombudsmen, when possible, or gives suitable advice to the complainant. The ombudsmen in the network are also well placed to help inform citizens about their rights under European law and about how to exercise and defend their rights.

In 2003, the co-operation was intensified, with meetings of national and regional ombudsmen from the Member States and of national ombudsmen from the candidate countries. The 4<sup>th</sup> Seminar of the National Ombudsmen and Similar Bodies in the EU Member States, on the theme "Ombudsmen and the Protection of Rights in the European Union", was organised jointly by the European Ombudsman and the Greek Ombudsman in Athens in April. The European Parliament was represented by the President of the Committee on Petitions, Mr Vitaliano Gemelli. The 4<sup>th</sup> Meeting of EU Regional Ombudsmen and similar bodies, at which the office of the European Ombudsman was represented, was held in Valencia in April under the sponsorship of the Sindic de Greuges de Valencia (regional ombudsman). Among the topics discussed were the future of Europe, immigration and asylum and the protection of the environment. In May, the European Ombudsman joined the national ombudsmen from the applicant countries attending the conference organised by the Ombudsman of Poland, Andrzej Zoll, in Warsaw. This meeting was entitled "Ombudsman and the Law of the European Union".

The European Ombudsman's network also consists of liaison officers, nominated in each national ombudsman's offices to act as a first point of contact for other members of the network. In December 2003, the liaison officers came together for a meeting in Strasbourg to discuss "European information,

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<sup>1</sup> Communication relating to a proposal for basic acts for grants currently covered by the Commission's administrative autonomy or institutional prerogatives (COM (2003)274 final).



advice and justice for all". This was the first such meeting to include liaison officers from the ten countries that will join the Union in 2004.

Between meetings, the network functions through three communications initiatives of the European Ombudsman: the European Ombudsmen – Newsletter, a bi-annual publication issued jointly with the European Region of the International Ombudsman Institute; Ombudsman Daily News, an electronic news service produced by the European Ombudsman and an interactive Internet Summit.

### **Reaching out to citizens**

A key part of the Ombudsman's work is to reach out to inform citizens of their rights, including the right to complain to the European Ombudsman. At the end of May 2003, the Ombudsman announced his intention to visit all ten accession countries before 1 May 2004, the date of enlargement, and as many of the Member States as possible. By the end of 2003, the Ombudsman had visited 11 of the existing and five of the future Member States, meeting high officials and presenting his work to non-governmental organisations, chambers of commerce, university students, journalists and other interested citizens. The co-operation of the national ombudsman offices in the countries concerned, as well as of the European Parliament and European Commission representations, made an important contribution to the success of these visits.

The Ombudsman and his staff also addressed a total of 80 conferences, meetings and groups all over the Union during 2003, following invitations from regional offices, interest groups, European institutes, universities and non-governmental organisations. These meetings allowed the Ombudsman's work to be presented to potential complainants and interested citizens alike.

Material about the work of the European Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament in May. Information was equally made available on the Ombudsman's website, where decisions, press releases, statistics and details of the Ombudsman's communications activities were posted on a regular basis.

The Ombudsman continued to develop constructive working relations with the media, holding six press meetings and eight press conferences to explain and illustrate his work. A total of 45 journalists interviewed the Ombudsman in Strasbourg and Brussels, as well as in the framework of official visits to Member States and accession countries. Press releases were issued, on average, every seven working days, with a view to drawing attention to the Ombudsman's decisions and communications activities. Journalists' requests for information about the Ombudsman's work were dealt with promptly throughout the year.

### **Internal developments**

During the year, the Ombudsman made intensive preparations for enlargement, so as to be able to serve effectively the citizens of 25 Member States in 21 Treaty languages as from 1 May 2004.

The multi-annual budget plan adopted in 2002 foresees a phased introduction of new posts connected to enlargement in 2003-5. The number of posts in the Ombudsman's establishment plan rose from 27 in 2002 to 31 in 2003, with an increase to 38 foreseen in the 2004 budget adopted by the budgetary authorities in December 2003.

