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El Defensor del Pueblo Europeo

Evropský veřejný ochránce práv

Den Europæiske Ombudsmand

Der Europäische Bürgerbeauftragte

Euroopa ombudsman

Ο Ευρωπαίος Διαμεσολαβητής

 The European Ombudsman

Le Médiateur européen

An tOmbudsman Eorpach

Il Mediatore europeo

Eiropas ombuds

Europos ombudsmenas

Az Európai Ombudsman

L-Ombudsman Ewropew

De Europese Ombudsman

Europejski Rzecznik Praw Obywatelskich

O Provedor de Justiça Europeu

Ombudsmanul European

Európský ombudsman

Evropski varuh človekovih pravic

Euroopan oikeusasiamies

Europeiska ombudsmannen

■ Annual Report

# The European Ombudsman

# 2008



■ Annual Report

# **The European Ombudsman**

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# THE EUROPEAN OMBUDSMAN



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P. NIKIFOROS DIAMANDOUROS

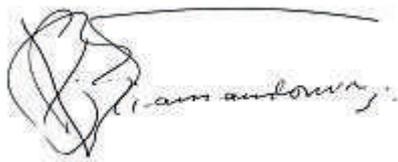
Prof. Dr Hans-Gert PÖTTERING MEP  
President  
European Parliament  
Rue Wiertz  
1047 Brussels  
BELGIQUE

Strasbourg, 21 April 2009

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 2008.

Yours sincerely,



P. Nikiforos DIAMANDOUROS

# Changes to the Ombudsman's Annual Report

**T**HE European Ombudsman's Annual Report is his most important publication. To ensure that it responds to the needs of its many readers, the Ombudsman reflects each year on how it can be improved. Recent, key innovations include the introduction of an Executive Summary, case summaries, and a thematic analysis of inquiries. All of these changes have been made with the end-user in mind. The result is also a shorter Report, which has enabled the Ombudsman to make the best use of resources and to contribute to sustainable development by respecting the highest environmental standards.

This year sees the most ambitious reform of the Ombudsman's Report to date. It has been designed with the January 2009 launch of the Ombudsman's new website in mind. The information made available on the website and in this Report now fully complement each other. A new six-page *Overview 2008* has also been produced, replacing the old *Executive Summary & Statistics*, which was previously published as a separate publication. As from April 2009, the *Overview 2008* is available, in 23 languages, at: <http://www.ombudsman.europa.eu/activities/annualreports.faces>

**The new Annual Report is a more timely, accessible, environmentally-friendly and modern-looking publication.**

The new Annual Report is a more timely, accessible, environmentally-friendly and modern-looking publication. In what follows, we explain the main changes made to the Report and provide links to sections of our website that will help you find what was previously printed in the Report.

## ■ Structure

The structure of the new Report is designed to guide the reader logically from an explanation of the Ombudsman's mandate and procedures (Chapter 2), to concrete case-handling activity in 2008 (Chapter 3), outreach activities (Chapter 4) and internal developments concerning personnel and budget (Chapter 5). The Report begins, as before, with an introduction by the Ombudsman, followed by an Executive Summary (Chapter 1).

## ■ Content

The content of the Report has been revised to ensure real added value for the reader. In particular, Chapter 3 contains a complete, illustrative and comprehensive account of the Ombudsman's core business of complaint-handling in 2008. With case summaries now made available on a regular basis in all 23 official EU languages at: <http://www.ombudsman.europa.eu/cases/summaries.faces>, these have been replaced in the Report by shorter examples which help illustrate the Ombudsman's findings. Graphs and charts are placed throughout the chapter, rather than in a separate statistical annex at the end of the Report. Chapter 3 also contains an expanded thematic analysis providing an in-depth, synthetic account of the Ombudsman's case-load and of the outcome of his inquiries into maladministration. Finally, the complete list of staff names and contact details has been replaced in the Report by an overview of the various departments and units in Chapter 5. A regularly updated staff list can be found on the Ombudsman's website at: <http://www.ombudsman.europa.eu/atyourservice/team.faces>

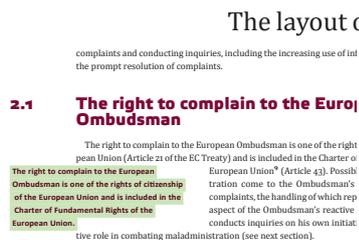
## ■ Statistics

In dealing with last year's Annual Report, the Committee on Petitions of the European Parliament encouraged us to improve the presentation of our statistical data. In response, we carried



out a rigorous review of what statistics we produce and how we produce them. As a result, the present Report contains clearer statistics (for example, on changes over time in the number of complaints). We have also added new information (for example, on the subject matter of inquiries). Finally, we also checked and, where necessary, improved the methodology for calculating the statistics.

## ■ Layout



The layout of the Annual Report has been completely overhauled to make it as user-friendly and accessible as possible. The new-look Report includes short excerpts from the text, which highlight the main points presented and are designed to draw your attention to them. The graphs and tables included in the Report have been prepared in a way that makes them easy to understand.

## ■ Printing

The Annual Report is printed on CyclusPrint, which is fine printing paper produced exclusively from recycled fibres. The result is reduced consumption of energy and water. CyclusPrint conforms to the strictest environmental standards. It has been awarded the EU-Flower eco-label, as well as EMAS and ISO 14001 EU environmental management certificates.



