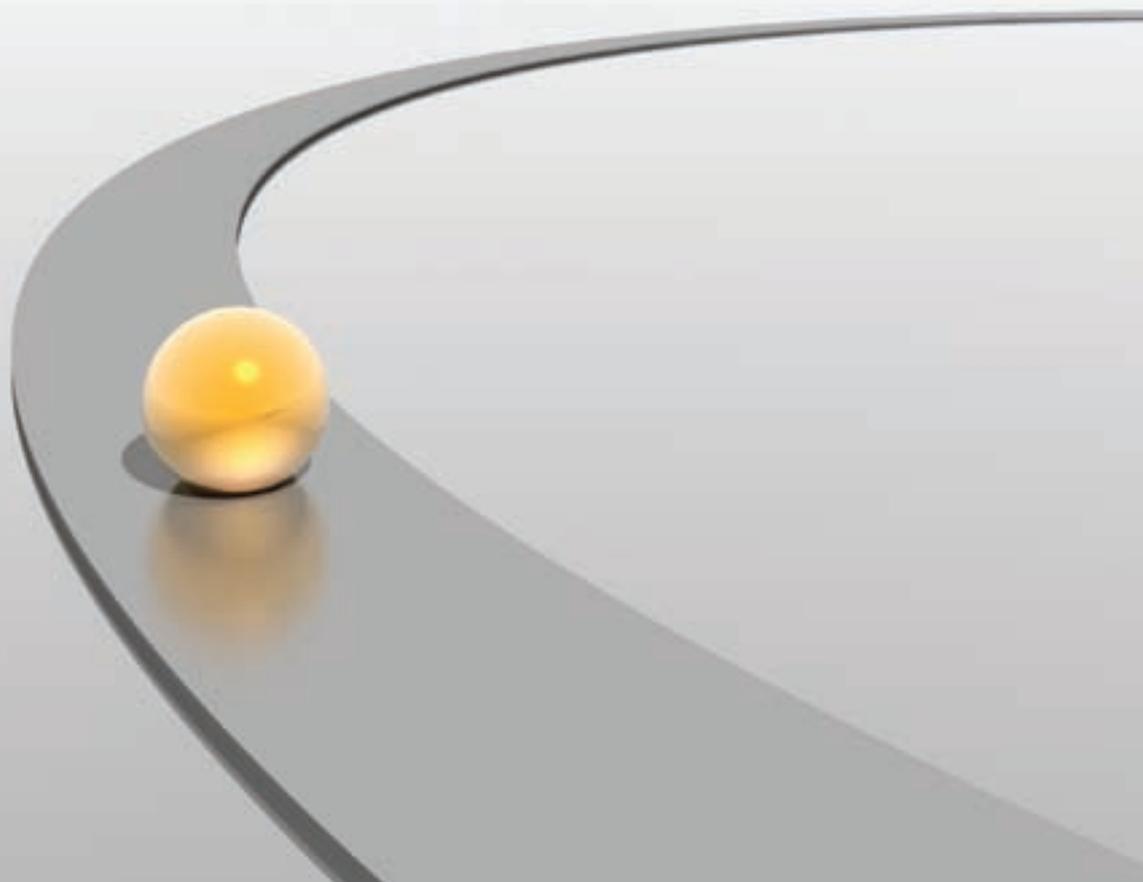


THE EUROPEAN OMBUDSMAN



ANNUAL REPORT 2007







**T H E E U R O P E A N O M B U D S M A N**

**A N N U A L R E P O R T 2 0 0 7**

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# THE EUROPEAN OMBUDSMAN



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P. NIKIFOROS DIAMANDOUROS

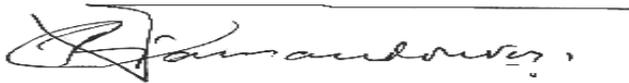
Prof. Dr. Hans-Gert PÖTTERING MEP  
President  
European Parliament  
Rue Wiertz  
1047 Brussels  
BELGIQUE

Strasbourg, 10 March 2008

Mr President,

In accordance with Article 195(1) of the Treaty establishing the European Community and Article 3(8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my Report for the year 2007.

Yours sincerely,



P. Nikiforos Diamandouros



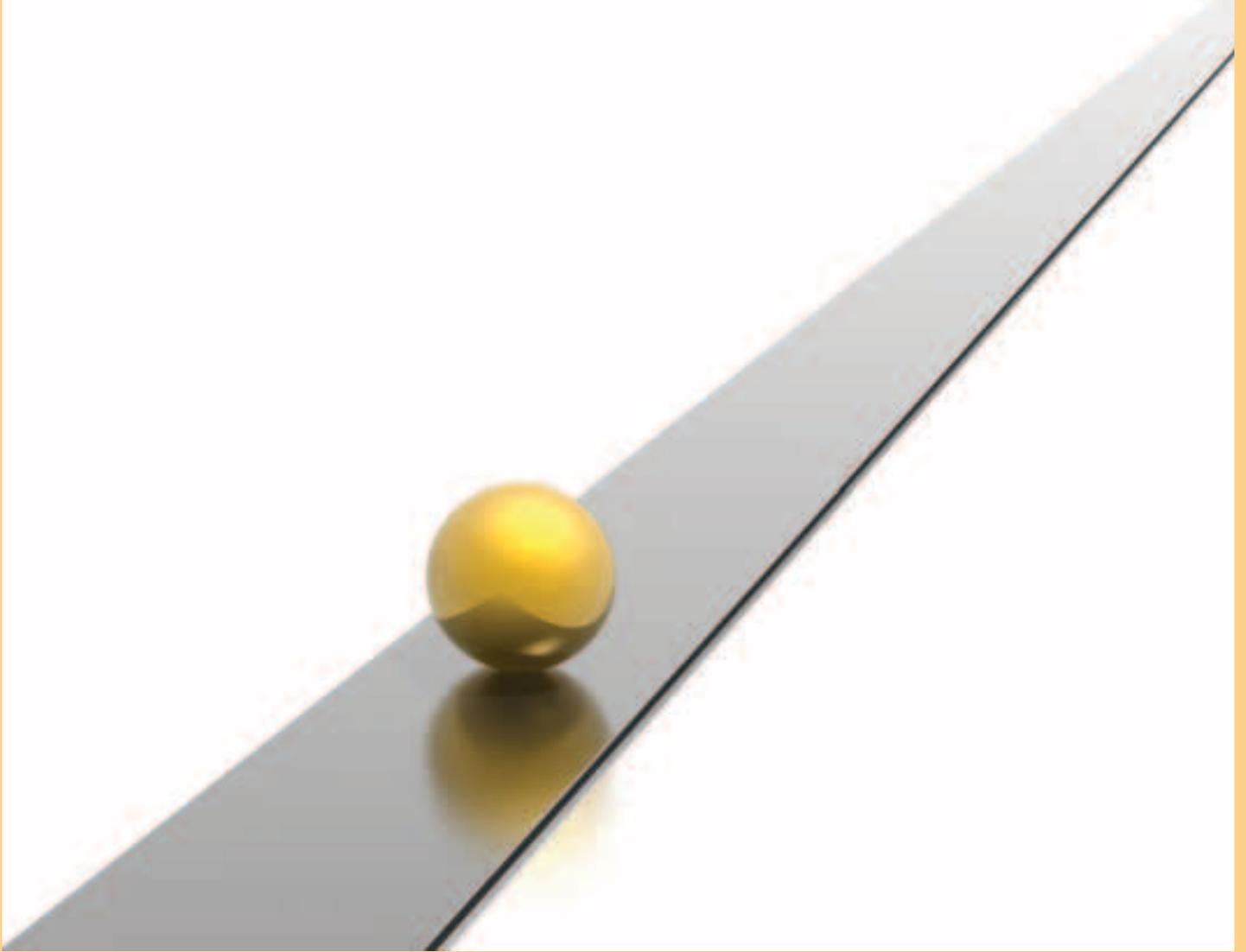


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# INTRODUCTION







## INTRODUCTION

The year 2007 was an important one for the European citizens' right to good administration. On 12 December, the EU's Charter of Fundamental Rights, originally proclaimed in December 2000, was signed and proclaimed again by the Presidents of the EU's three main institutions — the Parliament, Commission and Council. The commitment to a legally binding Charter, contained in the Treaty of Lisbon, reflects a growing realisation that citizens should be placed at the centre of Europe's concerns. From the Ombudsman's perspective, the Charter is groundbreaking in recognising, for the first time, the right to good administration as a fundamental right of Union citizenship (Article 41).

### *Good administration*

Since I took up the post on 1 April 2003, promoting good administration has been an absolute priority for the European Ombudsman. I constantly remind the EU institutions and bodies that good administration requires much more of civil servants than merely avoiding unlawful behaviour. Officials must be service-minded and ensure that members of the public are properly treated and enjoy their rights fully.

This message seems to be producing concrete results. I am happy to report that the EU institutions and bodies worked hard in 2007 to resolve complaints, remedy injustices and rectify mistakes. During the year, we saw a doubling in the number of cases settled by the institution concerned — an unprecedented 35% of our inquiries were closed after the relevant institution agreed to settle the matter. We should not underestimate the importance of this achievement for complainants, and for citizens more generally. I firmly believe that we are making significant progress in moving closer to a real culture of service.

The seven star cases highlighted in this Report bear witness to this change in attitude. No fewer than four concern the European Commission, which acted quickly and constructively to settle a range of grievances. I must also single out the European Aviation Safety Agency, which for the second year running has produced a star case, demonstrating its willingness to work constructively with the Ombudsman to resolve problems. The Council apologised to a complainant after I brought a language issue to its attention and confirmed its commitment to avoiding similar problems in the future. Finally, the European Central Bank provided a most helpful reply to a concerned citizen, stressing that it attached great importance to clarification of the issues she had raised and inviting her to address any further questions to its experts. My intention in highlighting these cases is to present models of good administration for all EU institutions and bodies to take inspiration from and to measure their own practices against. I will continue in 2008 to encourage the careful nurturing of a culture of service in order to meet citizens' expectations.

Some of the results that we obtained for citizens and that are documented in this Report were achieved without a formal exchange of correspondence with the institution. We have now reached a stage where our relations with the institutions are such that we can solve a growing number of cases rapidly, avoiding the need for a lengthy inquiry. I have begun to make wider use of more informal procedures to help resolve problems in a flexible way and will continue to develop this approach in 2008. To me, this marks a watershed for our institution, proving the extent to which the Ombudsman is respected and the institutions are keen to help the citizen.

To be sure, problems remain. Once again in 2007, 15% of cases were closed with a critical remark because the institution concerned failed to live up to the standards of service that citizens are entitled to receive. Examples of these cases are included in this Report. They range from one institution



refusing to change its recruitment procedures, essentially for reasons of its own administrative convenience, to another excessively delaying an infringement procedure without offering any specific explanations as to why. We will again produce a follow-up report to these critical remarks in 2008 to ensure that the institutions learn from them. I also intend to explore ways of making the Ombudsman's decisions easier to understand, so that they can be even more effective in providing guidance, for both citizens and officials, on what constitutes good administration.

It is clear that there is still work to be done in promoting the principles of good administration within the EU institutions and bodies. To help develop useful strategies in this regard, I convened a workshop in Brussels in November 2007 which saw a lively exchange of views on how the European Ombudsman can help make the right to good administration a reality. The discussions brought forward many stimulating and innovative ideas for the years ahead. I look forward to putting them into practice for the benefit of citizens throughout Europe.

### *Better communication*

I ended my introduction to the 2006 Annual Report by highlighting my dual aim for the year ahead, namely, working with the institutions to promote good administration and refocusing my communication efforts so that all those who might need to make use of the European Ombudsman's services are properly informed of how to do so.

With regard to this second aim, 2007 was a landmark year. We finally turned the corner in terms of the rate of admissible complaints. Thanks to an ambitious and carefully targeted information campaign, the number of admissible complaints increased in both absolute and relative terms compared to 2006. As a result, 17% more inquiries were opened during the year on the basis of complaints received. At the same time, as a result of our efforts to improve information to citizens about what the European Ombudsman can and cannot do, more citizens than ever were helped to find appropriate means of redress at the national, regional and local levels.

A key development in this regard in 2007 was the adoption of the European Network of Ombudsmen Statement. The aim of the Statement is to make the EU dimension of the work of ombudsmen better known and to clarify the service that members of the Network provide to people who complain about matters within the scope of EU law. The Statement is available on the European Ombudsman's website in all EU official languages and is reproduced in full in Chapter 5 of this Report. Members of the Network will work proactively to promote awareness of the Statement and thus to ensure that citizens understand who is best placed to resolve their EU law-related complaints.

A further important initiative in this area should come to fruition in 2008. Over the past year, my office has been developing an interactive guide that will be launched in the coming year as part of the Ombudsman's new website. This key feature will help citizens find the most appropriate avenue of redress for their grievances. The guide should enable a greater proportion of complainants to address directly the body best equipped to deal with their complaint. The success of the guide will hopefully be demonstrated by a further fall in the number of inadmissible complaints received by my office.

Identifying the most appropriate avenue of address the first time around is important for many reasons. It helps avoid the frustration involved for citizens who are told that the body they have turned to is not able to help them. It also means that complaints are resolved more promptly and effectively, thus ensuring that citizens can fully enjoy their rights under EU law. A final important consideration is that, by reducing the proportion of inadmissible complaints that it receives, my institution will be better able to fulfil its core role — that of helping citizens who are unhappy with the way they have been treated by the EU institutions and bodies. The results that my office is able to achieve for such citizens are, without a doubt, the most satisfying aspect of my work. Many examples of such successes from 2007 are highlighted in this Report. I look forward to continuing this work for European citizens in the year ahead.



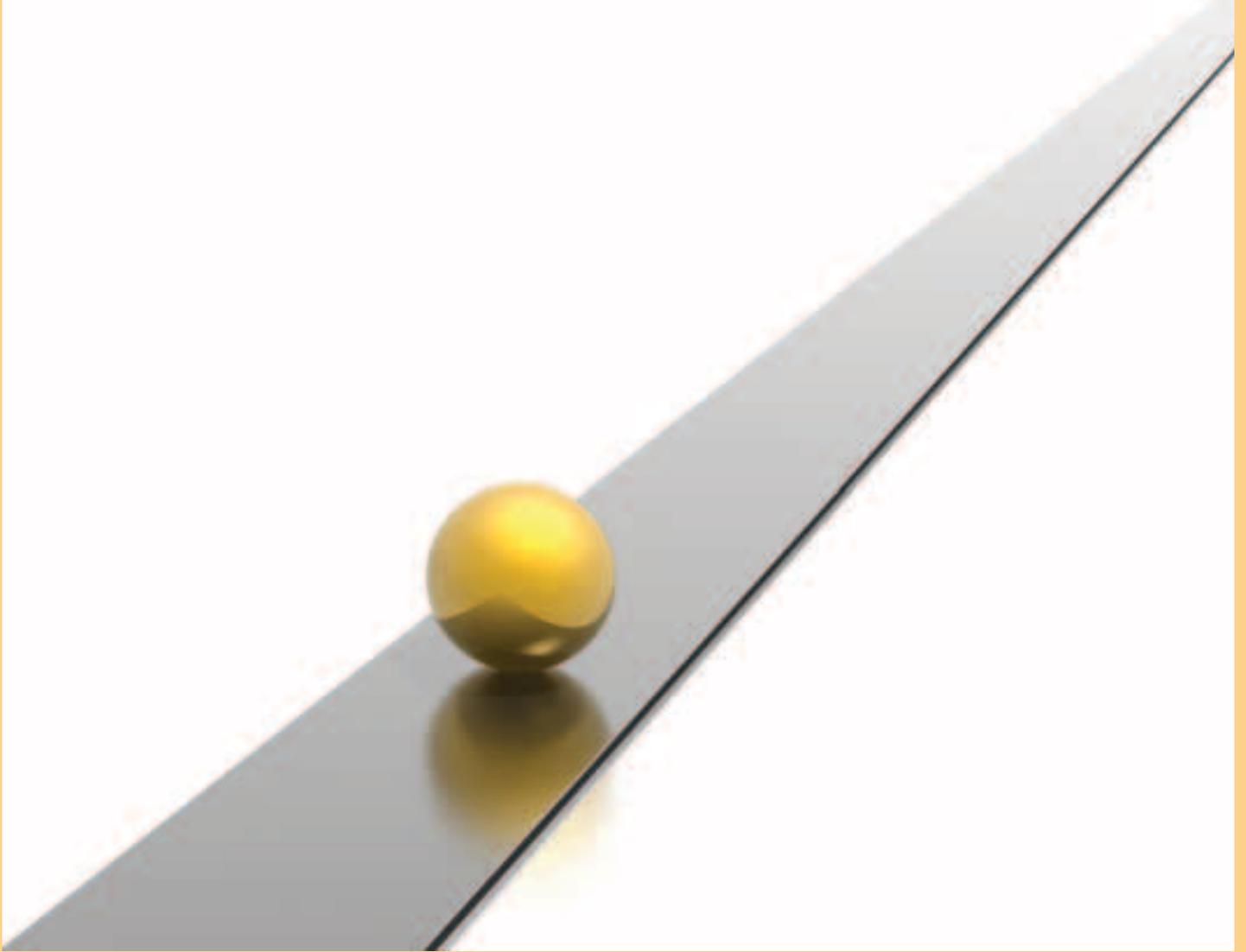
As I have often said, the Annual Report is the Ombudsman's most important publication. It enables him to provide an account of his work to the European Parliament, to which he reports. It serves as a resource to the EU institutions and bodies in helping them to improve their administration. It makes the Ombudsman's work accessible to the wide range of people who wish to follow his activities, including the general public, the media, academics, civil servants and colleagues from ombudsman offices around the world. Changes have been made to the Report in recent years to improve its user-friendliness. Further improvements constitute an additional novel feature of the present Report. They can be seen most notably in Chapters 5 and 6, where we have opted to provide an overview and analysis of activities rather than detailed lists of events and meetings as before. We hope that this makes for more interesting reading and provides a true reflection of the added-value of these important initiatives. We look forward to receiving your feedback.

Strasbourg, 15 February 2008

P. Nikiforos DIAMANDOUROS



# EXECUTIVE SUMMARY



1





# 1 EXECUTIVE SUMMARY

The thirteenth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2007. It is the fifth 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 highlights the most notable developments of the past year and looks to the year ahead. It is followed by this Executive Summary, which constitutes Chapter 1.

Chapter 2 describes the Ombudsman's procedures for handling complaints and conducting inquiries. It gives an overview of the complaints dealt with during the year, including a thematic analysis of the results of cases closed after an inquiry. This analysis covers the most significant findings of law and fact contained in the Ombudsman's decisions in 2007.

Chapter 3 consists of a selection of summaries of the Ombudsman's decisions for 2007, covering the range of subjects and institutions involved in complaints and own-initiative inquiries. The summaries are organised first by the type of finding or outcome and then by the institution or body concerned. The chapter ends with a summary of a decision following an own-initiative inquiry and an example of a query submitted by a national ombudsman.

Chapter 4 concerns relations with other institutions and bodies of the European Union. It begins by outlining the value of the Ombudsman's constructive working relations with the institutions and bodies, and goes on to list the various meetings and events that took place in this regard in 2007.

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 relevant 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 2007. Annexes B and C provide details, respectively, of the Ombudsman's budget and personnel. Annex D indexes the decisions contained in Chapter 3 by case number, by subject matter, and by the type of maladministration alleged. It also lists the star cases and all cases closed with a critical remark in 2007.

## SYNOPSIS

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

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



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

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

### **Complaints and inquiries in 2007**

During 2007, the Ombudsman received 3 211 new complaints, compared to 3 830 in 2006. On the other hand, the number of admissible complaints increased in both absolute and relative terms, from 449 (12% of the total) in 2006 to 518 (16%) in 2007. As a result, 17% more inquiries were opened during the year on the basis of complaints received.

A total of 58% of all complaints received by the Ombudsman in 2007 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 3 056 cases and 155 came from associations or companies.

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

A total of 303 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began six inquiries on his own initiative. Overall, the European Ombudsman dealt with a total of 641 inquiries in 2007, 332 of which were carried over from 2006.

As in previous years, most of the inquiries concerned the European Commission (413, or 64% 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 87 inquiries (14% of the total) concerning the European Personnel Selection Office (EPSO), 59 (9%) concerning the European Parliament, 22 (3%) concerning the European Anti-Fraud Office, and 8 (1%) concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (in 28% of cases), unfairness or abuse of power (18%), unsatisfactory procedures (13%), avoidable delay (9%), discrimination (8%), negligence (8%), legal error (4%), and failure to ensure fulfilment of obligations, that is, failure by the European Commission to carry out its role as “guardian of the Treaty” vis-à-vis the Member States (3%).

The main e-mail account of the Ombudsman was used to reply to a total of 7 273 e-mails requesting information in 2007. Of these, 3 127 were mass mailings submitted by citizens and concerned complaints already received by the European Ombudsman, while 4 146 constituted individual requests for information.

In total, therefore the Ombudsman handled 10 484 complaints and information requests from citizens during the year in question.

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

In 2007, the Ombudsman closed 348 inquiries. This represents a 40% increase compared to 2006. Of these inquiries, 341 were linked to complaints and seven were own-initiatives. An overview of the findings can be found below.

#### ***No maladministration***

In 2007, 95 cases were closed with a finding of no maladministration. This is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from



the institution or body concerned of what it has done, as well as the Ombudsman's view of the case. Among the examples of cases in which no maladministration was found in 2007 are the following:

- The Ombudsman received a complaint alleging that the European Commission had wrongly failed to take action against Ireland for possible infringement of the EU Habitats Directive. The complainant also complained about the Commission's decision not to take further action on arguments relating to possible infringement of the Waste Directive. The Ombudsman found that the Commission had provided a reasonable explanation of its strategic role in relation to the implementation of these Directives. He also noted that the Commission had given the complainant relevant useful advice in this case. (3660/2004/PB)
- A complainant to the Ombudsman alleged, inter alia, lack of transparency and undue delay by the European Medicines Agency (EMA) in response to concerns she had raised with it about an antidepressant's safety and suicide risk. The complainant's husband had committed suicide while taking that drug, and the complainant had contacted the Agency with several questions and requests for information. In the course of the inquiry, the Agency apologised to the complainant for the fact that it had not replied to certain of her questions and provided answers to these questions. While the complainant remained dissatisfied, the Ombudsman took the view that the Agency's action had removed the concerns he had identified and that there was no longer any maladministration. (2370/2005/OV)
- Greenpeace complained to the Ombudsman, alleging that the Commission had made inaccurate, misleading and defamatory accusations in relation to a study the NGO had issued on the question of "revolving doors" between the Commission and the lobbying chemical industry. The Ombudsman's inquiry concluded that this allegation had not been substantiated. While finding no maladministration, he underlined the importance of transparency in relation to lobbying activities exercised during the legislative procedures. (2740/2006/TN)

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

- A Polish environmental NGO alleged that the European Investment Bank (EIB) had acted contrary to its own "Environmental Statement" when it co-financed a road modernisation project in Poland. The Ombudsman found no maladministration. However, given that the complainant had submitted a parallel complaint to the Polish Ombudsman, the European Ombudsman encouraged the EIB to consider establishing channels of communication with, and seeking information from, relevant national and regional control bodies, such as ombudsmen. These bodies could serve as additional sources of information concerning compliance of EIB-financed projects with national and European law. (1779/2006/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 help enhance relations between the institutions and citizens and can avoid the need for expensive and time-consuming litigation.

During 2007, 129 cases were settled by the institution or body itself following a complaint to the Ombudsman. This is twice the number of cases settled in 2006 and reflects a growing willingness on the part of the institutions and bodies to see complaints to the Ombudsman as an opportunity to put right mistakes that have occurred and to co-operate with the Ombudsman for the benefit of citizens. Among the settled cases in 2007 were the following:

- After a German university complained about a payment dispute it was having with the Commission regarding a project under the Erasmus Programme, the Ombudsman contacted the Commission, which settled the case within two weeks. The university's efforts to convince the



Commission that a calculation error had occurred had proved unsuccessful. The Commission admitted the mistake and paid back the requested sum of EUR 5 400 plus interest. The Ombudsman commended Directorate-General Education and Culture for the exemplary way in which it had handled this complaint after he brought it to its attention. (3495/2005/GG)

- The Commission reimbursed an outstanding sum of EUR 88 000 to a French consulting firm, which claimed that the institution had not repaid the entire eligible costs for its participation in an Information Society Technologies programme with China. The Commission argued that the complainant had made a mistake in its cost statements. After the Ombudsman intervened in the case, it agreed to pay the outstanding sum. (1471/2007/(CC)RT)

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

Five cases were closed during the year after a friendly solution had been achieved. At the end of 2007, 31 proposals for friendly solutions were still under consideration. Among the cases involving a friendly solution in 2007 were the following:

- The Commission accepted the Ombudsman's proposal for a friendly solution and reduced the amount to be recovered from a contractor involved in a project in Lebanon. This followed a complaint in which the contractor alleged unfair handling of the contract. Although the Ombudsman did not find all of the complainant's allegations to be justified, he concluded that the Commission's decision to recover certain amounts constituted maladministration. In the interest of taking steps to settle the matter, the Commission agreed to reassess the file. (2577/2004/OV)
- The European Aviation Safety Agency (EASA) repealed a contested decision after the Ombudsman made a proposal for a friendly solution. The case concerned an EASA decision relating to the type-certification basis of certain aircraft. After analysing the relevant legal provisions, the Ombudsman was not convinced that the decision had a sufficient legal basis. EASA replied by saying that it had now been able to obtain the information needed to issue a type certificate and had therefore repealed the contested decision. (1103/2006/BU)
- The former European Monitoring Centre for Racism and Xenophobia (EUMC) accepted a friendly solution proposal by providing better information to an unsuccessful tenderer about how his bid compared with that of the winning organisation. The complainant had turned to the Ombudsman alleging that the EUMC had failed to give him satisfactory responses to his questions and had failed to apply transparent criteria. Following the inquiry, the complainant expressed his gratitude to the Ombudsman for his work and for providing a reliable safeguard for transparency in the EU. (1858/2005/BB and 1859/2005/BB)

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

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

A critical remark is normally made if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. A critical remark is also made if the Ombudsman considers that a draft recommendation would serve no useful purpose or that it does not seem appropriate to submit a special report to Parliament in a case where the institution or body concerned fails to accept a draft recommendation.

A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2007, the Ombudsman closed 55 inquiries with critical remarks. For example:



- The Ombudsman criticised the Commission for its failure to publish, in 2006 as required by law, its annual report 2005 on access to European Parliament, Council and Commission documents. This followed a complaint from the NGO Statewatch. While recognizing that, in September 2007, the Commission finally published the report in question, the Ombudsman pointed out that the timely publication of reports is a key mechanism of accountability to European citizens. (668/2007/MHZ)
- The Ombudsman issued two critical remarks against the European Personnel Selection Office (EPSO) in two cases concerning the use of languages of the “new” Member States as opposed to those of the “old” Member States. This followed a complaint from a Polish association concerning recruitment tests. EPSO informed the Ombudsman that the language requirements for competitions had been changed in the meantime. (3114/2005/MHZ)
- The Ombudsman criticised the Commission for failing to offer valid reasons for not giving access to the annual accounting reports it receives from the Member States in relation to agricultural subsidies. The Commission argued that the reports containing the information had been loaded onto a database and no longer existed as such. The information requested by the complainant would require complex new programming of the database, it said. Although considering the Commission’s approach to be unsatisfactory, the Ombudsman did not pursue the matter further since the legal issues could be examined by the Community legislator, from a general perspective, in the context of the announced reform of Regulation 1049/2001 on access to documents. (1693/2005/PB)

It is important for the institutions and bodies to follow up critical remarks from the Ombudsman, taking action to resolve outstanding problems and thus to avoid maladministration in the future. During 2007, the Ombudsman carried out a study of the follow-up undertaken by the institutions involved to all critical remarks and further remarks made in 2006. The study is available on the Ombudsman’s website (<http://www.ombudsman.europa.eu>). The Ombudsman envisages carrying out a similar exercise and informing the public of his findings on an annual basis.

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

During 2007, eight draft recommendations were made. In addition, seven draft recommendations from 2006 led to decisions in 2007. Three 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 2007, eight draft recommendations were still under consideration, including one made in 2004 and one made in 2006.

Among the draft recommendations made in 2007, one concerned public access to details of the payments received by MEPs. This followed a complaint from a Maltese journalist, whose request for details of certain MEPs’ allowances was rejected by the Parliament on grounds of data protection. The latter’s detailed opinion on the Ombudsman’s draft recommendation in this case (3643/2005/(GK)WP) is due to be delivered by the end of February 2008. In another draft recommendation made in 2007, the Ombudsman urged the Commission to avoid in the future any unjustified restrictions with regard to the official languages in which proposals under a call for tender may be submitted (259/2005/(PB)GG). Given that this inquiry was still open at the end of 2007, it does not appear in Chapter 3 of the Report.

Among the draft recommendations accepted in 2007 were the following:

- The Commission accepted a draft recommendation in which the Ombudsman called on it to correct inaccurate and misleading information contained in leaflets, posters and a video presentation on air passenger rights. Two airline associations had turned to the Ombudsman criticising the information provided by the Commission on the rights of travellers to compensation and assistance, in the event of denied boarding, cancellation of flights or



long delays. After the Ombudsman's intervention, the Commission replaced the erroneous information material. (1475/2005/(IP)GG and 1476/2005/(BB)GG)

- The Commission accepted a draft recommendation in which the Ombudsman called on it not to recover a pension payment that was made in error after the death of a former employee. This followed a complaint by the son of the deceased. More than four years after the death of his father, the Commission had asked him to pay back EUR 1 747. It subsequently agreed to waive the reimbursement request. (1617/2005/(BB)JF)

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 latter's political judgment. To give an example from 2007:

- The Ombudsman submitted a special report to the European Parliament, criticising the Commission for not dealing with a complaint concerning the European Working Time Directive. More than six years ago, a German doctor asked the Commission to open proceedings against Germany, alleging that it was infringing the Directive. Despite pressure from the Ombudsman, the Commission refrained from taking action on the complaint, arguing that its proposals for amending the Directive are before the Community legislator. The Ombudsman insisted that this case raised an important issue of principle concerning the way the Commission deals with infringement complaints from citizens. The Commission should either reject the complaint, or open infringement proceedings, he said. Simply doing nothing is not in conformity with principles of good administration. (3453/2005/GG)

### Own-initiative inquiries

The Ombudsman makes use of his power to launch own-initiative inquiries in two main instances. Firstly, he may use it to investigate a possible case of maladministration when a complaint has been submitted by a non-authorized 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). Two such own-initiative inquiries were opened in 2007. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. For example:

- In December 2007, the Ombudsman launched an own-initiative inquiry into the subject of the timeliness of payments made by the Commission. He asked the Commission to provide information on what has been done to avoid late payment, statistical data on late payment cases, as well as information about the Commission's policy on paying interest. This follows complaints from individuals, companies and organisations involved in EU-funded projects and contracts. (OI/5/2007/GG)

Among the other own-initiative inquiries opened in 2007 were one into EPSO's computer-based testing (OI/4/2007/ID) and one concerning the management of human resources at the Commission's Joint Research Centre (OI/6/2007/MHZ).

The following own-initiative inquiry was closed during the year:

- The Ombudsman concluded an own-initiative inquiry into the measures adopted by the Commission to ensure that people with disabilities are not discriminated against in their relations with the institution. Among the positive measures he identified were those to provide easier access to information via the Commission's website and to improve recruitment and promotion conditions. The Ombudsman underlined, however, that more should be done to sensitise the Commission's staff to the needs of people with disabilities. He also criticised the situation in the European Schools for pupils with disabilities as inadequate. (OI/3/2003/JMA)



### Star cases exemplifying best practice

A number of the aforementioned cases constitute illustrative examples of best practice that warrant inclusion among the “star cases” of 2007. They serve as a model for the other EU institutions and bodies, in terms of how best to react to issues that the Ombudsman raises. The **Commission**, in particular, acted quickly and constructively to settle a range of grievances. In case **3495/2006/GG**, it settled, within two weeks, a payment dispute with a German university after the Ombudsman brought the problem to its attention. Similarly, in case **2577/2004/OV**, it accepted a proposal for a friendly solution and reduced the amount to be recovered from a contractor involved in a project in Lebanon. In another payment dispute, it accepted a draft recommendation in which the Ombudsman called on it not to recover a pension payment that was made in error after the death of a former employee (**1617/2005/(BB)JF**). The Commission further demonstrated its willingness to work constructively with the Ombudsman in accepting a draft recommendation to correct inaccurate and misleading information contained in leaflets, posters and a video presentation on air passenger rights (**1476/2005/(BB)GG**).

Further examples of best practice include case **2580/2006/TN** where the **Council** apologised to the complainant and confirmed its commitment to avoiding similar problems in the future after the Ombudsman brought an issue about the Irish language to its attention. The **European Central Bank** (ECB) provided a most helpful reply to a concerned citizen, stressing that it attached great importance to clarification of the issues she had raised and inviting her to address any further questions to its experts (**630/2007/WP**). A final example of a positive response from the institutions and bodies in 2007 came in case **1103/2006/BU**, where the **European Aviation Safety Agency** (EASA) repealed a contested decision after the Ombudsman made a proposal for a friendly solution. This is the second year running that one of EASA’s cases features among the star cases listed in this Report, which is testimony to its willingness to co-operate constructively with the Ombudsman.

### Further analysis

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

Chapter 3 of the Report contains summaries of 50 out of a total of 348 decisions closing cases in 2007. The summaries reflect the range of subjects and institutions covered by the Ombudsman’s inquiries and the different types of finding.

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

### Relations with EU institutions and bodies

The European Ombudsman devotes considerable time to meeting with Members and officials of the EU institutions and bodies with a view to promoting a culture of service within the EU administration. These meetings allow the Ombudsman to explain the thinking behind his work and to sensitise Members and officials to the need to respond constructively to complaints.

Among the most important meetings to take place in 2007 were three events with civil servants from all levels within the European Commission. Since the Commission is the institution accounting for the highest proportion of inquiries carried out by the Ombudsman, it is particularly important that it take a leading role in developing a culture of service to citizens and of respect for their rights. The feedback that the Ombudsman received during these meetings was very encouraging. Key to facilitating these three meetings were Commission Vice-President Margot WALLSTRÖM, responsible, *inter alia*, for relations with the Ombudsman, and Commission Secretary-General Catherine DAY.

Meetings with Members and officials of the European Parliament are also of particular importance, in light of the Ombudsman’s privileged relationship with Parliament. The European Parliament



elects the Ombudsman and he is accountable to it. Chapter 4 of the Annual Report contains a full overview of these meetings. It covers the Ombudsman's participation in meetings of the Committee on Petitions to present his Annual Report and special reports, his presentation to the Constitutional Affairs Committee on the proposed changes to his Statute, and his speech at the Committee on Civil Liberties, Justice and Home Affairs on the reform of Regulation 1049/2001 on access to documents.

The Ombudsman continued to reach out to the other institutions and bodies in 2007, holding meetings with key representatives of the European Court of Justice, the European Economic and Social Committee, the European Investment Bank, and the European Central Bank.

To help keep his own staff informed about developments in the other EU institutions and bodies, the Ombudsman uses the regular staff meetings that he convenes in Strasbourg to invite external speakers. The President of the EU Civil Service Tribunal, Mr Paul J. MAHONEY, and the European Data Protection Supervisor, Mr Peter HUSTINX, both travelled to Strasbourg in 2007 to present their work to the Ombudsman's staff.

### Relations with ombudsmen and similar bodies

Many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. The European Ombudsman co-operates closely with his counterparts in the Member States to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This co-operation takes place for the most part under the aegis of the European Network of Ombudsmen. The Network now comprises almost 90 offices in 31 countries, covering the national and regional levels within the Union, as well as the national level in the candidate countries for EU membership plus Norway and Iceland.

One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. When possible, the European Ombudsman transfers cases directly or gives suitable advice to the complainant. During 2007, the Ombudsman advised 816 complainants to turn to a national or regional ombudsman and transferred 51 complaints directly to the competent ombudsman.

Chapter 5 of the Ombudsman's Annual Report details the activities of the Network in 2007, the high point of which was the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries, which took place in Strasbourg in October. The Seminar was organised jointly by the European Ombudsman and the National Ombudsman of France, Mr Jean-Paul DELEVOYE. All 27 EU Member States were represented at the meeting, as were two of the three candidate countries, plus Norway and Iceland. In line with the announcement made by the European Ombudsman at the Fifth Seminar, regional ombudsman representatives from the EU countries where they exist, namely Belgium, Germany, Spain, Italy, Austria, and the United Kingdom<sup>1</sup>, were also invited to take part for the first time. The theme of the 2007 Seminar was "Rethinking good administration in the European Union".

During the Seminar, the ombudsmen adopted a Statement, the purpose of which is to help inform citizens and other users of ombudsman services of the benefits that they can expect to obtain when they turn to a member of the Network about a matter that falls within the scope of EU law. The Statement is reproduced in full in Chapter 5, which also contains a detailed account of discussions at the Seminar.

Chapter 5 goes on to describe the various other instruments employed by the Network to share experiences and best practice. The *European Ombudsmen – Newsletter* served as an extremely valuable tool for exchanging information in 2007. The two issues, published in April and October, included articles on the supremacy of EU law over national law, discrimination and obstacles to free movement, problems in the area of environmental law, the protection of children's rights and the rights of the elderly, problems in the health care sector, and issues of privacy and data protection.

<sup>1</sup> These countries are listed in the EU protocol order.



The Ombudsman's Internet discussion and document-sharing fora continued to develop during the year, enabling offices to share information through the posting of questions and answers. Several major discussions were also initiated on issues as diverse as age discrimination, the legal framework for non-voluntary psychiatric hospitalisation, public service quality, the status of legal experts in Ombudsman offices, and the European Commission's initiatives to improve the handling of infringement complaints. In addition, the Ombudsman's electronic news service, *Ombudsman Daily News*, was published every working day, and contained articles, press releases and announcements from offices throughout the Network.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or, if more appropriate, channels the query to another EU institution or body for response. In 2007, three such queries were received (one each from a national, regional and local ombudsman) and three were closed (including one brought forward from 2005 and one from 2006). An example of a query is provided at the end of Chapter 3.

Information visits to ombudsmen in the Member States and candidate countries have proved highly effective in terms of developing the Network and constitute an excellent means of raising awareness of the range of communications tools it makes available. In the course of 2007, the European Ombudsman visited his ombudsman colleagues in Germany (March), Sweden (May), and Belgium (November).

The Ombudsman's efforts to collaborate with his counterparts stretch beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsmanship, discussing interinstitutional relations and exchanging best practice in 2007, Mr DIAMANDOUROS attended a range of ombudsman events and met with colleagues from within the EU and further afield. Chapter 5 ends with an overview of these activities.

### **Communications activities**

The European Ombudsman is profoundly aware of the importance of ensuring that those who might have problems with the EU administration know about their right to complain. Each year, strenuous efforts are made to reach out to citizens, companies, NGOs, and other relevant entities to inform them about the Ombudsman's services. In 2007, over 130 presentations were made by the Ombudsman and his staff at conferences, seminars, and meetings. The aforementioned information visits to Germany, Sweden, and Belgium gave him a further opportunity to promote awareness of his role in these countries.

A particular highlight of the year was the Ombudsman's participation in the events organised to celebrate the 50<sup>th</sup> anniversary of the Treaty of Rome. The Open Days organised in Berlin, Budapest, and Warsaw were a particular highlight with hundreds of thousands of people passing by to learn about the Union's activities. The Office also participated, as it does each year, in the Open Days organised by the European Parliament in Strasbourg and Brussels. Material covering the Ombudsman's work was distributed to visitors in 26 languages, together with a range of promotional items. Staff members were present at all of these events to answer questions about the Ombudsman's work.

Media activities continued apace, with the Ombudsman giving six press conferences and over 40 interviews to journalists from the print, broadcast and electronic media in 2007. Seventeen press releases were issued and distributed to journalists and interested parties throughout Europe. Among the topics covered were the Ombudsman's inquiry into late payment, problems in the area of access to documents and information, a complaint concerning the European Working Time Directive, and problems with information material produced by the Commission on the rights of air passengers.



A number of publications were produced and distributed in 2007 with the aim of informing key stakeholders and the general public about the service the Ombudsman can offer EU citizens and residents. Of particular interest in 2007 was a new information sheet for businesses and organisations, which explains succinctly what the Ombudsman can do for these entities. The information sheet was distributed, along with other relevant material, as part of a mailing campaign aimed at potential complainants. Chambers of commerce and law firms throughout the EU were particularly addressed during the campaign, with over 5 000 personalised mailings sent. This campaign proved to be a big success with requests for many thousands of extra copies of the Ombudsman's publications being received throughout 2007.

The Ombudsman's website was regularly updated with decisions, press releases, and details of his communications activities. A new section of the website was created in order to give a higher profile to the Ombudsman's own-initiative inquiries.

From 1 January to 31 December 2007, the Ombudsman's website received 449 418 unique visitors. The English-language pages of the site were the most consulted, followed by the French, Spanish, German and Italian pages. In terms of the geographical origin of visits, the greatest number of visitors came from Italy, followed by Spain, Sweden, the United Kingdom, and Germany. The links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 82 000 visits were made to the links pages during 2007, clearly demonstrating the added value for citizens of the services provided through the European Network of Ombudsmen.