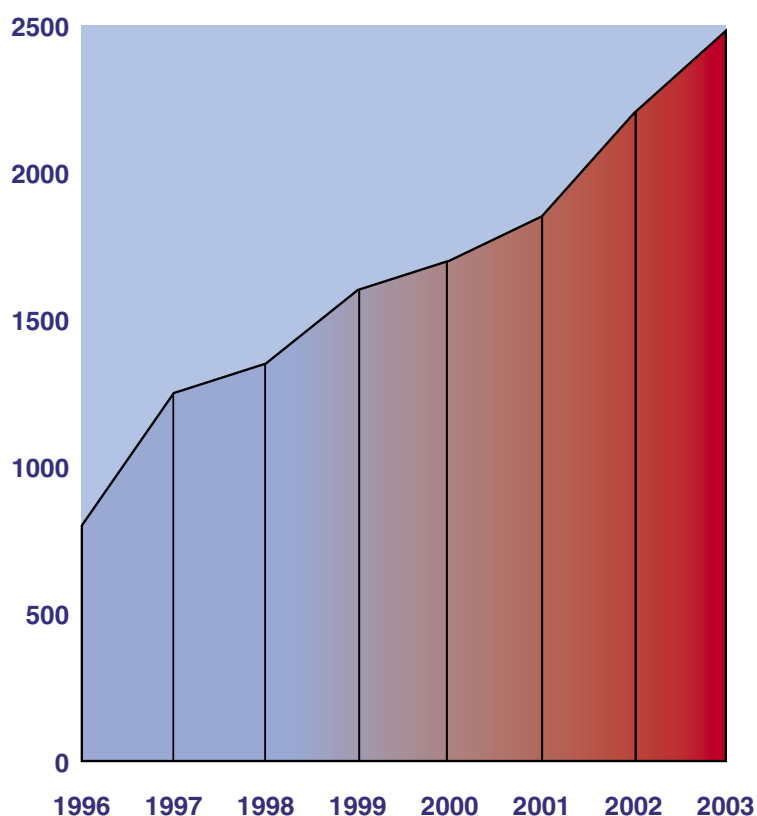
A review of the structure of the office and its deployment of human resources was launched during the year. The Ombudsman also embarked upon a significant upgrading of the information technology infrastructure and complaints-database. These initiatives were undertaken with a view to enabling the office to respond to the anticipated increase in complaints and to enhance the quality and efficiency of service to citizens.



## STATISTICS CONCERNING THE WORK OF THE EUROPEAN OMBUDSMAN IN 2003

### 1 CASES DEALT WITH DURING 2003

<b>1.1</b>	<b>TOTAL CASELOAD IN 2003</b> .....	<b>2611</b>
-	complaints and inquiries not closed on 31.12.2002	170 <sup>1</sup>
-	complaints received in 2003	2436
-	own initiatives of the European Ombudsman	5



Increase in Complaints 1996 - 2003

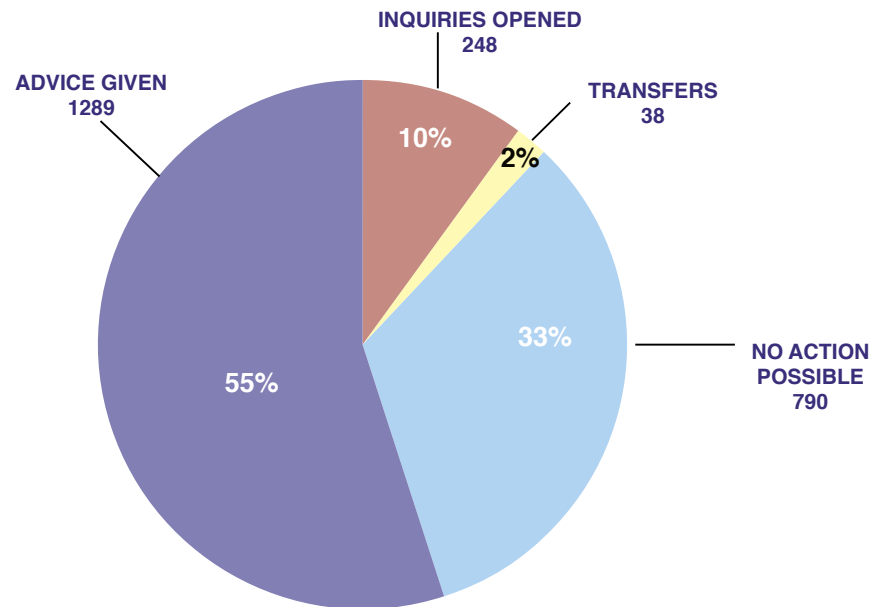
<sup>1</sup> Of which one own initiative of the European Ombudsman and 109 inquiries.