# Table of contents

## **Introduction** 9

### **1 Executive Summary** 13

### **2 The Ombudsman's mandate and procedures** 23

#### 2.1 The right to complain to the European Ombudsman 25

#### 2.2 The legal basis of the Ombudsman's work 25

#### 2.3 The Ombudsman's mandate 27

#### 2.4 Admissibility and grounds for inquiries 31

#### 2.5 The Ombudsman's procedures 32

### **3 Complaints and inquiries** 35

#### 3.1 Overview of complaints examined 37

#### 3.2 Analysis of inquiries opened 42

#### 3.3 Findings of the Ombudsman's inquiries 44

#### 3.4 Star cases exemplifying best practice 51

#### 3.5 Thematic analysis of inquiries closed 52

#### 3.6 Transfers and advice 66

### **4 Relations with institutions, ombudsmen, and other stakeholders** 71

#### 4.1 Relations with EU institutions and bodies 73

#### 4.2 Relations with ombudsmen and similar bodies 76

#### 4.3 Relations with other stakeholders 79

### **5 Resources** 85

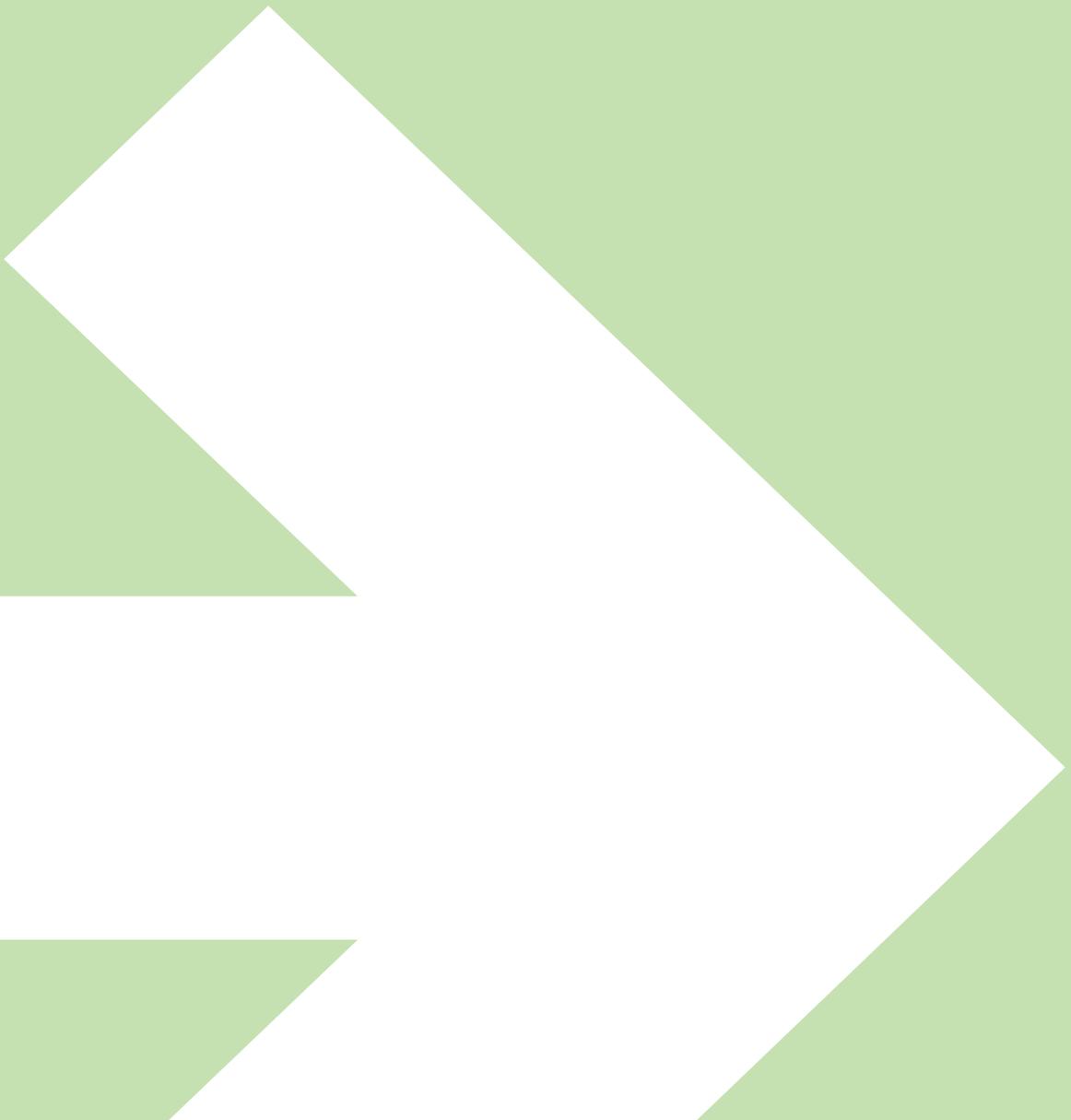
#### 5.1 Personnel 87

#### 5.2 Budget 92

## **How to contact the European Ombudsman** 95



# Introduction



I AM delighted to present you with the European Ombudsman's new look Annual Report. As explained in the opening pages, we have made strenuous efforts to improve the user-friendliness of the Report so that you can easily obtain a clear and comprehensive overview of the Ombudsman's work in 2008. I look forward to receiving your feedback on the changes made.

As always, the Annual Report records the Ombudsman's work for citizens, businesses and organisations over the past year. It highlights the most important developments in terms of cases dealt with and results obtained for complainants, and outlines the main policy issues relevant to the institution during the preceding year.



### Bringing the Union closer to its citizens

I often say that the way an institution reacts to complaints is a key indicator of how citizen-centred it is. I am happy to say that, once again in 2008, the EU institutions and bodies have shown that, for the most part, they are keen to resolve issues that the Ombudsman brings to their attention. In 129 cases closed in 2008 (36% of the total), the institution concerned accepted a friendly solution or settled the matter. In a further 101 cases, the matter was clarified so that no further inquiries were needed, while in 110 cases the Ombudsman found no maladministration.

Eight cases closed in 2008 exemplify best practice with respect to the manner in which institutions responded to issues raised by the Ombudsman. They therefore warrant inclusion among the star cases highlighted in this Report, in order to serve as a model of good administrative behaviour for all EU institutions and bodies. Three of the star cases involved the European Commission, and one each the Council, the European Court of Justice, the European Personnel Selection Office (EPSO), the European Anti-Fraud Office (OLAF), and, for the third year running, the European Aviation Safety Agency.

Not all responses to the Ombudsman's inquiries were as exemplary, however. The Commission refused to change its stance in an age discrimination case. This refusal led me to submit to Parliament the only special report I issued in 2008. While the number of inquiries in which I had to address critical remarks to the EU institutions dropped to 44 (from 55 in 2007), they are still too many. To help the institutions and bodies improve their performance, I published two studies on my website, in 2008, regarding the follow-up given by the institutions concerned to critical and further remarks issued in 2006 and 2007. These studies also identify star cases which, again, should serve as an example of good administration. I will publish a similar report in 2009.

**I often say that the way an institution reacts to complaints is a key indicator of how citizen-centred it is.**

### Acting as guardian of transparency

A record number of inquiries (355) was closed in 2008, with most taking less than a year. In 2009, we aim to improve our performance by taking even less time to close cases. By far the most common allegation examined in inquiries opened in 2008 was lack of transparency (36% of inquiries). Whether in contractual cases, requests for access to documents, infringement complaints, or selection procedures, refusal to provide information or documents was a recurring theme. In each of these cases, I urged the EU institutions and bodies to ensure the highest levels of openness in their activities. Some cases involved data protection issues, which, of necessity, require an approach balancing privacy and transparency. In several of them, I consulted the European Data Protection Supervisor, whose advice was very helpful.

Of particular importance regarding transparency in 2008 was the Commission's proposal to reform the EU's rules on public access to documents. I voiced my concerns over certain aspects of this otherwise good proposal and encouraged the Parliament to use its role as co-legislator on this issue to ensure the best result for citizens. As part of my contribution to this debate, I conducted a comparative study among my colleagues in the European Network of Ombudsmen into best practice in the Member States relating to public access to information contained in databases. I drew inspiration from the results of this study to formulate concrete proposals relating to the reform of the EU's rules on access to documents. I will follow developments in this debate closely in 2009.