### **Internal developments**

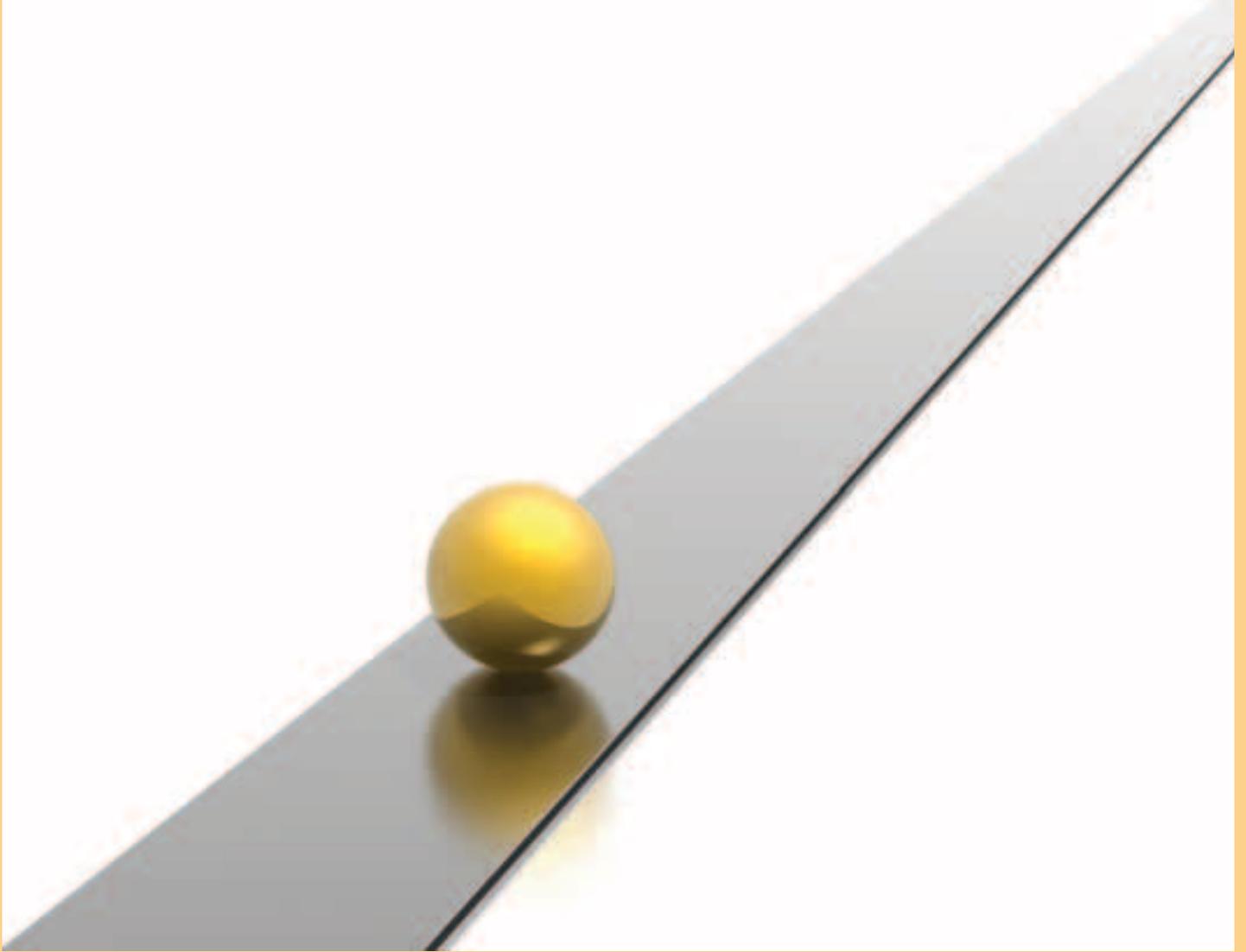
The Ombudsman continued his efforts in 2007 to ensure that the institution was equipped to deal with complaints from citizens of 27 Member States in 23 Treaty languages.

The Ombudsman appointed a new Head of the Legal Department on 1 July 2007, following an open recruitment procedure. With a view to enhancing quality control and to improving productivity, the Legal Department was divided into four teams, each headed by a principal legal supervisor. A new IT application was introduced to facilitate case-management. All of these developments proved invaluable in helping to increase productivity during the year. The 40% rise in the number of cases closed in 2007 confirms that the improvements made in the structure and functioning of the Ombudsman's Legal Department in recent years are beginning to have a real effect. The Ombudsman will build on this further in 2008.

Also from an organisational perspective, 2007 saw a slight change with the Ombudsman's complaint-handling secretariat now supervised directly by the Assistant to the Head of the Legal Department. This reflects more closely the functions of that secretariat which are directly linked to the work of the Legal Department.

The establishment plan of the Ombudsman showed a total of 57 posts in 2007, the same as for 2006. No increase is foreseen for 2008. Total budgeted appropriations for 2008 are EUR 8 505 770 (compared to EUR 8 152 800 in 2007).

# COMPLAINTS AND INQUIRIES



2





## 2 COMPLAINTS AND INQUIRIES

One of the most important ways in which the European Ombudsman promotes good administration is by investigating possible maladministration and recommending corrective action where necessary. Possible instances of maladministration come to the Ombudsman's attention mainly through complaints, the handling of which represents the most important aspect of the Ombudsman's reactive role.

The right to complain to the European Ombudsman is one of the rights of citizenship of the European Union (Article 21 of the EC Treaty) and is included in the Charter of Fundamental Rights (Article 43).

The Ombudsman also conducts inquiries on his own initiative, thereby taking a proactive role in combating maladministration and promoting good administration.

### 2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is governed by Article 195 of the EC Treaty, the Statute of the Ombudsman (which is a decision of the European Parliament<sup>1</sup>) and the Implementing Provisions adopted by the Ombudsman under Article 14 of the Statute. The current Implementing Provisions came into effect on 1 January 2003. They are available on the Ombudsman's website (<http://www.ombudsman.europa.eu>) and in hard copy from the Ombudsman's Office.

The Statute continues to provide a good framework for the Ombudsman's activities. However, after a careful review, the Ombudsman identified certain limited changes that could enhance his capacity to work more effectively for the benefit of European citizens. On 11 July 2006, he therefore wrote to the President of the European Parliament, requesting initiation of the procedure for amending the Statute. At the end of 2007, the Committee on Constitutional Affairs was considering a draft report on the proposed changes (rapporteur Ms Anneli JÄÄTTEENMÄKI).

### 2.2 THE MANDATE OF THE EUROPEAN OMBUDSMAN

Article 195 of the EC Treaty empowers the Ombudsman to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State, concerning instances of 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. A complaint is therefore outside the mandate if:

1. the complainant is not a person entitled to make a complaint;
2. the complaint is not against a Community institution or body;

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<sup>1</sup> European Parliament Decision 94/262 of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 1994 L 113, p. 15.



3. the complaint is against the Court of Justice or the Court of First Instance acting in their judicial role; or
4. the complaint does not concern a possible instance of maladministration.

Each of these items is further discussed below.

#### **The European Union Civil Service Tribunal**

An official made a complaint against the Civil Service Tribunal (CST), concerning its application of the Rules of the Procedure and Practice Directions of the Court of First Instance (CFI) in a pending case in which the complainant was the applicant.

The complainant argued that the requirements of the above provisions concerning the translation of supporting documents and the maximum length of the application were an unacceptable restriction of his access to justice.

The Ombudsman considered that the exception in Article 195 of the EC Treaty for the Court of Justice and the Court of First Instance acting in their judicial role applies to the CST, which is a judicial panel attached to the CFI. The Ombudsman also took the view that the subject matter of the complaint concerned the latter's judicial role. The Ombudsman therefore considered that he was not entitled to deal with the complaint.

920/2007/BU

### **Complaints and own-initiative inquiries**

Although the right to complain to the European Ombudsman is limited to citizens, residents and legal persons with a registered office in a Member State, the Ombudsman also has the power to open inquiries on his own initiative. Using the own-initiative power, the Ombudsman may investigate a possible case of maladministration brought to his attention by a person who is not entitled to make a complaint. The Ombudsman's practice in such cases is to give the person concerned the same procedural opportunities during the inquiry as if the matter had been dealt with as a complaint. The Ombudsman normally approaches on a case-by-case basis the question of whether to use the own-initiative power in this way.

Two such own-initiative inquiries were opened in 2007.

In the Annual Report for 2006, the Ombudsman stated that, subject to possible future resource constraints, he envisaged using the own-initiative power whenever the only reason not to inquire into a complaint alleging maladministration by the European Investment Bank (EIB) in its lending activities outside the EU (external lending) is that the complainant is not a citizen or resident of the Union. In its Resolution of 25 October 2007, the European Parliament welcomed the Ombudsman's declaration of intent and invited him to consider concluding a Memorandum of Understanding with the EIB. On 5 December 2007, the Ombudsman wrote to the President of the EIB inviting discussions on the drafting of a Memorandum of Understanding.

### **Community institutions and bodies**

The European Ombudsman's mandate covers the Community institutions and bodies. The institutions are listed in Article 7 of the Treaty but there is no definition or authoritative list of Community bodies. The term includes bodies established by the Treaties, such as the Economic and Social Committee and the European Central Bank, as well as bodies set up by legislation under the Treaties, including agencies such as the European Environment Agency and the European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX).

Complaints against public authorities of the Member States are not within the European Ombudsman's mandate, even if they concern matters within the scope of EU law. However, many



such complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen (see further below section 2.5).

#### **An example of a complaint that was not against a Community institution or body**

In January 2007, a complainant submitted a complaint to the Ombudsman concerning the terms on which he had been dismissed from his position at the Western European Union (WEU). The complaint was made against the Secretary-General of the Council of the European Union, Mr Javier SOLANA, who is also Secretary-General of WEU.

It appeared from the complaint that the contested decision was taken by Mr SOLANA acting in his capacity as Secretary-General of WEU. Since WEU is not a Community institution or body, the Ombudsman was not entitled to deal with the complaint.

128/2007/FOR

### **Maladministration**

The European Ombudsman has consistently taken the view that maladministration is a broad concept and that good administration requires, among other things, compliance with legal rules and principles, including fundamental rights. However, the principles of good administration go further, requiring Community institutions and bodies not only to respect their legal obligations, but also to be service-minded and ensure that members of the public are properly treated and enjoy their rights fully. Thus while illegality necessarily implies maladministration, maladministration does not automatically entail illegality. Findings of maladministration by the Ombudsman do not therefore automatically imply that there is illegal behaviour that could be sanctioned by a court.<sup>2</sup>

In response to a call from the European Parliament for a clear definition of maladministration, the Ombudsman offered the following definition in his *Annual Report 1997*:

*Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.*

In 1998, the European Parliament adopted a Resolution welcoming this definition. An exchange of correspondence between the Ombudsman and the Commission during 1999 made clear that the Commission has also agreed to the definition.

The Charter of Fundamental Rights, originally proclaimed in December 2000 and signed and proclaimed again on 12 December 2007 prior to the signing of the Treaty of Lisbon on 13 December 2007<sup>3</sup>, includes the right to good administration as a fundamental right of Union citizenship (Article 41).

Article 43 of the Charter contains the right to complain to the European Ombudsman, who provides an external mechanism through which Community institutions and bodies can be called to account for maladministration. It is important to recognise that a culture of service to citizens forms an integral part of good administration. It should not be confused with a culture of blame that encourages defensiveness. In this context, it should be noted that the Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure.

The Ombudsman's strategy for promoting a service culture includes not only various proactive initiatives, but extends also to the handling of complaints. An important part of a service culture is the need to acknowledge mistakes when they occur and to put matters right if possible. A prompt apology may be all that is needed to satisfy the complainant, or at least to avoid the need for the Ombudsman to make any formal criticism of the institution concerned.

<sup>2</sup> See, in this context, the judgments of the Court of First Instance of 28 October 2004 in joined cases T-219/02 and T-337/02, *Herrera v Commission*, paragraph 101, and of 4 October 2006 in Case T-193/04 R, *Hans-Martin Tillack v Commission*, paragraph 128.

<sup>3</sup> OJ 2007 C 303.



### **An apology from the Council satisfies the complainant**

An Irish citizen complained to the Ombudsman that the Council had sent him a reply in English. He claimed that the Council should provide him with a reply in Irish and apologise to him and to his organisation for having infringed Article 21 of the EC Treaty.

In its opinion, the Council acknowledged that its Public Information Unit had replied in English to the complainant's e-mail which was written in Irish. It apologised for the inconvenience and provided a translation into Irish of its response. It also stated that it would, in the future, ensure that requests for information in the Irish language would be replied to in that language.

The complainant accepted the Council's apology and welcomed its commitment to ensure that correspondence in Irish would henceforth be replied to in Irish.

The Ombudsman closed the case, since the Council had settled the matter to the complainant's satisfaction.

2580/2006/TN

In more complex cases in which the Ombudsman makes a preliminary finding of maladministration, he tries, if possible, to promote a "friendly solution" that will be acceptable both to the complainant and to the institution or body concerned. It is important to note, however, that the relevant provisions of the Statute (Article 3.5<sup>4</sup>) and the Implementing Provisions (Article 6.1<sup>5</sup>) apply only if there appears to be maladministration and if it appears possible that it can be eliminated.

## **The European Code of Good Administrative Behaviour**

On 6 September 2001, the European Parliament approved a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public. The Code takes account of the principles of European administrative law contained in the case-law of the European courts and draws inspiration from national laws. Parliament also called on the Ombudsman to apply the Code of Good Administrative Behaviour. The Ombudsman therefore takes account of the rules and principles contained in the Code when examining complaints and in conducting own-initiative inquiries.

## **2.3 ADMISSIBILITY AND GROUNDS FOR INQUIRIES**

Before the Ombudsman can open an inquiry, a complaint from an authorised complainant about maladministration by a Community institution or body must meet further criteria of admissibility. These criteria, as set out in the pertinent articles of the Statute, specify that:

1. the author and the object of the complaint must be identified (Article 2(3) of the Statute);
2. the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Article 1(3) of the Statute);
3. the complaint must be made within two years of the date on which the facts on which it is based came to the attention of the complainant (Article 2(4) of the Statute);

<sup>4</sup> "As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complainant."

<sup>5</sup> "If the Ombudsman finds maladministration, as far as possible he co-operates with the institution concerned in seeking a friendly solution to eliminate it and to satisfy the complainant."



4. the complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Article 2(4) of the Statute); and
5. in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Article 2(8) of the Statute).

Article 195 of the EC Treaty provides for the Ombudsman to “conduct inquiries for which he finds grounds”. In some cases, there may not be sufficient grounds for the Ombudsman to begin an inquiry, even though the complaint is admissible. Three examples of such cases are given below.

The Ombudsman also takes the view that, if a complaint has already been dealt with as a petition by the Committee on Petitions of the European Parliament, there are normally no grounds for an inquiry by the Ombudsman, unless new evidence is presented.

Overall, 42% of the admissible cases dealt with in 2007 were considered not to provide grounds for an inquiry.

#### **Examples of complaints in which there were no grounds to start an inquiry**

A Romanian citizen approached the European Commission alleging that a car registration tax imposed by the Romanian authorities infringes Community law.

In response, the Commission informed the complainant that it had opened an infringement procedure against Romania to ensure that there is no discrimination against imported used cars. The Commission added that it had not asked Romania to abolish the tax altogether, since there is no legal basis in Community law for making such a claim.

In reply to a further submission by the same citizen, the Commission stated that it was currently examining Romanian draft legislation, which is supposed to introduce the necessary amendments to the Romanian rules on car taxation in order to bring them in line with Article 90 of the EC Treaty.

In his complaint to the European Ombudsman, the complainant expressed dissatisfaction with the Commission's replies. He claimed that the Commission should require that the Romanian authorities abolish or reduce the car registration tax.

The Ombudsman took the view that the explanations that had been provided by the Commission were reasonable and that there were no grounds to open an inquiry.

In the spirit of good co-operation underlying the Statement adopted by the European Network of Ombudsmen (see Chapter 5) and taking into account that the complainant had also expressed dissatisfaction with the Romanian authorities, the European Ombudsman considered it useful to inform the Romanian Ombudsman of the complaint and of the ongoing infringement proceedings.

The European Ombudsman also informed the Commission of the above and suggested that the Romanian Ombudsman should be kept informed of further steps in the infringement procedure.

2543/2007/RT



The complainant alleged that the European Central Bank (ECB) was going to damage a building of historic value and that it had dealt with her correspondence concerning the matter in an arrogant and inconsiderate way. The complainant enclosed a copy of her letter to the ECB, but not the latter's reply. Having requested and obtained a copy of the ECB's reply from the complainant, the Ombudsman noted that it explained that the ECB was not going to damage or destroy the building but maintain, restore and use it. Furthermore, the letter stated that the ECB attached great importance to clarification of the issues the complainant had raised and invited her to address any further questions to its experts. The Ombudsman considered that the ECB's reply was reasonable and helpful and that there were, therefore, no grounds for an inquiry.

*630/2007/WP*

An Italian company complained to the Ombudsman about several aspects of the way in which the Commission had dealt with the company during an investigation of an alleged cartel in the aluminium fluoride industry. Among other things, the company complained that the Commission had wrongly ignored its request for leniency when sending the Statement of Objections, failed to respect its rights of defence and forced it to disregard an order of the national judicial authorities by requiring it to return certain documents to the Commission.

The Ombudsman carefully reviewed the case submitted by the complainant. As regards the request for leniency, the Ombudsman noted that the Commission only makes a final decision on leniency when it closes the relevant inquiry. By providing the complainant with information about the Commission's view of the likelihood of leniency and by granting the complainant an extension of the deadline for submitting its observations on the Statement of Objections, the Commission had allowed the complainant to exercise its rights of defence. As regards the return of documents, the Ombudsman noted that the Commission had supplied certain confidential documents to the complainant in error and that, in accordance with the relevant legislation, it was entitled, and even obliged, to seek their return. Although the Commission should take account of any obligations the company might have under Italian criminal law in relation to the documents, the complainant had not provided evidence that the Commission had failed to do so.

The Ombudsman therefore considered that there were no grounds to open an inquiry.

*2118/2007/IP*

## 2.4 ANALYSIS OF COMPLAINTS EXAMINED IN 2007

During 2007, the Ombudsman received 3 211 new complaints, compared to 3 830 in 2006. In accordance with established practice, all complaints that give rise to an inquiry are counted in the statistics produced by the Ombudsman. To avoid distortion, however, inadmissible mass complaints sent by e-mail, which often number several thousand, are only counted separately in the statistics up to and including the eleventh complaint.

Complaints were sent directly by individual citizens in 3 056 cases and 155 came from associations or companies.

During 2007, the process of examining complaints to see if they are within the mandate, meet the criteria of admissibility, and provide grounds to open an inquiry was completed in 95% of cases. Of all the complaints examined, just over 26% were within the mandate of the Ombudsman. Of these, 518 met the criteria of admissibility but 215 did not provide grounds for an inquiry.

A total of 303 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began six inquiries on his own initiative. A statistical analysis of these inquiries is provided in Annex A.



Overall, the European Ombudsman dealt with a total of 641 inquiries in 2007, 332 of which were carried over from 2006.

As in previous years, most of the inquiries concerned the Commission (413, or 64% 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 87 inquiries concerning the European Personnel Selection Office (EPSO), 59 concerning the European Parliament, 22 concerning the European Anti-Fraud Office, and 8 concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (216 cases), unfairness or abuse of power (135 cases), unsatisfactory procedures (102 cases), avoidable delay (69 cases), discrimination (63 cases), negligence (62 cases), legal error (35 cases), and failure to ensure fulfilment of obligations, that is, failure by the European Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (24 cases).

## 2.5 TRANSFERS AND ADVICE

If a complaint is outside the mandate, the Ombudsman tries to advise the complainant of another body that could deal with the complaint, especially if the case involves EU law. If possible, and provided there appear to be grounds for the complaint, the Ombudsman, with the consent of the complainant, transfers it directly to another competent body.

As already noted, the European Ombudsman co-operates closely with his national and regional counterparts in the Member States through the European Network of Ombudsmen (see Chapter 5 below). One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent national or regional ombudsman or similar body. The Committee on Petitions of the European Parliament also participates in the Network as a full member.

### Transfers

During 2007, 92 complaints were transferred. Of these, 51 were forwarded to a national or regional ombudsman, 20 to the European Parliament to be dealt with as petitions, 12 to SOLVIT<sup>6</sup>, seven to the European Commission and two to other bodies.

<sup>6</sup>

SOLVIT is a network set up by the European Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market.



### Examples of cases involving the European Network of Ombudsmen

The complainant's mother had worked in France and was now living in Brazil. The French state pension fund CRAM had suspended her pension payments in 2002 because of difficulties with the Brazilian banking system.

The case was transferred to the French Ombudsman, who informed the European Ombudsman in March 2007 that a solution had been found. The complainant's mother had obtained a banking domiciliation in a Brazilian bank, approved by the financial body which pays pensions on behalf of CRAM. On 5 February 2007, the amounts due had been reimbursed to the complainant's mother.

*1036/2005/ESB*

A Spanish citizen complained that the "Via Verde" system for discounted payment of Portuguese motorway tolls is not available to citizens of the EU who are not resident in Portugal. Since the complaint concerned the national authorities, the European Ombudsman transferred it to the Portuguese Ombudsman.

After conducting an inquiry, the Portuguese Ombudsman reported that the "Via Verde" system involves automatic deduction of tolls from the user's bank account. To benefit from the system, the user must have an account with a bank belonging to the "Multibanco" network, which includes two Spanish banks. The Portuguese Ombudsman also noted that, although the limitations of the current system might be questioned on the basis of the principles of contractual freedom and competition in the banking sector, Directive 2004/52/EC on the interoperability of electronic road toll systems in the Community should create a uniform system of electronic road toll payment at the European level by 2011. In light of the above, the Portuguese Ombudsman concluded that further inquiries into the complaint were unnecessary and closed the case.

*2681/2006/BM*

A Finnish citizen residing in Sweden complained to the European Ombudsman that the Swedish Social Insurance Agency had incorrectly calculated his entitlement to sickness benefit.

Since the complaint was against a national authority, the European Ombudsman advised the complainant to turn to the Swedish Ombudsman.

The European Ombudsman also wrote to the Swedish Ombudsman to inform him that the complaint raised a question of the correct application of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

*2828/2007/AL*

A Czech citizen working in Ireland complained that the Irish tax authorities had detained his car, which was registered in the Czech Republic, because he had not paid the Irish Vehicle Registration Tax. According to the complainant this tax is equivalent to an import tax.

The European Ombudsman advised the complainant to address the Irish Ombudsman, whose services had confirmed that the complainant could write to them in the Czech language if he had difficulties with English.

The European Ombudsman also informed the complainant that, if the matter could not be resolved at the national level, he could consider making a complaint to the Commission. The European Ombudsman also drew attention to the relevant case-law<sup>7</sup> concerning taxation of imported used cars.

*2510/2007/BU*

<sup>7</sup>

Case C-47/88 *Commission v Denmark*, [1990] ECR I-4509, paragraphs 10, 21 and 22.



### **Ongoing inquiry into actions of the Commission and the Portuguese authorities**

In 2001, the complainant set up a nursery and breeding facility for bivalves in the harbour of Nazaré (central Portugal). After some months, the complainant noted a significant increase in the bivalves' mortality rate. Analysis of the water in the harbour indicated high levels of certain compounds, notably tributyltin, which are used in antifouling paints. According to the complainant, antifouling paints are still frequently used in Portugal to coat the hulls of ships and fishing boats and are sold freely to fishermen within the area of jurisdiction of the harbour's authority, as well as other harbours of central Portugal.

After having unsuccessfully referred the matter to the Portuguese authorities, the complainant submitted a complaint against Portugal to the Commission. According to the complainant, the Commission filed the complaint without further action on the basis of the Portuguese authorities' explanations that, in summary, the waters of the harbour of Nazaré were not considered suitable for shell-breeding.

According to the complainant, the authorisation he had obtained from the Portuguese authorities was for the production of shell seeds and the waters in which he had started production were suitable for that purpose.

In his complaint to the European Ombudsman, the complainant expressed the view that it was obvious that the Portuguese authorities had provided the Commission with incorrect information. He alleged that the Commission had failed to provide him with adequate reasons as to why it considered the Portuguese authorities' explanations to be satisfactory.

The European Ombudsman asked the Commission to submit an opinion by 31 January 2008. He also informed the Portuguese Ombudsman about the complaint. On the basis of the information forwarded by the European Ombudsman, the Portuguese Ombudsman decided to open an inquiry into the actions of the Portuguese authorities and informed the Portuguese Prosecutor-General accordingly.

The European Ombudsman and the Portuguese Ombudsman intend to keep each other informed about the progress of their inquiries.

*1618/2007/JF*

### **Examples of cases transferred to the European Commission**

A Bulgarian citizen complained to the European Ombudsman that Article 30 of Directive 2002/22/EC, which gives consumers the right to keep their existing mobile telephone number if they change service provider, had not been implemented in Bulgaria and that the Commission had failed to act on the matter. He claimed that the Commission should open infringement proceedings.

The complainant had been in touch with several Commission services, which had informed him of the possibility to lodge an infringement complaint under Article 226 of the EC Treaty. However, the complainant appeared not to have done so. The Ombudsman therefore considered the complaint to be inadmissible against the Commission, since the appropriate prior administrative approaches had not been made.

The Ombudsman noted, however, that the Commission's complaint form concerning Member States' failure to comply with Community law was not yet available in the Bulgarian language. As regards the underlying issue, the Ombudsman therefore transferred the complaint to the Commission to be dealt with as an infringement complaint against Bulgaria. He also asked the Commission to inform him when the Bulgarian version of the complaint form would be available.

In reply, the Commission explained that the Bulgarian law on electronic communications, transposing the EU regulatory framework for electronic communications, had been adopted on 10 May 2007. It stated that it would examine this legislation and consider any appropriate measures in order to ensure the correct implementation of the EU regulatory framework. It also provided the link to the Bulgarian version of the complaint form which had in the meantime been made available.

*1466/2007/VIK*



In 2006, the Ombudsman received several complaints from Spanish citizens against the manufacturer of the drug Agreal. According to the complainants, they had suffered a number of serious health effects after taking the drug, such as headaches, depression, and lack of mobility. The complainants sought to have the product banned.

Since the Commission is the Institution which has the necessary legal powers at the EU level to take action on such matters, the Ombudsman transferred the cases to the Commission. The Commission subsequently informed the Ombudsman that it had asked the European Medicines Agency (EMA) for advice on whether Community action would be necessary. In July 2007, EMA announced that it had recommended to the Commission that all drugs containing the substance "veralipride", including Agreal, be withdrawn from the European market.

The Commission subsequently adopted a decision requiring Member States to revoke marketing authorisations for medicinal products containing "veralipride", as the benefit-risk balance was considered negative.

*1369/2006/JMA; 1698/2006/(BM)JMA; 1699/2006/(BM)JMA; 1700/2006/(BM)JMA; 1701/2006/(BM)JMA; 1751/2006/(BM)JMA; 2192/2006/JMA; 2318/2006/JMA and 3143/2006/JMA*

#### **Example of a case transferred to SOLVIT**

The complainant was a Bulgarian citizen who had obtained his diploma as a medical doctor in Bulgaria. Following Bulgaria's accession to the EU, he wished to practise medicine in France and obtained a conformity certificate for his diploma from the Bulgarian Ministry of Health. The French National Council of Physicians rejected the conformity certificate, however, because it did not mention Directive 93/16. The Bulgarian authorities insisted that the certificate was valid without the reference in question.

The Ombudsman transferred the complaint to the Bulgarian SOLVIT Centre, which informed the Ombudsman shortly thereafter that the case had been successfully resolved and that the complainant had been provided with a conformity certificate which allows him to practise his profession in France.

*1698/2007/RT*

## **Advice**

Advice was given in 1 862 cases. In 816 of these, complainants were advised to turn to a national or regional ombudsman and in 109 cases to petition the European Parliament. In 308 cases, the recommendation was to contact the European Commission. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches to the institution had not been made before the complaint was lodged. In 69 cases, the suggestion was to contact SOLVIT, while 766 complainants were advised to contact other bodies, mostly specialised ombudsmen or complaint-handling bodies in a Member State.

## **2.6 THE OMBUDSMAN'S PROCEDURES**

All complaints sent to the Ombudsman are registered and acknowledged, normally within one week of receipt. The acknowledgement informs the complainant of the procedure and includes a reference number, as well as the name and telephone number of the person who is dealing with the complaint. The complaint is analysed to determine whether an inquiry should be opened and the complainant is informed of the result of the analysis, normally within one month.

If no inquiry is opened, the complainant is informed of the reason. Whenever possible, the complaint is transferred, or the complainant is given appropriate advice about a competent body to which he or she could turn.



## Starting an inquiry

The first step in an inquiry is to forward the complaint to the institution or body concerned and request that it send an opinion to the Ombudsman, normally within three calendar months. The European Parliament and Commission agreed in 2004 to accept a shorter time limit of two months for complaints against refusal of access to documents.

## Fair procedure

The principle of fair procedure requires that the Ombudsman's decision on a complaint must not take into account information contained in documents provided either by the complainant, or by the Community institution or body, unless the other party has had the opportunity to see the documents and give its point of view.

The Ombudsman therefore sends the opinion of the Community institution or body to the complainant with an invitation to submit observations. The same procedure is followed if further inquiries into the complaint need to be conducted.

Neither the Treaty nor the Statute provides for appeal or other remedies against the Ombudsman's decisions concerning the handling or outcome of a complaint. However, like all other Community institutions and bodies, the Ombudsman is subject to actions for damages based on Article 288 of the EC Treaty. It is possible, in principle, to bring such an action in the Community courts based on the Ombudsman's alleged mishandling of a complaint.

## Inspection of the files and hearing of witnesses

Article 3(2) of the Statute of the Ombudsman requires the Community institutions and bodies to supply the Ombudsman with any information that he requests of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of secrecy.

The Ombudsman's power to inspect files allows him to verify the completeness and accuracy of the information supplied by the Community institution or body concerned. It is therefore an important guarantee to the complainant and to the public that the Ombudsman can conduct a thorough and complete investigation.

Article 3(2) of the Statute also requires officials and other servants of the Community institutions and bodies to testify at the request of the Ombudsman.

During 2007, the Ombudsman's power to inspect the institution's files was used in 18 cases. The power to hear witnesses was used in one case.

## Open procedure

Complaints to the Ombudsman are dealt with in a public way unless the complainant requests confidentiality.

Article 13 of the Implementing Provisions provides for the complainant to have access to the Ombudsman's file on his or her complaint. Article 14 provides for public access to documents held by the Ombudsman, subject to the same conditions and limits as those laid down by Regulation 1049/2001<sup>8</sup>. However, where the Ombudsman inspects the file of the institution or body concerned or takes evidence from a witness, neither the complainant nor the public may have access to any

<sup>8</sup>

Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



confidential documents or confidential information obtained as a result of the inspection or hearing (Articles 13.3 and 14.2). The purpose of this exclusion is to facilitate the Ombudsman in the exercise of his powers of investigation.

## 2.7 THE OUTCOMES OF INQUIRIES

During an inquiry, the complainant is informed of each new step taken. When the Ombudsman decides to close the inquiry, he informs the complainant of the results of the inquiry and of his conclusions. The Ombudsman's decisions are not legally binding and do not create legally enforceable rights or obligations for the complainant, or for the institution or body concerned.

In 2007, the Ombudsman closed 348 inquiries, of which 341 were linked to complaints and seven were own-initiatives.

If an inquiry deals with more than one allegation or claim, these may give rise to several findings by the Ombudsman.

### **No maladministration**

In 2007, 95 cases, including three own-initiative inquiries, were closed with a finding of no maladministration. This is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution or body concerned of what it has done. Furthermore, 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.

### **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 2007, 129 cases, including an own-initiative inquiry, were settled by the institution or body itself following a complaint to the Ombudsman. Of this number, 93 were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence (see section 2.9 of the *Annual Report 1998* for details of the procedure). The Ombudsman's objective in such cases is to solve the problem rapidly, as an alternative to opening a normal inquiry into possible maladministration. In 2007, the procedure was also successfully used in three cases (723/2007/MHZ, 1624/2007/JMA, 2201/2007/JMA) to help the Commission settle the matter by supplementing its previous answer.



### Explanation of the scope of a Directive

The complainant, a Spanish citizen who lives in Spain, asked the Commission to take action against the United Kingdom and Estonian authorities because they required his wife, who is of Byelorussian nationality, to obtain a visa before visiting those countries. According to the complainant, the visa requirements violate Directive 2004/38/EC<sup>9</sup> ("the Directive"). In reply, the Commission explained that his wife was not entitled to benefit from the provisions of Article 5(2) of the Directive, which exempts third country nationals holding a "residence card" from any visa requirement by EU Member States.

The complainant wrote to the Commission again, arguing that the Directive appears to apply to all EC citizens and their families and that his wife holds a residence permit. In its second reply, the Commission underlined that Article 5(2) of the Directive does not apply to the complainant's wife since her residence permit is not the "residence card" foreseen in Article 10 of the Directive, but was granted under, and is governed exclusively by, Spanish law.

In his complaint to the Ombudsman, the complainant alleged that the Commission's position was contrary to the Directive.

The Ombudsman took the view that the Commission's replies were legally correct, but could have been drafted in a more easily understandable way. The Commission's services agreed to send an additional reply to the complainant. The additional reply explained that the Directive applies to EU citizens who move to, or reside in, a Member State other than that of which they are a national and to their family members who accompany or join them. The Directive does not, therefore, apply to citizens who stay in their own Member State, or to their families. The Commission's reply also included a clear explanation of the concept of a "residence card" and its relationship to other provisions of the Directive. The reply also included a number of examples by way of illustration. Finally, the Commission pointed out that the drafting of Article 5(2) of the Directive is disadvantageous for the families of EU citizens who have not exercised the right of free movement, but that the Directive could only be amended through the legislative process.

The Ombudsman considered that the additional reply was sufficient to resolve the case. In view of the final point of the Commission's reply, the Ombudsman also informed the European Parliament of the matter.

2201/2007/JMA

As indicated in the Annual Report for 2006 (see the summary of complaints 3297/2006/BU and 3684/2006/BU), the Ombudsman has also begun to make wider use of more informal procedures, with the agreement and co-operation of the institution or body concerned, to help resolve problems in a flexible way. An example of such a case involving the Commission is included below. The Council has also designated a person in its secretariat, whom the Ombudsman's services can contact with a view to finding solutions through informal procedures.

### Text missing from the Schuman declaration

A French professor complained that the phrase concerning the importance of the development of the African continent had been omitted from the text of the Schuman declaration on the Europa website in all the language versions except French. Two days after being contacted by the Ombudsman, the Commission's services wrote to the complainant explaining that the incomplete versions had been transferred from the original website, which dated back over a decade and that the omission of the phrase was probably the result of a technical error. They undertook to restore the missing phrase as soon as the translation service had carried out the necessary work.

The Ombudsman considered that the reply from the Commission settled the matter, but informed the complainant that he could make a new complaint if he were not satisfied with the steps taken by the Commission. The Ombudsman also thanked the Commission services for their prompt and effective action to provide a rapid solution.

2650/2007/FOR

<sup>9</sup>

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; OJ 2004 L 158, p. 77.



If an inquiry leads to a finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. Five cases were closed during the year after a friendly solution had been achieved. At the end of 2007, 31 proposals for friendly solutions were still under consideration.

In some cases, a friendly solution can be achieved if the institution or body concerned offers compensation to the complainant. Any such offer is made *ex gratia*, that is, without admission of legal liability and without creating a legal precedent.

For examples of friendly solutions achieved by the Ombudsman, please refer to section 3.3 of this Report.

### **Critical remarks and draft recommendations**

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

A critical remark is normally made if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. A critical remark is also made if the Ombudsman considers that a draft recommendation would serve no useful purpose or that it does not seem appropriate to submit a special report to Parliament in a case where the institution or body concerned fails to accept a draft recommendation.

A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2007, the Ombudsman closed 55 inquiries with critical remarks. A full list of these cases is provided in Annex D.

During 2007, the Ombudsman carried out a study of the follow-up undertaken by the institutions involved to all critical remarks and further remarks made in 2006. The study is available on the Ombudsman's website (<http://www.ombudsman.europa.eu>). The Ombudsman envisages carrying out a similar exercise and informing the public of his findings on an annual basis.

In cases where follow-up action by the Ombudsman does appear necessary, that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution or body concerned. In accordance with Article 3(6) of the Statute of the Ombudsman, the institution or body must send a detailed opinion within three months. During 2007, eight draft recommendations were made. In addition, seven draft recommendations from 2006 led to decisions in 2007. Three 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 2007, eight draft recommendations were still under consideration, including one made in 2004 and one made in 2006.

### **Special reports to the European Parliament**

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. The special report may include recommendations.

As was pointed out in the European Ombudsman's *Annual Report 1998*, the possibility to present a special report to the European Parliament is of inestimable value for the Ombudsman's work.

A special report to the European Parliament is the last substantive step which the Ombudsman takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers



are matters for that institution's political judgment. The Ombudsman naturally provides whatever information and assistance may be required by Parliament in dealing with a special report.

The Rules of the European Parliament make the Committee on Petitions responsible for Parliament's relations with the Ombudsman. At a meeting of the Committee on Petitions on 12 October 2005, the Ombudsman undertook, in accordance with Rule 195(3) of Parliament's Rules of Procedure, to appear before the Committee at his own request, whenever he presents a special report to Parliament.

One special report was submitted to Parliament in 2007. It involves case 3453/2005/GG in which the Ombudsman criticised the Commission for not dealing with a complaint concerning the European Working Time Directive.

## 2.8 DECISIONS CLOSING CASES IN 2007

Decisions closing cases are normally published on the Ombudsman's website (<http://www.ombudsman.europa.eu>) in English and, if different, the language of the complainant. Chapter 3 contains summaries of 50 decisions closing inquiries. The summaries reflect the range of subjects and of Community institutions and bodies covered by the total of 348 decisions closing inquiries in 2007, as well as the different reasons for closure. They are indexed by case number, by subject matter in terms of the field of Community competence involved, and by the type of maladministration alleged by the complainant.

The rest of this section of Chapter 2 analyses the most significant findings of law and fact contained in the decisions. It is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around five main categories:

- Openness (including access to documents and information) and data protection;
- The European Commission as guardian of the Treaty;
- Tenders, contracts and grants;
- Personnel matters, including recruitment;
- Other matters.

It should be noted that there is substantial overlap between the above categories. For example, issues of openness and public access are often raised in complaints concerning recruitment or the Commission's role as guardian of the Treaty.

### **Openness, public access and the protection of personal data**

A high proportion (28%) of the allegations investigated in 2007 concerned lack of openness. Article 1 of the Treaty on European Union refers to decisions in the Union being taken "as openly as possible", while Article 255 of the EC Treaty provides for a right of access to European Parliament, Council, and Commission documents. This right is governed by Regulation 1049/2001<sup>10</sup>. Following own-initiative inquiries by the Ombudsman in 1996 and 1999, many other Community institutions and bodies have also adopted rules on access to documents.

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<sup>10</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



### *Access to documents and information*

Regulation 1049/2001 gives applicants a choice of remedy: they may challenge a refusal either in court proceedings under Article 230 of the EC Treaty, or by complaining to the Ombudsman. During 2007, the Ombudsman closed inquiries into eleven complaints concerning the application of Regulation 1049/2001, eight of which were against the Commission, two against OLAF and one against the Council.

One inquiry was closed into a complaint against the European Investment Bank concerning access to documents under its own rules.

Summaries of eight of the above cases are included in Chapter 3.

In case **3697/2006/PB**, the Ombudsman found that the requirement to give “detailed reasons” for extending the deadline for reply to a confirmatory application under Regulation 1049/2001 was not met by a mere reference to the need to consult other Commission services. He further stated that the Commission should organise its administrative services so as to ensure that applications for access are registered no later than the first working day following receipt.

In case **668/2007/MHZ**, the Ombudsman criticised the Commission for a delay of over eight months in publishing its annual report on the operation of Regulation 1049/2001 in 2005. The Ombudsman pointed out that the publication of reports is a key mechanism of accountability to, and communication with, European citizens.

The Ombudsman dealt with three cases concerning exceptions to public access.

In case **1844/2005/GG**, the Ombudsman expressed the view that a general reference to the perceived risks of disclosure for the internal decision-making process would not be sufficient to justify applying the second subparagraph of Article 4(3) of Regulation 1049/2001<sup>11</sup>. Although the Commission had put forward arguments related to the specific document, the Ombudsman considered, after inspecting the document, that the Commission had not established that disclosure would seriously undermine the Commission’s decision-making process.

In case **3269/2005/TN**, the Ombudsman took the view that Article 4(1)(b) of the Regulation (privacy and integrity of the individual) did not justify the Commission’s decision to blank out the names of industry lobbyists from a document. In reaching this view, the Ombudsman relied on the Background Paper on Public access to Documents and Data Protection published by the European Data Protection Supervisor, whom the Ombudsman also consulted on this matter. Moreover, the Ombudsman emphasised the need for transparency of lobbying activities in case **2740/2006/TN**.

In case **948/2006/BU**, the Ombudsman recognised that the European Investment Bank’s dual role, as both a banking institution and a Community body, is reflected in the provisions of its rules on public access to documents concerning the professional obligation of banking secrecy. The Ombudsman also noted that the EIB is bound by Regulation 1367/2006<sup>12</sup>, which applies the Aarhus Convention to the Community institutions and bodies. However, that Regulation was not in force when the complainant’s request for access was made.

Article 11 of Regulation 1049/2001 requires each institution to provide public access to a register of documents in which references to documents shall be recorded without delay. In case **2350/2005/GG**, the Ombudsman took the view that, as long as there is no easily accessible or sufficiently complete register, the EU institutions must be prepared to provide citizens with ad hoc lists upon request, even if their preparation constitutes a considerable burden.

<sup>11</sup> “Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.”

<sup>12</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ 2006 L 264, p. 13.



The application of Regulation 1049/2001 to electronic databases presents technical as well as legal problems. In case **1693/2005/PB**, the Commission argued that accounting information supplied to it by Member States did not constitute a document or documents, since the reports containing the information had been loaded onto a database and no longer existed as such. The Commission's approach in such cases was to treat the outputs of routine retrieval operations as documents. The information requested by the complainant, however, would require complex new programming, it said. Although considering the Commission's approach to be unsatisfactory, the Ombudsman did not pursue the matter since the legal issues were new and complex and could be examined by the Community legislator, from a general perspective, in the context of the announced reform of Regulation 1049/2001.

In case **2370/2005/OV**, the European Medicines Agency (EMA) agreed to provide information in response to three questions raised by the complainant.

### *Data protection*

Two decisions were made on complaints which raised, among other things, issues concerning the complainants' data protection rights.

Case **452/2005/BU** concerned unauthorised disclosure of the names of candidates for a post of head of a Commission Representation. The European Data Protection Supervisor provided the Ombudsman with information about his own inquiries into the matter. In its opinion to the Ombudsman, the Commission stated that it was unable to identify the source of the leak because it could not establish which persons had access to the personal data concerned. The Ombudsman made a critical remark, saying that this was incompatible with the Commission's obligations under Regulation 45/2001<sup>13</sup>.

Case **183/2006/MF** concerned Europol's reply to the complainant's request to know what information it held about her. The Ombudsman's decision left open the general question of the relationship between the Appeals Committee established under the Europol Convention and his own role under Article 195 of the EC Treaty. In the specific case, the complainant did not provide concrete information to support her allegation against Europol's decision. Furthermore, the Appeals Committee apologised for and corrected an error in its response to her appeal.