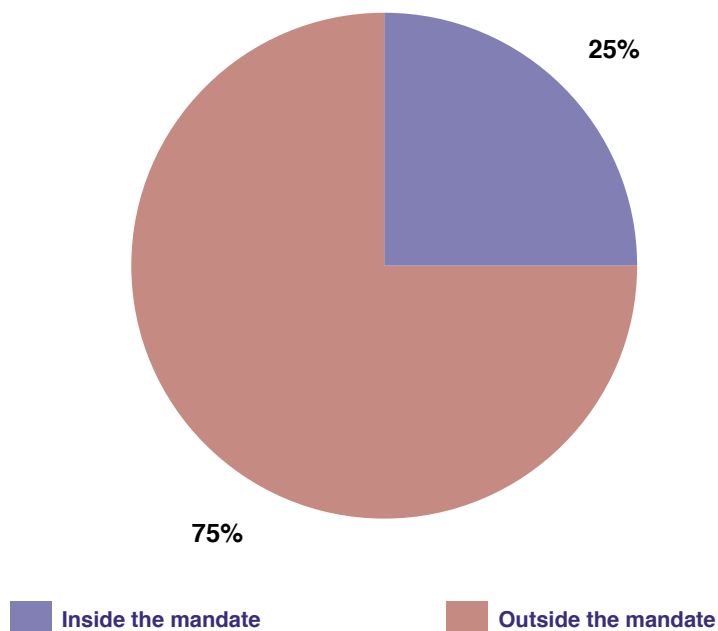
## 1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED 95%