### Promoting a culture of service

The Ombudsman registered a total of 3 406 complaints in 2008. As always, we endeavoured to ensure that all those who might have a complaint to make are aware of the Ombudsman's services.

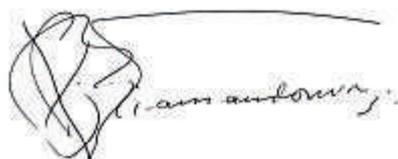
**As always, we endeavoured to ensure that all those who might have a complaint to make are aware of the Ombudsman's services.**

For instance, with regard to businesses, NGOs, and other organisations, which have made relatively little use of the Ombudsman in the past, we publicised our own-initiative inquiry into the timeliness of payments by the Commission in order to highlight what we can concretely do for them.

In almost 80% of cases registered, we were 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. Often, the advice is to contact a member of the European Network of Ombudsmen. Regional ombudsmen in the Network met in Berlin in November to discuss how, together, we can improve the service we provide to citizens. I also continued to reach out to Members and officials of the EU institutions and bodies to encourage them to adopt a culture of service to citizens. Among the highlights in this regard were the signing of a Memorandum of Understanding with the President of the European Investment Bank and the agreement by the Union's Agencies to adopt the European Code of Good Administrative Behaviour in their relations with citizens.

One final important development in 2008 concerned the revision of the Ombudsman's Statute. The changes made ensure that citizens can have full confidence in the Ombudsman's ability to conduct a thorough investigation of their complaints without restrictions. I look forward to continuing my work for citizens on the basis of this even stronger mandate in 2009.

Strasbourg, 16 February 2009



P. Nikiforos DIAMANDOUROS





# Executive Summary



**T**HE fourteenth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2008. It is the sixth 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 five chapters. It starts with a personal introduction by the Ombudsman and is followed by this Executive Summary, which constitutes Chapter 1.

Chapter 2 explains the Ombudsman's mandate and describes the Ombudsman's procedures for handling complaints and conducting inquiries. It includes any notable developments which took place during the past year.

Chapter 3 gives an overview of the complaints dealt with during the year, as well as an in-depth study of inquiries carried out. There is a section on star cases identified by the Ombudsman, as well as a thematic analysis covering the most significant findings of law and fact contained in the Ombudsman's decisions in 2008. The Chapter ends with a look at cases falling outside the Ombudsman's mandate and at how the Ombudsman followed up on these complaints.

Chapter 4 concerns the Ombudsman's outreach activities, covering relations with other institutions and bodies of the European Union, relations with the community of national, regional and local ombudsmen in Europe, and an overview of the Ombudsman's communication activities.

Chapter 5 provides details of the Ombudsman's personnel and budget.

## ■ The mission of the European Ombudsman

The office of European Ombudsman was established by the Maastricht Treaty as part of the citizenship of the Union. The Ombudsman investigates complaints about maladministration in the

**The Ombudsman investigates complaints about maladministration in the activities of Community institutions and bodies.**

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 Parlia-

ment, the Ombudsman has defined "maladministration" in a way that requires respect for fundamental 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

### Overview of complaints examined

The Ombudsman registered<sup>1</sup> 3 406 complaints in 2008, compared to 3 211 in 2007. Almost 60% of all complaints registered by the Ombudsman in 2008 were sent electronically, either by e-mail or using the complaint form on the Ombudsman's website.

A total of 3 346 complaints were processed<sup>2</sup>, compared to 3 265 in 2007. Of all the complaints processed, 24% (802 complaints) were found to be inside the European Ombudsman's mandate, while 9% gave rise to an inquiry. In almost 80% 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.

In 2008, the main e-mail account of the Ombudsman was used to reply to a total of over 4 300 e-mails requesting information. Around 3 300 were individual requests for information, while around 1 000 were related to a mass mailing. In total, therefore, the Ombudsman handled over 7 700 complaints and information requests from citizens during the year in question.

### Analysis of inquiries opened

A total of 293 new inquiries were opened in 2008 on the basis of complaints. Of these, 26% were submitted by companies and associations, whereas 74% were submitted by individual citizens.

The Ombudsman also launched three inquiries on his own initiative. Two of these concerned cases which had been submitted by a non-authorised person (i.e., a complainant who is not a citizen or resident of the Union or a legal person with a registered office in a Member State). The third involved the use of the Ombudsman's own-initiative power to tackle what appeared to be a systemic problem concerning the European Commission's Early Warning System (**OI/3/2008/FOR**).

As is the case each year, most inquiries opened by the Ombudsman in 2008 concerned the Commission (195 inquiries or 66% of the total). Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints. There were 28 inquiries (10%) concerning the European Parliament's administration, 20 (7%) concerning the European Personnel Selection Office (EPSO), 10 (3%) concerning the Council of the EU, and 7 (2%) concerning the European Anti-Fraud Office (OLAF). Twenty other EU institutions and bodies were the subject of a further 37 inquiries.

The main types of maladministration alleged in inquiries opened in 2008 were lack of transparency, including refusal of information (107 cases or 36% of the total), unfairness or abuse of power (59 cases, 20%), unsatisfactory procedures (27 cases, 9%), negligence (25 cases, 8%), avoidable delay (24 cases, 8%), legal error (21 cases, 7%), discrimination (14 cases, 5%), and failure to ensure fulfilment of obligations, that is, failure by the Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (14 cases, 5%).

The Ombudsman closed 355 inquiries in 2008 (compared to 348 in 2007). Of these, 352 were linked to complaints and three were own-initiatives. Most of the inquiries were closed within one year (52%). Over one-third (36%) were closed within three months. On average, cases took 13 months to close.

### Findings of the Ombudsman's inquiries

Whenever possible in inquiries, 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

1. As of this year, the European Ombudsman's Annual Report makes use of the statistical category "complaints registered" instead of "complaints received", to distinguish between complaints actually registered during a given calendar year and those received during the same period but registered in the following year.

2. The statistical category "processed" means that the analysis designed to determine whether the complaint (i) falls within the Ombudsman's mandate, (ii) meets the criteria of admissibility, and (iii) provides grounds to open an inquiry has been completed. Because of the time required for this, the number of complaints "processed" in a given year is different from the number of complaints "registered" in the same year.

enhance relations between the institutions and citizens, and can avoid the need for expensive and time-consuming litigation. A positive outcome was readily achieved for the complainant in 129 cases closed in 2008 (36% of the total). These cases were either settled by the institution or a friendly solution was agreed (this compares to 134 cases in 2007, which itself was twice the number of such cases in 2006).

In 31% of cases (110), no maladministration was found. This is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution or

**Whenever possible in inquiries, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against.**

body concerned of what it has done, as well as the Ombudsman's view of the case.