During 2007, the Ombudsman contacted the European Data Protection Supervisor in relation to eight cases, pursuant to the Memorandum of Understanding signed on 30 November 2006. In six of the cases, the Ombudsman's inquiry was on-going at the end of 2007. The two cases that were closed in 2007 have already been mentioned above (**452/2005/BU** and **3269/2005/TN**).

## **The Commission as guardian of the Treaty**

The rule of law is a founding principle of the European Union. One of the Commission's most important duties is to be the guardian of the Treaty<sup>14</sup>. Article 226 of the EC Treaty creates a general procedure under which the Commission may investigate and refer to the Court of Justice possible infringements of Community law by Member States. The Commission may open investigations on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions addressed to it under Article 194 of the EC Treaty. Other procedures apply in relation to specific matters such as illegal state aids.

Complaints that are outside the mandate of the European Ombudsman often concern alleged infringements of Community law by Member States. Many such cases can best be handled

<sup>13</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

<sup>14</sup> Article 211 of the EC Treaty requires the Commission to "ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied".



by another member of the European Network of Ombudsmen. In some cases, however, the Ombudsman considers it appropriate to transfer the complaint to the Commission. Section 2.5 above gives examples of both approaches.

The Ombudsman receives and deals with complaints against the Commission in its role as guardian of the Treaty. When the Ombudsman opens an inquiry into such a complaint, he is always careful to make clear to the complainant, where necessary, that the inquiry will not examine whether there is an infringement, because the European Ombudsman has no mandate to investigate the actions of authorities of the Member States.

Chapter 3 contains summaries of six decisions that illustrate how the Ombudsman deals with complaints against the Commission in its role as guardian of the Treaty.

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a Communication issued by the Commission in 2002<sup>15</sup>, in response to criticisms from the Ombudsman. The Communication states that, as a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice, or to close the case, within not more than one year from the date the complaint was registered by the Secretariat-General. Point 3 of the Communication defines the circumstances in which the Secretariat-General is entitled not to register correspondence as a complaint and requires that the complainant be informed accordingly by normal correspondence. In case **446/2007/WP**, the Ombudsman emphasised the importance of applying the latter provision correctly.

Case **3453/2005/GG** concerned the Commission's handling of a complaint about failure to apply the Working Time Directive. In a Special Report to the European Parliament, the Ombudsman took the view that the Commission's undoubted discretion in matters relating to alleged infringements of Community law by Member States does not entitle it to postpone indefinitely reaching a conclusion on a complaint on the grounds that the applicable law may be amended at some time in the future. The Ombudsman also emphasised in case **962/2006/OV** that the Commission's discretion when dealing with infringement complaints does not render inapplicable the general principle that decisions have to be taken within a reasonable period of time.

A regional ombudsman forwarded a complaint that the Commission had failed properly to reply to requests concerning conformity of certain provisions of regional law with Community law (Case **3386/2005/WP**). The Commission provided detailed explanations in the framework of the European Ombudsman's inquiry and thereby satisfied the complainant.

Two complaints raised questions concerning the relationship between the role of national authorities and the role of the Commission in ensuring the application of Community environmental law and in handling complaints. In case **3660/2004/PB**, the Ombudsman found that the Commission had provided a reasonable explanation of its strategic role in relation to implementation of the Habitats Directive<sup>16</sup> and the Waste Directive<sup>17</sup>. In case **2725/2004/(PB)ID**, the Ombudsman also clarified his own role in investigating complaints against the Commission as regards Environmental Impact Assessments under Directive 85/337<sup>18</sup>.

In case **1166/2006/WP**, the Ombudsman noted that EU law concerning judicial co-operation in criminal matters is still mainly decided through intergovernmental procedures, so that the Commission's possibilities of taking action are rather limited. He also accepted as reasonable the Commission's argument that there was no need for it to pursue the specific case further because the

<sup>15</sup> Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law, OJ 2002 C 244, p. 5.

<sup>16</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7.

<sup>17</sup> Council Directive 75/442/EEC of 15 July 1975 on waste, OJ 1975 L 194, p. 39.

<sup>18</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.



Italian courts now generally accept the application of the *ne bis in idem* principle, which prohibits the institution of legal proceedings twice for the same cause of action.

In case **943/2006/MHZ**, the Ombudsman found no maladministration in the Commission's investigation leading to the adoption of anti-dumping provisional measures on imports of certain footwear. The Ombudsman's decision also pointed out the limited character of his review in cases concerning complex economic matters.

### Tenders, contracts<sup>19</sup> and grants

The Ombudsman deals with complaints about the award, non-award, and management of contracts and grants. However, where a question of possible breach of contract arises, the Ombudsman limits his inquiry to examining whether the Community institution or body has provided a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified.

Chapter 3 contains summaries of eight decisions that illustrate how the Ombudsman deals with complaints of this kind.

Four of the cases concerned tenders. In case **3693/2005/ID**, the Ombudsman considered the principle of equal treatment of tenderers and the related obligation of transparency in tender procedures. In the specific case, the Commission had failed to give adequate reasons for rejecting a tender but the Ombudsman could not accept the remedy claimed by the complainant, since the relevant contracts had already been awarded, signed, and were currently being executed. Three other cases led to satisfactory outcomes for complainants. In cases **1858/2005/BB** and **1859/2005/BB**, the former European Monitoring Centre for Racism and Xenophobia accepted a friendly solution in which it provided better information to an unsuccessful tenderer about how his bid compared with that of the winning organisation. In case **2633/2006/WP**, the Commission revised its assessment of the quality of a bid for translation services and offered the complainant a framework contract.

Three cases involving financial disputes with the Commission were also resolved in a satisfactory way. In cases **3495/2006/GG** and **1471/2007/(CC)/RT**, the Commission rapidly made the additional payments claimed by the complainant, a German University in the first case and a French consulting firm in the second. In case **2577/2004/OV**, the Commission accepted the Ombudsman's proposal for a friendly solution and reduced the amount to be recovered from a contractor. In case **2468/2004/OV**, the Commission blocked a payment due to the complainant company and listed it in its Early Warning System (EWS). The Ombudsman found no maladministration as regards the amount of the blocked payment, but criticised the Commission as regards the company's continued listing on the EWS.

### Personnel matters

Chapter 3 contains summaries of eight decisions on complaints that relate to personnel matters, illustrating the range of complaints dealt with under this heading. Five of them concern recruitment procedures, two concern work relationships with the institutions and bodies, and one concerns a traineeship application. Four of the cases will be mentioned here.

Case **3346/2004/ELB** concerned the requirement imposed by the European Personnel Selection Office (EPSO) that candidates register and communicate with it on-line. The Ombudsman accepted EPSO's general justifications for the requirement, but recommended that it should be ready to consider properly reasoned requests for exceptions. EPSO rejected the draft recommendation, basically on grounds of its own administrative convenience. In case **3114/2005/MHZ**, the Ombudsman criticised

<sup>19</sup>

Complaints relating to *employment* contracts are dealt with in sub-section "Personnel matters".



the linguistic requirements in the open competitions organised by EPSO following the 2004 enlargement of the Union.

The decision on case **3278/2004/ELB** welcomed the European Parliament's commitment to revise the conditions for the participation of breastfeeding women in competitions, and asked Parliament to ensure that the relevant rules reflect a careful and fair balancing of the competing interests and principles involved, including the principle of equal treatment of candidates. In case **2825/2004/OV**, the Ombudsman found no maladministration by the European Parliament in relation to alleged political interference in the appointment of the Head of Parliament's information office in a Member State.

In addition to the above, the own-initiative inquiry into the integration of people with disabilities by the European Commission (**OI/3/2003/JMA**) partly concerned questions of employment and recorded progress in a number of relevant areas.

### Other matters

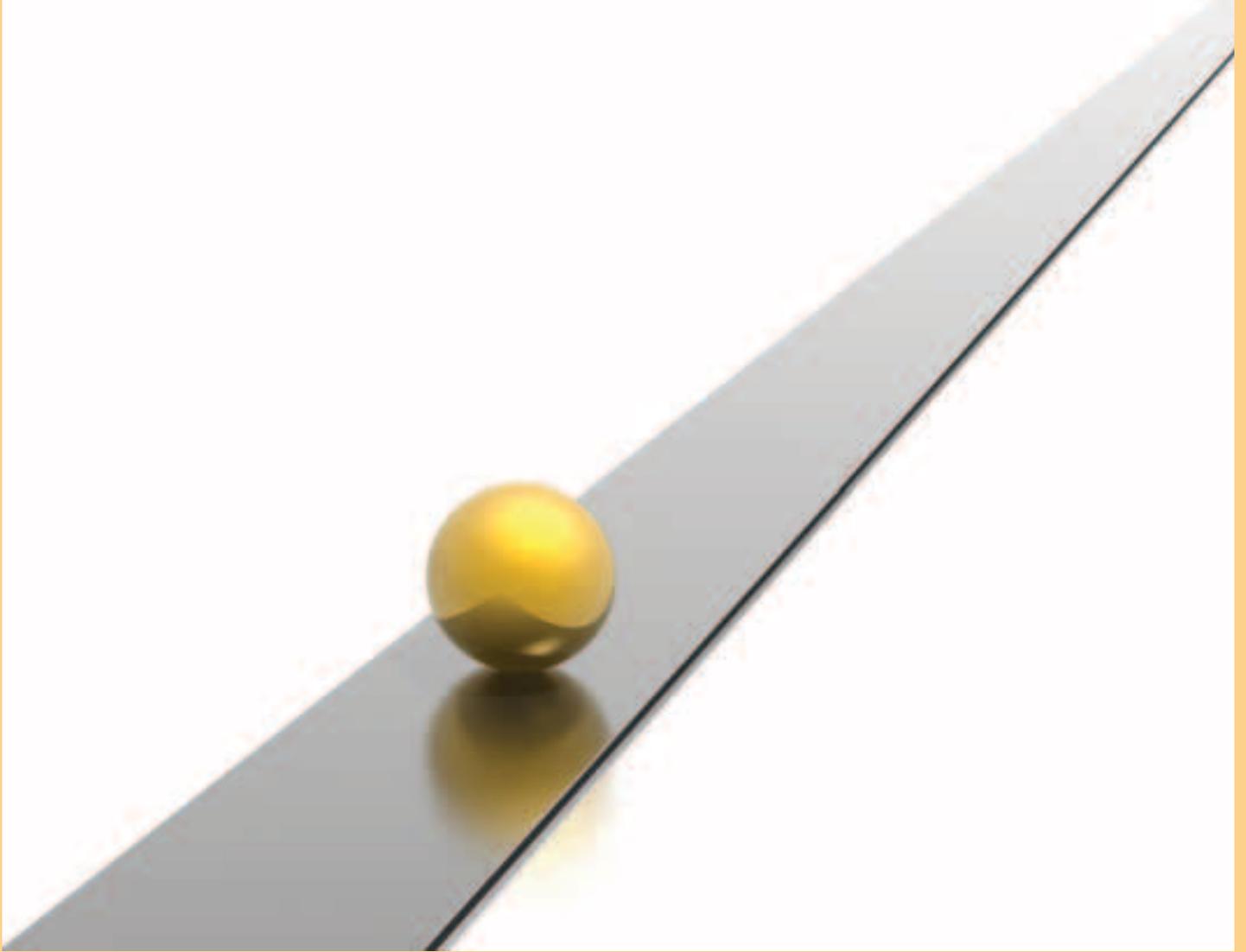
Chapter 3 also contains a number of summaries that fall outside the categories dealt with in the preceding sub-sections. Six will be mentioned here.

The Ombudsman dealt with three complaints against the Commission concerning accuracy of information, two of which (**1475/2005/(IP)GG** and **1476/2005/(BB)GG**) were about information material on the rights of air passengers. The Ombudsman concluded that some of the statements criticised by the complainants were indeed incorrect and misleading. The Commission accepted draft recommendations to correct the material. In case **2403/2006/(WP)BEH**, which concerned allegedly wrong information on a Commission website, the Ombudsman found no maladministration. He underlined that the obligation to be correct and accurate did not prevent the Commission from simplifying information to make it as accessible as possible for the target audience.

Case **1103/2006/BU** concerned a decision of the European Aviation Safety Agency (EASA) relating to the type-certification basis of certain aircraft. After analysing the relevant legal provisions, the Ombudsman was not convinced that the decision had a sufficient legal basis. In reply to a proposal for a friendly solution, EASA said that it had now been able to obtain the information needed to issue a type certificate and had therefore repealed the contested decision.

The Ombudsman made further remarks in two decisions on complaints against the European Investment Bank (EIB) made by Polish NGOs working in the field of the environment. In case **1779/2006/MHZ**, the further remark encouraged the EIB to consider establishing channels of communication with, and seeking information from, relevant national and regional control instances, such as ombudsmen, which could serve as additional sources of information concerning compliance of EIB-financed projects with national and European law. In case **1807/2006/MHZ**, the Ombudsman noted that the complainants had played a valuable role in bringing to the EIB's attention relevant information of which it was previously unaware. The Ombudsman encouraged the EIB to continue to engage constructively with NGOs.

# SUMMARIES OF DECISIONS



3





### 3 SUMMARIES OF DECISIONS

This chapter consists of a selection of summaries of the Ombudsman's decisions in 2007, illustrating the range of subjects and institutions involved in complaints and own-initiative inquiries. It includes summaries of 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. The Chapter ends with a summary of a decision following an own-initiative inquiry and an example of a query submitted by a national ombudsman.

Within each sub-section of this chapter, cases are presented in case number order. For example, in the European Commission sub-section of section 3.1, case 1166/2006/WP precedes case 2280/2006/MF. The full decision in each of the cases can be found in the decisions section of the Ombudsman's website (<http://www.ombudsman.europa.eu>). The relevant decision can be accessed using the case number. Full decisions are included on the website in English and in the language of the complaint, if different. A printout of the full decision, as it appears on the website, may be requested from the Ombudsman's Office.

#### 3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND



##### The European Commission

###### **Alleged failure to ensure respect for environmental directives in relation to a dam project in Portugal**

*Summary of decision on complaint 2725/2004/(PB)ID against the European Commission*

The complainants lodged an infringement complaint with the Commission, concerning the Alqueva Dam and Reservoir project in Portugal. In their complaint to the Ombudsman, they alleged, in summary, that the Commission had failed to take action to ensure respect for Directive 85/337<sup>1</sup> and Directive 92/43<sup>2</sup> in relation to the above project.

The Ombudsman considered that the aims of Directive 85/337 are better served when arguments regarding the adequacy and propriety of an Environmental Impact Assessment (EIA), in light of Articles 3 and 5 of the Directive, are submitted to, and considered by, the competent national authorities in the context of the development consent procedure, pursuant to Articles 6 and 8 of the Directive. Since the Commission must ensure compliance with Article 8 of the Directive, it should deal diligently with allegations made in an infringement complaint that a Member State granted

<sup>1</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7.



development consent in violation of Article 8. However, the complainants in the present case had made no such specific allegation.

The Ombudsman also considered the situation that occurs when allegations about non-compliance with Articles 3 and 5 of Directive 85/337 are submitted *directly* to the Commission, through an infringement complaint. A finding by the Ombudsman that the Commission's rejection of such allegations constitutes maladministration presupposes, in light of the scientific and technical nature of the content of the EIA, that the infringement complaint contained allegations and supporting evidence to demonstrate that the Member State had committed a manifest error of assessment in considering that the EIA met the requirements of Articles 3 and 5 of the Directive. In the present case, the complainants did not show that they had presented relevant arguments demonstrating, in a sufficiently specific and cogent way, such a manifest error of assessment.

In relation to archaeological sites that appeared to have been discovered, for the first time, during the execution of the project, the Ombudsman remarked that there was substantial, objectively reasonable, doubt as to the applicability of Directive 85/337. Moreover, the complainants' argument regarding the independence of the challenged EIAs contested, in essence, the wisdom and adequacy of the Directive. Hence, it did not concern a possible instance of maladministration.

As regards the protection of the Iberian Lynx and respect for Directive 92/43, the Ombudsman concluded that the complainants had not shown that they had submitted to the Commission sufficiently specific and duly substantiated arguments demonstrating that Portugal's list of sites eligible for identification as sites of Community importance was flawed or that Portugal had failed to meet its obligations under Article 12 of the Directive.

In light of the above, and after taking into account the information given by the Commission about the EIA study of the project it had commissioned before granting Community funding, and other steps it had taken in order to ensure respect of EC environmental law in relation to the same project, the Ombudsman considered that the complainants' allegation had not been substantiated.

### **Failure to act on a complaint about the infringement of environmental legislation**

#### *Summary of decision on complaint 3660/2004/PB against the European Commission*

The complainant had complained to the Commission that Ireland was in breach of the EU Habitats Directive<sup>3</sup>. In her view, Ireland should have included a certain wetland in the list of sites sent to the Commission for the establishment of the NATURA 2000 Network. The Commission decided not to take action on the complaint, because it was not evident that the wetlands concerned conformed to the scientific description of habitats covered by the Directive and it was necessary to have more detailed ecological information in this respect. The complainant alleged to the Ombudsman that the Commission wrongly failed to take action on the above matter. She argued that the Commission failed to explain why the relevant wetland was not covered by the Habitats Directive.

After examining the relevant legal provisions and case-law, the Ombudsman found that the Commission can reasonably require appropriate scientific information supporting an allegation about violation of the Habitats Directive. Such information includes, in particular, specific and reliable scientific data concerning both the nature and the protectable character, under the Directive, of the site concerned, at least if this character does not seem to be immediately apparent. In light of the above, the Ombudsman concluded that the Commission had provided satisfactory explanations for its challenged omission, which was not unreasonable. He thus found no maladministration in this regard.

<sup>3</sup>

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7.



The complainant also complained about the Commission's decision not to take further action on arguments relating to possible infringement of the Waste Directive<sup>4</sup>. The complainant had described how waste was being dumped in the wetland concerned. The Commission explained its decision by stating, in summary, that (i) ensuring compliance with Community environmental law is primarily the responsibility of Member States; (ii) a court case brought by the Commission against Ireland in relation precisely to the Waste Directive had been successful (Case C-494/01); (iii) in the case of general and persistent breaches of Community law, the Commission's administrative resources are best employed in seeking structural reform; and (iv) one reform achieved in Ireland was the creation in 2003 of an Office of Environmental Enforcement (OEE), which the complainant could now turn to with her specific grievances.

The Ombudsman accepted the Commission's explanations in this case as satisfactory and also noted that the Commission had given the complainant relevant useful advice. He thus found no maladministration regarding this part of the case.

### **Lack of legal remedy against disciplinary sanction at a European School**

#### *Summary of decision on complaint 3323/2005/WP against the European Commission*

A pupil at the European School in Munich was suspended for 38 school days because he and two of his classmates were held responsible for having dropped two thumbtacks into a soup bowl in the School's canteen. The pupil's mother contested this decision, arguing that her son did not know that his classmates had put into practice what he had expressed as an idea. When the Schools' Complaints Board declared that it was not competent to hear her case, she brought the matter before a German administrative court. However, the court held that the issue did not fall under German jurisdiction. Thereupon, the pupil's mother turned to the Ombudsman.

Since the European Schools are not an institution or body of the European Communities, the Ombudsman asked for an opinion from the Commission, given that the latter has a certain responsibility for the operation of the European Schools, which derives from the fact that it is represented on their Board of Governors and contributes largely to their financing.

The Commission submitted that, under a new version of the applicable rules, the Complaints Board was competent to hear cases such as the complainant's. It added that it saw no objection to the Complaints Board accepting jurisdiction over decisions taken, in such cases, under the previous version of the rules. The Commission thus advised the complainant to re-submit her case to the Complaints Board. However, in the absence of an express provision for retroactivity, the Complaints Board rejected the renewed appeal.

The Ombudsman noted that the case arose from a particularly serious measure taken by a European School and that there was a risk that the complainant would be left without adequate legal protection. He considered that the importance of the Commission's involvement in the European Schools system is such that it must play an active role in order to ensure that the Schools comply with principles of good administration. The Ombudsman therefore suggested that the Commission ensure that a proposal was presented to the Board of Governors for an amendment of the relevant rules.

The Commission recalled that it had already drawn the attention of the Board of Governors to the issue, but that it was the only member in favour of a retroactive extension of the Complaints Board's competences. However, it added that, since it remained convinced of its position, it had insisted that the Secretary-General of the European Schools put the matter on the agenda again. Eventually, the issue was presented to the Board of Governors through a written procedure, the outcome of which was still unclear at the time of the Ombudsman's final assessment of the case.

<sup>4</sup>

Council Directive 75/442/EEC of 15 July 1975 on waste, OJ 1975 L 194, p. 39.



The Ombudsman appreciated the Commission's sustained efforts and closed the case with a finding of no maladministration on the part of the Commission. However, since the complainant's problem had still not been resolved, the Ombudsman decided to inform the new Secretary-General of the European Schools and the German government of the case.

### Anti-dumping provisional measures

#### *Summary of decision on complaint 943/2006/MHZ against the European Commission*

The complainant was an interested party in the Commission's investigation leading to the adoption of anti-dumping provisional measures on imports of certain footwear with leather uppers originating from China and Vietnam<sup>5</sup>. Before the relevant regulation was adopted, the Commission published on its website information concerning the anti-dumping measures in question, and the complainant thereupon asked the Commission for a disclosure of its findings and for the opportunity to present its views. Its requests were refused.

In its complaint to the Ombudsman, the complainant alleged that the Commission (i) failed to ensure the complainant's rights of defence and breached the principle of sound administration, by failing to disclose its findings prior to the formal adoption of provisional measures and by failing to accept the complainant's request of 13 March 2006 to present its comments; (ii) infringed the principle of proportionality (the complainant argued that the Commission did not respect the "fair balance" between the interests, on the one hand, of consumers and those companies to which the anti-dumping duties apply, and, on the other, of those companies to which the duties do not apply); (iii) based its decision on erroneous information (the complainant referred to the relevant publication on the Commission website) and wrongly selected Brazil as the reference country; and (iv) acted in a way that was not transparent, by failing to disclose the identity of the complaining EU producers and of the sampled EU producers.

The complainant claimed that the Commission should withdraw its Regulation imposing provisional anti-dumping measures on certain leather footwear from China and Vietnam, and that the provisional anti-dumping duties which had already been collected should be released. In its observations, the complainant maintained its allegations and claims.

In its opinion, the Commission pointed out that, in accordance with the basic Regulation on anti-dumping<sup>6</sup>, it was not required to disclose its findings before the provisional measures had been taken. The Commission denied any infringement of the complainant's right of defence and any errors or lack of transparency. It referred to its statement of reasons in Regulation (EC) 553/2006.

The Ombudsman did not find any instance of maladministration. He underlined that the complaint concerned the provisional measures which have a specific character and may be changed afterwards. He also pointed out the limited character of the Ombudsman's review in cases concerning complex economic matters. In reaching his decision, the Ombudsman took into consideration the Commission's Green Paper<sup>7</sup> submitted for public consultation in the meantime and reflecting the issue raised by the complainant.

<sup>5</sup> Commission Regulation (EC) No 553/2006, OJ 2006 L 98, p. 3.

<sup>6</sup> Council Regulation (EC) No 384/96, as amended by Council Regulation (EC) No 461/2004.

<sup>7</sup> COM(2006) 763.



## Alleged failure to act in a criminal matter

### *Summary of decision on complaint 1166/2006/WP against the European Commission*

The complainant, a German citizen, was convicted of illegal possession of arms by a German court in 1997. The sentence was suspended. However, in 1998, the complainant was sentenced, *in absentia*, to 16 years in prison by an Italian court. In 2002, he was arrested on the basis of an international arrest warrant and has been imprisoned since that time.

In 2003, the complainant's lawyer informed the Commission about this case. He alleged that the Italian court had violated the *ne bis in idem* principle, which prohibits the institution of legal proceedings twice for the same cause of action. The Commission took interest in the case. However, it explained that it was not competent to review the decisions of prosecution authorities and that there was no possibility of conducting infringement proceedings against a Member State in criminal matters. The only way in which it could possibly act would be to submit, under Article 35(7) of the EU Treaty, a dispute to the European Court of Justice concerning the interpretation of an agreement, for example the Convention implementing the Schengen Agreement, which laid down the *ne bis in idem* principle at European level. However, since certain information was missing, the Commission advised the lawyer that he should pursue the matter further at national level. In 2005, and after a negative decision of an Italian appeals court, the Commission finally concluded that there were not sufficient reasons for it to act.

In his complaint to the Ombudsman, the complainant argued that the Commission should have taken action. He added that he had followed the Commission's advice only in order to give it a basis on which to act. Since the Commission had then failed to act, it had made him waste money on his legal representation.

In its opinion, the Commission explained that it had mentioned Article 35(7) of the EU Treaty because the Italian court had held in 1998 that the *ne bis in idem* principle was not applicable in Italy. However, this statement had not been upheld by later decisions of the Italian courts. Therefore, there was no sign of a general disagreement between the Commission and Italy. The Commission emphasised that it had not promised to take action against Italy in the case of a negative decision of the Italian appeals court and that such a negative decision did not imply that its advice was not correct and not in the complainant's interest.

The Ombudsman recalled that the area of EU law concerning judicial co-operation in criminal matters is still mainly decided through intergovernmental procedures, so that the Commission's possibilities of taking action are rather limited. He noted that the wording of the Commission's letters was extremely cautious. The Commission did not commit itself to taking action but announced that it would consider further possible steps after additional information had been obtained. Furthermore, the Commission's argument for not pursuing the matter further, namely, that the Italian courts now generally accepted the application of the *ne bis in idem* principle, appeared to be reasonable.

Therefore, the Ombudsman closed the case with a finding of no maladministration.

## Alleged failure to reply to an application from a Turkish Cypriot University

### *Summary of decision on complaint 2280/2006/MF against the European Commission*

The complainant is the rector of the Eastern Mediterranean University (EMU), a Turkish Cypriot educational institution located in the northern part of Cyprus. In October 2004, the EMU applied to the Commission for an Erasmus University Charter (EUC). A precondition for receiving an EUC was that the "national authority for education" should confirm the status of the EMU as an institution of higher education. According to the complainant, the Cyprus Ministry of Education refused to give the EMU the status of an institution of higher education.



In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to provide a reply to the EMU's application for the EUC within a reasonable period of time and to provide an explanation for this avoidable delay.

In its opinion, the Commission stated that the reason for its alleged failure to provide a prompt and formal reply to the EMU's application was the absence of confirmation by the relevant authority that the EMU was an eligible institution. On 12 May 2005, the Commission sent a letter to the EMU formally confirming that its application for a EUC had not been successful because it had not been recognised by the relevant national authority as eligible to participate in the Socrates/Erasmus programme.

The Ombudsman considered that the period of time which elapsed between the EMU's application and the Commission's reply of 12 May 2005 was not due to delays which could be attributed to the Commission, but rather appeared to be due to the fact that the EMU refused to apply to the Ministry of Education in Nicosia for the status of an institution of higher education. This issue of eligibility raised sensitive questions due to the political situation in Cyprus. The Commission could not be held responsible for delays which resulted directly from that political situation. Furthermore, the Commission appeared to have regularly informed the complainant of the relevant steps taken to confirm the eligibility of the EMU's application. The Ombudsman further considered that it was not for the Commission to provide any detailed explanation as regards the behaviour of parties other than the Commission.

The Ombudsman also applauded the fact that the Commission appeared to have found an alternative practical solution which would help students and teachers in Northern Cyprus, by affording them opportunities which were similar to those resulting from the EUC.

The Ombudsman therefore found no maladministration by the Commission as regards the complainant's allegation.

### **Allegedly inaccurate information on the Commission's website**

*Summary of decision on complaint 2403/2006/(WP)BEH (Confidential) against the European Commission*

The complaint related to allegedly wrong information given on the website of the Commission's Directorate-General for Enterprise and Industry. The relevant page was entitled "Protecting your ideas". In particular, the German version of the page stated that the Commission would take action against "*Diebstahl von geistigem Eigentum*", that is, literally, "theft of intellectual property".

In this regard, the complainant alleged that "ideas" could not be protected by intellectual property rights, since such protection was reserved for inventions and works *based on* ideas, and that the notion of "theft" could not be applied to intellectual property rights. Since both Commission statements would therefore have to be considered to be wrong, the complainant asked the Commission to remove them, in order to avoid misleading the target audience.

In its opinion, the Commission pointed out that the relevant information on its website formed part of an information package whose aim was to provide information on complex issues, such as the protection of intellectual property rights, to journalists but also to the general public, in clear and understandable language. It explained that the language it had used was in accordance with the language and concepts used by other international organisations. The Commission also stated that it had received very positive feedback from business organisations, which had made the information package available to their members. It concluded that the information provided on the website fulfilled the objective of providing information to the general public in a clear and understandable format.

The Ombudsman pointed out that, in the interest of avoiding misleading information, the content provided by the Commission on its websites must be correct and accurate. At the same time, he



underlined that this did not prevent the Commission from simplifying content, on its website, with a view to making the information contained in it as accessible as possible for the target audience. He concluded that, while arguably not fully satisfactory from an academic point of view, the simple and accessible terms conveyed, to a layperson, a basic notion of what intellectual property entailed. Given that the website did not purport to give a complete and sophisticated explanation of intellectual property rights, the expressions used were sufficiently clear. The Ombudsman found that this view was confirmed by the practice of international organisations. On the basis of the above, the Ombudsman found no instance of maladministration corresponding to the complainant's allegation.

### **Allegation about inaccurate and defamatory accusations against Greenpeace**

#### *Summary of decision on complaint 2740/2006/TN against the European Commission*

A Greenpeace report entitled *Toxic Lobby, How the Chemicals Industry is trying to kill REACH*<sup>8</sup> referred to "revolving doors" between the Commission and the lobbying chemical industry. The report defined this term as the tactic under which EC officials and industry lobbyists were "trading working places among themselves". It illustrated the alleged practice by providing information on the working relationships of certain persons with the Commission and the chemical industry.

A Commission spokesperson subsequently commented, in response to relevant questions put to him by the media, that "Regarding the ... individuals singled out, two of them have never actually worked on REACH. So it is a mystery to me how one can possibly try to construct a claim of revolving doors, improper behaviour. (...) I utterly find these allegations unfounded, unfair and based on sloppy research". Greenpeace complained to the Ombudsman, alleging that the Commission had made inaccurate, misleading and defamatory accusations in relation to a study issued by Greenpeace.

The Ombudsman concluded that this allegation had not been substantiated. He noted, in particular, that, viewed in the context in which it was presented in the report<sup>9</sup>, the term "revolving doors" could reasonably be considered as calling into question the integrity of the persons concerned and the proper discharge of the duties imposed on them by the Staff Regulations. Such accusations were not duly substantiated in the report, which could reasonably explain why the spokesperson reacted strongly.

While finding no instance of maladministration corresponding to the complainant's allegation inquired into, the Ombudsman also underlined the importance of transparency in relation to lobbying activities exercised during the legislative procedures. The Ombudsman acknowledged the importance attached to this in the Commission's ongoing initiative for increased openness<sup>10</sup>, which recognises that the question of lobbying is also related to the behaviour of current or former officials and agents of the EU and is a matter which is explicitly addressed in provisions of the Staff Regulations. The Ombudsman emphasised that the correct and thorough implementation of these provisions is essential to guarantee the achievement of the high standards of transparency that the EU considers are part of the legitimacy of any modern administration.

<sup>8</sup> REACH is the new European chemicals regulation (Regulation (EC) No 1907/2006, OJ 2006 L 396, p. 1) and stands for "Registration, Evaluation and Authorisation of Chemicals".

<sup>9</sup> For instance, that the "revolving doors" part of the report was illustrated by a wind-up doll and that, on the front page of the report, there was a marionette operated by a person whose face was not visible.

<sup>10</sup> More information on this "European Transparency Initiative" is available on [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm)



## The European Investment Bank

### Refusal to provide public access to a finance contract

#### *Summary of decision on complaint 948/2006/BU against the European Investment Bank (EIB)*

An NGO applied to the EIB for access to a finance contract concerning a railway modernisation project in Slovakia. In rejecting the application, the EIB relied on an exception in its rules on public access to documents which mentioned the obligation of professional secrecy and professional ethics, rules and practices applicable in the banking and financial sector. The EIB informed the complainant, however, that it would have no objection to the disclosure of the finance contract by the borrower, or the Slovak Government.

In the complaint to the Ombudsman, the complainant argued that, by delegating responsibility for disclosure to the Member States' authorities, the EIB discriminates against citizens who do not speak the language of the Member State concerned. The complainant also referred to the Aarhus Convention, which provides for an individual right of access to environmental information.

In its opinion on the complaint, the EIB argued that, as a bank, it must ensure mutual trust with its counterparts, which have the legitimate right to expect that it will act within the established legal framework and will not divulge information protected by the obligation of banking confidentiality. In this regard, the EIB referred to its rules on public access, which had been updated from 28 March 2006 as part of its public disclosure policy. Both the old and the new rules provide for an exception for information covered by the obligation of professional secrecy. The new rules reinforce the position by explicitly mentioning the non-disclosure of finance contracts. Finally, the EIB stated that it is committed to promoting access to information and that, for documents which are not available in all official EU languages, a translation can be considered whenever wide interest for a particular document arises.

The Ombudsman's decision recognized the EIB's dual role as both a banking institution operating in the financial markets and a Community body. The Ombudsman considered that the EIB had been entitled to reject access on the basis of its old rules, which applied at the time. The Ombudsman understood that, by also referring to its new rules, which explicitly mention the non-disclosure of finance contracts, the EIB indicated that the established practice was, in light of the confidential banking relationship between itself and its business partners, not to disclose finance contracts under any circumstances, and thus not to assess the possibility of partial disclosure. As regards the Aarhus Convention, the Ombudsman noted that Regulation 1367/2006<sup>11</sup> is binding on the EIB, but that it has been applicable only since 28 June 2007. Thus it did not apply at the time of the complainant's request.

As regards the possible problem of languages which citizens might encounter in addressing requests to national authorities, the Ombudsman made a further remark encouraging the EIB to consider contacting the national authorities in the future, in order to ascertain the possibility of total or, at least, partial disclosure of the finance contracts to which citizens request that it grant them public access. The EIB could, in this way, usefully contribute to mitigating language problems that some citizens may encounter in addressing the corresponding requests for public access to the authorities of the Member State concerned.

<sup>11</sup>

Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ 2006 L 264, p. 13.



### **Alleged lack of compliance with national environmental law of a transport project financed by the European Investment Bank**

*Summary of decision on complaint 1779/2006/MHZ against the European Investment Bank (EIB)*

A Polish environmental NGO complained that the EIB had co-financed the Project “Poland Road Modernisation” although no strategic environmental impact assessment of the Project had been carried out, as required by Polish environmental law. According to the complainant, the EIB thus acted contrary to its own “Environmental Statement”, according to which the EIB ensures that projects it finances comply with the principles and standards set by both EU and national environmental legislation. The complainant also alleged that the EIB failed to inform it about the answer of the Polish authorities which were contacted by the EIB in connection with the complainant’s complaint. The complainant claimed that the EIB should suspend its financing until the legal status of the Project had been clarified.

In its opinion, the EIB stated that the Polish authorities (i) had full responsibility for ensuring compliance with the relevant national legislation and that, after having been contacted by the Bank, (ii) informed it that the relevant Polish law did not require a strategic environmental impact assessment for the Project. Furthermore, in the meantime, it had informed the complainant about the conclusions of the Polish authorities.

In the Ombudsman’s view, the EIB could (i) legitimately consider that the Polish authorities complied with the applicable legal provisions, and (ii) legitimately expect that the same Polish authorities would provide it with *reliable* information concerning the application of those provisions on their part. Therefore, the Ombudsman accepted the EIB’s reasons for relying on the information made available by those authorities, when it signed the loan. He thus found no maladministration as regards this issue. The Ombudsman also noted that, in the meantime, the EIB had informed the complainant about the conclusions of the Polish authorities. The Ombudsman therefore found that no further inquiries were justified in this respect. The Ombudsman made the same finding as regards the complainant’s claim, given that it appeared that the EIB had already made the relevant payment.

The Ombudsman also referred to the findings of the Polish Ombudsman to whom the complainant had submitted a parallel complaint against the Polish authorities. In this regard, he also made a further remark to the effect that, in the future, the EIB could consider establishing channels of communication with and seeking information from, relevant national and regional control instances, such as ombudsmen, which could serve as additional sources of information concerning compliance of projects financed by the Bank with national and European law.



### **The European Medicines Agency**

#### **Alleged lack of information with regard to an anti-depressant**

*Summary of decision on complaint 2370/2005/OV against the European Medicines Agency (EMA)*

The complainant’s husband committed suicide while taking the antidepressant Seroxat/Paroxetine. After her husband’s death, the complainant contacted the European Medicines Agency with regard to the drug’s safety and suicide risk. Among other things, the complainant requested information on the Agency’s scientific opinion on the drug. However, certain of her e-mails remained unanswered. The complainant also considered that the replies that were sent by the Agency were unsatisfactory. In her complaint to the Ombudsman, the complainant alleged: lack of transparency and information by the Agency with regard to her requests; undue delay; that she had not been heard with regard to the safety and suicide risk of the drug; and lack of action by the Agency with regard to her concerns.



In its opinion, the Agency argued that it had not answered certain of the complainant's e-mails because they had been repetitive and pointless. It stated that, for the rest, it had given all the necessary information to the complainant.

After careful analysis of the relevant correspondence, the Ombudsman concluded that the Agency had failed to reply to three questions raised by the complaint. He therefore made a proposal for a friendly solution and invited the Agency (i) to apologise for having considered some of the complainant's e-mails as repetitive and pointless and (ii) to reply to the said questions. The Agency accepted the Ombudsman's proposal, apologised to the complainant and replied to the three questions.

In his decision, the Ombudsman welcomed the fact that the Agency had accepted his proposal. Given, however, that the complainant remained dissatisfied with the letter of apology and with the replies to her questions, he concluded that no friendly solution could be achieved. The Ombudsman nevertheless took the view that since the action taken by the Agency removed the concerns he had identified, there was no longer any maladministration by the Agency.

As regards the allegation that the complainant had not been heard and that there had been lack of action by the Agency, the Ombudsman concluded, on the basis of an analysis of the procedure applicable to the adoption of medicine marketing authorisations, that there had been no maladministration by the Agency. He therefore closed the case.

## 3.2 CASES SETTLED BY THE INSTITUTION



### The European Commission

#### **Alleged unsatisfactory handling of requests concerning horse breeding in Austria**

##### *Summary of decision on complaint 3386/2005/WP against the European Commission*

The *Volksanwalt* (Ombudsman) for the Austrian region of Vorarlberg forwarded a complaint to the Ombudsman, which he had received from a horse breeder residing in the Vorarlberg region. The complainant considered that certain regional rules on stud-books were not in conformity with Community law. Furthermore, his complaint concerned the format and content of identification documents for horses ("horse passports"). The complainant essentially alleged that the Commission had failed properly to reply to his requests for legal clarification.

In its opinion, the Commission submitted that, on the basis of the complainant's submissions, it had been in constant contact with the competent Austrian authorities and had given them indications as to the correct interpretation of Community law. In parallel, it had amended EU rules on horse passports. As regards the general question of the application of Community law concerning organisations that maintain stud-books, which had already been the subject of a request for a preliminary ruling to the European Court of Justice, it had received an infringement complaint, in the framework of which it had again contacted the Austrian authorities. In addition, it was investigating a new complaint from the complainant, in which he had raised suspicions of fraud in relation to the use of horse passports in Vorarlberg.



After careful consideration of the Commission's and the complainant's submissions, the Ombudsman asked the Commission for more information on the different procedures in the framework of which it had been or was still dealing with the issues raised by the complainant.

Thereupon, the Commission gave a detailed overview of two complaint procedures related to the complainant's concerns, both of which were still under investigation. It stated that most of the problems had been resolved. All problems that had not been resolved and that were related to Community law were still being investigated.

In his observations and further contacts with the Ombudsman's services, the complainant reported that certain positive results had been achieved, particularly in relation to the horse passports. He added that he was entirely satisfied with the way his complaint had been handled at the EU level, both by the Commission and by the Ombudsman, and stated that he was optimistic that the Commission's continued activity would lead to the resolution of the remaining problems.

The Ombudsman welcomed the detailed explanations the Commission had provided in the framework of his inquiry and expressed his confidence that it would do its best in order to contribute to the resolution of the remaining problems. The Ombudsman concluded that the Commission appeared to have taken steps to settle the matter and had thereby satisfied the complainant.

### **Dispute concerning formulation of an arbitration agreement**

*Summary of decision on complaint 1126/2006/SAB (Confidential) against the European Commission*

The complainant was working for a Commission Delegation in a third country, on the basis of an ALAT (Administrative and Technical Local Staff) contract. The complaint concerned the Commission's refusal to change, in part, the wording of a draft agreement it had proposed to the complainant concerning the mandate of the arbitration body which would decide on the complainant's entitlement to an education allowance for his children. The relevant part of the proposed agreement referred to an allowance for the complainant's "two children who attend a kindergarten". According to the complainant, this wording was misleading, given that his children attended the "maternelle" section of the French school, which was, in his opinion, a fully-fledged educational establishment. He argued that to include an expression such as "kindergarten" in the arbitration agreement would pre-empt the issue in his case.

The Ombudsman found sufficient grounds for opening an inquiry into the matter and, in his opening letter to the Commission, expressly asked it whether it was willing to accept his proposal for a specific alternative formulation of the crucial point of the draft arbitration agreement.

In its opinion, the Commission proposed a wording for the arbitration agreement which, building upon the Ombudsman's proposal, also met the Commission's concerns in relation to the clear identification of the issue in dispute. The complainant accepted this final proposal and asked the Ombudsman to close the case. The Ombudsman, thus, considered that the Commission had settled the matter.

After the closure of the case, the complainant informed the Ombudsman that the arbitrators had ruled in his favour. He thanked the Ombudsman for his efficient intervention, noting that it had allowed the arbitration to proceed in a fair way.

### **Wrongful rejection of a translation tender**

*Summary of decision on complaint 2633/2006/WP against the European Commission*

A translator living in Germany submitted a bid in reply to an invitation to tender for translation services into Bulgarian, launched by the Commission. The bid was rejected because, according



to the Commission, its linguistic quality had not attained the required minimum mark of 5/10. However, the complainant considered that most of the words and phrases that had been marked as incorrect in the Bulgarian text in question were in fact correct. In his complaint to the Ombudsman, the complainant alleged that the Commission had wrongly rejected his bid. He claimed that the Commission should annul its decision to reject his bid and that it should admit it to the further selection procedure.