### 1.3 CLASSIFICATION OF THE COMPLAINTS

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

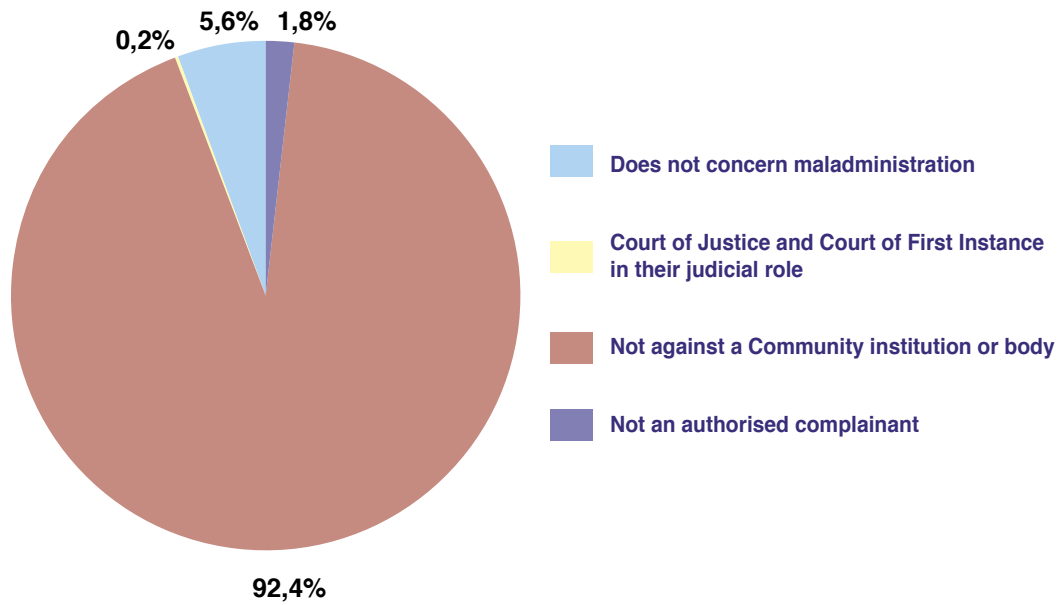


#### 1.3.2 According to the Mandate of the European Ombudsman



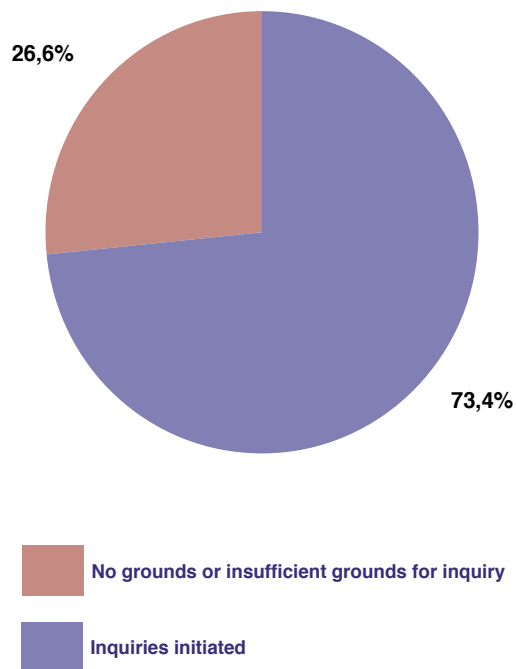


### Outside the Mandate

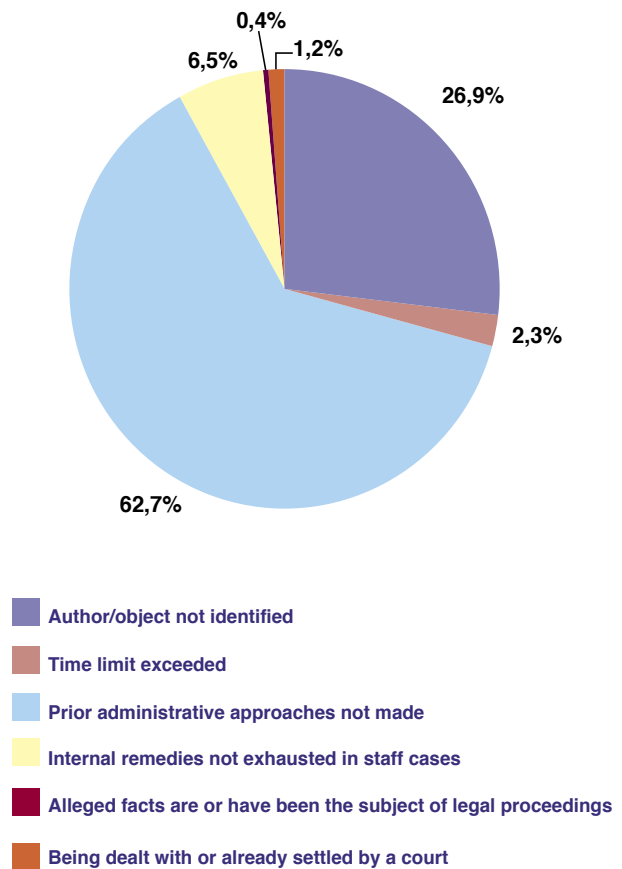


### Inside the Mandate

#### – Admissible complaints

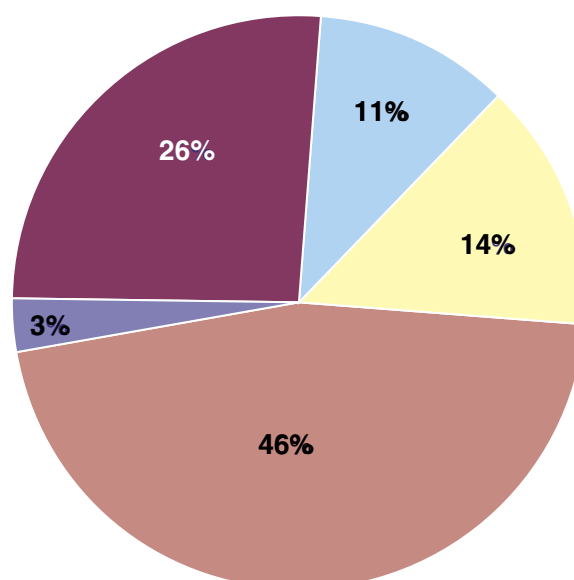