The Ombudsman concluded that there was maladministration in 15% of cases (53), but was nevertheless able to obtain a positive outcome for the complainant in eight of these cases through the acceptance of the draft recommendation that he made to the institution concerned. In one case where the Commission failed to accept a draft recommendation concerning age discrimination (**185/2005/ELB**), the Ombudsman submitted 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. In 44 cases, the inquiry was closed with a critical remark to the institution or body concerned. A critical remark confirms to the complainant that his or her complaint was justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future.

It is similarly with a view to improving the EU institutions' performance in the future that the Ombudsman has made increasing use of further remarks, when he identifies an opportunity to enhance the quality of the administration. The Ombudsman made further remarks in a total of 41 cases in 2008.

It is important for the institutions and bodies to follow up critical and further remarks from the Ombudsman and to take action to resolve outstanding problems. With this in mind, the Ombudsman

**It is important for the institutions and bodies to follow up critical and further remarks from the Ombudsman and to take action to resolve outstanding problems.**

published on his website, in 2008, two studies of the follow-up undertaken by the institutions involved to all critical remarks and further remarks issued in 2006 and 2007. The Ombudsman envisages informing the public on an annual basis of his findings on

the institutions' follow-up to critical and further remarks.

### **Star cases exemplifying best practice [→→→]**

Eight cases closed in 2008 constitute illustrative examples of best practice. They serve as a model for all EU institutions and bodies, in terms of how best to react to issues that the Ombudsman raises.

The **European Personnel Selection Office** (EPSO) agreed to disclose to candidates, at their request, the evaluation criteria used in selection procedures, as well as a breakdown of individual marks. This followed an own-initiative inquiry by the Ombudsman, who praised EPSO for adopting such a transparent approach (**OI/5/2005/PB**). The **European Anti-Fraud Office** (OLAF) reacted constructively to a request for access to documents. By releasing two versions of the relevant report, one with the complainant's personal data and the other without, it complied with the EU's access to documents rules, while demonstrating a citizen-centred approach (**754/2007/BU**). Also concerning access to documents and information, an Austrian citizen complained to the Ombudsman about inadequate information she had received from the Registry of the **European Court of Justice**. After the Ombudsman's intervention, the Registry sent the complainant a letter with more detailed information and confirmed to the Ombudsman that it had included these additional indications in its standard letters for similar cases (**2448/2008/WP**).

The Ombudsman praised the **Commission** for its constructive approach in two contractual cases. In a case concerning a payment dispute with an Italian company over an EU project to supply water for displaced persons in Liberia, the Commission was thorough and constructive throughout the procedure, even to the point of accepting additional relevant payments identified by its own services and the complainant. As a result, the Italian company received more than EUR 100 000

(3490/2005/(ID)PB). In a case concerning an Austrian institute involved in a research and development contract in the field of chemical engineering, the Commission agreed to pay EUR 54 000. This followed the Ombudsman's request that it reconsider its refusal to pay an outstanding sum because it had not received the final cost statements on time (3784/2006/FOR). In case 2672/2008/VL, the Ombudsman used a simplified inquiry procedure and was encouraged to note that the Commission responded positively by resolving, in a rapid and exemplary manner, a contentious e-mail dispute involving an academic researcher and a Commission official.

Further examples of best practice include case 1162/2007/FOR, where the Council agreed to make an *ex gratia* payment of EUR 1 000 in recognition of the inconvenience and stress that the complainant had suffered. The Council had initially offered the complainant a one year contract and then changed the terms when it realised that the complainant would turn 65 during that period. Finally, for the third year running, the response of the **European Aviation Safety Agency** (EASA) to a complaint brought to its attention should be applauded. In case 893/2006/BU, EASA not only apologised for a mistake it had made in a selection procedure, but also agreed to give the complainant the information he required and committed itself to doing so in future procedures.

### Thematic analysis of inquiries closed

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

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

2008, the Ombudsman adopted a new format and structure for his decisions, which, while maintaining the essential facts and analysis, makes the texts shorter, easier to read, and thus more accessible.

A selected number of cases are made available on the Ombudsman's website in summary form in all 23 official EU languages. The summaries reflect the range of subjects and of Community institutions and bodies covered by the 355 decisions closing cases in 2008, as well as the different reasons for closing cases.

Section 3.5 of this Report analyses the most significant findings of law and fact contained in the Ombudsman's decisions in 2008. It is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around seven main categories<sup>3</sup>:

- Openness, public access and personal data;
- The Commission as guardian of the Treaty;
- Award of tenders and grants;
- Execution of contracts;
- Administration and staff regulations;
- Competitions and selection procedures;
- Institutional, policy matters and other.

The first section of the thematic analysis reviews the Ombudsman's decisions in 2008 on complaints concerning (i) public access to documents, (ii) public access to information, and (iii) the protection of personal data and the right of data subjects to have access to their data. Issues examined range from delays in giving access to documents to diverging interpretations of the exceptions provided for in Regulation 1049/2001 on public access to documents<sup>4</sup>. Cases in which the Ombudsman consulted the European Data Protection Supervisor (EDPS) on the data protection aspects of transparency issues are also analysed.

The second category of cases concerns complaints against the Commission in its role as guardian of the Treaty. The Ombudsman can deal with both procedural and substantive aspects of the Commis-

3. On the basis of inquiries opened in 2008, the breakdown in terms of the main subject matter of inquiries is as follows: transparency (26%), institutional and policy matters (17%), the Commission as guardian of the Treaty (17%), competitions and selection procedures (14%), administration and staff regulations (10%), execution of contracts (8%), award of tenders or grants (8%).

4. 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.

sion's treatment of such cases. With regard to the substantive aspects, the Ombudsman's review aims at verifying whether the conclusions reached by the Commission are reasonable and whether they are well argued and thoroughly explained to complainants. With regard to procedural aspects, the main point of reference in the Ombudsman's inquiries is the Commission's Communication on relations with the complainant in respect of infringements of Community law<sup>5</sup>. Among the allegations examined in relation to such cases in 2008 were delays, the provision of inadequate information to the complainant, and failure to register complaints.

The third section of the thematic analysis deals with complaints about the award, or non-award, of tenders and grants. The Ombudsman's review in such cases is limited to checking whether the rules governing the procedure are complied with, the facts are correct, and no manifest error of assessment or misuse of powers has occurred. He may also review if the institutions have complied with their duties to state reasons and if these are coherent and reasonable. In 2008, the Ombudsman examined issues of improper handling of tender procedures, inadequate information, and unfounded accusations.

The fourth category looks at cases in which complainants contest the institutions' failure to fulfil obligations arising from contracts. With regard to contractual disputes, the Ombudsman considers it justified to limit his inquiry to examining whether the Community institution or body has provided him with 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. In 2008, the Ombudsman examined issues of late payment, unfair treatment, and problems relating to sub-contractors.