In its opinion, the Commission stated that, further to the complainant's complaint to the Ombudsman, it had decided to convene the inter-institutional evaluation committee once again in order to re-examine the tender and to avoid any possible unfair treatment. The evaluation committee, assisted by two additional Bulgarian linguists, had decided to accept two of the complainant's arguments. The final number of errors contained in the bid had therefore been reduced to five, so that the tender had been admitted to the rest of the selection procedure. The bid had finally been accepted with a quality mark of 12/20. The Commission apologised to the complainant for the inconvenience caused.

The Commission furthermore informed the Ombudsman that the complainant had now been offered a framework contract.

The complainant told the Ombudsman's services that he was entirely satisfied with the way in which the Commission had resolved his problem. He also stated that he was impressed by the short period of time it had taken to settle the matter and thanked the Ombudsman for his intervention.

The Ombudsman welcomed the fact that the Commission had rapidly addressed and resolved the problem raised by the complainant and that it had apologised to him. He concluded that the Commission had taken steps to settle the matter and had thereby satisfied the complainant.

### **Failure properly to handle payment due under a contract**

#### *Summary of decision on complaint 3495/2006/GG (Confidential) against the European Commission*

The complainant, a German university, took part in a project under the Erasmus Programme. The European Commission agreed to provide a maximum grant of EUR 45 156. An advance payment of EUR 40 640 was made. At the end, the complainant's total expenditure amounted to EUR 42 833. The handling of the project was entrusted to a Technical Assistance Office (TAO).

In March 2002, the TAO informed the complainant that two items of expenditure amounting to EUR 5 395 and EUR 4 111 were not considered eligible. The TAO noted that the final grant amounted to EUR 33 327. The complainant accepted the deduction of the amount of EUR 5 395 and returned this amount to the TAO. However, following the complainant's objections, the Commission accepted that the amount of EUR 4 111 was eligible. The Commission informed the complainant that the sum to be reimbursed thus amounted to EUR 3 202.

According to the complainant, this calculation was erroneous. It appeared that the Commission had added the amount of EUR 4 111 to the amount of EUR 33 327 that had already been accepted and then deducted this sum (of EUR 37 438) from the advance of EUR 40 640 that had already been released. The Commission had thus omitted to take into account the fact that the complainant had already returned an amount of EUR 5 395.

In March 2004, the complainant informed the Commission that it considered that an error had occurred and that the Commission in effect owed it an amount of EUR 2 193 (i.e., the difference between the Commission's claim over EUR 3 202 and the amount already reimbursed of EUR 5 395).

However, in May 2004, the Commission informed the complainant that, given that the sum of EUR 3 202 had not been reimbursed, it would be set off against other claims that the complainant had against the Commission.



The complainant's further efforts to convince the Commission of the fact that a mistake had occurred were unsuccessful.

In its complaint to the Ombudsman, the complainant essentially alleged that the Commission had failed to handle the matter properly. It claimed that the Commission should reimburse an amount of EUR 5 395, as well as interest amounting to EUR 44.47.

In its opinion, the Commission pointed out that, after having carried out an examination and in view of the evidence submitted by the complainant, it had hastened to pay back the amount of EUR 5 395 to the complainant. It went on to state that this payment had been debited to its account on 20 December 2006. The Commission also took the initiative of reimbursing the interest to the complainant.

In its observations, the complainant confirmed that the relevant amount had been reimbursed in its entirety and that it was satisfied with the outcome of this case. The complainant thanked the Ombudsman for his assistance in this case.

The Ombudsman was pleased to note that the Commission had taken steps to settle the matter and had thereby satisfied the complainant.

In his decision, the Ombudsman stressed that the service of the Commission in charge of the matter (the Commission's Directorate-General Education and Culture) had acted rapidly to deal with this matter. It appeared that the main issue was effectively solved by 20 December 2006, i.e., less than two weeks after the complaint had been forwarded to the Commission. The Ombudsman therefore commended the Commission, in general, and its Directorate-General Education and Culture, in particular, for the exemplary way in which this complaint had been handled.

### **Rejection of application for a traineeship due to prior work experience**

#### *Summary of decision on complaint 471/2007/VIK against the European Commission*

The complainant, a Portuguese national, applied for an in-service traineeship at the Commission. She was informed that her application had been rejected as she did not meet the eligibility criteria described in Point 2.3 of the Rules governing the official traineeship scheme of the Commission ("the Rules"). According to Point 2.3 of the Rules, applications from persons who had already benefited from any kind of in-service training for more than six weeks were not accepted by the Commission. In her complaint to the Ombudsman the complainant alleged that her application had been incorrectly rejected, as her non-consecutive work experience took place during Parliament's plenary sessions and lasted a total of only three weeks. She further alleged that the format of the electronic application form did not allow applicants in her situation to declare non-consecutive work experience and that the Commission had failed to change the form accordingly. The complainant submitted that her attempt to reapply for a traineeship had also been rejected by the Commission. She claimed that she should be allowed to submit an application for a traineeship and that the electronic application form should be altered so that non-consecutive work experience could be declared.

In its opinion, the Commission explained that the complainant's application had been rejected on the grounds that preparatory and follow-up work for the plenary sessions must have required more than mere attendance during the sessions. Furthermore, it had learned that the complainant had had a service card which was valid for three months. However, the Commission pointed out that, after having reviewed her file again and in particular the declaration from the MEP with whom she had worked, it had proposed to accept the complainant's application as eligible and to submit it to the pre-selection committees for the training period to begin in October 2007.

As regards the format of the electronic application form, the Commission clarified that the applicants were invited to declare in the form only relevant professional experience with a minimum duration of one month. The Commission stated that, at the time the application form was designed,



professional experience of less than one month had not been considered relevant and thus did not need to be declared.

The complainant confirmed that she was satisfied with the way in which the Commission had resolved the matter. The Ombudsman closed the case as settled by the institution.

### **Initial failure to pay outstanding amount**

#### *Summary of decision on complaint 1471/2007/(CC)/RT against the European Commission*

In 2004, a French consulting firm participated in an Information Society Technologies (IST) programme supported by the European Commission. The project included EU-Chinese co-operation on the Digital Olympics Programme, which aims at ensuring the successful organisation of the 2008 Beijing Olympic Games, as well as long-term EU-Chinese co-operation in the field of IST. The Commission agreed to pay EUR 178 415.10 for the complainant's participation in the project.

In July 2005, the complainant asked for the reimbursement of a first amount of EUR 90 379.00 which was paid by the Commission. In a second cost statement, the complainant applied for the remaining amount of EUR 88 036.10. One year later, the Commission sent the final financial statement which did not include the outstanding sum. As the Commission did not provide a satisfactory explanation for its failure to pay the amount requested, the complainant turned to the Ombudsman.

In its opinion, the Commission stated that it had reached agreement with the complainant in direct contacts and had reimbursed the complainant the remaining amount of EUR 88 036.10. The complainant stated that he was entirely satisfied with the way in which his problem had been solved. He thanked the Ombudsman for his intervention.

The Ombudsman closed the case since the Commission had settled the matter to the satisfaction of the complainant.

## **3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN**



### **The European Commission**

#### **Alleged unjustified recovery of a sum in the framework of a development project**

##### *Summary of decision on complaint 2577/2004/OV (Confidential) against the European Commission*

The complainant, a company participating in a consortium, was a contractor in the implementation of the Commission's project "EU Assistance to the Rehabilitation of the Lebanese Administration". In August 1999, the complainant signed a contract with the Contracting Authority for the project, namely, the Minister of State for Administrative Reform of the Republic of Lebanon (OMSAR). The complainant faced several problems concerning the way in which the project was handled by the Commission Delegation in Lebanon. By letter of 22 January 2003, the Delegation informed the complainant that an amount of EUR 29 306.65 corresponding to per diem and air ticket costs invoiced by the consortium for the backstopping (home office support) team would be recovered. According to the complainant, the Commission's unfair handling of the contract resulted in serious financial losses for the complainant while also causing damage to the consortium's reputation.



In August 2004, the complainant lodged a complaint with the Ombudsman. The complainant alleged that (i) the Commission's decision to recover the amount of EUR 29 306.65 was unjustified, and (ii) the Commission showed indecisiveness and unresponsiveness with regard to the plan which the consortium submitted in June and December 2002 and again in March 2003 for a second phase of the project. In its observations, the complainant furthermore alleged that (iii) the proposal for a second phase of the project was simply rejected, without affording any opportunity to OMSAR or the complainant to be heard.

In its opinion, the Commission stated, with regard to the first allegation, that it had sufficient legal grounds to claim the reimbursement of that sum. As regards the second allegation, the Commission stated that the delays were not exclusively attributable to it and that it had not remained passive. The Commission rejected the complainant's third allegation, stating that it had shown utmost flexibility towards the complainant.

After a thorough analysis of the file, the Ombudsman considered that a distinction had to be made between the ten-day pre-inception period at the very beginning of the project (in October 1999) and the remainder of the contract period. With regard to the pre-inception period, the Ombudsman concluded that the Commission's decision to recover the travel expenses and per diems of the backstopping team could constitute an instance of maladministration. The Ombudsman therefore made a proposal for a friendly solution between the complainant and the Commission. He therein suggested that the Commission could review its decision to recover the amount of EUR 29 306.65.

As regards the other two allegations, the Ombudsman considered that there was no maladministration.

In its reply to the proposal for a friendly solution, the Commission stated that, in the interest of taking steps to settle the matter, it had reassessed the file and had accepted the Ombudsman's proposal. The Commission explained that expenses totalling EUR 3 536.23, corresponding to per diems and air tickets, had now been deemed eligible and had been deducted from the amount to be recovered. Therefore, the amount to be recovered from the complainant would be reduced to EUR 25 770.42. In its observations, the complainant accepted the friendly solution and thanked the Ombudsman for his intervention.

In his decision, the Ombudsman noted that a friendly solution had been agreed between the complainant and the Commission. The Ombudsman therefore closed the file.



## The European Monitoring Centre for Racism and Xenophobia

### **Alleged failure to provide adequate information to an unsuccessful tenderer**

*Summary of decisions on complaints 1858/2005/BB and 1859/2005/BB against the European Monitoring Centre for Racism and Xenophobia (EUMC)<sup>12</sup>*

The complainant asked Mr D., a Head of Unit in the European Monitoring Centre for Racism and Xenophobia (EUMC), to explain why his offers in response to two Open Calls for Tender had been unsuccessful. Mr D. replied to the first request, but he did not reply to the complainant's subsequent requests to know the identity of the winning organisation and the cost of its offer and to obtain a comparison of the rating grades and the scores of his offers and the winning offers. In the first complaint, the complainant also argued that the EUMC had failed to apply transparent criteria.

<sup>12</sup>

The Ombudsman notes that in accordance with Article 33 of Council Regulation (EC) No 168/2007 of 15 February 2007, the EUMC ceased to exist with effect from 1 March 2007 and its role is thereafter carried out by the European Union Agency for Fundamental Rights.



According to the EUMC, the requests were not addressed to the designated contact person, and ought to have been sent by ordinary or registered mail, not by e-mail. It made a general reference to receiving approximately 300 "spam" e-mails per day. It referred to the contract award notice for the name of the winning offer and the cost of its offer and provided the rating grades and explanations, maintaining that the procedure had been transparent.

The Ombudsman was not satisfied with the EUMC's explanations. In this regard, he recalled that the Administration is required to provide the requested information unless there are valid and adequate grounds for not doing so. Moreover, after receiving requests for information on matters for which he or she is not responsible, an official should either (i) provide the contact references of the person responsible or (ii) forward the request directly to the person responsible. Neither of these steps was taken in the present case. Further, the Ombudsman observed that the purpose of an obligation of transparency is to enable verification that the principle of equal treatment of tenderers has been respected and to facilitate review of the impartiality and integrity of the procurement procedures. Relatedly, the duty to provide reasons addresses the need to ensure an appropriate level of transparency in contract-awarding procedures<sup>13</sup>.

The Ombudsman therefore made proposals for friendly solutions requesting the EUMC to provide adequate information on the compared scores and adequate explanations regarding the transparency of the first tender procedure or, alternatively, reasonable compensation.

The EUMC accepted the Ombudsman's proposals for friendly solutions and the complainant expressed his gratitude to the Ombudsman for his work and for providing a reliable safeguard for transparency in the EU.

### 3.4 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN



#### The European Parliament

##### **Inadequate reasoning and failure to provide information concerning the mark received in an oral test**

*Summary of decision on complaint 1782/2004/OV (Confidential) against the European Parliament*

The complainant participated in an Open Competition organised by the European Parliament but was informed by Parliament that he had obtained only 19/40 in the oral test and that, therefore, his name could not be included on the reserve list. By letter of 11 March 2004, the complainant contested this result. He stated that he considered the result incomprehensibly low and asked for a review of his oral test and for his name to be put on the reserve list. He also asked to be provided with a breakdown of the marks and with the weighting of the marks for each subject of the oral test. According to the complainant, Parliament sent him a vague and inadequately reasoned reply on 25 March 2004, which merely confirmed his marks.

In June 2004, the complainant complained to the Ombudsman alleging that Parliament's competitions service had sent a vague and inadequately reasoned reply to his letter of 11 March

<sup>13</sup>

Case C-92/00, *HI*, ECR [2002] I-5553, paragraph 46.



2004. He claimed (i) that his performance in the oral test should be reconsidered and his name should be included on the reserve list of the competition and (ii) that he should be provided with (a) a clear justification for his marks; (b) a breakdown of his marks in the oral test; (c) the weighting of the marks for each subject of the oral test; (d) information as to the total number of candidates and their marks; and (e) the correct answers to all questions.

In its opinion, Parliament stated that, in its letter of 25 March 2004, it had reconfirmed the marks of the complainant. Parliament observed that the Selection Board had respected the notice of competition and that no irregularity had been found. Parliament also pointed out that the Open Competition in question consisted of only one oral test which was meant to assess the performance of each candidate in relation to that of the other candidates. It went on to say that, since there was only one overall mark, it could not communicate to the complainant the “correct” answers to the questions or provide him with a detailed breakdown of his mark.

The Ombudsman conducted further inquiries with regard to several aspects of the complainant’s claims and also carried out an inspection of Parliament’s file concerning the competition and the assessment of the complainant’s oral test. During the inspection, it appeared that, apart from one general sentence in the final report of the Selection Board, there was no other document available concerning the evaluation of the candidates’ oral tests.

In his decision, the Ombudsman concluded that there had been maladministration with regard to Parliament’s failure adequately to reason its reply to the complainant’s letter of 11 March 2004. In a critical remark, the Ombudsman pointed out that, in a case where there was only one oral test with merely a single overall mark, it is particularly important for Parliament adequately to address requests for reconsideration of that mark. With regard to the complainant’s claims, no instance of maladministration was found. The Ombudsman however made a further remark in which he recommended that, in cases like the present one where a competition consists of only one oral test, Parliament could encourage Selection Boards to document their appraisals in a more detailed way. He went on to argue that such a course of action would not create an unbearable burden of extra work in cases where the number of candidates taking part in the oral test is limited.

### **Alleged political interference in the appointment of the Head of Parliament’s Information Office in a Member State**

#### *Summary of decision on complaint 2825/2004/OV (Confidential) against the European Parliament*

The complainant applied in November 2002 for the post of Head of Parliament’s Information Office in a Member State. The President of the Selection Board informed him in February 2003 that, after a comparative examination of the merits of the candidates, he was not among the six best candidates who were invited for an interview. By registered letter of 19 February 2003, the complainant complained against the rejection of his application and asked to be reconsidered for the post. He received no reply to his letter. The complainant suspected that there was opposition from one particular political party to his appointment to the post.

In September 2004, the complainant therefore complained to the Ombudsman alleging that (i) political parties were involved in the appointment of the Head of Parliament’s Information Office, and that such involvement is contrary to the Staff Regulations, and that (ii) Parliament had failed to reply to his registered complaint of 19 February 2003.

In its opinion, Parliament stated that an independent Selection Board had been constituted and that the selection criteria adopted by the Board and applied equally to all candidates were based on the detailed profile described in the vacancy notice. In his observations on Parliament’s opinion, the complainant stated that certain MEPs from the Member State concerned had interfered in the selection procedure and appeared to know the identity of the candidates and had seen their applications and CVs.



The Ombudsman carried out three series of further inquiries asking Parliament, among other things, to explain what measures it had taken to guarantee the impartiality of the selection procedure, as well as the anonymity of the candidates and their applications towards persons other than the members of the Selection Board. The Ombudsman also asked Parliament to comment on the complainant's statement that certain unnamed MEPs had sought direct contact with Parliament's Secretary-General in order to influence the selection procedure. In its replies, Parliament stated that the Selection Board had respected the secrecy of its proceedings and that there was no proof that the Board members had communicated information concerning candidates. Parliament's President also confirmed that he could guarantee that there had been no interference by the Secretary-General in the work of the Selection Board or attempts to influence the Secretary-General.

In his decision, the Ombudsman firstly pointed out that allegations against individual MEPs are outside his mandate, because they do not concern an act of a Community institution or body. The Ombudsman understood the complainant's first allegation as suggesting that Parliament officials involved in the selection procedure allowed themselves to be influenced by MEPs. In this regard, the Ombudsman noted that the complainant had submitted no tangible evidence supporting that allegation and that the further inquiries conducted did not produce any concrete evidence that could confirm the complainant's suspicions. The Ombudsman also took note of Parliament's clear statements that there had been no interference in the selection procedure. With regard to the complainant's particular request to have testimony taken from an assistant of an MEP, the Ombudsman pointed out that his Statute does not allow him to take testimony from MEPs or their assistants and that, in any event, given Parliament's clear statements which ought to be given credence, taking testimony on a voluntary basis from the persons concerned would not be appropriate. On the basis of these considerations, the Ombudsman concluded that it had not been established that the selection procedure for the post in question had been open to or influenced by "outside" interference. No instance of maladministration was therefore found.

The Ombudsman made however a critical remark with regard to the second allegation of failure to reply to the complainant's registered letter of 19 February 2003. Parliament replied to this letter only on 12 October 2005, that is, more than two and a half years later and a year after the Ombudsman had drawn its attention to the failure to reply.



## The European Commission

### Unfair listing of company in the Early Warning System

*Summary of decision on complaint 2468/2004/OV (Confidential) against the European Commission*

The complainant, a company, was involved in a number of projects financed by the Commission. In the framework of a commercial dispute, one of its subcontractors obtained from a court in Luxembourg an attachment order against it. When the Commission was informed of this order, it blocked all payments to the complainant and listed it in its so-called Early Warning System (EWS). The EWS alerts the Commission to cases where a beneficiary or potential beneficiary has or may have committed (serious) administrative errors or even fraud. When the Commission was informed that the attachment order was limited to EUR 50 000, it decided to retain this sum from the amounts due to the complainant. However, the complainant remained on the EWS until the attachment order was lifted nearly one year later.

In its complaint to the Ombudsman, the complainant alleged that the Commission's decision (i) to retain the sum of EUR 50 000 and (ii) to list the complainant in the EWS was unfair, illegal, unfounded and infringed the European Code of Good Administrative Behaviour. It also claimed that the Commission should circulate an explanatory letter to all Commission services in order to restore its reputation. According to the complainant, its listing in the EWS resulted in serious



problems as regards the award of new contracts by the Commission, major delays in payments and irreparable damage to its reputation.

In its opinion, the Commission submitted that the blocking of EUR 50 000 was fully justified and that the listing in the EWS was made in accordance with its internal rules.

The Ombudsman carried out further inquiries and also an inspection of the relevant documents. As regards the Commission's decision to retain the sum of EUR 50 000 from the complainant, the Ombudsman concluded that there was no maladministration because the Commission appeared to have acted in conformity with the law.

The Ombudsman noted that the Commission had maintained the complainant in the EWS list even after it had been informed that the attachment order had been limited to EUR 50 000 and after it had blocked the said amount. The Ombudsman considered that the negative effects of the listing mentioned by the complainant appeared credible. In these circumstances, the Ombudsman considered that the complainant's continued listing in the EWS was unfair and constituted an instance of maladministration. The Ombudsman therefore considered that there was no need to examine the other allegations.

The Ombudsman contacted the complainant with a view to exploring the possibility of a friendly solution. However, the complainant preferred to receive the Ombudsman's final decision. The Ombudsman therefore closed the case with a critical remark.

### **Leaks to the press of the names of candidates for the post of Head of Representation in Malta**

#### *Summary of decision on complaint 452/2005/BU against the European Commission*

A candidate for the post of Head of Representation in Malta complained against the Commission in connection with the disclosure to, and appearance in, three local newspaper articles, of the names of candidates for the post. The three press articles named respectively several candidates for the post, nine candidates shortlisted for interview, and three female candidates who were shortlisted for the post. The complainant considered that the three leaks of the candidates' names to the press constituted a breach of trust and Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>14</sup>.

In its opinion on the complaint, the Commission informed the Ombudsman that the European Data Protection Supervisor (EDPS) had opened investigations into the first leak. Following the Ombudsman's request, the EDPS informed the Ombudsman of the outcome of his investigations. In his decision, the Ombudsman referred to the Memorandum of Understanding between the European Ombudsman and the European Data Protection Supervisor of 30 November 2006 which stipulates that "[n]either authority envisages opening an inquiry if the other authority is dealing, or has dealt, with what is essentially the same complaint, unless the complainant presents significant new evidence in a case where the other authority has already concluded its inquiry." The Ombudsman considered, therefore, that it would not be appropriate for him to continue his inquiry in so far as the first leak was concerned.

However, the Ombudsman requested the Commission to provide him with information on the outcome of its own internal investigations into the information contained in the second and third press articles, as well as with lists of its staff members and/or third parties who were authorised by it to have access to the personal data that appeared in each of the three press articles.

<sup>14</sup>

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.



In reply, the Commission stated that no objective evidence had been found that would enable it to identify the source of the leaked data. It also stated that an exhaustive list of persons having access to the information on which the press articles were based could not be established because of (i) the large number of recipients of the file containing the applications for the post, (ii) the numerous secretariats and staff involved, and (iii) the potential number of people with access to the electronic data in question.

In his decision, the Ombudsman found that the Commission's providing the confidential personal data to a "large number of recipients" and "numerous secretariats and staff involved" and the subsequent impossibility to establish the lists of persons having access to that personal data might have reasonably increased the possibility of leaks of the personal data to unauthorised recipients. The Ombudsman therefore made a critical remark that such a situation was not compatible with the Commission's obligations under Regulation 45/2001 and constituted an instance of maladministration.

### **Allegation of unjustified secrecy in CAP database**

#### *Summary of decision on complaint 1693/2005/PB against the European Commission*

In order to find out who are the beneficiaries of EU agricultural subsidies, the complainant asked the Commission for public access to the annual accounting reports sent by the Member States to the Commission in relation to the Common Agricultural Policy under Regulation 2390/1999.

The Commission stated that the accounting information provided to it by the Member States was confidential under Regulation 2390/1999. It also stated that the reports no longer existed as "documents" since their content had been loaded onto a very large database (Regulation 1049/2001<sup>15</sup> provides for public access to "documents", not information).

In a proposal for a friendly solution, the Ombudsman suggested to the Commission that it could provide the information concerned to the complainant as a matter of good administration. This was rejected.

In his closing decision, the Ombudsman found that the Commission had failed to give valid reasons for its reliance on the confidentiality provision in Regulation 2390/1999. The Commission had only referred in general terms to the interests protected and had not given adequate explanations about the applicability of a relevant exception. The Ombudsman noted in this context that the new Financial Regulation<sup>16</sup> and a recent political agreement of the Council on a new Regulation obliging Member States to publish national lists of beneficiaries<sup>17</sup> undermined the Commission's arguments as regards confidentiality.

With regard to the non-existence of the reports as "documents", the Commission conceded that it was problematic to generally exclude the very large amounts of information in public databases from public access. Outputs of "routine operations" were therefore dealt with as "documents". However, the information requested by the complainant in this case could not be retrieved through a "routine operation", but would require complex new programming of the database.

The Ombudsman concluded that the Commission's general position regarding public access to information in databases was not satisfactory. The Ombudsman refrained, however, from pursuing this issue further, pointing out, in particular, that this was a complex general new legal issue that the Community legislator could examine in the context of the reform of Regulation 1049/2001. The

<sup>15</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

<sup>16</sup> Articles 53b(2)(d) of the amended Financial Regulation.

<sup>17</sup> See press release of the Agriculture and Fisheries Council, 22-23 October 2007 (available at: <http://www.eu2007.pt/NR/rdonlyres/948633D2-DCD5-4413-AFCD-86688D5161F3/0/96806.pdf>).



Ombudsman therefore closed the case with a critical remark. However, the Ombudsman also stated that he would consider consulting the members of the European Network of Ombudsmen to find out what answers had been given to these problems at the national level and to be made aware of the best practices. The results of such a consultation would be made available to the Commission and published on the Ombudsman's website.

### **Refusal to grant access to an internal advisory document**

#### *Summary of decision on complaint 1844/2005/GG against the European Commission*

A German journalist asked the Commission for access to a document its services had drawn up in 1995, in the preparation of a decision on possible infringement proceedings against Greece in relation to the construction of a new airport in Spata. The Commission rejected the request, arguing that disclosure of the document would seriously undermine its decision-making process. The journalist took the view that disclosure of the document could hardly have such an effect, given that it was nearly ten years old. Furthermore, he argued that there was a substantial public interest in the provision of EU funds for the project in question and that possible irregularities concerning the project had already been the subject of articles in major newspapers.

In its opinion, the Commission explained that the document contained assessments and opinions of its services and reflected the debate between them. It referred to guidelines according to which documents relating to infringement proceedings were normally to be released once the case was closed. Exceptions to that rule were applied in a restrictive manner. However, in the Commission's view, disclosure of the document in question would seriously affect its ability effectively to exercise its powers in relation to infringement procedures.

Following a thorough assessment, the Ombudsman addressed a draft recommendation to the Commission, asking it to grant access to the document. In his view, the Commission's interpretation of the relevant exception to the rule of public access was so general that it appeared to deprive the exception of its meaning.

In its detailed opinion, the Commission insisted that access could not be granted. It added that this position was based solely on the sensitivity of the information contained in the document. On delicate issues such as the Spata airport case, it was essential for it to receive unfettered advice from its services and to keep the freedom of not following their recommendations. According to the Commission, disclosure of the document would reopen discussions and cast doubts as regards the legality of its decision.

In his observations, the complainant emphasised that, if the document was of such an "explosive" character that its disclosure could call into doubt the legality of the Commission's decision, the interest in disclosure clearly outweighed any other interests.

The Ombudsman noted that the Commission had only explained in its detailed opinion why it had refused access to the specific document in question, whereas, in its handling of the complainant's application and in its opinion, it had only referred to the protection of its decision-making process in general terms. Therefore, the Ombudsman considered that the Commission had failed to handle the complainant's request properly.

As regards the substance of the document, the Ombudsman accepted the Commission's offer that he could inspect it. Following this inspection, he stated that he was not convinced that disclosure of the document would have the negative consequences invoked by the Commission.

The Ombudsman closed the case with a critical remark.



## Unfair contractual conditions

### *Summary of decision on complaint 3008/2005/OV against the European Commission*

The four complainants were employed as International Contracted Civilians with the European Union Police Mission "Proxima" in Skopje in the Former Yugoslav Republic of Macedonia (FYROM). When their "Proxima I" contracts expired, they were invited to sign "Proxima II" contracts, which would take effect on the following day. The complainants noticed significant changes in the new contracts with regard to their salary, social security contributions, removal allowances, and grading. Since the alternative was to be unemployed the next day, they signed the contracts.

In their complaint to the Ombudsman, the complainants alleged that they were informed too late of the conditions of their new contracts and had to sign the contracts under pressure. The complainants also claimed, in substance, that they should continue to enjoy the same conditions as before with regard to salary, social security contributions, removal allowances and grading.

In its opinion, the Commission denied that pressure had been put on the complainants. As regards the complainants' claims, the Commission argued that by signing the new contracts, which were not extensions of the previous contracts, the complainants had accepted the conditions stipulated therein.

The Ombudsman took the view that the Commission had failed to inform the complainants in good time of their new conditions of employment and that this was an instance of maladministration. However, the delay had not, in itself, meant that the complainants were put under pressure.

With regard to the complainants' claims, the Ombudsman found no maladministration, since a Commission Communication of August 2004 provided a basis on which Proxima II contracts could contain different conditions from those that applied to Proxima I contracts.

With regard to the complainants' claim concerning the social security contributions, the Ombudsman found that there had been an additional delay in informing the complainants of their social security entitlements and that, because of this delay, the complainants had unnecessarily continued to contribute to their private insurances. The Ombudsman's office contacted the complainants in June 2007 with a view to proposing a friendly solution to this aspect of the case. The complainants indicated, however, that they did not want to pursue that possibility. The Ombudsman therefore closed the case. The closing decision contained two critical remarks concerning the maladministration that had been identified.

## Refusal to provide access to correspondence between the Commission and Denmark

### *Summary of decision on complaint 3193/2005/TN against the European Commission*

A Danish MEP requested access to certain correspondence between the Commission and the Danish authorities. The Commission rejected the request on the grounds that disclosure of the documents concerned would undermine the protection of the purpose of investigations (Article 4(2), third indent of Regulation 1049/2001<sup>18</sup>), as well as seriously undermine the institution's decision-making process because the documents related to a matter where the decision had not been taken by the institution (Article 4(3), first subparagraph, of the Regulation).

In the course of the Ombudsman's inquiry, the Commission eventually gave access to the documents requested. However, since the Commission appeared to defend the propriety of its former refusal,

<sup>18</sup>

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



the Ombudsman considered it useful to consider whether the Commission had been entitled to reject the complainant's original request for access.

The Commission argued that the exchange of letters constituted part of its monitoring process designed to verify compliance with Community law, which could result in the launching of an infringement procedure against Denmark under the Euratom Treaty. Underlining the political sensitivity of the issue, the Commission noted that disclosure of the letters would have been premature.

The Ombudsman asked the Commission to explain, *inter alia*, what kind of investigation the requested letters belonged to, in order to justify the application of Article 4(2), third indent, of the Regulation.

The Commission replied that the main question was whether the Danish authorities should inform it of the results of monitoring of environmental radioactivity in Greenland, so that it could determine whether remedial action would be appropriate. The Commission noted that it had originally requested this information on the assumption that the Euratom Treaty applied to Greenland, but had later acknowledged that it does not. The Commission argued that, at the moment of the complainant's access request, it was still unclear whether it would pursue its efforts to obtain the information from Denmark on a voluntary basis.

The Ombudsman observed that, in dealing with the request for access, the Commission had put forward that the monitoring could potentially result in an infringement procedure under the Euratom Treaty, even though, by the time the request was made, the Commission had already acknowledged that the Euratom Treaty does not apply to Greenland. The Ombudsman noted that the Commission had not explained what (other) kind of investigation, within its competence, it could have conducted. The Ombudsman therefore concluded that the Commission's original refusal to provide access to the letters was not based on valid and adequate grounds.

### **Alleged unfair treatment in tender procedure**

#### *Summary of decision on complaint 3693/2005/ID (Confidential) against the European Commission*

This complaint concerned the rejection of the complainant's bids on the basis of a provision of a procurement notice, under which "[n]o more than (...) six applications for all the lots can be submitted by a natural or legal person (including legal persons within the same legal group), whatever the form of participation (...)". The complainant, a European Economic Interest Grouping (EEIG) established under Regulation 2137/85<sup>19</sup>, alleged that the Commission was wrong to accuse X, a member of this EEIG, of applying for seven lots.

The Ombudsman first noted that it is not his role to assess the admissibility of tenders and to substitute his judgment for that of the Institution concerned as to whether a tender meets the applicable admissibility/eligibility criteria. Accordingly, he examined whether the Commission provided valid and adequate grounds for its challenged decision.

The Ombudsman further remarked that, under the principle of equal treatment of tenderers and the relevant obligation of transparency in the tender procedures, the admissibility and award criteria stated in a tender notice (or similar document) must be formulated in such a way as to allow all reasonably well-informed and normally diligent tenderers to interpret them in the same way. In addition, when tenders are being assessed, the above-mentioned criteria must be applied objectively and uniformly to all tenderers. In this context, information made publicly available by the contracting authority to potential tenderers, with regard to the interpretation and application of the admissibility or award criteria, or of rules of Community law which may reasonably be considered

<sup>19</sup>

Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), OJ 1985 L 199, p. 1.



as having a bearing on the application of these criteria, is particularly important. Such information is likely to affect the preparation and formulation of the tenders and is substantially relevant to the significant Community interest of affording potential tenderers the opportunity to compete on an equal footing. Hence, when the contracting authority examines the tenders submitted to it, due regard must be had to the content of such information, at least to the extent that its accuracy or propriety has not been contested by a (potential) tenderer or it is not manifestly violative of the relevant provisions of the tender notice (or similar document) or of Community law.

In the present case, the Ombudsman found that the Commission failed to comply with the above-mentioned requirement. The Ombudsman also found that the Commission failed to give adequate reasons for its challenged decision, taking into account certain passages of its Communication on the participation of EEIGs in public contracts and programmes financed by public funds, on which the complainant could, at least in principle, justifiably rely when preparing its bids. Taking into account that the relevant contracts had been awarded, signed and were currently being executed and that the challenged decision concerned the selection phase of the tender procedure, the Ombudsman concluded that it would not be justifiable to accept the complainant's claim that the challenged decision should be revoked and the applications should be reinstated. Given that the complainant had not made any other claim, the Ombudsman closed the case with a critical remark.

### **Avoidable delay in dealing with infringement complaint**

#### *Summary of decision on complaint 962/2006/OV against the European Commission*

In November 2002 and March 2003, several Dutch residents of the municipality of Bellingwolde, lodged infringement complaints with the European Commission. They alleged an infringement of Directive 85/337/EC<sup>20</sup> by the German authorities who had authorised the building of a wind-park in the German municipality of Rhede, close to the Dutch border. The alleged infringements concerned the detrimental consequences of the project on the environment and the lack of an environmental impact assessment. The Commission several times promised to take a decision with regard to the complaints. However, by April 2006, the complainants had still not heard from the Commission. One of the complainants therefore complained on behalf of them all to the Ombudsman, alleging avoidable delay by the Commission.

In its opinion, the Commission stated that it had launched an infringement procedure against Germany within one year of the receipt of the complaints, in accordance with the Commission's Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law<sup>21</sup>. The case was then dealt with in an expeditious way until the German authorities' reply to the Commission's reasoned opinion was received in June 2004. A final decision on the case had not been taken until June 2006 because of extensive discussions within the Commission and the difficulty of the legal question concerned.

The Ombudsman concluded that, up to the date of the sending of the reasoned opinion to the German authorities on 1 April 2004, there appeared to have been no undue delay by the Commission. The Ombudsman noted, however, that the Commission's decision to close the case had only been adopted on 28 June 2006, that is to say nearly two years after the German authorities' reply to the reasoned opinion had been received. In this regard, the Ombudsman considered that the Commission's discretion when dealing with infringement complaints does not make the general principle that decisions have to be taken within a reasonable period of time inapplicable. The Ombudsman noted that the Commission had referred only to its internal consultations. He concluded that, in the absence of specific explanations that could justify the delay, the Commission

<sup>20</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

<sup>21</sup> COM(2002) 141 final, OJ 2002 C 244, p. 5.



had failed to deal with the complaints within a reasonable period of time and therefore closed the case with a critical remark.

### **Failure of the Commission to properly investigate a complaint into the allegedly erroneous transposition of the insurance mediation directive**

#### *Summary of decision on complaint 3543/2006/FOR against the European Commission*

The Ombudsman received a complaint against the Commission from an Irish citizen concerning the alleged failure of the Commission to properly investigate the allegedly erroneous transposition of Directive 2002/92/EC (the “Insurance Mediation Directive”) into Irish law. According to the complainant, sellers of insurance policies in Ireland had to comply with legislation which was designed to regulate the sale of investment products. Further, banks which also acted as insurance intermediaries were wrongly excluded from the application of insurance mediation rules.

The Commission stated in its opinion that the Insurance Mediation Directive was adopted under the principle of “minimal harmonisation”. Thus, Member States were entitled to regulate details. Therefore, Member States, and not the Commission, were responsible for any so-called “gold-plating”. The Commission also stated that it had been informed by the Irish authorities that a revision of the Irish legislation, designed to resolve the situation, was in the pipeline. According to the information the Commission received from the Irish Finance Ministry, banks mediating insurance products will be included in the scope of application of the revised rules. The Commission also stated that, in addition, the issue of possible overregulation of intermediaries in Ireland should be settled by the revised rules.

The Ombudsman, in his decision, first of all observed that the Commission had failed to classify initial correspondence from the complainant as a “complaint”. As a result of this procedural error, the Ombudsman made a critical remark.

The Ombudsman also noted that the complainant and the Commission, and indeed the Irish authorities, now shared the view that certain aspects of the legislation transposing the Insurance Mediation Directive into Irish law do not conform with the Insurance Mediation Directive. In particular, the complainant and the Commission now appear to agree that Ireland wrongly excluded banks from the insurance mediation rules.

The Ombudsman noted that the Irish authorities made a commitment to the Commission to rectify the errors identified in Irish legislation. The Ombudsman considered that the Commission is obliged to verify if Ireland has indeed adopted the legislation which it has committed to adopt, with an eye to rectifying the errors that the complainant identified in Irish legislation and the Commission agrees do exist. A failure to do so on the part of the Commission would constitute maladministration. In this context, the Ombudsman stated, in a further remark, that the Commission should arrive at a decision to issue a formal notice to Ireland, or a reasoned decision to close the case, by no later than 26 January 2008.

### **Public access to documents: inadequate reasons for extension of deadline, and delay in registration of applications**

#### *Summary of decision on complaint 3697/2006/PB against the European Commission*

The complainant had, under Regulation 1049/2001<sup>22</sup>, applied for public access to documents held by the European Regulators Group. His application was handled by the Commission.

<sup>22</sup>

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



The complainant inquired as to the apparently considerable delay in registering his application. According to Regulation 1049/2001, the deadline for replying to an application for access begins on the date of registration. The Ombudsman concluded that the complainant did not appear to wish to pursue this matter as a specific allegation. However, he did make a further remark in which he stated that, in his view, the legal obligation to handle applications promptly implies that the Commission should organise its administrative services so as to ensure that registration normally takes place, at the latest, on the first working day following receipt of an application.

The complainant had furthermore alleged maladministration with respect to the Commission's extension of the deadline for replying to his application. On this issue, the Ombudsman found maladministration and made a critical remark concerning delay and a second critical remark concerning the standard of the reasons given for its actions.

With respect to the second critical remark, the Ombudsman noted that, under Regulation 1049/2001, the institutions are required to provide applicants with "detailed reasons" for the extension of the deadline for replying to a confirmatory application. What constitutes such sufficiently "detailed" reasoning may differ from case to case. Nevertheless, a simple reference (as in this case), formulated in general terms, to the need to consult other Commission services cannot satisfy the foregoing requirement, since it does not contain adequate elements to enable review of whether the extension is reasonably justified. Such elements could consist of, in particular, explanations as to why the consultation of other specific Commission services is necessary, and why the internal consultation could not have been completed earlier. In the present case, the Commission merely justified its extension of the deadline as follows: "for the handling of your application, we have to consult other Commission services". This kind of statement did not amount to "detailed reasons" within the meaning of Regulation 1049/2001. The Commission, thus, failed to comply with the relevant statutory requirement. Accordingly, its failure to do so constituted an instance of maladministration.

### **Failure to apply Communication on Relations with Complainant**

#### *Summary of decision on complaint 446/2007/WP against the European Commission*

A German lawyer alleged that the Commission had failed properly to deal with a letter in which he had asked it to open infringement proceedings against Germany. According to him, Germany was in breach of Community law because it was practically impossible to pursue former or current members of the German government for criminal wrongdoing. The Commission had replied that it had no competence to intervene in the matter.

In his letter to the Commission opening the inquiry, the Ombudsman pointed out that the Commission's "Communication on Relations with the Complainant in Respect of Infringements of Community Law"<sup>23</sup> could be applicable in this case. In the Communication, the Commission laid down standards for its contacts with complainants who consider that measures or practices in a Member State infringe Community law.

In its opinion, the Commission argued that the Communication was not applicable because the complainant's complaint did not relate to an area in which it could conduct infringement proceedings, but fell within the scope of police and judicial co-operation in criminal matters (Title VI of the EU Treaty).

The Ombudsman noted that the complainant had clearly intended his letter to constitute an infringement complaint. He pointed out that the second paragraph of point 3 of the Communication contains an exhaustive list of reasons on the basis of which correspondence shall not be investigable as an infringement complaint, for example if "it sets out a grievance which clearly falls outside the scope of Community law". The Communication provides that, where the Commission decides not

<sup>23</sup>

Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law, OJ 2002 C 244, p. 5.



to register a correspondence as a complaint, it shall “notify the author to that effect by ordinary letter setting out one or more of the reasons listed in the second paragraph of point 3”.

The Ombudsman considered that the Commission’s failure to apply the Communication when it replied to the complainant was maladministration and made a critical remark. However, the Ombudsman took the view that the complainant’s complaint indeed appeared to concern a “grievance which clearly falls outside the scope of Community law”. In particular, the complainant had not explained in what way he considered that the accountability of politicians in criminal matters related to an obligation of Germany under the EC Treaty. Therefore, the Ombudsman considered that the Commission had correctly concluded that it could not investigate the complainant’s concerns by way of an infringement procedure.

### **Failure to publish the annual report 2005 on access to documents**

#### *Summary of decision on complaint 668/2007/MHZ against the European Commission*

Statewatch complained to the Ombudsman that, contrary to its legal obligation resulting from Article 17(1) of Regulation 1049/2001<sup>24</sup>, the Commission had failed to publish, in 2006, its annual report 2005 on access to European Parliament, Council and Commission documents. According to the complainant, the annual report is the only way for citizens to be informed about the Commission’s response to access to documents requests. Statewatch claimed that the failure to publish the report on time was a clear case of maladministration.

In its opinion, the Commission stated that it was well aware of the obligation to publish an annual report. However, the drafting of the report had been delayed because of a major turnover of staff in the service dealing with access to documents issues. Furthermore, priority had been given to the launching of the public consultation on the review of the access to documents regulation.