#### – Inadmissible complaints





## 2 TRANSFERS AND ADVICE



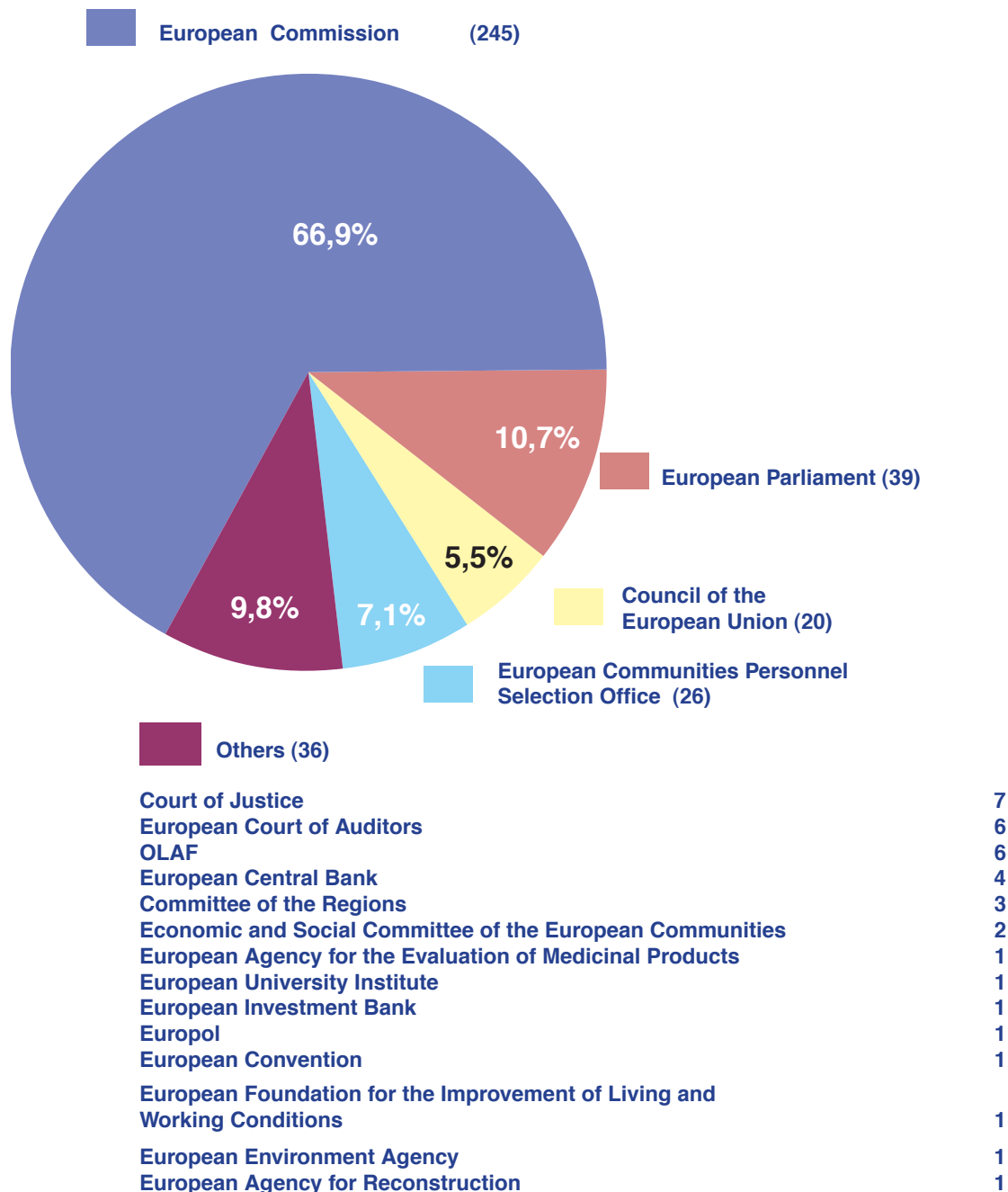


### 3 INQUIRIES DEALT WITH IN 2003

**363**

In 2003, the European Ombudsman dealt with 363 inquiries, 253 inquiries initiated in 2003 (of which five own initiatives) and 110 inquiries not closed on 31.12.2002