The fifth category looks at complaints concerning the administrative activities of the institutions, notably, in terms of the application of the Staff Regulations for officials and other relevant texts. The nature of these cases varies considerably and they concern almost all institutions and bodies.

The sixth section of the thematic analysis examines complaints relating to open competitions and other selection procedures. Most of these cases concern the European Personnel Selection Office (EPSO), and relate to lack of transparency, material problems encountered in connection with the tests, and allegations of unfair treatment.

The final, residual category covers a range of complaints made against the institutions concerning their policy-making activities or their general functioning.

## ■ Relations with institutions, ombudsmen, and other stakeholders

### Relations with EU institutions and bodies

Constructive relations with the EU institutions and bodies are hugely important for the European Ombudsman in that they help achieve the best possible results for complainants. The Ombudsman

**Constructive relations with the EU institutions and bodies are hugely important for the European Ombudsman in that they help achieve the best possible results for complainants.**

continued to meet regularly with Members and officials of the institutions during 2008 to discuss ways of raising the quality of the EU administration.

Of particular importance in 2008 were meetings with representatives of Parliament, the Council and the Commission linked to the revision of the Ombudsman's Statute. Following a positive Commission opinion and the agreement of the Council, Parliament adopted a decision<sup>6</sup> revising the Statute on 18 June. The ongoing reform of Regulation 1049/2001 on public access to documents<sup>7</sup> also featured on the Ombudsman's interinstitutional agenda in 2008.

5. 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.

6. European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.

7. 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 Ombudsman meets regularly with Members and officials of the EU institutions and bodies. Mr DIAMANDOUROS is pictured here with Mr Hans-Gert PÖTTERING, President of the European Parliament. Strasbourg, 12 March 2008.



Further highlights from the year in question include the signing of a Memorandum of Understanding<sup>8</sup> with the President of the European Investment Bank and the agreement by all the Union's Agencies that they accept the European Code of Good Administrative Behaviour. The Ombudsman also met regularly with representatives of the European Personnel Selection Office to help promote the highest standards of service to citizens in selection procedures.

The Ombudsman continued to reach out to the other institutions and bodies in 2008, meeting with key representatives of the European Court of Justice, the Court of First Instance, the Civil Service Tribunal, and the European Union Agency for Fundamental Rights. The Ombudsman presented his work to members of the SOLVIT Network in November and gave an overview of relations with the European Data Protection Supervisor at an event marking five years of that institution in December. Finally, earlier in the year the Ombudsman met with the Presidents of the Staff Committees of the EU institutions to explain his role in raising the quality of the EU administration.

### 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

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.

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. The European Parliament's Committee on Petitions is also a full member of the Network.

One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. During 2008, in 1 079 cases, the complaint was transferred to a member of the European Network of Ombudsmen or the complainant was advised to contact a member of the Network.

Section 4.2 of this Report details the activities of the Network in 2008, the high point of which was the Sixth Seminar of Regional Ombudsmen of EU Member States, which took place in Berlin in November. The Seminar was organised jointly by the European Ombudsman and the Chair of the Committee on Petitions of the Berlin Regional Parliament, Mr Ralf HILLENBERG. Around 90 people attended the Seminar which focused on complaints and petitions from vulnerable people. The liaison officers within the Network also met in 2008 in Strasbourg.

8. Memorandum of Understanding between the European Ombudsman and the European Investment Bank concerning information on the Bank's policies, standards and procedures and the handling of complaints, including complaints from non-citizens and non-residents of the European Union, OJ 2008 C 244, p. 1.

Information visits co-organised with ombudsmen in the Member States and candidate countries have proved highly effective in terms of developing the Network. In the course of 2008, the European Ombudsman visited his ombudsman colleagues in Cyprus (March), Greece (May), Latvia (September) and Lithuania (October).

**The European Ombudsman co-operates closely with his counterparts in the Member States through the European Network of Ombudsmen. Liaison officers in the national ombudsmen offices act as the first point of contact for members of the Network. They held their sixth biennial seminar from 1 to 3 June 2008 in Strasbourg.**



The Network serves as a useful mechanism for exchanging information on EU law and best practice through the aforementioned seminars, a biannual Newsletter, an electronic discussion and document-sharing forum, and an electronic daily news service. In addition to these 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. During 2008, eight new queries were received.

### Relations with other stakeholders

The European Ombudsman is committed to ensuring that any person or organisation that might have a problem with the EU institutions and bodies is aware of the right to complain to him about

**The European Ombudsman is committed to ensuring that any person or organisation that might have a problem with the EU institutions and bodies is aware of the right to complain to him about maladministration.**

maladministration. Section 4.3 of this Report gives an overview of the myriad ways in which the Ombudsman sought to raise awareness about the right to complain in 2008. Around 135 presentations were made by the Ombudsman and his staff to groups interested in his work. The Ombudsman's main media activities in 2008 included press conferences in Brussels, Budapest and

Strasbourg, as well as in Athens, Nicosia, Riga, and Vilnius, as part of the aforementioned information visits. Seventeen press releases were issued and distributed to journalists and interested parties throughout Europe during the year. Among the issues covered were transparency in the area of MEPs' allowances, the revision of the Ombudsman's Statute, and the reform of EU rules on public access to documents.

Of particular interest in terms of publications in 2008 was a new guide to the Ombudsman's work, produced in the 23 official EU languages. The Ombudsman's website was regularly updated with decisions, press releases, and details of his communication activities. From 1 January to 31 December 2008, the website received around 440 000 unique visitors, with most visitors coming from the United Kingdom, followed by Germany, France, Spain and Italy.

The European Ombudsman undertakes regular information visits to EU Member States and candidate countries to develop relations with ombudsmen and to raise awareness about his work. During his visit to Lithuania, which took place from 1 to 3 October 2008, Mr DIAMANDOUROS delivered a public lecture to civil servants and to university students and met with representatives of the Lithuanian business community, as well as NGOs. Participants at the meeting with the Lithuanian Bar Association, Chambers of Commerce, Industry and Crafts, as well as the Business Employers' Confederation are pictured here.