In the Ombudsman’s view, the reasons given by the Commission to explain its failure were not convincing. He found that the Commission’s failure to publish the 2005 report before the end of 2006 was an instance of maladministration and made a critical remark. The Ombudsman emphasised that citizens can hardly trust the institutions if they are not able to respect the deadlines they themselves set.

The Ombudsman also made a further remark, in which he pointed out that the publication of reports is a key mechanism of accountability to, and communication with, European citizens. The Ombudsman further encouraged the Commission to set a good example to the many new Community agencies which have recently been established, by giving high priority in future to ensuring the timely publication of reports.

Since, in September 2007, the Commission finally published the report in question, the Ombudsman closed the case.

<sup>24</sup>

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



## The European Personnel Selection Office

### Challenge to the compulsory on-line registration and information system for competitions

*Summary of decision on complaint 3346/2004/ELB against the European Personnel Selection Office (EPSO)*

EPSO adopted a system under which candidates in open competitions are required to register and communicate with EPSO on-line. The complainant challenged this system. His main argument was that this requirement is discriminatory, given the low Internet penetration rate in some Member States and the difficulties in gaining access to the Internet in rural areas. EPSO rejected the complainant's allegations, by referring, in particular, to the reasons for adopting the foregoing system.

The Ombudsman, first, noted that the principle of equality of treatment of candidates or potential candidates in competition proceedings is a fundamental principle binding on Community institutions and bodies. The Ombudsman found that the requirement at issue is not, in principle, discriminatory and unfair on the basis (i) of certain statistical data about Internet use or accessibility provided by the parties or found on the Eurostat website; (ii) that there was no evidence that a significant number of persons interested in applying to EPSO and participating in EPSO competitions have been prevented from doing so because of their restricted access to the Internet; (iii) that, as a matter of common knowledge and experience, accessibility to the Internet is constantly increasing; (iv) of EPSO's justifications for the system, namely, greater transparency and improving accessibility to information.

However, the Ombudsman did not exclude the possibility that, in certain cases, candidates and potential candidates may have considerable and objectively justifiable difficulty in applying to EPSO, or communicating with EPSO, via the Internet. In such cases, the above-mentioned principle of non-discrimination requires that EPSO provide for an exception to the requirement for on-line registration and communication. The Ombudsman, thus, found that EPSO's failure to do so amounted to maladministration and addressed a relevant draft recommendation to EPSO. He also suggested, on the basis of a pertinent analysis, that EPSO could require requests for an exception to be supported by evidence of a kind that the person concerned could reasonably be expected to provide in the circumstances.

EPSO did not accept the draft recommendation. In doing so, it relied upon arguments that the Ombudsman found unconvincing. He noted, inter alia, that administrative convenience, in the sense of avoidance of difficulties in assessing fairly and even-handedly relevant requests for an exception, taking into account his relevant analysis in the draft recommendation, is insufficient to validate what otherwise is a violation of the principle of equal treatment of candidates or potential candidates. The Ombudsman, thus, maintained his above finding of maladministration and closed the case with a critical remark.

### Linguistic requirements of candidates in open competitions

*Summary of decision on complaint 3114/2005/MHZ against the European Personnel Selection Office (EPSO)*

The complaint concerned the language regime for recruitment competitions, following the enlargement of 1 May 2004, when ten new Member States joined the Union.



Shortly before the enlargement, a Regulation was adopted which temporarily derogates from the normal provisions of the Staff Regulations, by allowing posts to be filled by appointment of nationals of the new Member States<sup>25</sup>. The Regulation also provides for competitions to continue to be held, up to the year 2010, for the recruitment of officials whose main language is one of the 11 languages of the old Member States.

EPSO then organised two sets of competitions.

The first set of competitions was restricted to nationals of the new Member States. Candidates had to have one of the 10 languages of the new Member States as their main language. They also had to demonstrate a satisfactory knowledge of one of the 11 languages of the old Member States. Furthermore, they were obliged to take part of the tests in English, French, or German.

The second set of competitions was open to nationals of all 25 Member States. Candidates had to have one of the 11 languages of the old Member States as their main language and demonstrate a satisfactory knowledge of another of those 11 languages. They were not, however, obliged to demonstrate knowledge of English, French, or German.

The Association of Graduates of the Polish National School of Public Administration complained that, by organising the competitions in this way, EPSO had discriminated against citizens of the new Member States.

In its opinion, EPSO took the view that each competition has its own objectives and, therefore, discrimination or unfair treatment could not be alleged on the basis of a comparison of one notice of competition with another. EPSO also pointed to Regulation 401/2004 ("the Regulation") as the legal basis for the competitions in question.

The Ombudsman asked EPSO to explain why only the 11 "old" languages were acceptable as the second language and why only candidates from new Member States were required to have knowledge of English, French, or German. In reply, EPSO stated that the knowledge of one of the 11 languages was "better suited to the realities of the administrative organisation of the institutions during the transitional period", and that "there is no possible obligation to take account of the immense variety of individual choices that candidates could make when choosing a second language."

The Ombudsman's analysis of the case began by recalling Article 12 of the EC Treaty, which forbids discrimination on grounds of nationality, and the case-law of the Community Courts concerning the principle of non-discrimination.

He pointed out that legislation must be interpreted in the light of these legal principles and that language requirements for employment may constitute indirect discrimination on the grounds of nationality, unless they are justified.

The Ombudsman considered that the requirements as regards the main languages of the competitions were authorised by the Regulation. However, the Regulation said nothing about requirements for second languages, nor did it require knowledge of English, French, or German.

Whilst in principle there might be convincing reasons why knowledge of specific Community languages could be necessary for the performance of a future official's duties, EPSO had not adequately explained why only the 11 old languages were acceptable as a second language.

The Ombudsman also accepted that it might be justifiable to require knowledge of specific languages to ensure efficient internal communication. But EPSO had not explained why it considered it was essential for candidates from the new Member States to know English, French, or German, but not

<sup>25</sup>

Council Regulation (EC, EURATOM) 401/2004 of 23 February 2004 introducing, on the occasion of the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia, special temporary measures for the recruitment of officials of the European Communities, OJ 2004 L 67, p. 1.



necessary for candidates in the second set of competitions to demonstrate knowledge of one of those languages, even though the two groups of candidates would carry out substantially identical functions.

The Ombudsman therefore concluded that EPSO had infringed the principle of non-discrimination and made a critical remark.



## The European Investment Bank

### Failure to ensure compliance of river reconstruction works with EU law

#### *Summary of decision on complaint 1807/2006/MHZ against the European Investment Bank (EIB)*

Two Polish environmental NGOs complained to the Ombudsman that, contrary to its "Environmental Statement", the EIB failed to ensure compliance of 2001 flood reconstruction and repair works with the Environmental Impact Assessment Directive. The complainants also alleged that the EIB failed to exercise due diligence in its October 2004 monitoring mission to Poland, and claimed that it should ensure that all projects that it agrees to finance in non-Member States comply with the Directive. Finally, the complainants complained that the EIB refused access to the Project's Finance Contract and related documents.

In its opinion, the EIB took the view that, on the basis of (i) its assessment of the relevant Reports sent by the Polish authorities and (ii) its monitoring visits to Poland, including the 2004 visit, the relevant procedures applied by the Polish authorities were acceptable. The EIB refused access to the Finance Contract and implied that finance contracts were covered by professional secrecy as a matter of principle. However, in the course of the inquiry, it disclosed the related documents.

The Ombudsman found that the EIB failed to react to relevant Polish Reports which appeared to suggest that the Polish authorities did not consider the relevant Directive procedure necessary for the works. This approach appeared to be contrary to the interpretation of the European Court of Justice of the Directive<sup>26</sup>. The Ombudsman found that this constituted an instance of maladministration and made a critical remark. However, as regards the allegation concerning the 2004 monitoring mission to Poland, he considered that no further inquiries were justified, given that the EIB appeared to have given a reasonable follow-up to the complaints received from various NGOs during that mission. The Ombudsman made the same finding as regards the complainants' claim because it appeared that the EIB had taken some initiatives to improve its procedure and disseminate EU best practice.

As regards access to the Finance Contract, the Ombudsman, relying on an earlier decision, found that it was reasonable to accept that the EIB, in its role as a banking institution, was obliged to respect professional secrecy. He also noted that the EIB had disclosed the other documents during the inquiry. For these reasons, no further inquiries were justified regarding access to documents.

The Ombudsman made a further remark noting that the complainants had played a valuable role in bringing to the EIB's attention relevant information which it was previously unaware of. He went on to say that he trusted that, in the future, the Bank would continue to engage constructively with NGOs in the different Member States and also outside the EU.

<sup>26</sup>

C-72/95 *Kraaijeveld* [1996] ECR I-5403, paragraphs 32 and 49.



## The European Anti-Fraud Office

### Request for access to a list creates a “disproportionate burden”

#### *Summary of decision on complaint 2350/2005/GG against the European Anti-Fraud Office*

A German journalist asked the European Anti-Fraud Office (OLAF) for access to a complete list of its correspondence with the German federal government and the governments of the German *Länder* in the years 2000 to 2004. He based his request on Article 11 of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>27</sup>. OLAF replied that such a list did not exist and that it would be a disproportionate burden on its staff to produce one. OLAF offered that it was ready to help as much as possible if the complainant narrowed down his request, which, however, the latter refused to do.

In the course of the Ombudsman’s inquiry, OLAF maintained its position. It argued that the complainant’s request would require it to review some 8 000 documents. Most of its heads of unit would have to be involved in order to check the correspondence falling under their responsibility. In addition, a German lawyer and the data protection officer would have to ensure that data protection requirements were met. According to OLAF, this would distract its limited human resources from their core task of deterring and detecting fraud. However, as proof of its good will, OLAF provided the complainant with a list covering the relevant correspondence that had been exchanged in the last three months of 2004.

The Ombudsman noted that OLAF did not deny the complainant’s right to receive information of the type he requested, but only contended that compiling all the information would require a disproportionate effort. He recalled that, according to case-law of the Community courts, a request for access to documents could only be rejected on this basis in exceptional cases. In the Ombudsman’s view, this case-law was also relevant in the present case. The Ombudsman was not convinced that complying with the complainant’s request would require a disproportionate effort by OLAF. Only around one-fifth of the documents on the list provided by OLAF were relevant. It thus appeared that the overall number of documents concerned was far smaller than OLAF had indicated. The Ombudsman accepted that the remaining list was still very long and that, therefore, ascertaining that it did not include confidential data was likely to require a considerable amount of work. However, and with a view to the data that needed to be checked in doing so, he concluded that OLAF had not established that this work was disproportionate.

The Ombudsman pointed out that, if citizens are to be able to make use of their rights under Regulation 1049/2001, they need to know what documents are in the possession of the administration concerned. He took the view that, as long as there is no easily accessible register or as long as this register is not sufficiently complete, the EU institutions must be prepared to provide citizens with ad-hoc lists, even if their preparation constitutes a considerable burden.

Given that OLAF rejected the Ombudsman’s proposal for a friendly solution in this case and, subsequently, his draft recommendation, the Ombudsman closed the case with critical remarks relating both to its procedural and its substantive aspects.

<sup>27</sup>

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



### 3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION



#### The European Commission

##### **Publication of incorrect and misleading information on rights of air passengers**

*Summary of decisions on complaint 1475/2005/(IP)GG and 1476/2005/(BB)GG against the European Commission*

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91<sup>28</sup> entered into force on 17 February 2005. In order to inform passengers of their new rights under Regulation 261/2004, the Commission prepared and published a leaflet, a poster, and a fact sheet. The Commission also produced a short video presentation and issued a press release to mark the coming into force of the Regulation. All these materials were also made available on the Commission's website.

Two associations of airlines — the European Regions Airlines Association (ERA) and the International Air Carrier Association (IACA) — considered that the material published by the Commission contained incorrect and misleading information.

After the Commission had rejected the bulk of their objections, the two associations turned to the Ombudsman.

Both associations alleged that the information concerning passengers' rights under Regulation 261/2004, which the Commission had published in its poster, leaflet, fact sheet, and included in its video presentation, contained inaccurate and misleading statements. The complainants claimed that the Commission should withdraw these statements.

The complaint submitted by ERA covered certain further issues (alleged failure to act fairly and reasonably and to be service-minded, accessible, and helpful; alleged failure to reply to letters within an appropriate period of time; and a claim for an apology).

After a thorough inquiry, the Ombudsman arrived at the conclusion that a number of the statements criticised by the complainants were indeed inaccurate or misleading. The Ombudsman therefore addressed, in both cases, a draft recommendation to the Commission, urging the latter to correct these statements. In the draft recommendation concerning the complaint submitted by ERA, the Commission was also requested to present an apology to the complainant.

In its detailed opinion, the Commission informed the Ombudsman that it had taken note of his draft recommendation and that the leaflet, poster, fact-sheet, and video presentation in question had been withdrawn from its website. The Commission further pointed out that replacement information would be produced and that the new information material had been sent to the stakeholders concerned, including the complainants, for comments.

<sup>28</sup>

OJ 2004 L 46, p. 1.

*Case 1476/2005/(BB)GG*

In its observations, IACA pointed out that it was pleased to note that, due to the Ombudsman's draft recommendation, the Commission had withdrawn its misleading documentation on passenger rights from its website. IACA stressed that it was satisfied with the procedure leading to the publication of the new version of the Commission's poster on 4 April 2007.

In view of the above, the Ombudsman considered that the Commission had satisfactorily implemented the draft recommendation that was made in this case.

*Case 1475/2005/(IP)GG*

In its observations, ERA welcomed the action taken by the Commission and added that the Commission had accepted all the comments it had made on the new information material. However, ERA considered that three issues still needed to be addressed: (i) Since the old version of the poster was still on display at many EU airports, the Ombudsman was requested to make a specific recommendation that the Commission should instruct airports to withdraw these posters. (ii) The Ombudsman should, furthermore, seek a commitment from the Commission that it will consult airline associations and act on their input prior to changing the new poster or producing any new material. (iii) The Commission had not apologised to the complainant and had made no reference to this part of the draft recommendation in its detailed opinion. The Ombudsman was requested to pursue this issue.

As regards the first issue (which had also been mentioned by IACA), the Ombudsman noted that he trusted that the Commission would take the necessary steps in this direction once the issue had been drawn to its attention through this decision. The Ombudsman however invited the Commission to report to him on this issue by 31 July 2007.

As regards the second issue, the Ombudsman took the view that it would not be appropriate to extend his examination to this further claim at this advanced stage of his inquiry. The complainant remained free to submit a new complaint concerning this issue, after having made the appropriate prior approaches to the Commission.

As regards the third issue, the Ombudsman regretted the position that the Commission had adopted in this respect. The Ombudsman reiterated his view that the Commission ought to have presented its apologies in the present case. He took the view, however, that it would not be appropriate to make a special report to the European Parliament in this case. The Ombudsman therefore closed the case with a critical remark.

**Recovery of sums unduly paid to heir of a former official***Summary of decision on complaint 1617/2005/(BB)JF against the European Commission*

The complainant was the only heir of a former employee of the Commission who died in November 1998. In May 2003, the Commission asked the complainant to repay his father's pension for the month of December 1998, which it had unduly paid. The complainant, although initially accepting to reimburse the sum in instalments, through a payment plan covering 12 months, alleged that it would be unfair for the Commission to enforce the recovery order. He argued that he had acted in good faith and that he was unaware of the amounts in the relevant bank account because of tragic circumstances, namely, multiple bereavements over a short time. The complainant claimed that the Commission should cancel the said recovery order.

In its opinion on the complaint, the Commission took the view that the overpayment had been patently such that the complainant could not have been unaware of it, had he exercised ordinary care. It also considered that he could not invoke his good faith because he failed to respect the reimbursement plan established at his own request.



In his observations, the complainant explained that he had changed his view regarding the recovery after he learned about the Appointing Authority's power to waive a debt, in accordance with Article 85 of the Staff Regulations. He emphasised that he was receiving unemployment benefit and would have liked the Commission to adopt a more humane and less mechanical approach to his case.

In his proposal for a friendly solution, the Ombudsman noted that the overpayment in question occurred as a result of an error by the Commission. The Ombudsman recognised that the Commission has a duty to recover sums unduly paid, in order to protect the financial interests of the Community. However, he also pointed out that, in some Member States, the public authorities responsible for taxes and benefits have, in consultation with the relevant national ombudsman, adopted policies to ensure that overpayments that result from official mistakes are not recovered unless it is fair and reasonable to do so. In this respect, the Ombudsman emphasised that exceptional circumstances such as bereavement may be accepted by those authorities as a reasonable explanation for a beneficiary's failure to check the correctness of payments made to bank accounts. In view of the exceptional circumstances of the case, the Ombudsman therefore invited the Commission to consider whether it would be fair and reasonable to cancel, or meaningfully reduce, the recovery order.

In its reply, the Commission maintained that it had acted in accordance with relevant legal provisions. Although it agreed that the overpayment resulted from an error it had committed, the Commission explained that error by the fact that December was the month during which the annual adaptation of the pension took place. Thus, it still had to pay to the estate of the complainant's father the annual "adaptation" of his pension corresponding to the period from July to November 1998.

The Ombudsman took note of the fact that some of the multiple payments made to the estate of the complainant's father in December 1998 had been duly paid, whereas others had not been duly paid. In light of this, the Ombudsman could not support the argument that the undue nature of the payment was "patently" such that the complainant could not have been unaware of it. The Ombudsman emphasised that in the present case the Commission was dealing with a person who was neither a "servant" nor an "official" and who could not be presumed to have the special responsibility required from officials and servants as regards payments made to them. In light of the above, the Ombudsman made a draft recommendation to the Commission to consider whether, in addition to being fair and reasonable, it would be in accordance with the applicable rules, to cancel the recovery order.

In its reply, the Commission stated that, considering the importance that the Ombudsman had given to the present case, it had decided to accept the Ombudsman's recommendation and, exceptionally, cancel the recovery order.

In his decision, the Ombudsman welcomed the Commission's reply and emphasised the importance of the Commission's positive approach in the present case for strengthening citizens' expectations of a more humane EU.



## 3.6 CASES CLOSED FOR OTHER REASONS



### The European Parliament

#### Refusal to organise new written tests for a candidate who gave birth one day before the tests

##### *Summary of decision on complaint 3278/2004/ELB against the European Parliament*

The complainant applied for an internal competition organised by Parliament, mentioning that she was pregnant and noting the likely date of the delivery, that is, 17 June 2004. She was invited to the tests, which took place on 2 July 2004, and gave birth one day before. On the same day that she gave birth, she informed Parliament that she would not be able to attend the tests and requested that she be allowed to take them at a later date. Parliament refused. In her complaint, the complainant alleged that this refusal was discriminatory.

Following a relevant friendly solution proposal and draft recommendation by the Ombudsman, he concluded that the challenged refusal did not appear to reflect a fair balancing of the competing interests involved. After recalling the fundamental principles of non-discrimination on the basis of gender and of respect for private and family life, the Ombudsman noted that, in the context of gender classifications, or classifications involving burdens upon a fundamental right, the defender of the challenged classification has to show that the classification serves a legitimate objective of general interest and that the means employed are proportional to the achievement of this objective. The Ombudsman found that the contested decision involved *de facto* gender discrimination and that such a refusal may make the exercise of the fundamental freedom of procreation much less attractive to female candidates and, hence, may involve a real and appreciable burden upon their right to respect for private life. Therefore, Parliament had to defend its contested decision.

As to Parliament's reference to the principle of equal treatment of candidates and the relevant requirement that the written tests be conducted on the same date for all candidates, the Ombudsman considered that this was a legitimate objective of general interest, the pursuit of which might, but did not by itself, justify the upholding of the challenged decision. Parliament, which admitted that it could have organised the test at a later date, failed to show that it complied with the principle of proportionality, which requires a fair balancing of the competing principles and interests involved. In particular, Parliament did not demonstrate that, in establishing the date of the test, it took properly into account, in light of Case 130/75 *Prais v Council*<sup>29</sup>, the information it had received from the complainant about the likely date of the childbirth. In this context, Parliament appeared to have failed to give due consideration to the inherent uncertainty in the date of the labour; the postnatal physical condition of the woman who had given birth; and the time needed for an adequate recovery, for the purposes of her participation in the competition.

The Ombudsman therefore concluded that the challenged refusal was not well-founded. Since, however, the complainant meanwhile withdrew her claims and in light of Parliament's commitment to revise the conditions for the participation in future competitions of women who have recently given birth and its policy on the setting of the date of tests for pregnant candidates, the Ombudsman decided not to further pursue the matter. He also welcomed Parliament's commitment to revise the conditions for the participation of breastfeeding women in competitions, and asked Parliament to ensure that the relevant rules reflect a careful and fair balancing of the competing interests and principles involved, including the principle of equal treatment of candidates.

<sup>29</sup>

Case C-130/75 *Prais v Council* [1976] ECR 1589.



## The European Commission

### Medical coverage of former spouses under the Joint Sickness Insurance Scheme

*Summary of decisions on confidential complaints 368/2005/(MF)(BU)BM and 2776/2005/ID against the European Commission*

The divorced former spouse of an official of the Commission was diagnosed with a serious illness. In response to an application for the reimbursement of medical costs under the Joint Sickness Insurance Scheme for Officials of the European Communities (JSIS), the complainant was informed that medical insurance only lasted for a period of one year following divorce. The complainant claimed that the Commission should extend this period.

The Ombudsman's inquiry revealed that the Commission had agreed to grant the complainant an additional period of insurance cover as regards expenses resulting from the serious illness. The Ombudsman also noted that the Commission had taken the initiative to invite the complainant to contact its services if the treatment of the serious illness had to be continued once the JSIS coverage had expired.

The Ombudsman pointed out that the approach taken by the Commission appeared to be consistent with the complainant's fundamental rights to health care and to good administration, taken together<sup>30</sup>. The Ombudsman therefore found that no further inquiries into the complainant's claim were necessary.

As regards the general issue, the Commission acknowledged, in the course of the inquiry, that it had now become aware of a lacuna in the area of sickness insurance cover for ex-spouses of officials. It informed the Ombudsman that it had introduced a new general implementing provision, with effect from 1 July 2007, to allow the JSIS to continue, subject to certain conditions, to cover officials' ex-spouses suffering from serious illnesses.

The Ombudsman subsequently dealt with a similar issue in the context of case 2776/2005/ID. In that case, the Ombudsman's inquiry revealed that the Commission had decided to prolong the complainant's medical coverage by the JSIS for almost two years, because the complainant was suffering from a grave illness, the treatment of which apparently required considerable expenses. The Ombudsman praised the Commission for its decision to prolong the JSIS coverage, noting that it reflected a sensitive and pragmatic consideration of the complainant's medical condition.

### The blanking out of names of industry lobbyists

*Summary of decision on complaint 3269/2005/TN against the European Commission*

The complaint, which was submitted on behalf of an NGO, concerned the Commission's blanking out of the names of industry lobbyists in documents to which access had been granted under Regulation 1049/2001<sup>31</sup>. The complainant alleged that the Commission had failed to comply with its duty to provide proper access to documents. The complainant argued that the Commission had failed to explain how disclosure of the names in question would "undermine the protection of the

<sup>30</sup> Articles 35 and 41 of the Charter of Fundamental Rights of the European Union.

<sup>31</sup> Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



privacy and the integrity of the individual” as stipulated in Article 4(1)(b) of Regulation 1049/2001, and that it wrongly relied on Article 8(b) of Regulation 45/2001<sup>32</sup> when blanking out the names.

The Commission argued that disclosure of the names of the individuals concerned could interfere with their right to privacy, which is protected by Community legislation regarding the protection of personal data. The Commission considered its decision to blank out the names to be in accordance with the understanding of the European Data Protection Supervisor (EDPS), as explained in his background paper on public access to documents and data protection.

The Ombudsman wrote to the EDPS, asking him to comment on the position taken by the Commission, in particular on the applicability of Regulation 45/2001 to the present case. In reply to the Ombudsman’s request, the EDPS stated that he wanted to await the Court of First Instance’s judgment in Case T-194/04, *Bavarian Lager v Commission*, before examining the present case. The EDPS explained that he had intervened in the case in question in support of the applicant, because in his view, the position of the Commission did not lead to a satisfactory outcome.

Since it was not clear when the judgment in Case T-194/04 would be delivered, the Ombudsman decided to examine the present case without waiting for the Court’s judgment and the EDPS’s opinion.

The Ombudsman then analysed the case in light of the EDPS’s guidelines, according to which three conditions have to be fulfilled in order for access to be refused under Article 4(1)(b) of Regulation 1049/2001. The Ombudsman did not consider the Commission to have established that any of the three conditions was fulfilled. The Ombudsman therefore found that the complainant’s allegation appeared to be founded.

In such a situation, the Ombudsman would normally seek to find a friendly solution, in accordance with Article 3(5) of the Statute of the Ombudsman. However, noting that the issue of blanking out names of persons in documents to which access had been granted under Regulation 1049/2001 was under review by the Court of First Instance in Case T-194/04, the Ombudsman took the view that it would not be useful to propose a friendly solution, since the Commission would not be likely to take any action before the Court delivered its judgment. The Ombudsman therefore considered that there were no grounds to continue his inquiry and closed the case. He pointed out that the complainant could consider presenting a new complaint to the Ombudsman once the Court has given judgment in Case T-194/04 and the Commission has acted thereon.

*Note: The Court of First Instance delivered its judgment in Case T-194/04 on 8 November 2007. The Court annulled the decision of the Commission refusing to disclose the names of all participants at a meeting in the context of proceedings for failure to fulfil obligations.*



**Europol**

### **Alleged abuse of power with regard to access to data**

#### *Summary of decision on complaint 183/2006/MF against Europol*

The complainant requested the French Data Protection Commission (CNIL) to ascertain whether data relating to her were stored by Europol. The CNIL forwarded the letter to Europol, which informed the complainant that no personal data concerning her, to which she was entitled to have access in accordance with Article 19(1) of the Europol Convention in combination with the applicable French legislation, were stored at Europol. The Appeals Committee upheld Europol’s decision.

<sup>32</sup>

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.



In her complaint to the Ombudsman, the complainant alleged that Europol had wrongly refused to give information about data relating to her and to grant her access to these data. In her view, this constituted an abuse of power. The complainant further alleged that Europol had failed carefully to deal with her appeal to the Appeals Committee because the French translation of its reply was addressed to another appellant.

The Director of Europol informed the Ombudsman that the Ombudsman's letter asking Europol for an opinion on the complaint had been forwarded to Europol's Joint Supervisory Body (JSB).

In its letter to the Ombudsman, the JSB stated that the decision of the Appeals Committee was binding for all parties concerned. Article 195(1) of the EC Treaty provides that the Ombudsman conducts inquiries into possible instances of maladministration, unless the alleged facts are or have been the subject of legal proceedings. Since the Appeals Committee was to be regarded as an independent committee providing individuals with a legal remedy against Europol's decisions, the JSB assumed that this exception applied in the present case. As regards the alleged failure to have carefully dealt with the complainant's appeal, the JSB stated that two decisions in two different cases had been adopted by the Appeals Committee and that the first page of the French translation of the decision on the complainant's appeal had inadvertently been replaced by the first page of the French translation of the other decision. The JSB emphasised that such mistakes should not occur and added that it would send its apologies to the complainant for this error.

In his decision, the Ombudsman pointed out that the relevant exception set out in Article 195(1) was only applicable where a case had been dealt with by or was pending before a court and that this interpretation was confirmed by Article 1(3) of his Statute. The Ombudsman noted that he was not convinced that the Appeals Committee should be regarded as a judicial body for the purposes of Article 195 of the EC Treaty and that the fact that it had examined a given case should therefore prevent him from carrying out an inquiry. He considered, however, that it was not necessary for him to take a definitive position on this issue in the present case. The Ombudsman noted in this context that the complainant had not provided any concrete information that would support her allegation that Europol's decision had been wrong and abusive. Nor had a careful examination of the decision of the Appeals Committee yielded any information that would call into doubt Europol's decision. In view of these circumstances, the Ombudsman considered that there appeared to be no grounds to pursue his inquiry into the complainant's first allegation.

As regards the alleged failure to have carefully dealt with the complainant's appeal, the Ombudsman noted that the JSB had apologised to the complainant for the mistake that had occurred. The Ombudsman therefore took the view that there were no grounds to pursue his inquiry into this aspect of the case either.



## The European Aviation Safety Agency

### **Alleged lack of a legal basis for decision on airworthiness certification of aircraft**

*Summary of decision on complaint 1103/2006/BU (Confidential) against the European Aviation Safety Agency (EASA)*

The complainant complained to the Ombudsman about the implementation by EASA of Article 2(3)(a)(i) of Regulation 1702/2003<sup>33</sup> laying down implementing rules for inter alia the airworthiness and environmental certification of aircraft. The above provision stipulates, in essence, that:

<sup>33</sup>

Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ 2003 L 243, p. 6.



- a product not certificated under Joint Aviation Authorities procedures, which has a type-certificate (TC) issued before 28 September 2003 by a Member State, shall be deemed to have a TC issued in accordance with Regulation 1702/2003 (EASA-TC), unless
- EASA determines that the type-certification basis of such a product does not provide for a sufficient level of safety.

According to the complainant, it follows from the above provision that products (aircraft) with a national TC issued by a Member State shall be *automatically* deemed to have an EASA-TC, and that any exemptions from this principle of automatic recognition should be duly specified and reasoned, including a statement of specific technical reasons for the aircraft concerned.

In this context, the complainant challenged EASA's Decision No 2004/01/CF<sup>34</sup>, by which it implemented the above Article 2(3)(a)(i) of Regulation 1702/2003. In its Decision, EASA determined that the type-certification basis of the products listed in the annex to the same Decision may not provide for a sufficient level of safety, since:

- products designed in a Member State can only be deemed to have an EASA-TC if the type-certification basis provides for a sufficient level of safety,
- airworthiness codes used in some Member States are not sufficiently known to EASA to ensure that they provide for a sufficient level of safety, and
- sufficient details of the type-certification basis used in the certification of products by some Member States are not currently available to EASA.

The complainant pointed out that EASA's approach taken in Decision 2004/01/CF implies that a product will not be deemed to have an EASA-TC unless EASA determines that its type-certification basis does provide for a sufficient level of safety, and thus contradicts the principle of automatic recognition provided for in Article 2(3)(a)(i) of Regulation 1702/2003. He also argued that the fact that EASA was not able to acquaint itself with certain airworthiness codes was not a valid reason for concluding that the national type-certification basis of the products listed in the annex to Decision 2004/01/CF may not provide for a sufficient level of safety.

Therefore, the complainant alleged that EASA was not entitled to base its Decision 2004/01/CF on Article 2(3)(a)(i) of Regulation 1702/2003. He also alleged that EASA, in breach of Article 2(3)(a)(i) of the same Regulation, failed to determine the EASA-TCs for certain aircraft types.

After having carefully analysed the relevant legal provisions and the arguments of the complainant and EASA, the Ombudsman was not convinced that EASA's Decision 2004/01/CF (i) had a sufficient legal basis in Regulation 1702/2003, and (ii) contained an accurate and sufficient statement of the grounds on which it was based. Therefore, the Ombudsman made a proposal for a friendly solution to EASA, in which he suggested that EASA could consider amending its Decision 2004/01/CF so that it would comply with Regulation 1702/2003 and principles of good administration.

In its reply to the friendly solution proposal, EASA stated that it had been able to determine the approved design for all aircraft subject to Decision 2004/01/CF that fall within the scope of its responsibilities, including the aircraft types referred to by the complainant, for which an EASA-TC would be issued. EASA concluded that, as a consequence, Decision 2004/01/CF had been repealed by a new Decision<sup>35</sup>.

The Ombudsman welcomed EASA's rapid and positive response to his proposal for a friendly solution to the complaint. In particular, the Ombudsman, as well as the complainant, welcomed the fact that EASA repealed, in its entirety, the contested Decision 2004/01/CF. The Ombudsman

<sup>34</sup> Decision No 2004/01/CF of the Executive Director of EASA of 28 April 2004 on the implementation of Article 2(3)(a) of Regulation 1702/2003.

<sup>35</sup> Decision No 2007/002/C of the Executive Director of EASA of 23 March 2007 repealing Decision 2004/01/CF of the Executive Director of EASA of 28 April 2004 on the implementation of Article 2(3)(a) of Commission Regulation (EC) No 1702/2003.



also noted that EASA issued an EASA-TC for the aircraft types referred to by the complainant. However, the complainant informed the Ombudsman that he was only partially satisfied with that EASA-TC, and was considering making new administrative approaches to EASA concerning it. On the basis of these results of his inquiries, the Ombudsman considered that no further inquiries into the case were justified, and therefore closed the case.

### 3.7 CASES CLOSED AFTER A SPECIAL REPORT



#### The European Commission

##### **Failure to take action on complaint concerning Working Time Directive**

###### *Summary of decision on complaint 3453/2005/GG against the European Commission*

In 2001, a German doctor complained to the European Commission about Germany's alleged failure to comply with EU legislation on working time, in particular as regards the time spent on call by doctors in hospitals. The relevant rules were laid down in Directive 93/104/EC, and remained in force until the latter was replaced by Directive 2003/88. In two judgments rendered in 2000 and 2003, the European Court of Justice held that time spent on call is to be considered as working time within the meaning of these rules.

In a complaint lodged with the Ombudsman in December 2003 (complaint 2333/2003/GG), the complainant alleged that the Commission had failed to deal with his infringement complaint against Germany within an appropriate period of time. Having examined the case, the Ombudsman considered that the complainant's allegation was well-founded. He noted, however, that Germany had recently introduced new legislation in this field which the Commission still needed to examine and that the Commission appeared to accept that the decisions of the Court of Justice had clarified the relevant legal issues. On the assumption that the Commission would not incur further delays in dealing with the complainant's infringement complaint, the Ombudsman thus closed his inquiry.

In November 2005, the complainant turned to the Ombudsman again. In his new complaint (3453/2005/GG), the complainant in essence repeated the allegation that he had already submitted in his earlier complaint, according to which the Commission had failed to deal with his infringement complaint within an appropriate period of time. The Ombudsman decided to open a new inquiry.

In its opinion, the Commission noted that in September 2004 it had submitted to the Community legislator a proposal for an amendment of Directive 2003/88. The Commission pointed out that it would examine the complainant's infringement complaint in the light of this proposal and of its ongoing discussions with the other Community institutions.

The Ombudsman took the view that submitting a proposal for amending a directive did not allow the Commission to disregard its duty to ensure that the existing directive was respected by Member States. He further considered that the Commission's undoubted discretion in matters relating to alleged infringements of Community law by Member States did not entitle it to postpone indefinitely reaching a conclusion on a complaint on the grounds that the applicable law may be amended at some time in the future.

On 12 September 2006, the Ombudsman therefore addressed a draft recommendation urging the Commission to deal with the complainant's infringement complaint as rapidly and as diligently as possible.



In its detailed opinion, the Commission maintained its position.

On 10 September 2007, the Ombudsman therefore submitted a special report to Parliament concerning this case.

### 3.8 OWN-INITIATIVE INQUIRIES BY THE OMBUDSMAN

#### **Integration of people with disabilities by the European Commission**

*Summary of decision following own-initiative inquiry OI/3/2003/JMA*

People with disabilities face a wide range of obstacles which prevent them from achieving equal opportunities, independence and full economic and social integration. Even though the Union had responded to this challenge by adopting a number of legal and political initiatives to remove those obstacles, the Ombudsman considered that the seriousness of the situation encountered by people with disabilities demanded that the proclaimed commitments be put into practice by means of effective actions. Because of the Commission's central role within the institutional framework of the Union and its specific commitments towards disabled people, the Ombudsman considered it useful to review the actions undertaken by this institution in this area, and to assess whether or not they were consistent with its legal obligations and stated commitments. The Ombudsman therefore decided to open an own-initiative inquiry into the subject of the integration of persons with disabilities by the Commission, in order to ensure that these citizens were not discriminated against in their relations with the institution. He requested the Commission to report on (i) the actions it had taken or intended to take to ensure that persons with disabilities were not discriminated against in their relations with the institution as well as (ii) the timetable for their adoption.

The Ombudsman's inquiry was carried out through an open and transparent dialogue in which individuals with disabilities, representative groups, other ombudsmen at national and regional levels, and the public were invited to contribute.

On the basis of his review, the Ombudsman considers that the Commission has made a genuine effort to integrate people with disabilities, even if certain aspects of its policy do not appear to have met public expectations. The Ombudsman acknowledges that progress has been accomplished in a number of areas, including the following:

- ensuring that the employment of persons with disabilities by all EU institutions respects fundamental principles enshrined in the new Staff Regulations, such as non-discrimination on grounds of disability (Article 1d(1)), or the need to provide officials with disabilities with reasonable accommodation, so that they can perform the tasks assigned to them (Article 1d(4));
- candidates to EU competitions with a disability can now benefit from a number of measures to facilitate their participation; moreover, the Commission has undertaken to explore the various means by which the recruitment of people with disabilities can be promoted within the institution;
- the adoption of new requirements regarding the accessibility of the Commission's premises, fully in line with the standards set out by EU and Belgian law, and specifically addressing the needs of disabled people;
- making information more accessible to persons with a disability, in particular as regards the data posted on the Commission's website; the institution has made laudable efforts in this direction;



- the Commission has made efforts to make its services more attuned to the difficulties encountered by persons with disabilities, so that they can adequately respond, if need be. In this light, the Commission's Code of Good Practice should be a very helpful tool to sensitise its staff, although efforts should be made to ensure that standards of conduct are fully upheld and periodically updated.

The Ombudsman is mindful of the fact that, as the public underlined during the consultation process, action is still needed in other areas, including the following:

- the financial support given by the Commission to officials with a disability or with disabled family members is still perceived as insufficient; the public also considers that the budgetary allocation for cost linked to disability ought to be increased;
- the measures adopted to promote the recruitment of disabled persons appear to lack transparency, and a more reliable evaluation of the situation has been asked for;
- there also appears to be dissatisfaction with the insufficient accessibility of certain disabled persons to Commission information;
- the situation of pupils with disabilities in the European Schools appears to be inadequate and the Schools' policy for the integration of this category of children does not appear to have effectively contributed to their integration;
- the application of the Commission's Code of Good Practice has revealed a number of inadequacies, in particular as regards the insufficient number of actions taken to sensitise the institution's staff by means of training courses or seminars.

The Ombudsman is mindful of the fact that the Commission has made a number of commitments in order to tackle the above public concerns. The Ombudsman notes that the Commission has undertaken to:

- provide full reimbursement of the costs linked to a handicap; on condition that sufficient funds are made available by the budgetary authority and that an inter-institutional agreement is reached;
- consider publishing more general reports on the recruitment of persons with disabilities and in these should include existing and future statistics;
- adopt new standards on accessibility of its premises to disabled people, and increase the number of parking spaces for people with disabilities either in or near all of its buildings;
- organise in the future specific actions on sensitisation through training sessions and conferences or seminars for staff.

In view of the Commission's undertakings, the Ombudsman considers that, at present, no further action on the above aspects appears to be needed.

The Ombudsman finds however that, in so far as the situation of pupils with disabilities in the European Schools is concerned, the present state of affairs still appears to be unsatisfactory. In order closely to monitor how this situation evolves in the near future, the Ombudsman therefore considers it necessary that the Commission report by the end of 2007 on the progress accomplished by the European Schools on the integration of children with disabilities. This report will enable the Ombudsman to decide whether any further action regarding this issue is necessary on his part.

The Ombudsman is hopeful that the results of his initiative will help the Commission reassess some of its actions in this realm, with a view to correcting them, if necessary, and, in so doing, to serving all European citizens better.



### 3.9 QUERIES DEALT WITH BY THE OMBUDSMAN

#### **Alleged discrimination on grounds of nationality**

##### *Summary of query Q1/2007/ELB submitted by the Ombudsman of Luxembourg*

The Ombudsman of Luxembourg addressed a query to the European Ombudsman, after he was contacted by a citizen of Luxembourg (“the complainant”) about a dispute with the French Ministry of Defence.

The complainant was born in France and then moved to Luxembourg. At the age of 20, and for 29 months, the complainant served in the French army. Later, he acquired citizenship of Luxembourg. As the title of war veteran had been given to him, the complainant requested a pension as a war veteran. The French Ministry of Defence rejected the complainant’s request because he had relinquished his French citizenship, after his service in the French army. The Ombudsman of Luxembourg transferred the case to the French Ombudsman. According to the French Ombudsman, the complainant’s entitlements had been assessed in compliance with the applicable rules.

In the case at hand, the European Ombudsman understood, after having taken into account the information contained in the letter and the file of the complaint, that he was invited to take a position on the following matter: in circumstances such as the ones here involved, is there a violation of the principle of non-discrimination on grounds of nationality?

The Ombudsman noted that, according to Article 12 of the EC Treaty, “[w]ithin the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”. This prohibition is an expression of the general principle of equality, a fundamental principle of Community law. Nevertheless, this principle comes into play where a situation falls within the scope of application of Community law; it cannot, in itself, have the effect of extending the scope of Community law. Hence, national legislation which provides for differential treatment of citizens of the European Union on grounds of their nationality cannot be deemed as incompatible with the aforementioned general principle of Community law (and will not be examined as regards its compliance with the principle of non-discrimination) if this legislation relates to a situation which does not fall within the scope of application of Community law.

In the present case, the situation of the complainant did not seem to have a sufficient connection with and to fall within the scope of application of Community law. In this regard, there did not seem to be secondary Community legislation on the matter. In circumstances such as the ones here concerned there appeared to have been no violation of the general principle of Community law prohibiting discrimination on grounds of nationality.



# RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES



4





## 4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

The European Ombudsman devotes considerable time to meeting with Members and officials of the EU institutions and bodies with a view to promoting a culture of service within the EU administration. Over 60 such meetings took place during the year in question. These meetings allow the Ombudsman to explain the thinking behind his work and to sensitise Members and officials to the need to respond constructively to complaints. This chapter contains an overview of these meetings.

On three occasions, the Ombudsman met with civil servants from all levels within the European Commission. Since the Commission is the institution accounting for the highest proportion of inquiries carried out by the Ombudsman, it is particularly important that it take a leading role in developing a culture of service to citizens and of respect for their rights. The feedback that the Ombudsman received during these meetings was very encouraging. Key to facilitating these three meetings were Commission Vice-President Margot WALLSTRÖM, responsible, *inter alia*, for relations with the Ombudsman, and Commission Secretary-General Catherine DAY.

Meetings with Members and officials of the European Parliament are also of particular importance, in light of the privileged relationship the Ombudsman enjoys with Parliament. The European Parliament elects the Ombudsman and he is accountable to it. In this regard, the high point on the Ombudsman's calendar as far as his relations with Parliament are concerned is the debate on his Annual Report in plenary. This took place on 25 October and the session is described in more detail in section 6.1 of this Report.