#### 3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES<sup>2</sup>



<sup>2</sup>

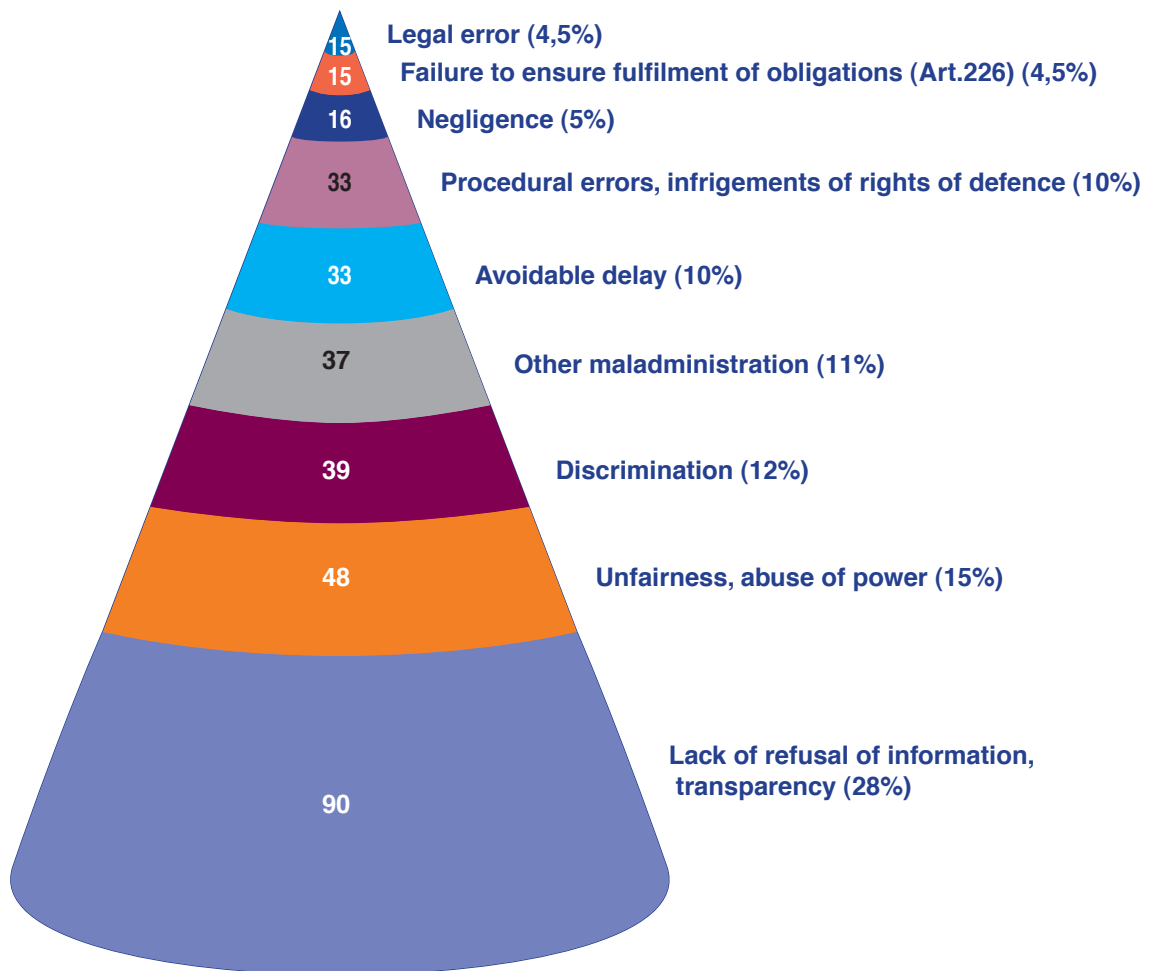
Some cases concern two or more institutions or bodies.