## ■ Resources

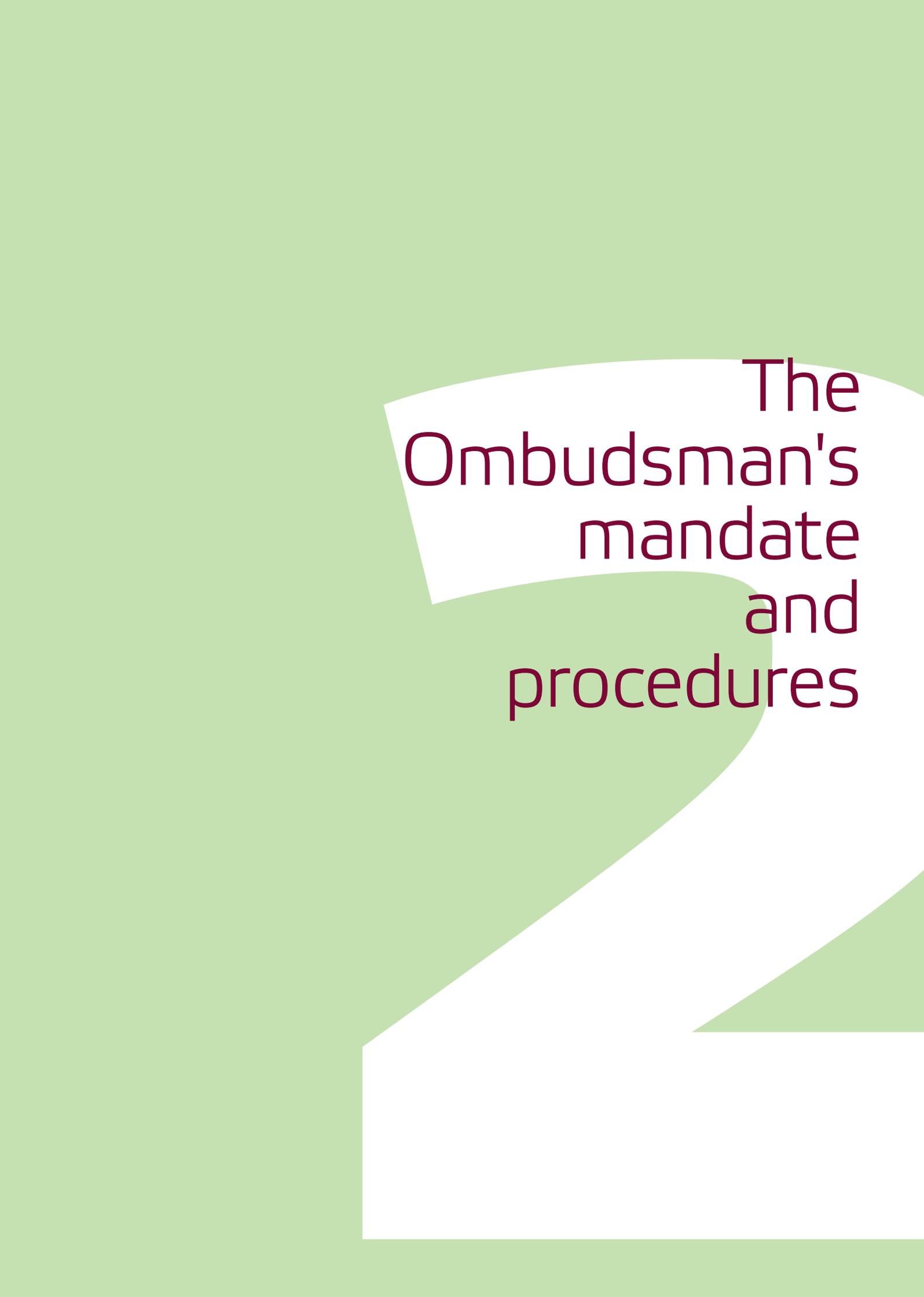
Section 5.1 of this Report gives an overview of the structure of the Ombudsman's office and provides some biographical information about the Ombudsman and his management staff.

### An ambitious programme of internal restructuring was carried out in the Ombudsman's office in 2008.

An ambitious programme of internal restructuring was carried out in the Ombudsman's office in 2008. It entered into force on 1 July and involved the creation of four Units within each of the existing Departments: the Legal Department and the Administration and Finance Department. This restructuring is aimed at establishing a management structure in which the office's two Heads of Department, corresponding to directors, and reporting to the Secretary-General, are each supported by four Heads of Unit with increased managerial prerogatives.

Section 5.1 also contains information about the Ombudsman's staff retreats and staff meetings. The staff retreats form an integral part of the Ombudsman's strategic planning, most notably by providing useful guidance for policy-making and the preparation of the Annual Management Plan (AMP). They form part of an annual cycle of events that provide staff and trainees with an opportunity to share views on subjects directly linked to the Ombudsman's work. The institution held its second retreat from 27 to 29 February 2008. The immediate feedback from staff clearly suggests that the second retreat was seen as a very positive experience, with the themes and subjects discussed considered to be highly relevant.

The establishment plan of the Ombudsman showed a total of 57 posts in 2008, the same as for 2006 and 2007. The budgeted appropriations in 2008 amounted to EUR 8 505 770.



# The Ombudsman's mandate and procedures



**T**HIS Chapter contains a detailed explanation of the European Ombudsman's role, covering the legal basis of his work, a description of his mandate, and information regarding admissibility and grounds for opening inquiries. It includes examples of cases dealt with in 2008 to illustrate these elements and highlights specific developments, such as the revision of the Ombudsman's Statute. The Chapter ends with an overview of the Ombudsman's procedures for handling complaints and conducting inquiries, including the increasing use of informal procedures aimed at the prompt resolution of complaints.

## 2.1 The right to complain to the European Ombudsman

**The right to complain to the European Ombudsman is one of the rights of citizenship of the European Union.**

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 of the European Union<sup>1</sup> (Article 43). 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 Ombudsman also conducts inquiries on his own initiative, thereby taking a proactive role in combating maladministration (see next section).

## 2.2 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 and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute.

### Revision of the Ombudsman's Statute

The European Parliament adopted the Statute in 1994<sup>2</sup>. After a careful review, the Ombudsman concluded in 2006 that it continues to provide a good framework for his activities, but that certain limited changes could enhance his capacity to work more effectively for the benefit of European citizens. In June 2008, following a report by the Committee on Constitutional Affairs (rapporteur Ms Anneli JÄÄTTEENMÄKI MEP), the European Parliament adopted a decision<sup>3</sup> revising the Statute, with effect from 31 July 2008.

The two most important changes strengthen the Ombudsman's powers of investigation. First, the Ombudsman now has full access during his inquiries to documents held by the EU institutions and bodies. They can no longer refuse to disclose documents on "duly substantiated grounds of secrecy". Second, EU officials who give evidence to the Ombudsman are

1. The Charter was 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, OJ 2007 C 303, p. 1.

2. 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. European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.

no longer required to speak "on behalf of and in accordance with instructions from their administrations". The provisions for the Ombudsman to maintain the confidentiality of documents and information are also clarified and strengthened. Finally, Article 5 of the Statute provides a basis for the Ombudsman to co-operate with institutions and bodies of Member States in charge of the promotion and protection of fundamental rights.