The Ombudsman has an excellent working relationship with Parliament's Committee on Petitions, which is responsible for relations with the Ombudsman and drafts the report on his Annual Report. In 2007, Mr DIAMANDOUROS participated in three meetings of the Committee on Petitions, during which he presented his Annual Report and two Special Reports. The latter covered the use of languages on the websites of the Council Presidencies and problems with the implementation of the European Working Time Directive. At the Committee's request, the Ombudsman was represented by a member of his staff at each of its meetings in 2007. The Ombudsman himself participated in meetings of the Petitions Committee and the Constitutional Affairs Committee to explain the proposed changes to his Statute (see Chapter 2). Finally, the Ombudsman was invited by the Committee on Civil Liberties, Justice and Home Affairs to outline his experience in dealing with complaints about refusal of access to documents in light of the ongoing process of reform of Regulation 1049/2001.

The Ombudsman continued to reach out to the other institutions and bodies in 2007. In February, he met with Mr Dimitris DIMITRIADIS, President of the European Economic and Social Committee. He travelled to Frankfurt in July for meetings with Mr Jean-Claude TRICHET, President of the European Central Bank, Mr Lucas D. PAPADEMOS, Vice-President, and Ms Gertrude TUMPEL-GUGERELL, Member of the Executive Board. These were followed by a presentation to the Bank's senior staff. The year 2007 also saw a meeting with the President of the European Court of Justice, Mr Vassilios SKOURIS.

To help keep his own staff informed about developments in the other EU institutions and bodies, the Ombudsman uses the regular staff meetings that he convenes in Strasbourg to invite external speakers. In March 2007, the President of the EU Civil Service Tribunal, Mr Paul J. MAHONEY, addressed the Ombudsman's staff, giving an overview of the experience of the recently created



Tribunal and covering issues of direct relevance to the Ombudsman's complaint-handlers. In December, the European Data Protection Supervisor, Mr Peter HUSTINX, came to Strasbourg to outline the latest developments in the area of data protection and to respond to questions from the Ombudsman's staff, both with regard to complaint-handling and to administrative matters within the institution. The lively questions and answers sessions that followed both presentations were testimony to how valuable they were for the Ombudsman's staff.

The aforementioned meetings and events, and all other activities of the Ombudsman in this area, are listed in the sections of this chapter immediately following<sup>1</sup>.

## 4.1 THE EUROPEAN PARLIAMENT

16 January: Meeting with Mr Christian PENNERA, Jurisconsult.

17 January: Meeting with Mr Andrew DUFF MEP.

12 February: Meeting with Mr Herbert BÖSCH MEP.

12 February: Meeting with Mr Julian PRIESTLEY, Secretary-General.

12 February: Meeting with Mr Nicolas-Pierre RIEFFEL, Director-General for Infrastructure.

13 February: Participation at the presentation of the work programme of the President of Parliament, Mr Hans-Gert PÖTTERING MEP.

13 February: Meetings with Ms Anneli JÄÄTTEENMÄKI MEP and with Mr Paolo CASACA MEP.

13 March: Presentation of the Ombudsman's Annual Report 2006 to Mr Hans-Gert PÖTTERING MEP.

14 March: Meeting with Ms Diana WALLIS MEP.

27 March: Presentation of the Ombudsman's Special Report on the use of languages on the websites of the Council Presidencies at a meeting of the Committee on Petitions.

24 April: Meeting with Ms Sylvia-Yvonne KAUFMANN MEP.

24 April: Meeting with Mr David HARLEY, Deputy Secretary-General.

25 April: Meeting with Mr Íñigo MÉNDEZ DE VIGO MEP.

26 April: Meeting with Mr Richard CORBETT MEP.

26 April: Meeting with Mr Harald RØMER, Secretary-General.

26 April: Meeting with Mr Christian PENNERA.

2 May: Presentation by Mr DIAMANDOUROS of the proposed changes to the Ombudsman's Statute at the Constitutional Affairs Committee.

2 May: Meeting with the President of the Committee on Petitions, Mr Marcin LIBICKI MEP and with the Rapporteur on the Ombudsman's Annual Report 2006, Ms Luciana SBARBATI MEP. Also present at the meeting was the Head of Secretariat of the Committee on Petitions, Mr David LOWE.

<sup>1</sup> Unless otherwise stated, the meetings and events took place in Brussels, Luxembourg, or Strasbourg.



2 May: Presentation of the Ombudsman's Annual Report 2006 to the Committee on Petitions. Mr DIAMANDOUROS also presented the proposed changes to the Ombudsman's Statute during this meeting.

9 May: Participation by the Ombudsman in the Europe Day Ceremony organised by the European Parliament's Information Office in Strasbourg.

22 May: Meetings with Ms Charlotte CEDERSCHIÖLD MEP and with Mr Jacky HÉNIN MEP.

20 June: Meetings with Ms Luciana SBARBATI MEP and with Mr Ville ITÄLÄ MEP.

21 June: Meeting with Mr Metin KAZAK MEP.

4 October: Meetings with Ms Diana WALLIS MEP and with Mr Costas BOTOPOULOS MEP.

4 October: Presentation of the Ombudsman's Special Report on problems with the implementation of the European Working Time Directive at a meeting of the Committee on Petitions.

24 October: Meetings with Sir Robert ATKINS MEP and with Mr Andrew DUFF MEP.

25 October: Presentation of the Ombudsman's Annual Report 2006 to the plenary of the European Parliament (see section 6.1).

15 November: Meetings with Mr Martin SCHULZ MEP and with Mr Paul VAN BUITENEN MEP.

22 November: Meetings with Ms Diana WALLIS MEP and with Mr Ioannis VARVITSIOTIS MEP.

29 November: Presentation of the Ombudsman's experience in dealing with complaints about refusal of access to documents at a meeting of the Committee on Civil Liberties, Justice and Home Affairs on the ongoing process to reform Regulation 1049/2001<sup>2</sup>.

10 December: Meeting with Ms Maria Eleni KOPPA MEP.

11 December: Meetings with Ms Anneli JÄÄTTEENMÄKI MEP, Ms Maria DA ASSUNÇÃO ESTEVES MEP and Mr Costas BOTOPOULOS MEP, with Mr Ingo FRIEDRICH MEP, with Mr Michael CASHMAN MEP, with Mr Marco CAPPATO MEP, and with Mr Emilio DE CAPITANI, Head of Secretariat of the Committee on Civil Liberties, Justice and Home Affairs.

12 December: Meetings with Ms Charlotte CEDERSCHIÖLD MEP, with Ms Diana WALLIS MEP, with Mr Brian CROWLEY MEP, with Mr Jens-Peter BONDE MEP, with Sir Robert ATKINS MEP, with Ms Margrete AUKEN MEP and Mr David HAMMERSTEIN MEP, and with Mr Christian PENNERA.

12 December: Participation at the ceremony to mark the formal proclamation of the Charter of Fundamental Rights of the European Union.

13 December: Meetings with Ms Rodi KRATSA-TSAGAROPOULOU MEP and with Mr Joseph DAUL MEP.

## 4.2 THE EUROPEAN COMMISSION

12 January: Meeting with Mr Themis THEMISTOCLEOUS, Head of the Representation of the European Commission in Nicosia, Cyprus.

15 March: Meeting with Mr Fernando FRUTUOSO DE MELO, Director responsible for, inter alia, relations with the European Ombudsman in the Secretariat-General.

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<sup>2</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



24 April: Meeting with Mr Siim KALLAS, Vice-President responsible for Administrative Affairs, Audit and Anti-Fraud.

22 May: Meeting with Mr Michel PETITE, Head of the Legal Service.

28 June: Meeting with Ms Catherine DAY, Secretary-General.

12 September: Presentation to a meeting of the Heads of the Commission's External Delegations.

6 November: Meeting with Mr Jean-Claude EECKHOUT, Honorary Director-General and Special Advisor.

7 November: Meeting with Ms Catherine DAY, followed by a presentation to Commission staff responsible for co-ordinating the handling of the Ombudsman's inquiries. Ms Margot WALLSTRÖM, Vice-President responsible for Institutional Relations and Communication, and Ms DAY participated in the meeting.

29 November: Meeting with the Directors-General.

### 4.3 OTHER INSTITUTIONS AND BODIES

12 February: Meeting with Mr Dimitris DIMITRIADIS, President of the European Economic and Social Committee.



Mr DIAMANDOUROS and Mr Dimitris DIMITRIADIS, President of the European Economic and Social Committee. Strasbourg, 12 February 2007.

15 March: Meeting with Mr Rémy JACOB, Director-General of Strategy and Corporate Centre, and Mr Felismino ALCARPE, Deputy Head of Division of the European Investment Bank.

30 March: Presentation by Mr Paul J. MAHONEY, President of the EU Civil Service Tribunal, to the European Ombudsman's staff.

2 July: Meetings with Mr Jean-Claude TRICHET, President of the European Central Bank, Mr Lucas D. PAPADEMOS, Vice-President, and Ms Gertrude TUMPEL-GUGERELL, Member of the Executive Board. These were followed by a presentation to the Bank's senior management staff in Frankfurt, Germany.

16 July: Meeting with the President of the European Court of Justice, Mr Vassilios SKOURIS.

6 November: Meeting with Ambassador Vassilis KASKARELIS, Permanent Representative of Greece to the European Union.

7 December: Presentation by Mr Peter HUSTINX, European Data Protection Supervisor, to the European Ombudsman's staff.

# RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES



5





## 5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

Ombudsmen throughout the EU, at the national, regional and local levels, play a key role in ensuring that citizens' rights under EU law are fully respected. The European Ombudsman co-operates closely with his counterparts to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This co-operation takes place for the most part under the aegis of the European Network of Ombudsmen. This Chapter details the activities of the Network in 2007, the high point of which was the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries. A detailed account of that event is given below. During the Seminar, the ombudsmen adopted a Statement, the purpose of which is to help inform citizens and other users of ombudsman services of the benefits that they can expect to obtain when they turn to a member of the Network about a matter that falls within the scope of EU law. This development is seen as a key step in building a clearer public identity for the Network. The Statement is reproduced in full in this chapter.

Other activities covered in this Chapter include seminars and conferences that the European Ombudsman and his staff participated in during 2007, as well as bilateral contacts that Mr DIAMANDOUROS had with his ombudsman colleagues from the EU Member States and further afield.

### 5.1 THE EUROPEAN NETWORK OF OMBUDSMEN

The European Network of Ombudsmen consists of almost 90 offices in 31 European countries. Within the Union, it covers the ombudsmen and similar bodies at the European, national, and regional levels, while at the national level, it also includes Norway, Iceland, and the candidate countries for EU membership. Each of the national ombudsmen and similar bodies in the EU Member States, as well as in Norway and Iceland, has appointed a liaison officer to act as a point of contact for other members of the Network.

The Network was established in 1996 and has steadily developed into a powerful collaboration tool for ombudsmen and their staff, serving as an effective mechanism for co-operation on case handling. It is of particular importance to the European Ombudsman to enable him to deal promptly and effectively with complaints that fall outside his mandate. Experiences and best practice are shared via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Visits of the European Ombudsman organised by the ombudsmen in the Member States and accession countries have also proved highly effective in developing the Network. Section 5.1 therefore ends with a brief mention of the Ombudsman's information visits in 2007. These visits are covered in greater detail in section 6.2.

All of the activities described below are key to enabling ombudsmen to play their part in ensuring that EU law is applied correctly throughout the Union. This is vital, if citizens are to enjoy their EU law rights to the full. The European Ombudsman sees this as a particular priority and devotes considerable resources to developing the Network.



### National ombudsmen seminars

National ombudsmen seminars are held every two years, organised jointly by the European Ombudsman and a national counterpart. The Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries was organised by the French National Ombudsman, Mr Jean-Paul DELEVOYE, and the European Ombudsman. It took place in Strasbourg from 14 to 16 October 2007. This was the second national ombudsmen seminar to take place in Strasbourg, just over eleven years after the first-ever such seminar which was organised in September 1996.

All 27 EU Member States were represented at the meeting, as were two of the three candidate countries, plus Norway and Iceland. As agreed at the Fifth Seminar, regional ombudsman representatives from the EU countries where they exist, namely, Belgium, Germany, Spain, Italy, Austria, and the United Kingdom<sup>1</sup>, were also invited to take part for the first time.

The theme of the 2007 Seminar was “Rethinking good administration in the European Union”. This theme was chosen in knowledge of the fact that a number of ombudsmen, whether at the regional, national, or European levels, representing different administrative cultures and traditions, have been reflecting on ways to refine, rethink and deepen their understanding of good administration, with an eye to improving the quality of service offered to citizens and, more generally, to users of the public administrations that they oversee. It proved to be a popular choice.

### Discussions at the seminar

The seminar was opened by the co-hosts, Mr DELEVOYE and Mr DIAMANDOUROS and included a welcome speech by the Mayor of Strasbourg, Senator Fabienne KELLER, and a welcome message sent by the Prime Minister of France, Mr François FILLON. The latter underlined Europe’s role in spreading the values of tolerance, dialogue and democracy throughout the world. Ombudsmen in Europe represent one of the most obvious manifestations of these values, he said. When ombudsmen supervise the application of a body of EU law that is becoming increasingly important, they are on the front line of those who are building Europe, concretely, day by day.



The Mayor of Strasbourg, Senator Fabienne KELLER, Mr DIAMANDOUROS, and the French National Ombudsman, Mr Jean-Paul DELEVOYE, open the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries. Strasbourg, 15 October 2007.

### Keynote speech

Judge Allan ROSAS, President of the Third Chamber at the European Court of Justice, launched the Seminar discussions with a keynote speech entitled “Ensuring uniform application of EU law in a Union of 27: the role of national courts and authorities”. According to Judge ROSAS, one of the most essential features of EU law is that it must be applied directly by everybody concerned,

<sup>1</sup> These countries are listed in the EU protocol order.



including national administrative authorities. He stressed that national ombudsmen play a particularly important role in the monitoring of administrative decisions and practices concerning the application and implementation of not only purely national but also EU law. It would be a mistake to rely exclusively on the judicial system to ensure the correct application of EU law, he said. In his view, the citizen much prefers to have the principles of legality and of good administration, recognised in the Charter of Fundamental Rights of the European Union, respected right away, without any need to resort to court proceedings which may be lengthy and costly. In this regard, it is important to recall that one of the cornerstones of the EU legal edifice is its direct relevance for the private citizen, who can invoke it directly before courts and administrative authorities. He confirmed that the work of ombudsmen contributes to a strengthening of the role of the citizen. The case-law of the European Court of Justice on Union citizenship has also contributed to this emphasis on a “Citizens’ Europe”.



Judge Allan ROSAS, President of the Third Chamber at the European Court of Justice, gives the keynote speech to the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries. Strasbourg, 15 October 2007.

With regard to the issue of *uniform* application referred to in the title of his speech, the Judge acknowledged that decentralised application poses a challenge. The problem has not been diminished by the enlargement of the EU to encompass by now 27 Member States. Decentralisation, in his view, should be coupled with co-ordination and co-operation, responsibility, accountability and transparency. National institutions for monitoring and control, and co-ordination between such institutions and institutions at EU level, are of crucial importance. In this regard, Judge ROSAS welcomed the organisation of regular national ombudsmen seminars.



Mr Jens NYMAND-CHRISTENSEN, Director responsible for Better Regulation and Institutional Issues at the Secretariat-General of the European Commission, addresses the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries. Strasbourg, 15 October 2007.



### *Thematic session one: Legality and good administration: is there a difference?*

Mr DIAMANDOUROS was the opening speaker in the first thematic session, which was chaired by the National Ombudsman of Ireland, Ms Emily O'REILLY. His presentation focused, in particular, on the notion of "life beyond legality". In his view, the continued existence of conceptual space for life beyond legality is positive for European citizens. Firstly, law and legality continue to be closely associated with blame and sanctions. But a culture of service, which ombudsmen should be keen to promote, is not a culture of blame, he said. Moreover, any attempt to promote a service culture through law might only reinforce a narrow and legalistic approach. At the same time, it might also encourage the tendency of some complainants to regard their complaint as a denunciation, rather than as an instrument for seeking practical redress, or a constructive solution to a problem.

A second relevant consideration concerns the relationship between the work of ombudsmen and the work of the courts. The logic of judicial procedures leads to adjudication, in which the court determines authoritatively the legal rights of the parties. The logic of the Ombudsman's procedures, on the other hand, is different and involves flexibility between two modes of operation. On the one hand, there is a dispute-resolution mode, which focuses on problem-solving, conflict-reduction, possibilities for compromise and win-win outcomes. On the other hand, there is an adjudicative mode, in which the Ombudsman finds either that there is maladministration, or that there is no maladministration. That mode is governed by a logic analogous to that of the Court, in which one party usually sees itself as the winner and the other as the loser. The appropriate balance between the two modes depends on the case and some cases may involve switching between them more than once. In Mr DIAMANDOUROS' view, the European Institutions are encouraged to co-operate with him in the dispute-resolution mode by the knowledge that his inquiry is not exclusively focused on the question "what are the legal rights of the parties?"

Mr Alex BRENNINKMEIJER, National Ombudsman of The Netherlands, and Mr Joseph SAID PULLICINO, National Ombudsman of Malta, followed up as the discussants during this session. According to Mr BRENNINKMEIJER, citizens demand much more than legality. They require good administration and proper conduct, which helps to create acceptance, legitimacy and ultimately public confidence in government. Proper conduct and fair treatment of citizens are an essential addition to pure legality. Mr SAID PULLICINO agreed that the test of good administration covers a much wider spectrum of activity than strict legality. When maladministration does not involve illegality, it can still be measured against the stiffer test of the principles of good administration that are gaining recognition as an informal source of law. Good administration, like legality, always implies respect for the rule of law and is never a licence to act in any way outside or contrary to law. Good administration, like legality, is also about operating in such a way that the citizen, the administration's client, receives the level of service that he or she is entitled to.

### *A Europe of Results – Prevention, Partnership and Transparency*

The next speaker was Mr Jens NYMAND-CHRISTENSEN, Director responsible for Better Regulation and Institutional Issues at the Secretariat-General of the European Commission. His intervention was entitled "A Europe of Results – Prevention, Partnership and Transparency". Mr NYMAND-CHRISTENSEN focused on the Communication adopted by the Commission in September 2007, which itself bears the title *A Europe of Results – Applying Community law*<sup>2</sup>. The Communication puts forward a series of proposals to improve the application of Community law by Member States. These proposals aim to ensure that Community law is implemented more effectively and that complaints made by citizens and business are resolved more quickly. The Communication describes the actions which the Commission will take in this regard as well as the contributions sought from, inter alia, Member States. It sets out four main areas of action: more targeted preventive measures; improved information-provision and problem-solving; a more efficient management of infringement cases to ensure the greatest benefit to the greatest number; and increased transparency.

One of the most important suggestions in the Communication concerns an exercise in which Member States' authorities would, in certain cases, be asked to find solutions for problems

<sup>2</sup>

COM(2007) 502. Available at: [http://ec.europa.eu/community\\_law/eulaw/pdf/com\\_2007\\_502\\_en.pdf](http://ec.europa.eu/community_law/eulaw/pdf/com_2007_502_en.pdf)



concerning Community law within a short period of time (8 weeks) and, respond *directly* to persons who have raised an issue with the Commission. The objective is to find faster solutions to enquiries and complaints from citizens and companies. In his keynote speech, Mr NYMAND-CHRISTENSEN gave further details of this proposal, which is of particular relevance to ombudsmen in the Member States. He informed them that Member States had shown great interest in participating in this pilot project, which is scheduled to last for one year. The Commission will then produce a report outlining its experience.

#### *Thematic session two: The relationship between ombudsmen and the courts*

Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, launched the discussions in this session. He began by looking into the competence of ombudsmen to supervise the courts, something that varies greatly from one country to another. While acknowledging that the role of courts needs to be recognized as being of special importance in a state governed by the rule of law, he argued that there is a need for some element of supervision in their regard. He examined how members of the judiciary tend to view the ombudsman in a system such as that in Sweden, where the ombudsmen *do* supervise the courts. He looked at the different roles of courts and ombudsmen and spoke of the possibility of conflicts between them on specific points of law. He ended by asking how ombudsmen handle situations where their interpretation of the law differs from that of a court, especially a court of last instance.

Mr Marc FISCHBACH, National Ombudsman of Luxembourg, and Mr Janusz KOCHANOWSKI, Commissioner for Civil Rights Protection of Poland, were the discussants in this session, which was chaired by Mr Allar JÖKS, Legal Chancellor of Estonia. Mr FISCHBACH started out by informing his colleagues that citizens frequently refer problems they have with the courts to the Ombudsman of Luxembourg. The issue, he said, is to clearly grasp the limits to any intervention by the ombudsman, for whilst ombudsmen must uphold the legitimate principle of independence of the judiciary, they must also guarantee the rights of parties to a trial or court hearing. In his view, ombudsmen are required to distinguish between justice on the one hand — in other words the sovereign exercise of the duty to dispense justice — and judicial administration on the other, judicial administration meaning any administrative mechanism that operates before or after a judicial decision. Although the ombudsman cannot interfere in the exercise of the sovereign function of the magistrate, he has the power to deal with any administrative failing of the judicial administration. Mr FISCHBACH concluded by saying that it might be more accurate to talk about the relationship between the ombudsman and the judicial administration, rather than of any relationship that might exist between the ombudsman and the courts. Mr KOCHANOWSKI, for his part, identified a dual-track approach. On the one hand, the Polish Commissioner involves himself in cases of individual citizens, where in his opinion the judgments issued infringe the rights of the individual. On the other hand, he takes on cases of a more general nature, often in an attempt to improve the functioning of the administration of justice, for example by initiating changes in the law or aiming to clarify controversial issues in judicial decisions. That is why the Commissioner, respecting in full the independence of the courts and the adversarial nature of civil proceedings, takes advantage of his entitlement to take cases before the courts with great caution. He supports a party only if he sees that the person applying for help is not capable of defending his rights by himself or when the case may lead to a breakthrough, helping to resolve other similar cases where the rights of individuals are threatened.

#### *Thematic session three: Remedies, redress and solutions: what do ombudsmen have to offer?*

This session was chaired by Mr Peter KOSTELKA of the Austrian Ombudsman Board.

Ms Ann ABRAHAM, United Kingdom Parliamentary and Health Service Ombudsman, was the main speaker in this session. She tackled the question of remedy by considering the ombudsman first as a system of justice — the source of direct benefit to aggrieved citizens. She then went on to consider the way in which remedy, conceived as something more than just financial redress or dispute resolution, points towards the larger role of the ombudsman as a source of wider public benefit — public benefit that comes from the promotion of good administration and good complaint handling and of improvements in public service delivery, but that also harbours the ambition of



informing public policy. By way of example, Ms ABRAHAM drew upon investigations undertaken by her office into the administration of the United Kingdom tax credit system. She concluded by reference to the framework of principles that she has begun to develop with the publication of a set of Principles of Good Administration and of Principles for Remedy.

Ms Zdenka ČEBAŠEK-TRAVNIK, Human Rights Ombudsman of Slovenia, and Mr Arne FLIFLET, Parliamentary Ombudsman of Norway, followed up to help launch the discussions in this session. Ms ČEBAŠEK-TRAVNIK outlined the many different influences on the ombudsman's mode of action, addressing them along the following lines: society and culture; the political system; international connections; actual problems in the country; and personal characteristics of the ombudsman. She illustrated her thesis with a concrete example of a sensitive problem handled by her office concerning a Roma family in Slovenia. Mr FLIFLET pointed to the fact that ombudsmen – among themselves – have very different backgrounds, personalities and jurisdictions and that this obviously affects the work they do. He underlined the supplementary role of the ombudsman vis-à-vis the courts in offering a much wider variety of remedies, redress and solutions.

#### *Thematic session four: Free movement of persons: what are the problems and how do ombudsmen deal with them?*

The purpose of this final session, which was chaired by the National Ombudsman of Spain, Mr Enrique MÚGICA HERZOG, was to illustrate concretely the contribution that ombudsmen can make in resolving citizens' EU law complaints. Mr Jean-Paul DELEVOYE gave the opening speech for this session. He began by tracing the evolution of the right to freedom of movement from the 1950s to the present day. He then went on to outline some of the obstacles to mobility, a fact confirmed, he said, by the very low proportion of complaints about the subject that are made to his own office. He pointed out that complaints of this nature are likely to increase in the coming years, however, and underlined the important role that ombudsmen can play. He concluded by emphasising the need for ombudsmen to work together to resolve complaints in the area of freedom of movement effectively.

Ms Eliana NICOLAOU, Commissioner for Administration of Cyprus, followed up as the first discussant. In her view, the full implementation and the realisation of the right to free movement is one of the greatest challenges for ombudsmen as they strive to create a genuine mobility culture in the EU with full respect for human rights. She gave examples of problematic areas in Cyprus, specifically in the area of mutual recognition of diplomas. Mr Yorgos KAMINIS, National Ombudsman of Greece, continued with a number of examples from his own country. He argued that pressure applied within certain professions, and political pressure – most notably at the municipal level – made it difficult for EU citizens to exercise their professions in Greece. The Ombudsman has an important role to play in helping these citizens enjoy their rights under EU law in relation to freedom of movement.

#### *The European Network of Ombudsmen Statement*

In addition to the four thematic sessions, the seminar included an in-depth discussion on an issue of fundamental importance to the Network, namely the European Network of Ombudsmen Statement. The European Ombudsman had offered at the Fifth National Ombudsmen Seminar that was held in The Hague in September 2005 to draft a Statement to inform citizens and other users of ombudsman services of the benefits that they can expect to obtain when they turn to a member of the Network about a matter that falls within the scope of EU law. The draft Statement was circulated to members of the Network before the Seminar.

The discussion on the Statement was based on a keynote speech given by the world's longest-serving national ombudsman, the Parliamentary Ombudsman of Denmark, Mr Hans GAMMELTOFT-HANSEN. He emphasised that the purpose of the discussions was to adopt a statement aimed at citizens, which in the briefest and simplest possible form, adequately covers those fundamental features which unite ombudsmen in Europe and are common to them all. Mr GAMMELTOFT-HANSEN encouraged his colleagues to adopt the draft Statement.



Mr DIAMANDOUROS makes a presentation to the Danish Ombudsman, Mr Hans GAMMELTOFT-HANSEN, to mark his twenty years in office. Strasbourg, 15 October 2007.

After a lively discussion, the Statement was adopted by consensus. The European Ombudsman announced his commitment to promoting awareness of the Statement and called on his colleagues to do likewise. The Statement, which is reproduced in full below, will be reviewed on a regular basis.

#### *An excellent seminar*

In addition to the stimulating formal sessions, the Seminar allowed for more informal discussions and contacts. The guided tour of Strasbourg added to the overall enjoyment of the event, as did the formal dinner which took place in the impressive *Palais Rohan* and which included a fitting tribute to the Danish Ombudsman to mark his twenty years in office. The ombudsmen expressed their gratitude to the Mayor of Strasbourg for having welcomed them to the city and for the hospitality she had provided.

At the end of the Seminar, it was announced that the Seventh Seminar of National Ombudsmen of EU Member States and Candidate Countries would take place in Cyprus in 2009.



Participants at the Sixth Seminar of National Ombudsmen of EU Member States and Candidate Countries. Strasbourg, 15 October 2007.



## The European Network of Ombudsmen

### Statement

*Statement adopted at the Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries, Strasbourg 14-16 October 2007*

The European Network of Ombudsmen has prepared this statement to make the European Union (EU) dimension of the work of ombudsmen better known and to clarify the service they provide to people who complain about matters within the scope of EU law.

National and regional ombudsmen make a vital contribution to ensuring that citizens and residents of the EU can know and enjoy their rights. Together with the European Ombudsman, they form the *European Network of Ombudsmen*.

*The European Network of Ombudsmen brings together, on a voluntary basis, the national and regional ombudsmen and similar bodies of the Member States of the European Union, the national ombudsmen of the candidate countries and of Iceland and Norway, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. In Germany, committees on petitions at the national and regional level fulfil a similar role to ombudsmen. They are part of the Network.*

EU law and policy have an increasing impact on the everyday life of citizens and residents of the Member States. For the most part, they are put into effect by the public authorities of the Member States. National and regional ombudsmen deal with complaints against public authorities of the Member States, including complaints that relate to activities that are within the scope of EU law. The European Ombudsman supervises the EU institutions, such as the European Commission.

*The appropriate national or regional ombudsman is responsible for dealing with complaints against public authorities of a Member State, including complaints about a matter falling within the scope of EU law. The European Ombudsman investigates complaints against the European Union institutions and bodies.*

Although the powers and responsibilities of different ombudsmen in the Network vary widely, they are all committed to providing the public with a service that is impartial, effective and fair. Within the limits of their mandates, they support the principles on which the European Union is founded.

*"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States" (Article 6(1) of the Treaty on European Union).*

One of the most important activities of the Network is sharing information about EU law and best practice, so as to offer the best possible service to the public. National and regional ombudsmen in the Network may ask the European Ombudsman for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases.

### The role and purpose of ombudsmen

The ombudsmen in the Network are independent and impartial persons, established by constitution or law, who deal with complaints against public authorities.

They try to achieve an appropriate outcome for each complaint. Having investigated a complaint and found it to be justified, an ombudsman may criticize what has taken place and state how, in his or her opinion, the case should have been properly handled. In many countries, the ombudsman may also propose remedies, which may include, for example, reviewing a decision, giving an apology, or providing financial compensation. Some ombudsmen may try to achieve a friendly solution to a complaint.



In some cases, the complainant may have the choice between going to an ombudsman or to a court. Normally, however, an ombudsman cannot deal with a complaint if a court is dealing or has dealt with the matter. Unlike a court, an ombudsman does not make legally binding decisions, but the public authorities usually follow the ombudsman's recommendations. If they do not, the ombudsman can, for example by notifying Parliament, draw political and public attention to the case.

As well as responding to complaints, ombudsmen also work proactively to raise the quality of public administration and public services. They encourage good administration and respect for rights, suggest appropriate solutions to systemic problems, spread best practice and promote a culture of service-mindedness.

Ombudsmen encourage public authorities to regard complaints as an opportunity to communicate effectively with the complainant and to put right any deficiencies in their service. Correspondingly, most ombudsmen do not investigate a complaint unless the body complained against has first been given a reasonable opportunity to deal with the matter itself.

The precise grounds on which an ombudsman can act vary within the Network, but normally include: violation of rights, including human and fundamental rights; other unlawful behaviour, including failure to respect general principles of law; and failure to act in accordance with principles of good administration. Examples of maladministration that an ombudsman can help correct include unreasonable delay, failure to follow established policy or procedures, lack of impartiality, unfairness, giving inaccurate information or advice, inconsistency, and discourtesy.

### **Service to the public**

The ombudsmen in the Network are committed to treating all members of the public with courtesy and respect. They aim to be accessible and service-minded, fair, impartial, consistent and effective.

Within the limits set by law and by the need to respect privacy and legitimate reasons for confidentiality, ombudsmen in the Network aim for transparency in their actions and decisions. They publish the criteria which they apply in dealing with complaints, give reasons for their decisions and report publicly on their activities.

The ombudsmen in the Network seek to maintain an appropriate balance between the thoroughness and the speed of their inquiries, taking account of the interests of the complainant and of the need to make effective use of resources.

#### *Accessibility*

The ombudsmen in the Network seek to facilitate free and equal access for everyone who is entitled to make use of their services.

Complaints may normally be addressed to an ombudsman directly.

An ombudsman's services are normally free of charge to the complainant.

Where exceptions to the above principles are imposed by law, the ombudsman seeks to minimise their adverse impact on complainants, as far as possible.

#### *Handling of complaints*

The ombudsmen in the Network aim to deal promptly and effectively with complaints. They take into account the relevant provisions of EU law, including general principles of law, such as respect for fundamental rights. The Charter of Fundamental Rights of the European Union may provide a useful point of reference in this regard.

Each complaint received is carefully analysed with a view to securing an appropriate outcome.

If a complaint is inadmissible, the ombudsman informs the complainant rapidly, explaining clearly the reason or reasons. If possible, the ombudsman advises the complainant of another body that could help.



Some ombudsmen use a simplified procedure, if preliminary analysis indicates that the complainant's problem could be solved rapidly, for example by a telephone call.

If there is a full investigation of the complaint, the ombudsman provides information to the complainant about the investigation, or ensures that the complainant can easily obtain such information. Relevant information could, for example, concern:

- the procedure used;
- the scope of the investigation, including what issue or issues are being investigated; and
- the progress of the investigation.

At the conclusion of the investigation, the ombudsman issues a written report or decision that normally sets out:

- the ombudsman's findings;
- whether the ombudsman considers the complaint to be justified in whole or in part and the reasons for this view; and
- the ombudsman's recommendations, if any, to the public authority concerned.

#### *Publication of information*

The ombudsmen in the Network publish easily understandable information, in widely accessible forms. Such information may include, for example:

- who is entitled to complain;
- against which public authorities a complaint may be lodged;
- the kinds of activity that can be the subject of a complaint, including activities within the scope of EU law;
- the conditions of admissibility of complaints;
- how to complain;
- what language or languages can be used to complain;
- (if appropriate) the conditions under which the ombudsman uses a simplified procedure;
- how to obtain individual advice about the possibility to complain (e.g., telephone hotline); and
- the possible outcomes and remedies if the complaint is found to be justified.

The European Ombudsman has undertaken to facilitate wide access to the information published by the national and regional members of the Network.

*The European Ombudsman's website <http://www.ombudsman.europa.eu> contains information about the Network and links to the homepages of its members. The information is also available on request from the European Ombudsman's Office (tel. +33 3 88 17 23 13).*

#### *An ever-improving service to the public*

The ombudsmen in the Network are committed to continuously improving the service that they provide to the public. To this end, this Statement will be regularly reviewed, at least every two years, with the aim of ensuring that it reflects evolving best practice.



### Co-operation on case-handling

National and regional ombudsmen in the Member States are competent to deal with many of the complaints that are outside the mandate of the European Ombudsman because they are not against a Community institution or body. During 2007, the Ombudsman advised 816 complainants to turn to a national or regional ombudsman and transferred 51 complaints directly to the competent ombudsman. Examples of these complaints are given in section 2.5 of this Report.

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. This practice is now enshrined in the European Network of Ombudsmen Statement. In 2007, three such queries were received (one each from a national, regional and local ombudsman) and three were closed (including one brought forward from 2005 and one from 2006). An example of a query is provided at the end of Chapter 3.

### European Ombudsmen – Newsletter

The *European Ombudsmen – Newsletter* covers the work of the members of the European Network of Ombudsmen and the broader membership of the European Region of the International Ombudsman Institute (IOI). Produced in English, French, German, Italian and Spanish, it is addressed to over 400 offices at the European, national, regional and local levels. The Newsletter is published twice a year – in April and October.

The Newsletter has proved to be an extremely valuable forum for exchanging information about EU law and best practice. In 2007, the two issues covered a wide range of topics, including articles on the supremacy of EU law over national law, discrimination and obstacles to free movement, problems in the area of environmental law, the protection of children's rights and the rights of the elderly, problems in the health care sector, and issues of privacy and data protection.

### Electronic communications tools

In November 2000, the Ombudsman launched an Internet discussion and document-sharing forum for ombudsmen and their staff in the Network. Over 230 individuals have access to the forum which offers possibilities for daily co-operation between and among offices.

The most popular part of the forum is the *Ombudsman Daily News* service, which is published every working day and contains news from ombudsman offices as well as from the European Union. Almost all national and regional ombudsman offices throughout Europe contribute to or consult the *Daily News* on a regular basis.

In 2007, the discussion forum continued to provide a very useful way for ombudsman offices to share information through the posting of questions and answers. Several major discussions were initiated in this way. They covered issues as diverse as age discrimination, the legal framework for non-voluntary psychiatric hospitalisation, public service quality, the status of legal experts in Ombudsman offices, and the European Commission's initiatives to improve the handling of infringement complaints.

The discussion forum's contents include an authoritative list of national and regional ombudsmen in the EU Member States, Norway, Iceland, and the applicant countries for EU membership. The list is updated whenever the contact details for an ombudsman office change and is thus an indispensable resource for ombudsmen throughout Europe.

### Information visits

In the course of 2007, the European Ombudsman visited his colleagues in Germany (March), Sweden (May), and Belgium (November). These visits offered an excellent opportunity to intensify



working relations within the European Network of Ombudsmen and to raise awareness of the non-judicial remedy that ombudsmen and committees on petitions provide. These visits are covered in detail in section 6.2.

## 5.2 OTHER OMBUDSMAN SEMINARS AND CONFERENCES

The European Ombudsman's efforts to collaborate with his ombudsman counterparts stretch beyond the activities of the European Network of Ombudsmen. The Ombudsman is an active member of several ombudsman organisations and participates regularly in conferences and seminars that they organise.

Among the events that Mr DIAMANDOUROS participated in during 2007 were the Round Table of the Ombudsmen of the Council of Europe that was held in April in Athens, Greece, and a Eonomia programme seminar of the Greek Ombudsman and the Commissioner for Human Rights of the Council of Europe that was hosted by the Bulgarian Ombudsman in September in Sofia.

The European Ombudsman was also invited to participate in events organised to mark various anniversaries of ombudsman institutions. On 27 March, he met with Ms Ann ABRAHAM, Parliamentary and Health Service Ombudsman of the United Kingdom, in London, on the occasion of the 40<sup>th</sup> anniversary of that office. As the founding Greek Ombudsman, Mr DIAMANDOUROS was invited by Mr Yorgos KAMINIS to participate in the event to mark ten years of the Greek Ombudsman institution in Athens in April. On 22 June, he travelled to Madrid to commemorate 25 years of the *Defensor del Pueblo* in Spain with Mr Enrique MÚGICA HERZOG. Mr DIAMANDOUROS also joined the Commissioner for Administration in Cyprus, Ms Eliana NICOLAOU, at the start of the year at an event to inaugurate the Commissioner's new premises in Nicosia.



Mr DIAMANDOUROS and the National Ombudsman, Mr Enrique MÚGICA HERZOG, meet His Royal Highness the Prince of Asturias. Madrid, 22 June 2007.

Members of the European Ombudsman's staff also represented the institution at ombudsman events throughout the year. In September, Mr Nicholas CATEPHORES, Assistant to the Ombudsman, took part in the 28<sup>th</sup> United States Ombudsman Association Annual Conference in Anchorage, United States, while Ms Ida PALUMBO, Legal Officer, attended a conference organised by the Regional Ombudsman of Veneto, Italy, in October. Finally, Mr Olivier VERHEECKE, Principal Legal Adviser, attended the first meeting of the Mediterranean ombudsmen, which took place in Rabat, Morocco,



in November and was organised jointly by the Spanish *Defensor del Pueblo*, the French *Médiateur de la République* and the Moroccan *Diwan Al Madhalim* (Ombudsman).

### 5.3 OTHER EVENTS WITH OMBUDSMEN AND THEIR STAFF

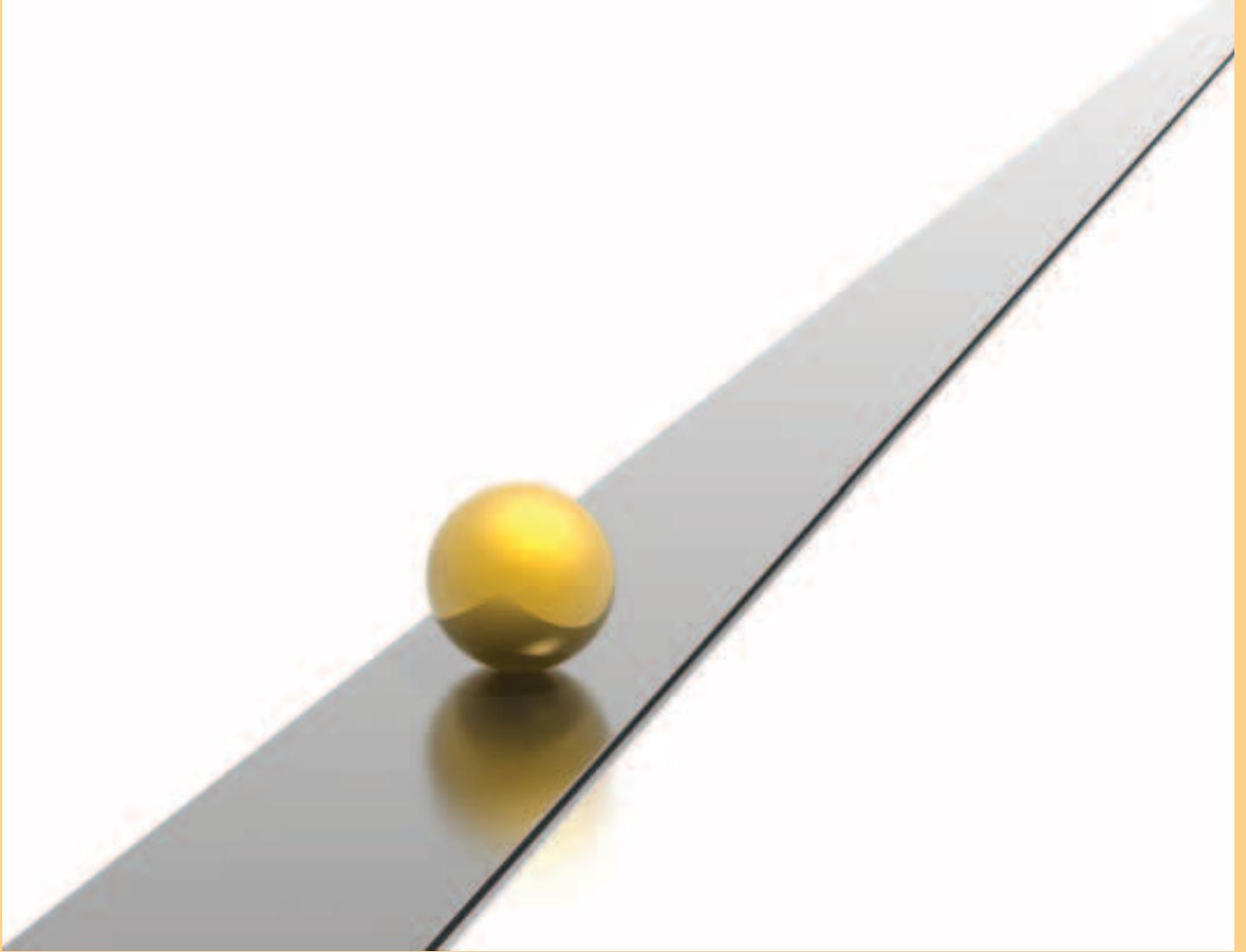
The year 2007 saw multiple bilateral contacts between the European Ombudsman and ombudsmen from within Europe and further afield. These meetings were organised with a view to promoting ombudsmanship, discussing interinstitutional relations, and exchanging best practice.