### 3.2 TYPE OF MALADMINISTRATION ALLEGED

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



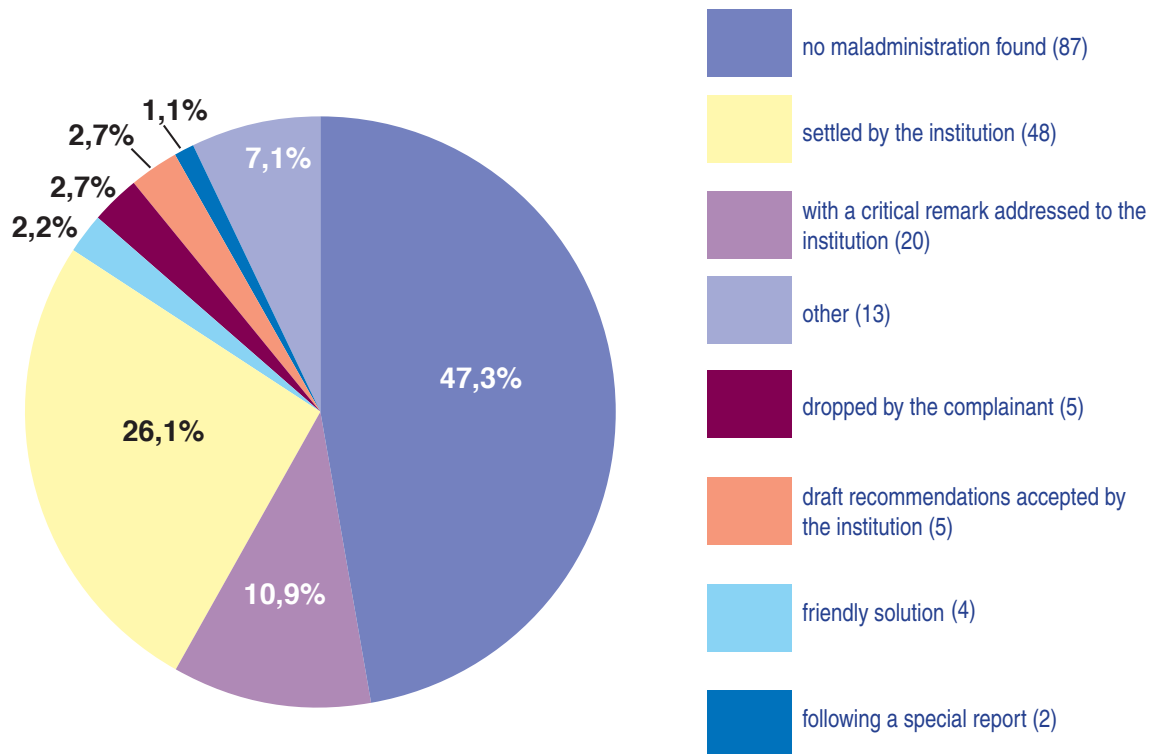
### 3.3 PROPOSALS FOR FRIENDLY SOLUTIONS AND DRAFT RECOMMENDATIONS MADE IN 2003

– proposals for friendly solutions	18
– draft recommendations	9



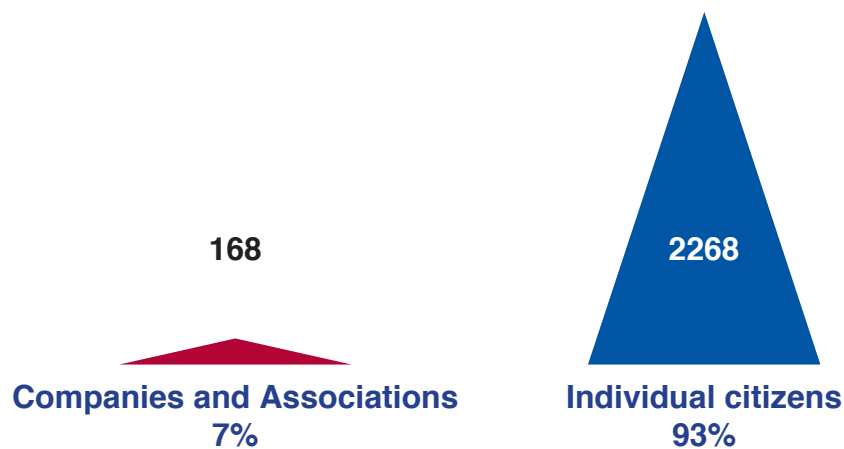
### 3.4 INQUIRIES CLOSED WITH REASONED DECISION<sup>3</sup> ..... 180