On 3 December 2008, the Ombudsman revised his implementing provisions in order to reflect the changes to the Statute and to take account of experience gained since 2004 when the provisions were last changed. The new implementing provisions came into force on 1 January 2009. They are intended to maintain and strengthen the trust of both complainants and the institutions in the Ombudsman's inquiries. In particular:

- the **complainant** can be confident that: (i) he or she can see all the material which the institution concerned chooses to send to the Ombudsman as part of its opinion on the complaint, or in reply to further inquiries and (ii) the Ombudsman has full access to all the information and documents that he considers relevant to the inquiry;

- the **institutions** can be confident that, when the Ombudsman asks for documents or information additional to those supplied in the institution's opinion and replies to further inquiries, or when he inspects the file, neither the public nor the complainant will have access to any information or documents that the institution identifies as confidential. ■

The Statute of the Ombudsman and the implementing provisions are available on the Ombudsman's website (<http://www.ombudsman.europa.eu>). The implementing provisions are also available in hard copy from the Ombudsman's Office.

## ■ Complaints and own-initiative inquiries

Article 195 EC 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. 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 2008.

### Memorandum of Understanding with the European Investment Bank (EIB)

In his Annual Report for 2006, the Ombudsman declared 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 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 (MoU) with the EIB.

In December 2007, the Ombudsman wrote to the President of the EIB, inviting discussions on the drafting of an MoU. The MoU<sup>4</sup> was signed by the Ombudsman and the EIB

4. Memorandum of Understanding between the European Ombudsman and the European Investment Bank concerning information on the Bank's policies, standards and procedures and the handling of complaints, including complaints from non-citizens and non-residents of the European Union, OJ 2008 C 244, p. 1.

President on 9 July 2008. The purpose of the agreement is to improve stakeholders' protection from any possible maladministration as regards the EIB's activities. It foresees that stakeholder protection will be extended to those who are not citizens or residents of the EU or who do not have a registered office in the EU (see further below section 4.1). ■

The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. He did this on one occasion in 2008:

### **Own-initiative inquiry into the Early Warning System**

The Ombudsman opened an own-initiative inquiry into the European Commission's "Early Warning System" (Ews). This computerised information system lists companies, NGOs, associations or other parties which, according to the Commission, are deemed to pose a threat to the EU's financial interests. While the Ombudsman acknowledges that it is very important that the Commission should make every effort to protect the EU's financial interests, he insists that concerned parties must be treated fairly and with due respect to the fundamental legal principle of the presumption of innocence.

The Ombudsman therefore asked the Commission to provide details of the number of stakeholders included in the Ews, as well as of the legal basis for the various Ews warning categories. He also asked the Commission to clarify its information policy towards concerned parties and to explain the available appeals mechanisms against a listing in the Ews.

OI/3/2008/FOR ■

The following own-initiative inquiry was closed in 2008:

### **Own-initiative inquiry into the timeliness of payments by the Commission**

In December 2007, the Ombudsman launched his second ever inquiry into the timeliness of payments by the Commission. This revealed that late payment continues to constitute a serious problem. While the Ombudsman commended the Commission for the measures already taken to reduce payment delays, he called on it to make further improvements, especially regarding more vulnerable contractors, such as individual citizens and small and medium-sized companies and organisations. The Ombudsman announced that he would carry out a new investigation in early 2009.

OI/5/2007/GG ■

## **2.3 The Ombudsman's mandate**

Article 195 EC empowers the Ombudsman to receive complaints 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 it:

- (i) is not against a Community institution or body;
- (ii) is against the Court of Justice or the Court of First Instance acting in their judicial role; or
- (iii) does not concern a possible instance of maladministration.

Each of these items is further discussed below.

## ■ 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 Commu-

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

nity 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 Opera-

tional 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 falling within the scope of EU law. Many such complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen (see further below section 3.6).

### ■ Complaints that were not against a Community institution or body

A Dutch citizen complained that he had to pay a monthly sum of EUR 14 to transfer money by means of internet banking from his French bank account to his Dutch bank account. As the complaint was against a French bank, it was outside the European Ombudsman's mandate.

The Ombudsman informed the complainant about Regulation (EC) No 2560/2001, which aims to eliminate price differences between cross-border and national payments. The Ombudsman also provided the link to the European Commission's website on this subject. Finally, he informed the complainant that, as the case might involve an infringement of Community law, the complainant could consider contacting the Commission directly.

Confidential case ■

A complainant turned to the European Ombudsman concerning problems he had encountered with his pension rights in Liechtenstein. These problems related to the fact that, although he had worked in Liechtenstein, he had been living in Austria. He alleged that the Liechtenstein government was violating Community law on the application of social security schemes to employed persons and their families moving within the Community.

Since the complaint did not concern a Community institution or body, the Ombudsman was not entitled to deal with it. The complainant was advised to submit a complaint to the European Free Trade Association Surveillance Authority.

505/2008/TJ ■

A complainant contacted the Ombudsman, arguing that the European Parliament's plenary sessions in Strasbourg are a waste of money and should be stopped. The Ombudsman explained that the decision as to where to hold plenary sessions is taken exclusively by the Member States. He pointed out that the Committee on Petitions of the European Parliament might be able to deal with the complainant's grievance.

2759/2008/DH ■

## ■ The courts acting in their judicial role

The Ombudsman cannot investigate complaints against the Court of Justice or the Court of First Instance acting in their judicial role. The following case helps to illustrate this point.

### Complaint against the European Court of Justice (ECJ) acting in its judicial role

A German citizen complained to the Ombudsman, referring to a judgment of the ECJ concerning the abrogation of the "home owner allowance" (*Eigenheimzulage*) in Germany. The ECJ had ruled that Germany was infringing Community law by excluding the possibility that this allowance also be granted to persons subject to full taxation in Germany but living in another Member State. The complainant contested the way this judgment was being implemented in Germany.

The complainant appeared to claim that it was the ECJ's task to include implementing measures in its judgment. The complaint thus concerned the ECJ's judicial activity and was not within the Ombudsman's mandate.

The complainant was informed that he could turn to the Committee on Petitions of the German Federal Parliament (*Bundestag*) or lodge a complaint with the European Commission (which had brought the action against Germany before the ECJ).

376/2008/CD ■

## ■ 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

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

and principles, including fundamental rights. However, the principles of good administration go further, requiring the institutions and bodies not only to respect their legal obligations, but also to

be service-minded and to 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>5</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.

There are limits to the concept of maladministration. For example, the Ombudsman has always considered that the political work of the European Parliament does not raise issues of possible maladministration. Complaints against decisions of Committees of Parliament, such as the Committee on Petitions are, therefore, outside the Ombudsman's mandate.

5. 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.