During the year, Mr DIAMANDOUROS met with his Cypriot colleague, Ms Eliana NICOLAOU, Commissioner for Administration, Mr Ulrich GALLE, Ombudsman of Rhineland-Palatinate, Germany, Mr Kjartan BJÖRGVINSSON, Deputy Ombudsman of Iceland, Mr Henrique NASCIMENTO RODRIGUES, Ombudsman of Portugal, and Mr Jean-Paul DELEVOYE, National Ombudsman of France.

Mr DIAMANDOUROS also took the time to meet and exchange views with ombudsmen from outside the EU, including the Ombudsman of East Timor, Mr Sebastião DIAS XIMENES, the Ombudsman of Morocco, Mr Moulay Mhamed IRAKI, and the Ombudsman of Ontario, Canada, Mr André MARIN.



# COMMUNICATIONS



6





## 6 COMMUNICATIONS

The European Ombudsman is profoundly aware of the importance of ensuring that those who might have problems with the EU administration know about their right to complain. Each year, strenuous efforts are made to reach out to citizens, companies, non-governmental organisations, and other relevant entities to inform them about the Ombudsman's services. In 2007, over 130 presentations were made by the Ombudsman and his staff at conferences, seminars, and meetings. Media activities continued apace, with the Ombudsman giving six press conferences and over 40 interviews to journalists from the print, broadcast and electronic media. The Ombudsman's information visits to Germany, Sweden, and Belgium gave him a further opportunity to promote awareness of his role in these countries.

This chapter details the European Ombudsman's activities in the area of communications in 2007. It begins with a look at the highlights of the year, followed by the Ombudsman's information visits, participation in events and conferences, media relations, publications, and electronic communications.

### 6.1 HIGHLIGHTS OF THE YEAR

#### THE 50<sup>TH</sup> ANNIVERSARY OF THE TREATY OF ROME

The European Union celebrated the 50<sup>th</sup> anniversary of the Treaty of Rome in 2007. A range of events were organised throughout the Union to mark this important occasion. The European Ombudsman and his staff participated actively in several of these events. The Open Days organised in Berlin, Budapest, and Warsaw were a particular highlight, with hundreds of thousands of people passing by to learn about the Union's activities.



Citizens visiting the Ombudsman's stand at the Open Day in Berlin on 25 March 2007.

The Office also participated, as it does each year, in the Open Days organised by the European Parliament in Strasbourg and Brussels. Material covering the Ombudsman's work was distributed



to visitors in 26 languages, together with a range of promotional items. Staff members were present at all of these events to answer questions about the Ombudsman's work.



Several thousand visitors came to the Ombudsman's stand at the Open Days in Strasbourg and Brussels on 1 and 5 May 2007. Many discussed in-depth with the Ombudsman's staff.



A European quiz for children formed the centrepiece of the Ombudsman's stand at the Open Days in Strasbourg and Brussels on 1 and 5 May 2007.

The Ombudsman himself travelled to Warsaw in May to participate in a round table event for stakeholders organised by the European Commission Representation to Poland. He was also invited to speak at the event to mark Europe Day in the European Parliament in Strasbourg, which gathered around 500 students.

All of these events gave the Ombudsman and his staff the opportunity to meet interested citizens and to inform them of how they can make use of his services. Feedback received during all the events was very positive.

## THE ANNUAL REPORT 2006

The Annual Report is the Ombudsman's most important publication. It provides an overview of his complaint-handling activities in a given year, offers an account of his efforts to raise awareness about his work, and explains the use that has been made of the resources put at his disposal. The Report is of interest to a wide range of groups and individuals at multiple levels – fellow ombudsmen, politicians, public officials, professionals, academics, interest groups, non-governmental organisations, journalists and citizens alike at the European, national, regional, and local levels.

Mr DIAMANDOUROS presented his Report to Mr Hans-Gert PÖTTERING MEP, President of the European Parliament, on 13 March 2007 and to the Parliament's Committee on Petitions on 2 May. This latter meeting gave the Ombudsman the opportunity to explain the results achieved during the year in question and to exchange views with Members of the Committee about ideas and initiatives for the future.

Ms Luciana SBARBATI MEP drafted the Committee's Report on the Ombudsman's activities for 2006. On 25 October, the Plenary of the Parliament debated Ms SBARBATI's Report, with the participation of Mr DIAMANDOUROS and European Commission Vice-President Margot WALLSTRÖM. Subsequently, the Plenary of the Parliament adopted a Resolution based upon Ms SBARBATI's Report, declaring its satisfaction with the Ombudsman's activities, with the constructive co-operation between the Ombudsman and the institutions, and with the Ombudsman's public profile.

The Ombudsman presented his Report to the media at a press conference on 3 May. The more than 50 journalists who attended this event gave him the opportunity to draw attention to the most important outcomes of his inquiries in 2006.



## GOOD ADMINISTRATION AND THE EUROPEAN OMBUDSMAN: A WORKSHOP

On 8 and 9 November, the Ombudsman convened a workshop in Brussels with an eye to generating useful ideas and strategies on how the European Ombudsman can promote the principles of good administration within the EU institutions and bodies. Participants included former ombudsmen, retired high-level officials from the main EU institutions, and members of the academic community.

After initially focusing on the concept of good administration in the EU context, the participants went on to examine the role of the European Ombudsman in promoting a culture of service to citizens. Among the questions addressed were how best to identify the core elements of a culture of service in the EU context, how to delimit the frontiers of good administration, and how to encourage the EU institutions and bodies to adopt techniques for reducing, or defusing, conflict and promoting constructive dialogue with citizens. Participants then went on to study the relationship between the work of the Ombudsman and that of the Courts. They looked into alternative modalities through which the Ombudsman should seek to establish a positive identity that is clearly separate from the role of the courts, and deliberated on how far the Ombudsman should be proactive in defining and communicating a clear narrative, for example, about the rights and responsibilities that attach to European citizenship.

The workshop saw a lively exchange of views on how the European Ombudsman can help make the right to good administration a reality and brought forward many stimulating and innovative ideas for the years ahead.

## 6.2 INFORMATION VISITS

With a view to raising awareness among citizens about their right to complain to the European Ombudsman and to further intensify his working relations with his national and regional counterparts, the Ombudsman embarked on an intensive programme of information visits to the Member States and accession countries in 2003. These visits have continued apace, with the result that the Ombudsman has now visited all EU Member States, many more than once. During each of the Ombudsman's visits, his counterparts in the Member States and accession countries arrange in-depth programmes of activities and meetings, often accompanying him throughout the trip. The presence of both ombudsmen in these events is most beneficial for citizens, since it allows them better to understand and appreciate the respective roles and competences of the national and the European Ombudsman, and to learn about their own rights deriving from citizenship not only in their country but also in the EU.

In 2007, the Ombudsman visited Germany, Sweden, and Belgium, meeting parliamentarians, judges, senior civil servants, the academic community, potential complainants and other citizens. The following section gives an overview of the wide range of meetings that took place during these visits, lists the key interlocutors and mentions the numerous presentations that were made.

### GERMANY

From 19 to 21 March, the European Ombudsman visited Berlin. The visit was organised by the German Foreign Office and the offices of the European Commission and the European Parliament in Berlin.

The visit enabled Mr DIAMANDOUROS to reach out to key audiences and to discuss his work during meetings with top government and state officials, the media, as well as citizens and representatives of target groups. Mr DIAMANDOUROS met the Federal Chancellor, Ms Angela MERKEL, the President of Germany, Mr Horst KÖHLER and the President of the *Bundestag*, Mr Norbert LAMMERT to exchange views on how to raise awareness among the German public

about the services of the European Ombudsman. Mr DIAMANDOUROS also met the Minister of Justice, Ms Brigitte ZYPRIES, the Minister of State for European Affairs, Mr Günter GLOSER, the Parliamentary Secretary of State in the Ministry of the Interior, Mr Peter ALTMAIER, the Parliamentary Secretary of State in the Ministry of Economics and Technology, Mr Peter HINTZE and the Head of the Federal Anti-Discrimination Office, Ms Martina KÖPPEN.



Mr DIAMANDOUROS and the Federal Chancellor, Ms Angela MERKEL. Berlin, 20 March 2007.



Mr DIAMANDOUROS and the President of the *Bundestag*, Mr Norbert LAMMERT. Berlin, 20 March 2007.

The further development of relations with the Petitions Committee in the *Bundestag* and its Chairman, Ms Kersten NAUMANN, constituted an important part of the visit. Mr DIAMANDOUROS had the opportunity to present his work during a meeting of the Petitions Committee. Furthermore, fruitful exchanges of view took place during a dinner organised by Ms Kersten NAUMANN which included representatives of the Petitions Committees of the *Landtage* of Berlin and Brandenburg.

Mr DIAMANDOUROS presented his work in a lecture at the *Humboldt-Universität Berlin* as well as at an event for potential complainants, citizens and other interested persons, jointly organised by the European Parliament and Commission offices and the *Institut für Europäische Politik* in Berlin. This was followed by a press conference and several individual interviews with radio and newspaper journalists.

To further develop relations with his ombudsman colleagues in Germany, Mr DIAMANDOUROS visited Mainz on 22 March. He participated in a "Conference on the crossborder co-operation of ombudsmen in the Greater Region", organised by Mr Ullrich GALLE, Ombudsman of Rhineland-Palatinate. Mr DIAMANDOUROS also met with the President of the *Landtag* of Rhineland-Palatinate, Mr Joachim MERTES, to sign the *Landtag's* Golden Book.



Mr DIAMANDOUROS with Members and staff of the *Bundestag's* Petitions Committee. Berlin, 21 March 2007.

On 25 April, Mr DIAMANDOUROS visited the German High Courts in Karlsruhe. He had an exchange of views with the President of the Federal Constitutional Court, Mr Hans-Jürgen PAPIER and with the President of the Federal High Court, Mr Günter HIRSCH.

Finally, on 27 June, the European Ombudsman visited the Chamber of Commerce in Frankfurt to discuss his work with Mr Hans-Joachim OTTO, Vice Managing-Director and spokesperson of the Chamber of Commerce. He then presented his work in a lecture at the *Johann Wolfgang Goethe-Universität Frankfurt*, which was hosted by Professor Hans-Jürgen PUHLE.

## SWEDEN

From 14 to 16 May, the European Ombudsman visited Sweden. The visit was organised by the Office of the Parliamentary Ombudsmen, which put together an extensive programme of meetings, lectures and interviews to enable the European Ombudsman to raise awareness about his role.

The Swedish Parliamentary Ombudsmen is the oldest Ombudsman institution in the world, and will be celebrating its 200<sup>th</sup> anniversary in 2009. Mr DIAMANDOUROS appreciated the opportunity during his visit to exchange experiences and to discuss working methods with the Chief Parliamentary Ombudsman, Mr Mats MELIN, with the three Parliamentary Ombudsmen, Ms Kerstin ANDRÉ, Mr Nils-Olof BERGGREN, and Ms Cecilia NORDENFELT, and with the Deputy Parliamentary Ombudsman, Mr Hans RAGNEMALM. He also took the opportunity to give a presentation to the staff of the Parliamentary Ombudsmen, during which many interesting issues were raised.

During his visit, Mr DIAMANDOUROS discussed his work with the Minister for EU Affairs, Ms Cecilia MALMSTRÖM, the State Secretary, Mr Håkan JONSSON, the President of the Supreme Court, Mr Johan MUNCK, and the President of the Supreme Administrative Court, Mr Rune LAVIN. He also met with the Chair of the Standing Committee on the Constitution, Ms Berit ANDNOR, the Deputy Chair of the Committee on European Union Affairs, Ms Susanne EBERSTEIN, and a Member of the Joint Committee on the Constitutional Treaty of the European Union, Mr Björn HAMILTON.

The visit provided several excellent opportunities for the Ombudsman to make his work better known to a variety of target audiences. The Swedish Bar Association hosted a seminar attended by lawyers specialising in EU affairs, during which Mr DIAMANDOUROS gave a presentation entitled "The European Ombudsman is always open for business". The event was hosted by the Secretary-General of the Bar Association, Ms Anne RAMBERG, and an article on the Ombudsman was subsequently published in the Association's newsletter. Mr DIAMANDOUROS also gave interviews to *Riksdag & Departement*, and to the best-selling newspaper in Sweden, *Aftonbladet*, which ran a full-page article on the work of the Ombudsman. During meetings with the Head

of the European Commission Representation, Mr Anders HENRIKSSON, and the Director of the European Parliament Information Office, Mr Björn KJELLSTRÖM, ideas were discussed on how best to increase awareness of the European Ombudsman in Sweden.



Mr DIAMANDOUROS with (from left to right), the State Secretary, Mr Håkan JONSSON, the Minister for EU Affairs, Ms Cecilia MALMSTRÖM, and the Chief Parliamentary Ombudsman, Mr Mats MELIN. Stockholm, 16 May 2007.

Mr DIAMANDOUROS presented his work to faculty members of the Departments of Law and Political Science at Uppsala University, in a speech entitled “Transparency, Accountability and Democracy in the EU”. The speech was hosted by Associate Professor of Public Law, Mr Thomas BULL. He also held a useful meeting with senior civil servants from the Ministry of Justice and the Prime Minister’s Office, during which the theme of “Strengthening Good Administration in the EU – challenges ahead” was presented and discussed.



Mr DIAMANDOUROS presents his work to the Swedish Bar Association. Stockholm, 15 May 2007.

## BELGIUM

From 26 to 28 November, the European Ombudsman visited Belgium. The Office of the Federal Ombudsman organised the visit, setting up a wide range of meetings which allowed the European Ombudsman to raise awareness about his role among top government and state officials, potential complainants and interested citizens.

The visit provided an excellent opportunity to further develop relations with the Belgian Federal Ombudsmen, Ms Catherine DE BRUECKER and Mr Guido SCHUERMANS. Besides the official meetings, during which they discussed their respective functions, the Ombudsmen had many occasions to exchange views more informally, including during a dinner they organised with the



Regional Ombudsman of Flanders, Mr Bernard HUBEAU, and the Ombudsman of the French-speaking Community, Ms Marianne DE BOECK. Mr DIAMANDOUROS also had the opportunity to discuss with other local and private sector ombudsmen in Belgium at the General Assembly of the *Concertation Permanente des Médiateurs et Ombudsmans*, where he made a presentation on transparency. This meeting was chaired by the Regional Ombudsman of Wallonia, Mr Frédéric BOVESSE, and the Pensions Ombudsman, Mr Jean Marie HANNESSE. It was followed by a reception offered by the Governor of the Province of Namur, Mr Denis MATHEN.



© Belgian Federal Ombudsman

Mr DIAMANDOUROS with the Belgian federal, regional, local, and private sector ombudsmen at the General Assembly of the *Concertation Permanente des Médiateurs et Ombudsmans*. Namur, Belgium, 27 November 2007.

During his visit, Mr DIAMANDOUROS discussed his work with the Minister for Foreign Affairs, Mr Karel DE GUCHT, the Minister for Justice, Ms Laurette ONKELINX, and the Minister for Public Administration, Mr Christian DUPONT. After meeting the President of the Chamber of Representatives, Mr Herman VAN ROMPUY, and the Vice-President, Mr Herman DECROO, the Ombudsman presented his work to the Advisory Committee on European Affairs and the Committee on Petitions. He also had the opportunity to meet members of the Belgian judiciary during his visit, namely, the First President of the Court of Cassation, Mr Ghislain LONDERS, and the Presidents of the Court of Cassation, Mr Ivan VEROUGSTRAETE and Mr Christian STORCK, the Presidents of the Constitutional Court, Mr Marc BOSSUYT and Mr Michel MELCHIOR, and the President of the Council of State, Ms Marie-Rose BRACKE.



© Belgian Federal Ombudsman

Ms Catherine DE BRUECKER, Belgian Federal Ombudsman, Mr Herman VAN ROMPUY, President of the Chamber of Representatives, Mr DIAMANDOUROS, Mr Herman DECROO, Vice-President of the Chamber, and Mr Guido SCHUERMANS, Belgian Federal Ombudsman, during the European Ombudsman's information visit to Belgium, 26–28 November 2007.



The information visit included two university presentations — at the *Université Libre de Bruxelles* and the Catholic University of Leuven — where the more than 250 students present showed great interest in the Ombudsman's work. The visit ended with a presentation to the staff of the Belgian Federal Ombudsman, where a number of highly relevant issues were raised.

## 6.3 CONFERENCES AND MEETINGS

Conferences, seminars, and meetings offer an excellent opportunity for the Ombudsman to raise awareness about his work among key target audiences such as non-governmental organisations, interest groups, and academic institutions. They equally facilitate his work of promoting the concept of ombudsmanship more generally. Conferences and meetings also enable the Ombudsman and his staff to keep abreast of developments on the European landscape that are of particular relevance to the institution.

This section covers the full range of activities aimed at promoting the concept of ombudsmanship generally and the work of the European Ombudsman in particular. Where the Ombudsman cannot participate personally in an event, he entrusts the representation of the institution to an appropriate staff member. Many groups also learn about the Ombudsman's work in the context of study trips to Strasbourg. This section therefore includes an overview of group presentations that took place during 2007.

### INVOLVING THE OMBUDSMAN

Mr DIAMANDOUROS devoted considerable time in 2007 to presenting his work to potential complainants. His speeches at events organised by the British Chamber of Commerce in Belgium, the Chamber of Commerce and Industry in Thessaloniki, Greece, and the Board of the Federation of Greek Entrepreneurs and Industrialists were important in reaching out to the business community. His presentation on transparency at the European Policy Centre in Brussels helped to communicate the Ombudsman's main ideas on a topic that is central to his work of complaint-handling. The Ombudsman also had the opportunity to discuss his work with the European Association of Lawyers (CCBE) at a seminar in Bruges, Belgium. Other notable events included a speech to the European Disability Forum, the Hellenic Society for the Protection of the Environment and Cultural Heritage, members of Euroculture, and the *Cercle Européen* in Strasbourg.

The university environment offers an excellent opportunity for the Ombudsman to reach out to students of law, public administration, and political science. In 2007, Mr DIAMANDOUROS presented his work to students at the *Ecole Nationale d'Administration* (ENA) in Strasbourg, Oxford University (Greek Society), the London School of Economics, the College of Europe in Bruges, and the Hellenic Society for Political Science in Athens.

In an effort to explain his work to high level political representatives, Mr DIAMANDOUROS met with presidents, prime ministers, ministers, members of parliament, and ambassadors from EU Member States, including the Czech Republic, Cyprus, Greece, and the United Kingdom. He also had meetings with high level political representatives from beyond the EU, including Japan, Moldova, Russia, Turkey, and Ukraine. His presentation at the 4<sup>th</sup> Ministerial eGovernment Conference in Lisbon, organised as part of the Portuguese Presidency of the EU, was invaluable in enabling the Ombudsman to address key decision-makers, private sector specialists and interested citizens from all Member States. Around 500 people were present to hear the Ombudsman's presentation at this event.



Mr DIAMANDOUROS gives a presentation at the 4<sup>th</sup> Ministerial eGovernment Conference. Lisbon, 21 September 2007.

#### INVOLVING THE OMBUDSMAN'S STAFF

The Ombudsman's staff is equally active in promoting awareness of the institution. During 2007, over 80 presentations were made to around 3 000 citizens from throughout the EU. The greatest number of such groups of visitors came from Germany, followed by Poland and Hungary. Among the participants at these presentations were students and trainees, lawyers and judges, entrepreneurs and lobbyists, government officials and civil servants, and staff from ombudsman offices. While these presentations require a large amount of work by the Ombudsman's staff, they are extremely important in reaching out to potential complainants and other citizens, and in helping to give the EU administration a "human face". For this reason, the Ombudsman's office attempts, as far as possible, to accept requests from relevant groups of visitors who wish to learn about his work.

## 6.4 MEDIA RELATIONS

The European Ombudsman is committed to ensuring that citizens, NGOs, associations and companies, are aware of their right to complain about maladministration in the EU institutions. The Ombudsman recognises the important role that the media play in informing public opinion, enriching debate, and in increasing the visibility of his services in all the EU Member States. A proactive media policy constitutes a central component of his activities and of his efforts to promote respect for rights under EU law and to improve the quality of administration.

The Ombudsman's media policy is based on a twin approach: On the one hand, he seeks to inform the wider European public about his work via the generalised media (e.g., TV, newspapers, radio). On the other, he targets specific groups of potential complainants via more specialised media (e.g., economic or consumer magazines and internal newsletters of associations, NGOs and interest groups).

The Ombudsman aims to be as transparent and accessible as possible for journalists in order to allow the public to follow his work. He provides information to the media about the start of investigations, friendly solutions accepted by institutions to satisfy complainants, important draft recommendations addressed to institutions and decisions closing inquiries. The Ombudsman also informs the media about his Annual Report, the latest statistics, his contributions to ongoing public debates and initiatives, and other Ombudsman-related topics which are relevant to the public. While



the Ombudsman aims to make his work as open as possible, he respects the legitimate demands of complainants who choose to have their cases treated confidentially.

The Ombudsman aims to reach out to the Brussels-based European correspondents as well as to national and regional journalists in all the EU Member States. He informs the media mainly via press releases, press conferences, background discussions, and interviews. He strives to provide reader-friendly and simple messages in order to be of maximum service to journalists.



Mr DIAMANDOUROS giving an interview to Ms Lena MELLIN, EU Reporter for Sweden's biggest daily newspaper, *Aftonbladet*. Stockholm, 14 May 2007.

In 2007, the Ombudsman's main media activities included press conferences in Brussels and Strasbourg to present his Annual Report, and in Berlin, Karlsruhe, and Warsaw, as part of his visits to these cities. Mr DIAMANDOUROS also teamed up with his French colleague, Mr Jean-Paul DELEVOYE, to present their work to French journalists in Strasbourg in the run-up to the Sixth Seminar of National Ombudsmen. Press briefings with interested journalists from a range of newspapers and press agencies also gave the European Ombudsman the opportunity to explain his work for citizens. Finally, Mr DIAMANDOUROS gave over 40 interviews to journalists from the print, broadcast, and electronic media in 2007, in Strasbourg, Brussels, and elsewhere.



The Rapporteur on the Ombudsman's Annual Report 2006, Ms Luciana SBARBATI MEP, and Mr DIAMANDOUROS address a press conference. Strasbourg, 24 October 2007.

Seventeen press releases were issued in 2007 and distributed to journalists and interested parties throughout Europe. Among the issues covered were the Ombudsman's inquiry into late payment, problems in the area of access to documents and information, a complaint concerning the European Working Time Directive, and problems with information material produced by the Commission on the rights of air passengers.



## 6.5 PUBLICATIONS

The Ombudsman is keen to reach the widest possible audience with a view to raising awareness about his work in holding the EU administration to account. A number of publications were produced and distributed to interested parties in 2007 with an eye to informing key stakeholders and the general public about the European Ombudsman's activities and the services he can offer EU citizens and residents. All of the Ombudsman's publications are available on his website at <http://www.ombudsman.europa.eu> and can be obtained free of charge from the EU Bookshop at <http://bookshop.europa.eu>

Of particular interest in 2007 was a new information sheet for businesses and organisations, which explains succinctly what the Ombudsman can do for these entities. The information sheet was distributed, along with other relevant material, as part of a mailing campaign aimed at potential complainants. Chambers of commerce and law firms throughout the EU were particularly addressed during the campaign, with over 5 000 personalised mailings sent. This campaign proved to be a big success with requests for many thousands of extra copies of the Ombudsman's publications being received throughout 2007.

## 6.6 ONLINE COMMUNICATIONS

### **E-mail communication**

In April 2001, an electronically-submittable version of the European Ombudsman's complaint form was added to the website in 12 languages. Following the enlargement of the European Union on 1 May 2004, the form was made available in a further nine languages. In December 2006, in preparation for the further enlargement of the European Union on 1 January 2007, the form was added to the website in Bulgarian and Romanian. Over 58% of all complaints received by the Ombudsman in 2007 were submitted over the Internet. A large proportion of these was received through the electronic complaint form.

In the year 2007, the main e-mail account of the Ombudsman was used to reply to a total of 7 273 e-mails requesting information. Of these, 3 127 were mass mailings submitted by citizens and concerned complaints received by the European Ombudsman, while 4 146 were individual requests for information. Issues covered by the mass mailings included the construction of a high-voltage cable to connect the Spanish and French electrical networks, and the alleged decision of authorities in the Valencia region of Spain to interrupt the broadcasting of a Catalan television channel. All such e-mails received a reply explaining the state of play with regard to the Ombudsman's handling of the complaint in question.

All of the 4 146 individual requests for information received individual replies from an appropriate member of the Ombudsman's staff. This compares with around 3 500 in 2006, and 3 200 in 2005.

### **Website developments**

The Ombudsman's website was created in July 1998. Throughout 2007, the European Ombudsman's Web Developer continued to work closely with the Heads of the Communications Sector, as well as with the technical services of the European Parliament, in preparing for the transformation of the Ombudsman's website into a modern, dynamic, informative, interactive, and constantly evolving service to citizens. The new website is scheduled to be launched in the first half of 2008.

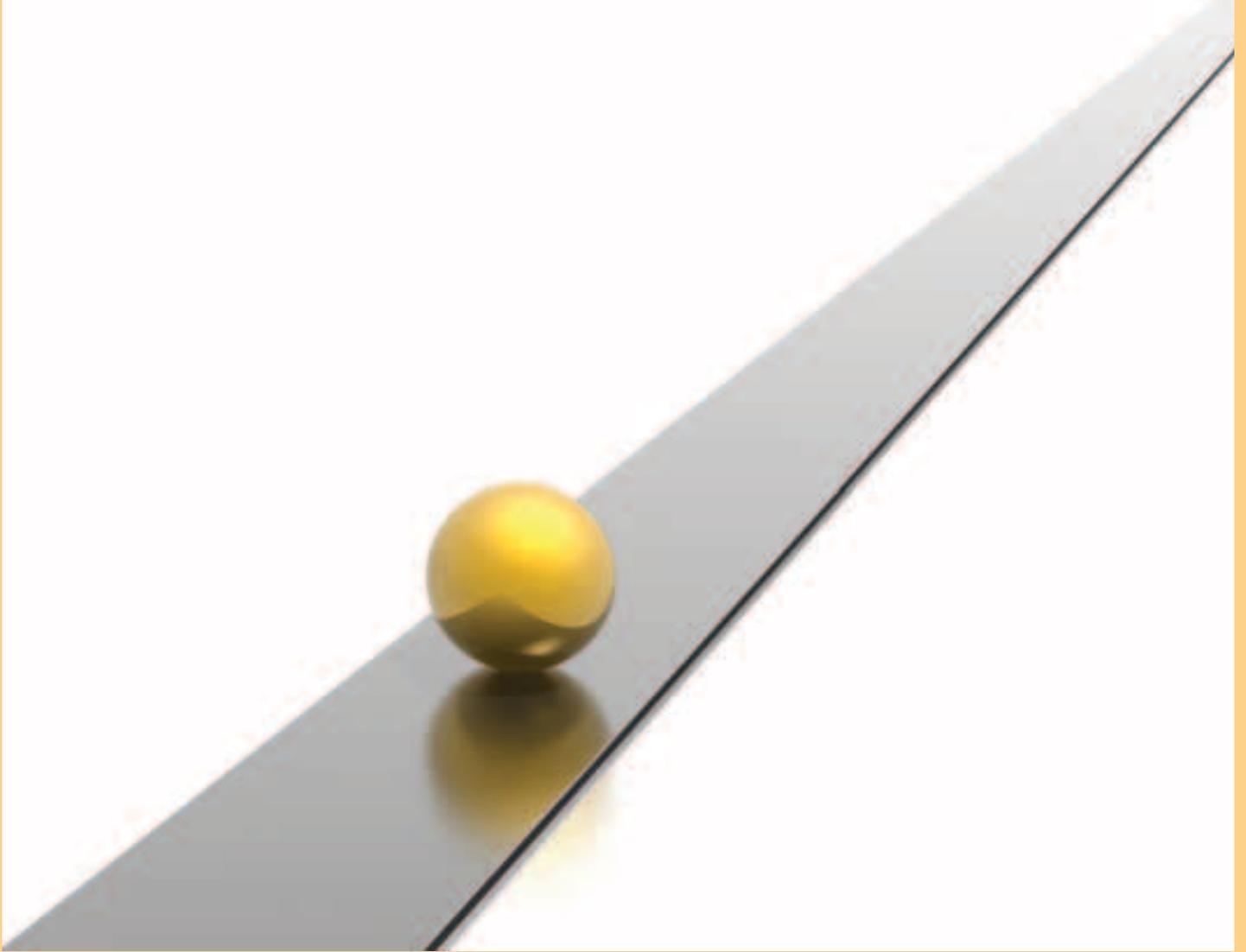
From 1 January to 31 December 2007, the Ombudsman's website received 449 418 unique visitors. The English-language pages of the site were the most consulted, followed by the French, Spanish, German and Italian pages. In terms of the geographical origin of visits, the greatest number of visitors came from Italy, followed by Spain, Sweden, the United Kingdom, and Germany. The



links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 82 000 visits were made to the links pages during 2007, clearly demonstrating the added value for citizens of the services provided through the European Network of Ombudsmen.

In order to ensure that the Ombudsman's website stays at the forefront of EU websites, the Office of the Ombudsman participated throughout 2007 in the work of the EU Inter-Institutional Internet Editorial Committee (CEiii).

# ANNEXES



7



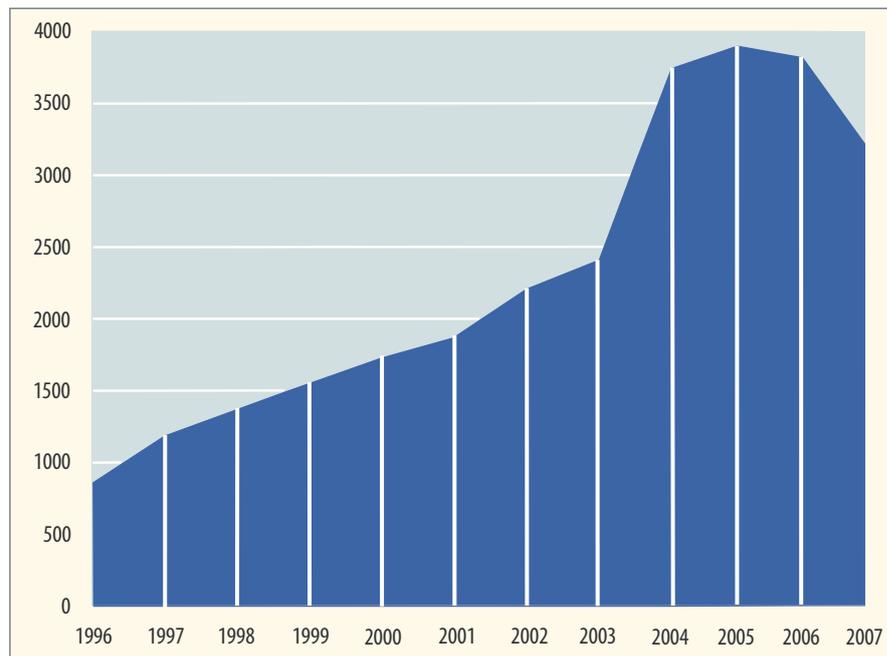


## A STATISTICS

### 1 CASES DEALT WITH DURING 2007

<b>1.1</b>	<b>TOTAL CASELOAD IN 2007</b> .....	<b>3 760</b>
	– Inquiries not closed on 31.12.2006 .....	332 <sup>1</sup>
	– Complaints awaiting decision on admissibility on 31.12.2006.....	211
	– Complaints received in 2007 .....	3 211
	– Own-initiatives of the European Ombudsman .....	6

**Number of complaints 1996-2007**



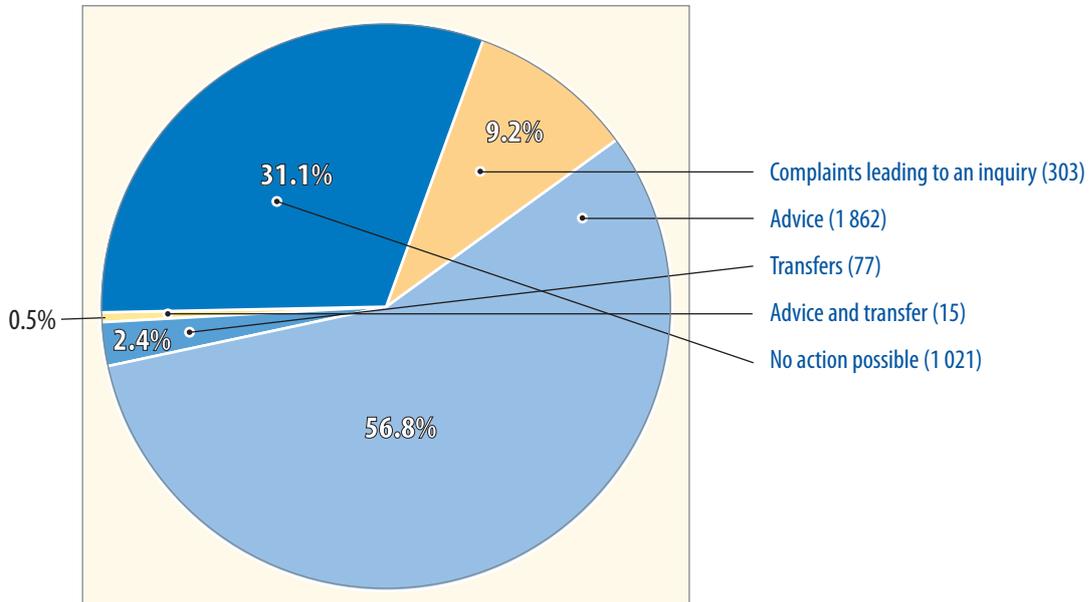
<b>1.2</b>	<b>EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED</b> .....	<b>95%</b>
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<sup>1</sup> Of which nine own-initiative inquiries of the European Ombudsman and 323 inquiries based on complaints.

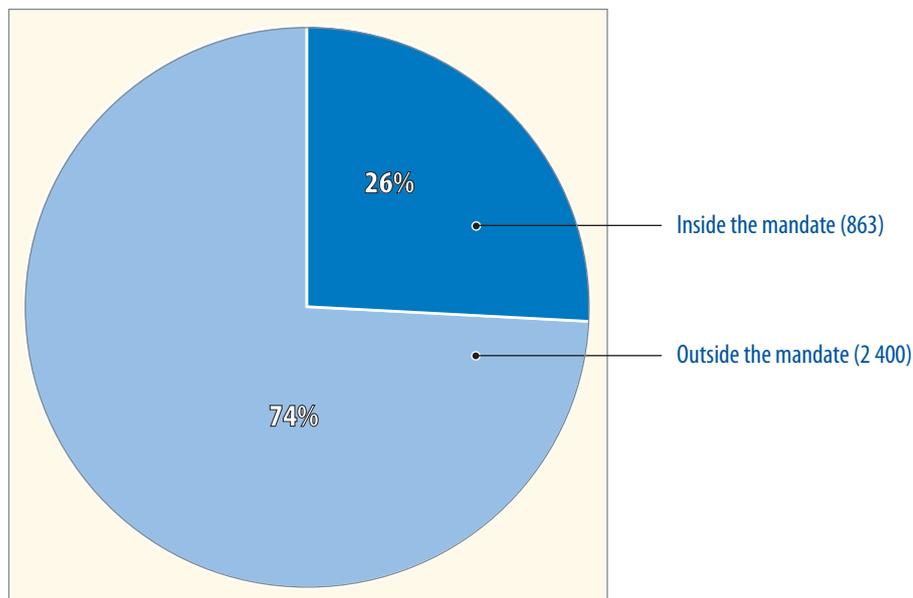


### 1.3 CLASSIFICATION OF THE COMPLAINTS

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

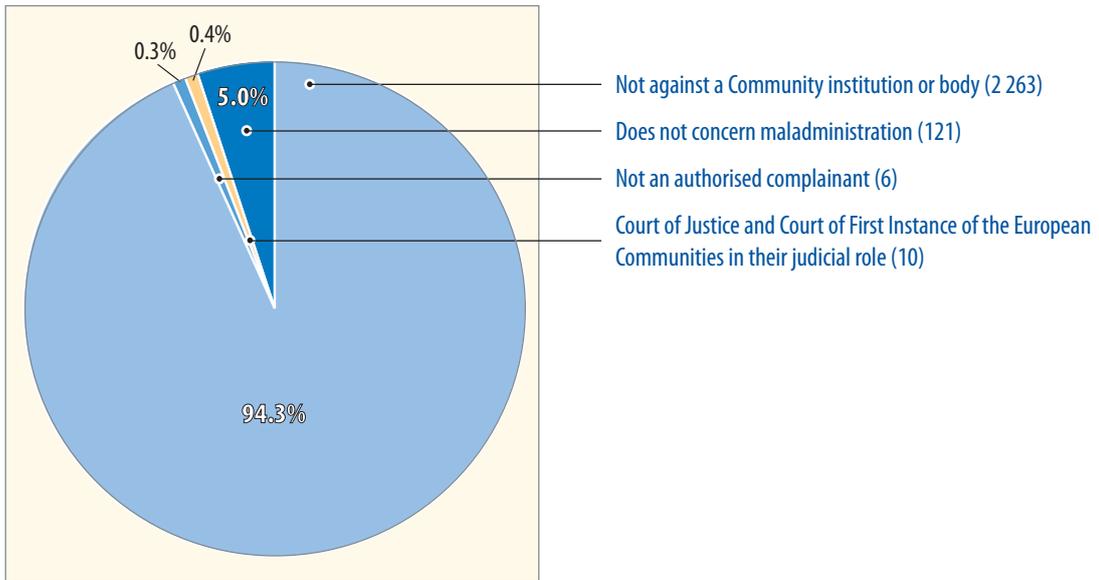


According to the mandate of the European Ombudsman



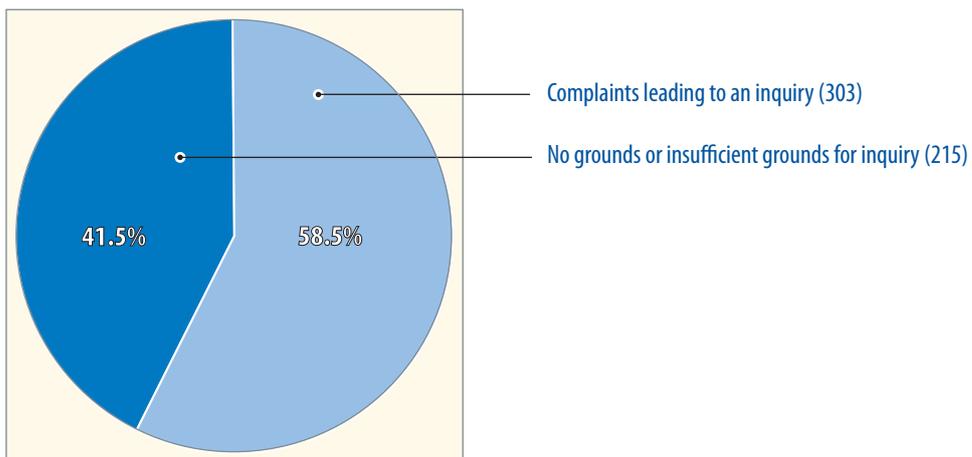


### Outside the mandate

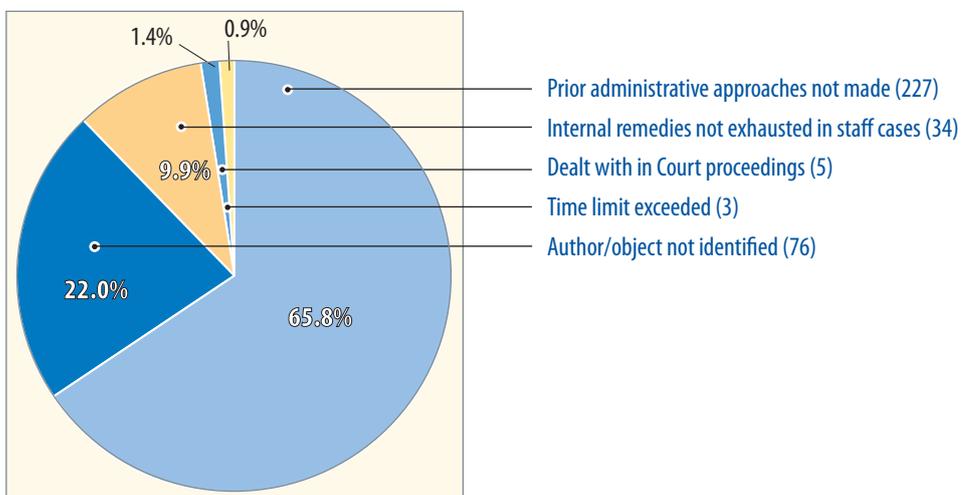


### Inside the mandate

#### Admissible Complaints



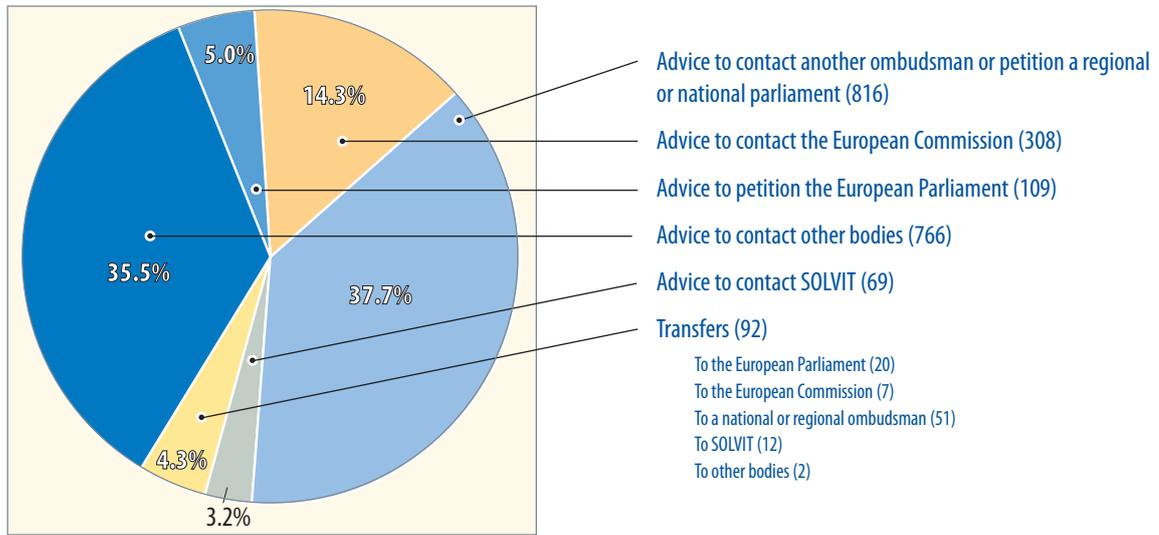
#### Inadmissible Complaints





## 2 TRANSFERS AND ADVICE

(In some cases, more than one advice has been given)

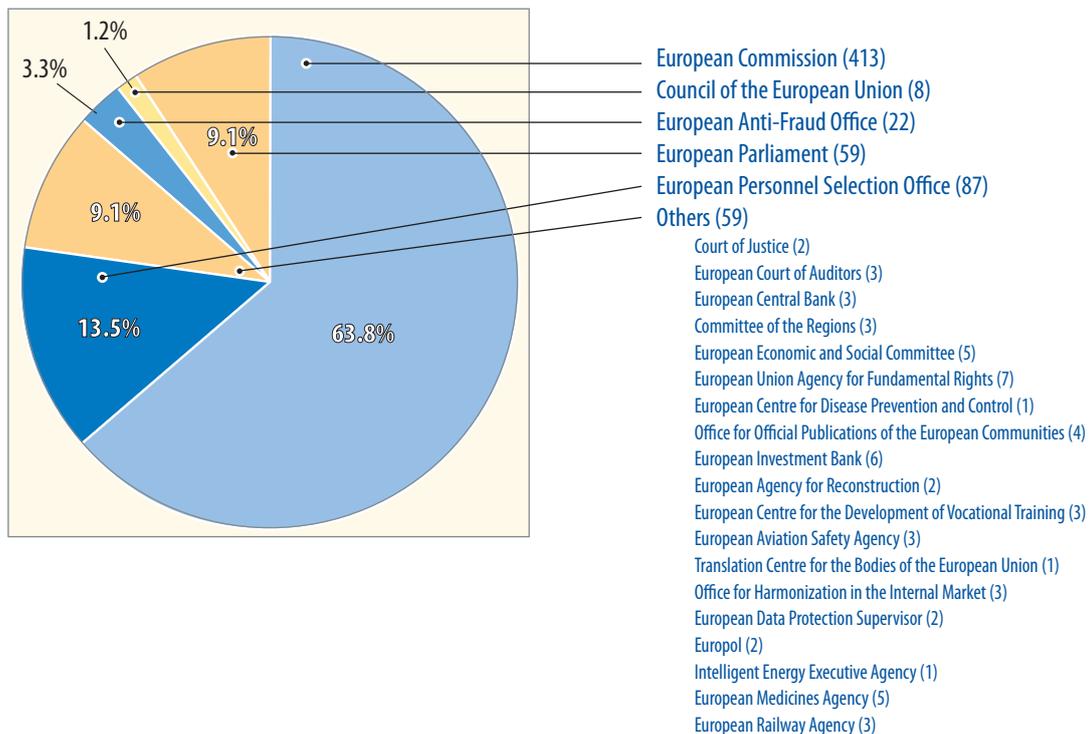


## 3 INQUIRIES DEALT WITH IN 2007 ..... 641

In 2007, the European Ombudsman dealt with 641 inquiries, 309 inquiries initiated in 2007 (of which six own-initiatives) and 332 inquiries not closed on 31.12.2006 (of which nine own-initiatives).