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



## 4 ORIGIN OF COMPLAINTS REGISTERED IN 2003

### 4.1 SOURCE OF COMPLAINTS





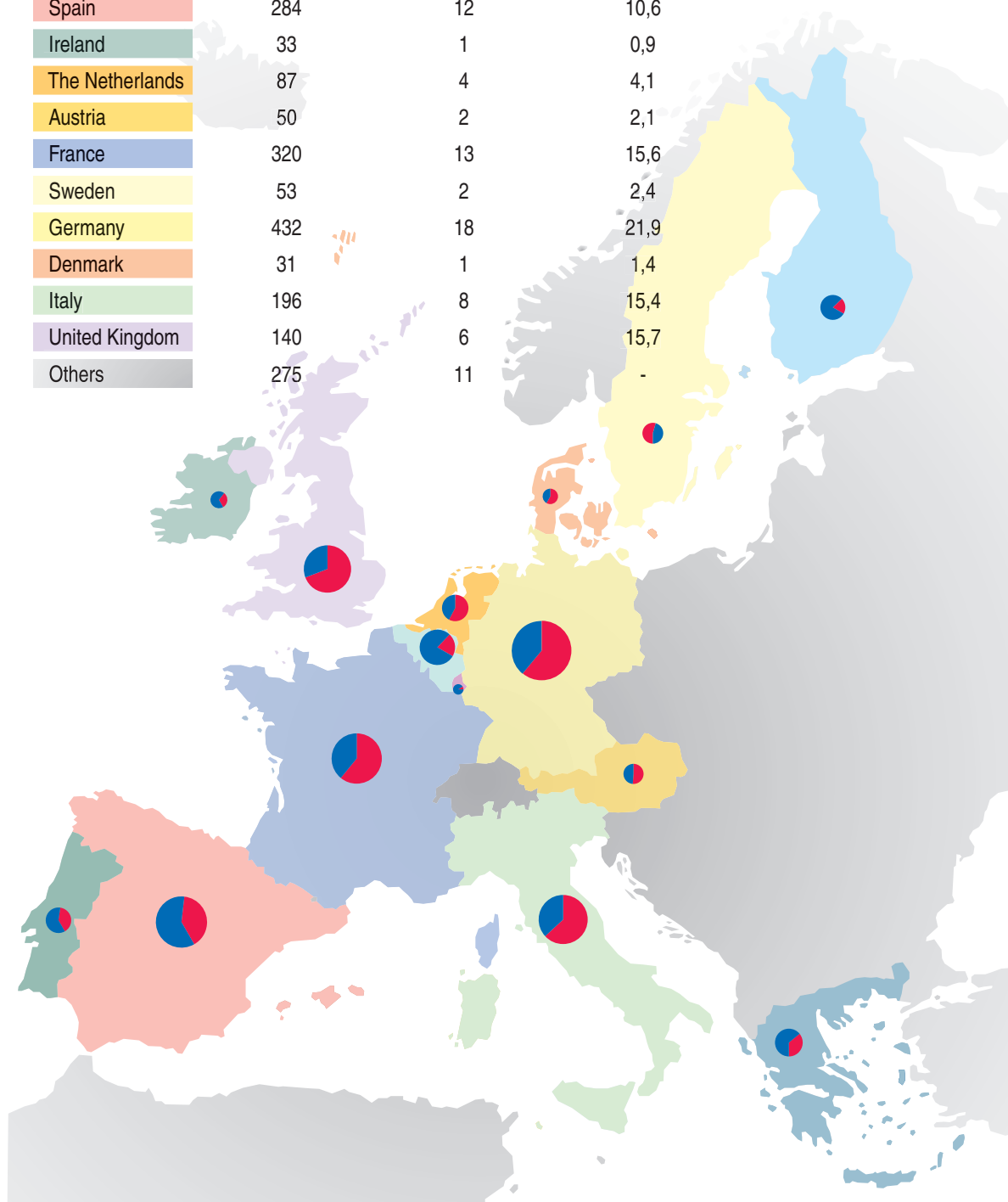
<sup>3</sup>

Of which two own initiatives of the Ombudsman.



## 4.2 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	 % of Complaints	 % of the EU Population
Luxembourg	38	2	0,1
Finland	88	4	1,3
Belgium	199	8	2,7
Portugal	110	5	2,6
Greece	100	4	2,8
Spain	284	12	10,6
Ireland	33	1	0,9
The Netherlands	87	4	4,1
Austria	50	2	2,1
France	320	13	15,6
Sweden	53	2	2,4
Germany	432	18	21,9
Denmark	31	1	1,4
Italy	196	8	15,4
United Kingdom	140	6	15,7
Others	275	11	-





## HOW TO CONTACT THE EUROPEAN OMBUDSMAN

### BY MAIL

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

### BY TELEPHONE

+33 3 88 17 2313

### BY FAX

+33 3 88 17 9062

### BY E-MAIL

[euro-ombudsman@europarl.eu.int](mailto:euro-ombudsman@europarl.eu.int)

### WEBSITE

<http://www.euro-ombudsman.eu.int>



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