### 3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

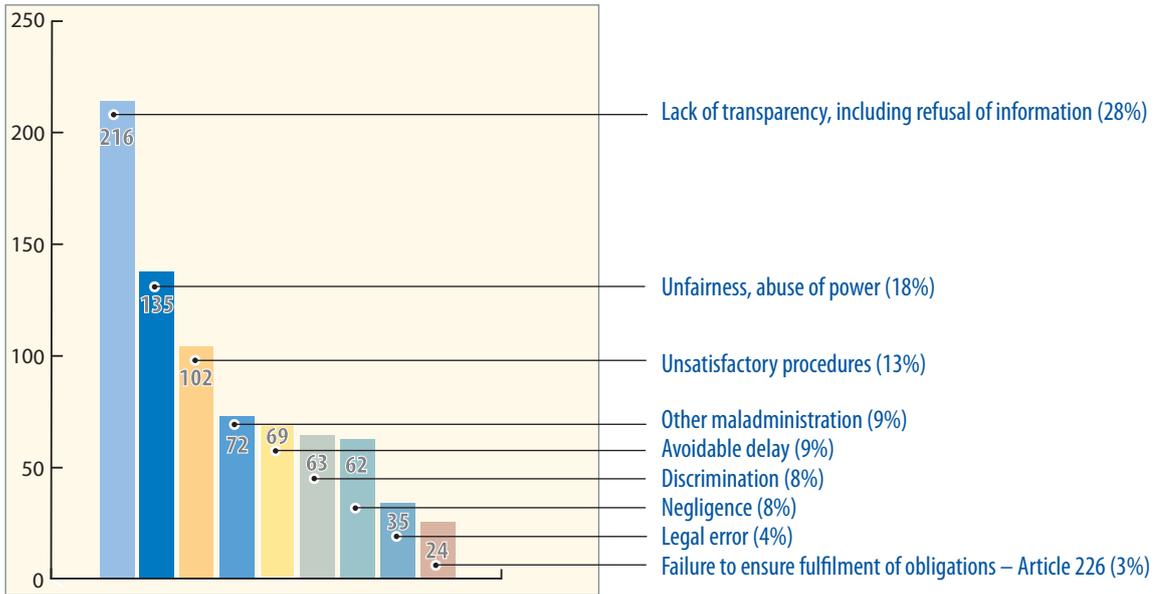
(In some cases, two or more institutions or bodies are concerned by the inquiry)





**3.2 TYPE OF MALADMINISTRATION ALLEGED**

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

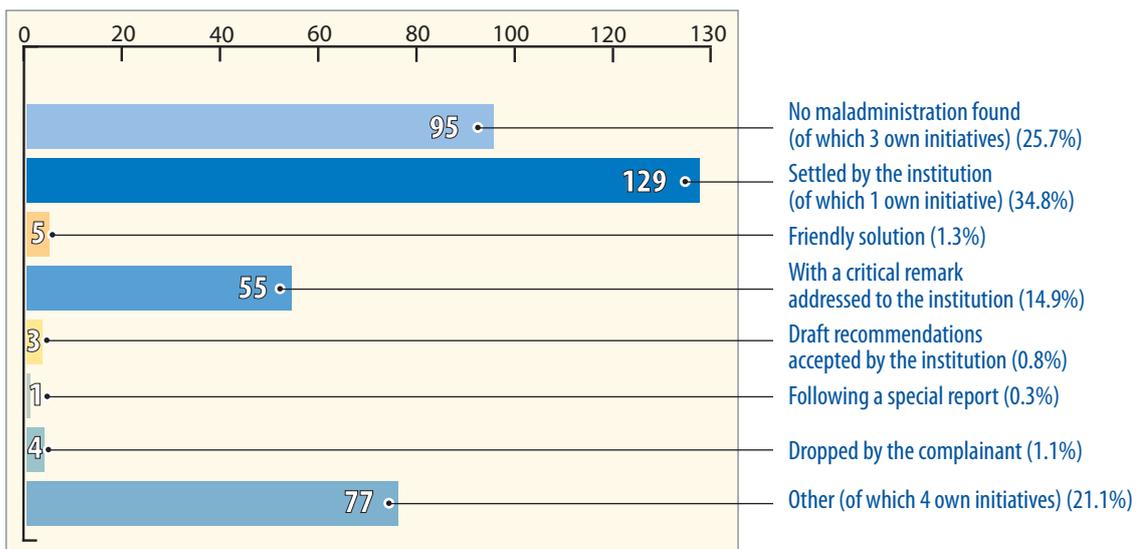


**3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2007**

– Proposals for friendly solutions.....	30
– Draft recommendations .....	8
– Special report.....	1

**3.4 INQUIRIES CLOSED ..... 348<sup>2</sup>**

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



<sup>2</sup> Of which seven own-initiatives of the Ombudsman.

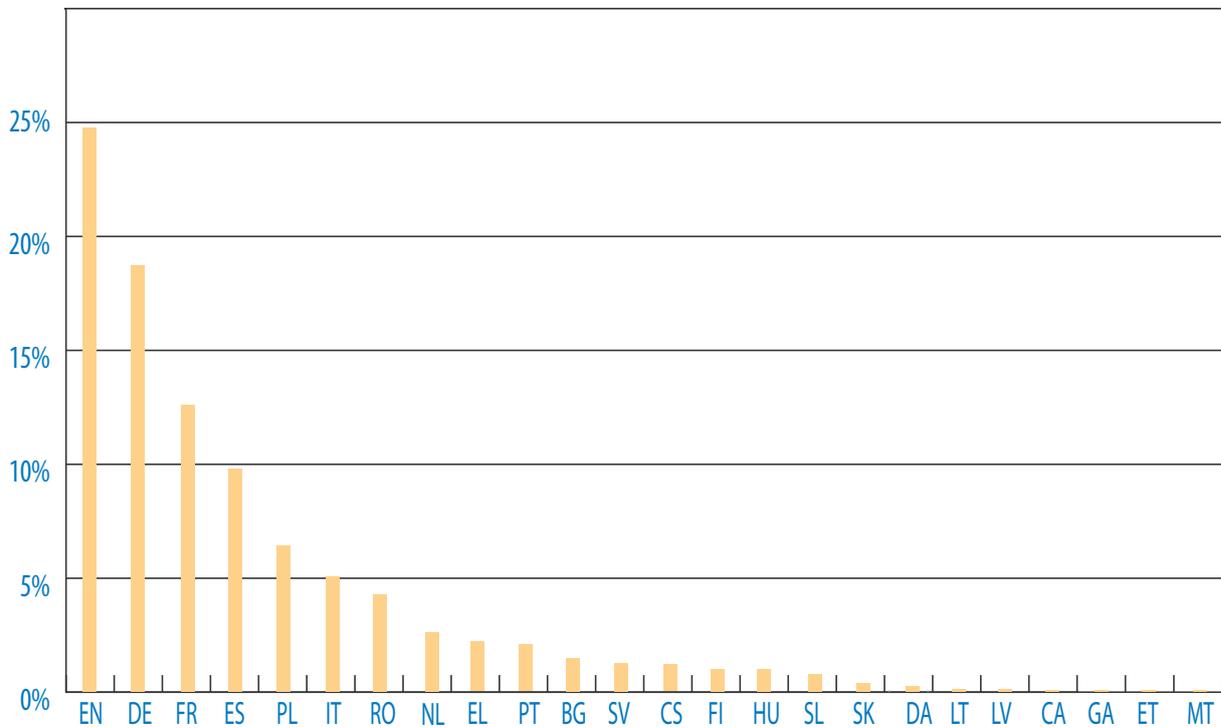


## 4 ORIGIN OF COMPLAINTS REGISTERED IN 2007

### 4.1 SOURCE OF COMPLAINTS



### 4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS





## 4.3 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Ratio <sup>1</sup>
Luxembourg	44	1.4	0.1	13.6
Malta	26	0.8	0.1	10.0
Cyprus	46	1.4	0.2	8.9
Slovenia	39	1.2	0.4	3.0
Belgium	182	5.7	2.1	2.6
Bulgaria	91	2.8	1.6	1.8
Finland	62	1.9	1.1	1.8
Ireland	43	1.3	0.9	1.5
Greece	106	3.3	2.3	1.5
Austria	75	2.3	1.7	1.4
Portugal	91	2.8	2.1	1.3
Spain	351	10.9	9.0	1.2
Romania	162	5.0	4.4	1.2
Sweden	61	1.9	1.8	1.0
Hungary	67	2.1	2.0	1.0
Germany	507	15.8	16.6	1.0
Czech Republic	59	1.8	2.1	0.9
Poland	214	6.7	7.7	0.9
Slovakia	27	0.8	1.1	0.8
The Netherlands	74	2.3	3.3	0.7
France	251	7.8	12.8	0.6
Lithuania	12	0.4	0.7	0.5
Latvia	8	0.2	0.5	0.5
Denmark	18	0.6	1.1	0.5
Italy	182	5.7	11.9	0.5
Estonia	4	0.1	0.3	0.5
United Kingdom	156	4.9	12.3	0.4
<b>Others</b>	200	6.2		
<b>Not known</b>	53	1.7		

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



## B THE OMBUDSMAN'S BUDGET

### An independent budget

Since 1 January 2000, the Ombudsman's budget has been an independent section of the budget of the European Union (currently section VIII)<sup>1</sup>.

### Structure of the budget

The Ombudsman's budget is divided into three titles. Title 1 contains salaries, allowances and other expenditure related to staff. Title 2 covers buildings, furniture, equipment and miscellaneous operating expenditure. Title 3 contains the expenditure resulting from general functions carried out by the institution.

### Co-operation with the European Parliament

To avoid unnecessary duplication of administrative and technical staff, some of the technical services necessary for the Ombudsman to carry out his functions are provided by, or through, the European Parliament. The co-operation between the European Ombudsman and the European Parliament has allowed for considerable efficiency savings to the Community budget. The current co-operation agreement was signed on 15 March 2006, by the President of the Parliament and the European Ombudsman, and entered into force in April 2006. Its goal is to maintain co-operation with the Parliament in all the domains where substantial economies of scale and budgetary savings are possible. The European Parliament will therefore continue to provide the Ombudsman with services in a number of areas, including buildings, information technology, communications, medical services, training, translation, and interpretation. The current agreement allows for clarity concerning Parliament's pricing policy. Services are paid on the basis of a fair, transparent, and reasonable estimate of costs, with the exception of auditing and accounting costs, for which a lump sum is paid. This also reflects the Ombudsman's autonomy in staff management and in financial matters.

### The budget in 2007 and 2008

The table below presents the Ombudsman's budget divided into three headings. It also shows how the budgeted appropriations in 2007 were used, and the evolution of the budget between 2007 and 2008. In addition, it indicates the number of staff posts in the Ombudsman's establishment plan.

(in EUR)

Title	Heading	2007		2008
		Budgeted appropriations	Committed Appropriations	Budgeted appropriations
1	Expenditure relating to persons working with the institution	6 150 300	5 950 031	6 436 000
2	Buildings, furniture, equipment and miscellaneous operating expenditure	1 251 500	1 309 867	1 345 000
3	Expenditure resulting from general functions carried out by the institutions	751 000	729 586	724 770
Total expenditure		8 152 800	7 989 484	8 505 770
Number of posts			57	57

<sup>1</sup> Council Regulation (EC, ECSC, Euratom) No 2673/1999 of 13 December 1999 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1999 L 326, p. 1.



## C PERSONNEL

To ensure that the institution can properly carry out the tasks of dealing with complaints about maladministration in 23 Treaty languages, and of reaching out to citizens and residents of the EU to raise awareness about their right to complain, the Ombudsman has the support of a well-qualified, multilingual staff. This Annex contains a full list of staff members in 2007, their job titles and contact details, as well as a description of the work carried out by the various departments and sectors within the office. It ends with a short overview of the staff meetings that took place during the year.

### EUROPEAN OMBUDSMAN

#### **P. Nikiforos DIAMANDOUROS**

##### *European Ombudsman*

P. Nikiforos DIAMANDOUROS was born in Athens, Greece, on 25 June 1942. He was elected European Ombudsman on 15 January 2003. He took office on 1 April 2003 and was re-elected for a five-year term on 11 January 2005.

From 1998 to 2003, he was the first National Ombudsman of Greece. He has also been Professor of comparative politics at the Department of Political Science and Public Administration of the University of Athens since 1993 (currently on leave). From 1995 to 1998 he served as Director and Chairman of the Greek National Centre for Social Research (EKKE).

He received his B.A. degree in political science from Indiana University (1963) and his M.A. (1965), M.Phil. (1969), and Ph.D. (1972) degrees in the same field from Columbia University. Prior to joining the faculty of the University of Athens in 1988, he held teaching and research appointments at the State University of New York and Columbia University respectively (1973-78). From 1980 to 1983, he served as Director of Development at Athens College, Athens, Greece. From 1983 to 1988, he was Program Director for Western Europe, as well as the Middle East and North Africa at the Social Science Research Council, New York. From 1988 until 1991, he was the Director of the Greek Institute for International and Strategic Studies, Athens, a policy-oriented research think tank established with joint funding from the Ford and MacArthur Foundations. In 1997, he held an appointment as Visiting Professor of political science at the Juan March Centre for Advanced Studies in the Social Sciences (Madrid).

He has served as President of the Greek Political Science Association (1992-98) and of the Modern Greek Studies Association of the United States (1985-88). Between 1999 and 2003, he served as a member of Greece's National Commission on Human Rights, while from 2000 to 2003 he was a member of the Greek National Council for Administrative Reform. From 1988 to 1995, he was co-chair of the Subcommittee on Southern Europe of the Social Science Research Council, New York, whose activities are funded by a grant from the Volkswagen Foundation. He is also joint General Editor of the Series on the New Southern Europe and the recipient of Fulbright and National Endowment for the Humanities research grants.

He has written extensively on the politics and history of Greece, Southern Europe and Southeastern Europe and, more specifically, on democratisation, state- and nation-building, and the relationship between culture and politics.



## SECRETARIAT OF THE EUROPEAN OMBUDSMAN

The Secretariat of the European Ombudsman is responsible for the running of the Ombudsman's private office. It manages the Ombudsman's agenda, co-ordinates his incoming and outgoing correspondence, advises on relations with the other EU institutions and bodies, deals with the protocol aspects of the institution's work, and undertakes general secretarial duties for the Ombudsman.

### **Nicholas CATEPHORES**

*Assistant to the European Ombudsman*

Tel. +33 3 88 17 23 83

### **Kelly KOUNDOURI**

*Secretary to the European Ombudsman*

Tel. +33 3 88 17 25 28

## SECRETARY-GENERAL

The Secretary-General assists and advises the Ombudsman in dealing with complaints and inquiries. He co-ordinates relations between the Ombudsman's Office and the other European institutions and has a key role to play in developing relations with ombudsman offices throughout Europe and in reaching out to European citizens. He advises the Ombudsman on the structure and management of the Office, the planning of its activities and the monitoring of its work and performance, as well as ensuring its general co-ordination.

Following the appointment of Mr Ian HARDEN to the post of Secretary-General on 1 August 2006, and pending the completion of the recruitment procedure for a new Head of the Legal Department, Mr HARDEN continued to perform the functions of Head of the Legal Department until 30 June 2007.

### **Ian HARDEN**

*Secretary-General*

Tel. +33 3 88 17 23 84

Ian HARDEN was born in Norwich, England, on 22 March 1954. He studied law at Churchill College, Cambridge, obtaining a BA with first class honours in 1975 and an LLB in 1976. After graduation, he joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a Senior Lecturer from 1990 to 1993, a Reader from 1993 to 1995, and became Professor of Public Law in 1995. He joined the European Ombudsman's Office as a Principal Legal Adviser in 1996, becoming Head of Secretariat from 1997 to 1999, then Head of the Legal Department from 2000 onwards. He was appointed Secretary-General of the Ombudsman's office on 1 August 2006. He is the author or co-author of numerous publications on EU law and public law, including *The Contracting State* (Buckingham: Open University Press, 1992); *Flexible Integration: Towards a more effective and democratic Europe* (London CEPR, 1995), and *European Economic and Monetary Union: The Institutional Framework* (Kluwer Law International, 1997). He is a Member of the *Association française de droit constitutionnel* and of the "Study of Parliament Group" in the United Kingdom and honorary professor at the University of Sheffield.

### **Murielle RICHARDSON**

*Assistant to the Head of the Legal Department (until 30.6.2007)*

*Assistant to the Secretary-General (from 1.7.2007)*

Tel. +33 3 88 17 23 88



## LEGAL DEPARTMENT

The Legal Department consists mainly of lawyers whose major responsibility is to analyse the complaints received by the European Ombudsman and conduct inquiries under the supervision of the Head of the Legal Department and four Heads of Legal Teams. The Head of the Legal Department also advises the Ombudsman on the legal strategy and direction of the institution and manages the Department. The Assistant to the Head of the Legal Department ensures the operation of internal quality control and management information systems and co-ordinates the Department's contribution to the Annual Report. She also supervises the Complaints-Handling Secretariat.

During 2007, the Department had a total staff of 23, consisting of the Head of the Legal Department, seven Principal Legal Advisers, four of whom serve as Heads of Legal Teams, 12 Legal Officers, a Lawyer Linguist, a Legal Assistant, and the Assistant to the Head of the Legal Department. During the year in question, the Legal Department supervised 16 trainees.

On 1 July 2007, Mr João SANT'ANNA was appointed as Head of the Legal Department following an open recruitment procedure. Mr SANT'ANNA joined the European Ombudsman's Office as Head of the Administration and Finance Department in 2000 and continues to perform the functions of Head of that Department *ad interim*.

### João SANT'ANNA

*Head of the Legal Department (from 1.7.2007)*

Tel. +33 3 88 17 53 46

João SANT'ANNA was born in Setúbal, Portugal, on 3 May 1957. He studied law at the University of Lisbon from 1975 to 1980 and registered with the bar in Lisbon in 1981. Between 1980 and 1982, he worked as a lawyer in the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. Between 1982 and 1984, he pursued his legal studies, in the field of intellectual property rights, at the Ludwig-Maximilian University and the Max-Planck Institute in Munich. After returning to Portugal in 1984, he was appointed Head of the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. In 1986, he became a civil servant of the European Parliament, working in the Directorates-General for Information and Public Relations, for Research, for Personnel and Finance, and finally, in the Legal Service of the European Parliament. He joined the European Ombudsman's Office as Head of the Administration and Finance Department in 2000. He was appointed Head of the Legal Department on 1 July 2007.

### Nelius CAREY

*Lawyer Linguist*

Tel. +33 3 88 17 25 63

### Isabelle FOUCAUD

*Assistant to the Head of the Legal Department (from 1.7.2007)*

Tel. +33 3 88 17 23 91



## LEGAL OFFICERS

The Legal Officers deal with complaints, which may be submitted to the Ombudsman in any of the 23 Treaty languages of the European Union. They also propose and carry out own-initiative inquiries, reply to requests for information from citizens, provide assistance to the Ombudsman on legal matters, advise on the legal procedures, developments and traditions of their respective Member States and represent the Ombudsman at certain public events.

### **Ioannis DIMITRAKOPOULOS**

*Head of Legal Team*

*Principal Legal Adviser*

Tel. +33 3 88 17 37 68

### **Sabina BALAŽIČ**

*Legal Officer (until 30.9.2007)*

### **Peter BONNOR**

*Legal Officer*

Tel. +33 3 88 17 25 41

### **Daniel KOBLENCZ**

*Legal Officer*

Tel. +32 2 284 38 31

### **Gerhard GRILL**

*Head of Legal Team*

*Principal Legal Adviser*

Tel. +33 3 88 17 24 23

### **Violetta DIMOVA**

*Legal Officer (from 1.2.2007)*

Tel. +33 3 88 17 25 63

### **Bernhard HOFSTÖTTER**

*Legal Officer (from 1.9.2007)*

Tel. +33 3 88 17 81 05

### **Marta HIRSCH-ZIEMBIŃSKA**

*Head of Legal Team*

*Principal Legal Adviser*

Tel. +33 3 88 17 27 46

### **Benita BROMS**

*Head of the Brussels Office*

*Principal Legal Adviser*

Tel. +32 2 284 25 43

### **Juliano FRANCO**

*Legal Officer*

Tel. +33 3 88 17 21 51

### **Tina NILSSON**

*Legal Officer*

Tel. +32 2 284 14 17

### **Tea SEVÓN**

*Legal Officer (from 1.10.2007)*

Tel. +32 2 284 21 80

### **Wiebke PANKAUKE**

*Legal Officer*

Tel. +33 3 88 17 24 02

### **Olivier VERHEECKE**

*Principal Legal Adviser*

Tel. +32 2 284 20 03

### **Raluca TRASCA**

*Legal Officer (from 16.4.2007)*

Tel. +33 3 88 17 31 08

### **Branislav URBANIČ**

*Legal Officer*

Tel. +33 3 88 17 27 14



**Fergal Ó REGAN**  
*Head of Legal Team*  
*Principal Legal Adviser*  
Tel. +33 3 88 17 67 84

**Elodie BELFY**  
*Legal Assistant*  
Tel. +32 2 284 39 01

**Marjorie FUCHS**  
*Legal Officer*  
Tel. +33 3 88 17 40 78

**José MARTÍNEZ ARAGÓN**  
*Principal Legal Adviser*  
Tel. +33 3 88 17 24 01

**Beatriz MENÉNDEZ ALLER**  
*Legal Officer (until 15.11.2007)*

**Ida PALUMBO**  
*Legal Officer*  
Tel. +33 3 88 17 23 85

## TRAINEES

**Marta ARIAS DIAZ**  
(until 31.8.2007)

**Elsa BERNARD**  
(until 30.4.2007)

**Clelia CASALINO**  
(from 15.2.2007)

**Caroline DIETZEL**  
(from 1.9.2007)

**Ramin FARINPOUR**  
(until 31.8.2007)

**Tobias JAMES**  
(from 1.9.2007)

**Farah JERAJ**  
(until 31.7.2007)

**Tomasz KODRZYCKI**  
(from 1.9.2007)

**Beata KULPACZYNSKA**  
(until 31.8.2007)

**Angela LINDBERG**  
(from 1.9.2007)

**Samir MOHAMED GHARBAOUI**  
(from 1.9.2007)

**Christopher MILNES**  
(from 1.9.2007)

**Zvi RAMAN**  
(until 31.8.2007)

**Louise RICHARD**  
(from 1.9.2007)

**Giorgio RIZZELLO**  
(until 9.2.2007)

**Brigita SABALIAUSKAITE**  
(until 31.8.2007)

**Axel SCHNEIDER**  
(until 31.7.2007)

**Elena TZOULIA**  
(from 1.3.2007)



## ADMINISTRATION AND FINANCE DEPARTMENT

The Administration and Finance Department is responsible for all the work of the Ombudsman's Office that is not directly related to examining complaints and conducting inquiries. It is made up of three sectors — the Administration Sector, the Finance Sector, and the Communications Sector. The Head of the Administration and Finance Department co-ordinates the overall work of the Department. In that capacity, he is responsible for the general organisation and operation of the office, personnel policy in the office, proposing and implementing the budgetary and financial strategy of the institution, and for representing the Ombudsman in a number of interinstitutional fora. In 2007, the Department had a total staff of 34.

**João SANT'ANNA**

*Head of the Administration and Finance Department (ad interim)*

Tel. +33 3 88 17 53 46

## COMPLAINTS-HANDLING SECRETARIAT

The Complaints-Handling Secretariat is responsible for the registration, distribution, and follow-up of complaints submitted to the European Ombudsman. The Secretariat ensures that all complaints are registered into a database, acknowledged, and transmitted to the Legal Department. It is responsible for managing all incoming and outgoing complaints-related correspondence, ensuring that the complaint records in the database are updated throughout the complaint procedure, monitoring compliance with deadlines, producing complaints-related statistics, and filing documents relating to complaints. It is supervised by the Assistant to the Head of the Legal Department.

**Séverine BEYER**

*Secretary*

Tel. +33 3 88 17 23 93

**Isabelle LECESTRE**

*Secretary*

Tel. +33 3 88 17 24 29

**Bruno BISMARQUE-ALCÂNTARA**

*Secretary*

Tel. +33 3 88 17 20 91

**Oualiba MAKHLOUFIA**

*Secretary*

Tel. +33 3 88 16.40.71

**Evelyne BOUTTEFROY**

*Secretary*

Tel. +33 3 88 17 24 13

**Ana MORAIS GASPAR**

*Secretary (from 1.10.2007)*

Tel. +33 3 88 16 63 10

**Elaine DRAGO**

*Secretary*

Tel. +33 3 88 17 33 31

**Christelle THEROUSE**

*Secretary (from 16.7.2007)*

Tel. +33 3 88 16 40 71

**Véronique FOREAU**

*Secretary*

Tel. +33 3 88 17 34 99

**Caroline ZINCK**

*Secretary*

Tel. +33 3 88 17 40 51



## ADMINISTRATION SECTOR

The Administration Sector's tasks are broad. They include the recruitment and management of staff, dealing with incoming and outgoing correspondence, the telephone switchboard, the office infrastructure, co-ordination of document translation, the organisation and management of the legal reference library, and the institution's documentation and archive policy. This sector is also responsible for the information technology policy of the institution and for meeting the office's IT needs, a task it carries out in close co-operation with the European Parliament.

### **Alessandro DEL BON**

*Head of Sector*

Tel. +33 3 88 17 23 82

### **Christophe BAUER**

*Administrative Support, Chauffeur*

Tel. +33 3 88 17 67 80

### **Cindy DE CARVALHO-GIANNAKIS**

*Administrative Support*

Tel. +32 2 284 63 93

### **Rachel DOELL**

*Secretary*

Tel. +33 3 88 17 23 98

### **Massimo EZZY**

*Information Technology Officer*

Tel. + 33 3 88 17 28 67

### **Giovanna FRAGAPANE**

*Secretary (from 17.9.2007)*

Tel. +33 3 88 17 29 62

### **Isgouhi KRIKORIAN**

*Secretary*

Tel. +33 3 88 17 25 40

### **Gaël LAMBERT**

*Information Technology Officer*

Tel. +33 3 88 17 23 99

### **Juan Manuel MALLEA**

*Secretary*

Tel. +33 3 88 17 23 01

### **Stéphanie MARAJ**

*Secretary*

Tel. +33 3 88 17 23 13

### **Charles MEBS**

*Secretary*

Tel. +33 3 88 17 70 93

### **Ana MORAIS GASPAR**

*Secretary (until 30.5.2007)*

### **Emese WALTZ**

*Secretary (until 16.9.2007)*

### **Félicia VOLTZENLOGEL**

*Secretary*

Tel. +33 3 88 17 23 94



## FINANCE SECTOR

The Finance Sector is in charge of ensuring that the Ombudsman's Office complies with the applicable financial rules of the EU designed to guarantee that budgetary resources are implemented economically, efficiently and adequately. These responsibilities derive from the fact that the European Ombudsman has an independent budget. Four Financial Officers, under the responsibility of the Authorising Officer by Delegation, prepare and execute the budget.

### **Loïc JULIEN**

*Head of Sector*

Tel. +33 3 88 17 67 79

### **Jean-Pierre FEROMONT**

*Finance Officer*

Tel. +32 2 284 38 97

### **Véronique VANDAELE**

*Finance Officer*

Tel. +32 2 284 23 00

### **Giovanna FRAGAPANE**

*Finance Officer (until 16.9.2007)*

### **Christophe WALRAVENS**

*Finance Officer*

Tel. +33 3 88 17 24 03

### **Emese WALTZ**

*Finance Officer (from 17.9.2007)*

Tel. + 33 3 88 16 40 95

## COMMUNICATIONS SECTOR

The Communications Sector is responsible for assisting the Ombudsman in reaching out to citizens and informing them of their rights under Community law. In doing so, it plays a key role in enhancing relations and trust between citizens, on the one hand, and Europe and its institutions, on the other.

The Sector is responsible for maintaining and promoting relations with the media, writing and producing the Ombudsman's publications, maintaining the Ombudsman's websites, organising the Ombudsman's information visits and events, and co-ordinating relations within the European Network of Ombudsmen.

### **Rosita AGNEW**

*Joint Head of Sector*

Tel. +32 2 284 25 42

### **Ben HAGARD**

*Joint Head of Sector*

Tel. +33 3 88 17 24 24

### **Marc AMIR-TAHMASSEB**

*Web Developer*

Tel. +33 3 88 17 44 10

### **Annika ÖSTERBERG**

*Publications Officer*

Tel. +33 3 88 17 49 36

### **Raffaella DALLATANA**

*Secretary (from 18.6.2007 until 17.11.2007)*

### **Dace PICOT-STIEBRINA**

*Communications Officer*

Tel. +33 3 88 17 40 80

### **Gundi GADESMANN**

*Press Officer*

Tel. +32 2 284 26 09

### **Gabrielle SHERIDAN**

*Secretary*

Tel. +33 3 88 17 24 08



The European Ombudsman and his staff.

## STAFF MEETINGS

To help ensure maximum efficiency and effectiveness of the procedures within the Office, to guarantee a smooth flow of information among staff, and to promote professional development opportunities, the Ombudsman regularly convenes staff meetings. As a rule, the agenda for these meetings includes an overview by the Ombudsman of his recent and future activities, as well as a presentation of the administrative, legal, and policy developments affecting the institution.

In line with the Ombudsman's strategy for the professional development of his staff, external speakers are frequently invited to address these meetings. In 2007, the President of the EU Civil Service Tribunal, Mr Paul J. MAHONEY, and the European Data Protection Supervisor, Mr Peter HUSTINX, came to Strasbourg to present their work to the Ombudsman's staff.



The President of the EU Civil Service Tribunal, Mr Paul J. MAHONEY, makes a presentation to the Ombudsman's staff. Strasbourg, 30 March 2007.



The European Data Protection Supervisor, Mr Peter HUSTINX, makes a presentation to the Ombudsman's staff. Strasbourg, 7 December 2007.



## D INDICES OF DECISIONS

### 1 BY CASE NUMBER

#### 2003

OI/3/2003/JMA.....	91
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#### 2004

1782/2004/OV .....	66
2468/2004/OV .....	68
2577/2004/OV .....	64
2725/2004/(PB)ID .....	51
2825/2004/OV .....	67
3278/2004/ELB .....	85
3346/2004/ELB .....	78
3660/2004/PB.....	52

#### 2005

0368/2005/(MF)(BU)BM .....	86
0452/2005/BU .....	69
1475/2005/(IP)GG.....	82
1476/2005/(BB)GG.....	82
1617/2005/(BB)JF .....	83
1693/2005/PB.....	70
1844/2005/GG .....	71
1858/2005/BB.....	65
1859/2005/BB.....	65
2350/2005/GG .....	81
2370/2005/OV .....	59
2776/2005/ID .....	86
3008/2005/OV .....	72
3114/2005/MHZ.....	78
3193/2005/TN.....	72
3269/2005/TN.....	86
3323/2005/WP .....	53
3386/2005/WP .....	60
3453/2005/GG .....	90
3693/2005/ID .....	73

#### 2006

0183/2006/MF .....	87
0943/2006/MHZ.....	54
0948/2006/BU .....	58
0962/2006/OV .....	74
1103/2006/BU .....	88
1126/2006/SAB.....	61
1166/2006/WP .....	55
1779/2006/MHZ.....	59
1807/2006/MHZ.....	80
2280/2006/MF .....	55
2403/2006/(WP)BEH .....	56
2633/2006/WP .....	61
2740/2006/TN.....	57
3495/2006/GG .....	62
3543/2006/FOR .....	75
3697/2006/PB.....	75

#### 2007

0446/2007/WP .....	76
0471/2007/VIK .....	63
0668/2007/MHZ.....	77
1471/2007/(CC)RT .....	64
Q1/2007/ELB .....	93



## 2 BY SUBJECT MATTER

For the page numbers of the cases listed below, please refer to Annex D.1.

### *Citizens' rights*

OI/3/2003/JMA  
0452/2005/BU  
1475/2005/(IP)GG  
1476/2005/(BB)GG  
1844/2005/GG  
2350/2005/GG  
3453/2005/GG  
2403/2006/(WP)BEH  
0668/2007/MHZ

### *Competition policy*

0943/2006/MHZ

### *Contracts*

2468/2004/OV  
2577/2004/OV  
1858/2005/BB  
1859/2005/BB  
3008/2005/OV  
3693/2005/ID  
2633/2006/WP  
3495/2006/GG  
1471/2007/(CC)RT

### *Education, vocational training and youth*

2280/2006/MF

### *Environment*

2725/2004/(PB)ID  
3660/2004/PB  
0962/2006/OV  
1779/2006/MHZ  
1807/2006/MHZ

### *Free movement of persons and services*

3543/2006/FOR

### *Internal rules of institutions*

2468/2004/OV

### *Miscellaneous*

3323/2005/WP  
3386/2005/WP

### *Police and judicial co-operation*

1166/2006/WP  
0446/2007/WP

### *Public access*

1693/2005/PB  
3193/2005/TN  
3269/2005/TN  
0183/2006/MF  
0948/2006/BU  
3697/2006/PB

### *Public health*

2370/2005/OV

### *Social Policy*

Q1/2007/ELB

### *Staff*

#### *Recruitment*

1782/2004/OV  
2825/2004/OV  
3278/2004/ELB  
3346/2004/ELB  
3114/2005/MHZ  
0471/2007/VIK

#### *Other questions*

0368/2005/(MF)(BU)BM  
1617/2005/(BB)JF  
2776/2005/ID  
1126/2006/SAB  
2740/2006/TN

### *Transport*

1103/2006/BU  
1779/2006/MHZ



### 3 BY TYPE OF MALADMINISTRATION ALLEGED

For the page numbers of the cases listed below, please refer to Annex D.1.

#### *Avoidable delay*

2577/2004/OV  
2825/2004/OV  
0962/2006/OV  
2280/2006/MF  
3495/2006/GG

#### *Defence*

2577/2004/OV  
2370/2005/OV

#### *Discrimination*

OI/3/2003/JMA  
3278/2004/ELB  
3346/2004/ELB  
Q1/2007/ELB

#### *Error in Article 226 procedure*

2725/2004/(PB)ID  
3660/2004/PB  
3453/2005/GG  
0962/2006/OV  
3543/2006/FOR  
0446/2007/WP

#### *Lack or refusal of information*

1782/2004/OV  
0368/2005/(MF)(BU)BM  
1693/2005/PB  
1844/2005/GG  
1858/2005/BB  
1859/2005/BB  
2350/2005/GG  
2370/2005/OV  
2776/2005/ID  
3269/2005/TN  
3386/2005/WP  
0948/2006/BU  
0668/2007/MHZ

#### *Legal error*

1103/2006/BU  
1166/2006/WP  
3495/2006/GG

#### *Procedures*

2825/2004/OV  
1617/2005/(BB)JF  
3114/2005/MHZ  
3323/2005/WP  
0943/2006/MHZ  
3697/2006/PB  
0471/2007/VIK

#### *Reasoning*

1782/2004/OV  
1617/2005/(BB)JF  
1858/2005/BB  
1859/2005/BB  
3693/2005/ID

#### *Transparency*

1858/2005/BB  
1859/2005/BB  
3193/2005/TN  
0183/2006/MF  
0943/2006/MHZ  
2740/2006/TN

#### *Unfairness*

1782/2004/OV  
2468/2004/OV  
2577/2004/OV  
0368/2005/(MF)(BU)BM  
2776/2005/ID  
3008/2005/OV  
1126/2006/SAB  
2633/2006/WP  
1471/2007/(CC)RT

#### *Other maladministration*

2577/2004/OV  
2825/2004/OV  
0452/2005/BU  
1475/2005/(IP)GG  
1476/2005/(BB)GG  
1617/2005/(BB)JF  
3008/2005/OV  
1779/2006/MHZ  
1807/2006/MHZ  
2403/2006/(WP)BEH



#### 4 STAR CASES

2577/2004/OV  
**1476/2005/(BB)GG**  
**1617/2005/(BB)JF**  
**1103/2006/BU**  
2580/2006/TN  
**3495/2006/GG**  
630/2007/WP

Where case references are in bold, a summary of the decision is presented in Chapter 3 of the present report. For the page numbers of these cases, please refer to Annex D.1. A summary of case 2580/2006/TN is available in section 2.2 of this Report, while section 2.3 contains a summary of case 630/2007/WP.

**5 LIST OF ALL THE CASES CLOSED WITH A CRITICAL REMARK IN 2007****2004**

0240/2004/PB  
0242/2004/PB  
0756/2004/PB  
1434/2004/PB  
**1782/2004/OV**  
**2468/2004/OV**  
2763/2004/JMA  
**2825/2004/OV**  
3321/2004/(BB)DK  
**3346/2004/ELB**  
3402/2004/PB

**2005**

0144/2005/PB  
0272/2005/(OV)DK  
**0452/2005/BU**  
0554/2005/(MF)FOR  
0575/2005/BB  
1027/2005/ELB  
1137/2005/(OV)ID  
**1475/2005/(IP)GG**  
**1476/2005/(BB)GG**  
**1693/2005/PB**  
**1844/2005/GG**  
1917/2005/IP  
2207/2005/MF  
**2350/2005/GG**  
2539/2005/ID  
2838/2005/BU  
3002/2005/PB  
**3008/2005/OV**  
3067/2005/(MHZ)MF  
3095/2005/TN  
**3114/2005/MHZ**  
**3193/2005/TN**  
3427/2005/WP  
3487/2005/(ID)DK  
**3693/2005/ID**

**2006**

0871/2006/(BB)MHZ  
**0962/2006/OV**  
1131/2006/BU  
1234/2006/WP  
1398/2006/WP  
**1807/2006/MHZ**  
1868/2006/ID  
2196/2006/(SAB)ID  
2216/2006/JF  
2479/2006/JF  
2582/2006/WP  
2899/2006/ELB  
3134/2006/(WP)JMA  
**3543/2006/FOR**  
**3697/2006/PB**  
3842/2006/TN

**2007**

0370/2007/MHZ  
**0446/2007/WP**  
**0668/2007/MHZ**  
1206/2007/WP

Where case references are in bold, a summary of the decision is presented in section 3.4 of the present report. For the page numbers of these cases, please refer to Annex D.1. The full texts of the decisions in all the above cases are available on the Ombudsman's website at <http://www.ombudsman.europa.eu>

## HOW TO CONTACT THE EUROPEAN OMBUDSMAN

### BY MAIL

The European Ombudsman  
1, avenue du Président Robert Schuman  
CS 30403  
F - 67001 Strasbourg Cedex  
France

### BY TELEPHONE

+33 3 88 17 23 13

### BY FAX

+33 3 88 17 90 62

### BY E-MAIL

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

### WEBSITE

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













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



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