### Complaints against the political work of the European Parliament

In 2008, two Members of the European Parliament complained separately to the Ombudsman concerning penalties imposed on them following protests which took place in the plenary during the December 2007 part session of the European Parliament. The complainants contested:

- (i) the procedures laid down in Rules 147 (penalties) and 148 (internal appeals procedure) of Parliament's Rules of Procedure;
- (ii) the application of Rule 147 to the events that gave rise to the penalties. According to the complainants, these events did not fall within Rule 147. They also criticised the conduct of the President of Parliament during the plenary session in question;
- (iii) the validity of the decisions made by the Bureau of Parliament on appeals against the President's decision to impose penalties.

The Ombudsman considered that the adoption of its Rules of Procedure and the conduct of plenary sessions are part of the political work of Parliament. Furthermore, whilst certain kinds of decision by the Bureau are of an administrative nature, the Bureau acts as a political organ of Parliament when it hears an appeal against a decision of the President to impose a penalty. The complaints did not, therefore, raise an issue of maladministration that could be dealt with by the Ombudsman.

1156/2008/CHM and 1176/2008/WP ■

The Charter of Fundamental Rights includes the right to good administration as a fundamental right of Union citizenship (Article 41). 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 is worth noting that the Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure.)

**It is important to recognise that a culture of service to citizens forms an integral part of good administration.**

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.

### Europol apologises in access to documents case

A Danish journalist complained to the Ombudsman, alleging that Europol had not properly implemented its new rules on access to documents in his case. Europol apologised for whatever inconvenience its failure to reply within the stipulated timeframe may have caused, stating that it took full responsibility for the delay. Furthermore, it offered reassurances that future requests to Europol would be answered without delay.

111/2008/TS ■

**The Ombudsman tries, if possible, to promote a "friendly solution" that will be acceptable both to the complainant and to the institution or body concerned.**

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>6</sup>) and the Implementing Provisions (Article 6.1<sup>7</sup>) apply only if there appears to be maladministration and if it appears possible that it can be eliminated.

6. "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."

7. "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."

## ■ 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.

The Ombudsman very much welcomed the confirmation by the Heads of the EU Agencies, at their meeting in Lisbon on 24 October 2008, that they all accept the European Code of Good Administrative Behaviour and would consider how best to publicise it (see section 4.1 below).

### 2.4 Admissibility and grounds for inquiries

Before the Ombudsman can open an inquiry, a complaint must meet further criteria of admissibility. These criteria, as set out in 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);
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).

#### **Complaint in which prior administrative approaches were not made**

A complainant turned to the Ombudsman to report that regular border controls were being carried out by the Dutch authorities on the Dutch-German border in Vetschau. These controls regularly take place during rush hour, he said, resulting in traffic jams. He argued that the controls amount to a deliberate disregard of the Schengen agreements and alleged a lack of supervision in the Netherlands as far as the implementation of these agreements is concerned. Given that the European Commission is the body responsible for supervising the implementation of the Schengen agreements, the complaint was understood as being directed against the Commission.

In view of the fact that the complainant had apparently not yet contacted the Commission, the complaint was deemed inadmissible for lack of appropriate prior administrative approaches. The complainant was informed that if, after having been contacted, the Commission failed to reply within a reasonable time or its response was not satisfactory, he could submit a new complaint to the Ombudsman.

817/2008/BEH ■

Article 195 EC provides for the Ombudsman to "conduct inquiries for which he finds grounds". To avoid raising unjustified expectations among complainants and to ensure the best use of resources,

**To avoid raising unjustified expectations among complainants and to ensure the best use of resources, all admissible complaints are carefully studied to check if there is a reasonable prospect that an inquiry will lead to a useful result.**

all admissible complaints are carefully studied to check if there is a reasonable prospect that an inquiry will lead to a useful result. If not, the Ombudsman closes the case as not providing sufficient grounds for an inquiry. 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. It is important to note that 44% of the admissible cases dealt with in 2008 were considered not to provide grounds for an inquiry.

### **Complaint in which there were no grounds to start an inquiry**

A Greek citizen lodged a complaint about what he called the "unacceptable" behaviour of an individual working for the security company of the Commission Representation in Greece. He asked for the employee's name, and also requested that all necessary measures be taken to ensure that this employee would behave properly in the future and that it be made clear to him that his behaviour had created a very negative impression of the Commission's services.

The Representation responded to the complainant, apologising for the behaviour of the said employee, offering to help the complainant with his initial request, and expressing a wish that the unfortunate incident would not change the complainant's feelings towards the EU. The Ombudsman concluded that the Commission had taken the appropriate measures and that there were not sufficient grounds to open an inquiry.

87/2008/VAV ■

## **2.5 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.

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.

### **■ Simplified inquiry procedures**

As an alternative to opening a written inquiry into possible maladministration, and with the aim of solving the relevant problem rapidly, the Ombudsman makes use of informal, flexible procedures, with the agreement and co-operation of the institution or body concerned.

During 2008, 101 cases were settled after 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). A simplified procedure was also used, for example, in the following cases, which feature among this year's star cases:

### →→→ Commission settles e-mail dispute in a rapid and exemplary manner

A researcher complained to the Ombudsman following an e-mail dispute he had had with a Commission official. The dispute centred around the researcher's wish to quote, in an academic publication, the official's reply to a series of critical questions he had put to her by e-mail. The Commission official strongly objected to this. After a careful examination of the complaint, the Ombudsman considered that it might be possible to find a friendly, informal solution. Both the complainant and the Commission expressed their willingness to explore this possibility.

Less than a month later, the complainant informed the Ombudsman that, following a meeting he had in the Commission, a satisfactory solution had been reached. The Ombudsman closed the case as settled by the institution, commending the rapid and exemplary manner in which the Commission had handled the matter.

2672/2008/VL ■

### →→→ Information provided by the Registry of the European Court of Justice (ECJ)

An Austrian citizen sent a letter to the ECJ, stating that she wished to sue Austria for a breach of Community law. The Registry of the Court informed her that the Court was only competent to hear such cases if they were brought before it by the Commission or a Member State. It advised her to turn to the Commission. She turned to the Ombudsman, complaining that the Registry had not informed her about where to turn in the Commission.

After the Ombudsman's services intervened by telephone, the Registry sent a letter with more detailed information to the complainant. Furthermore, the Registry informed the Ombudsman that it had included these additional indications in its standard letters regarding similar cases.

2448/2008/WP ■

## ■ Starting an inquiry

Should the Ombudsman decide to open a written inquiry, the first step 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 material which the complainant, or the Community institution or body chooses to send to the Ombudsman, unless the other party has had the opportunity to see and respond to that material.

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<sup>8</sup>.

## ■ 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 he has requested from them and to give him access to the files concerned. Following the 2008 revision of the Statute, the institutions and bodies can no longer refuse to disclose documents 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. During 2008, the Ombudsman's power to inspect the institution's files was used in 16 cases.

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. Again, following the 2008 Statute revision, EU officials who give evidence to the Ombudsman are no longer required to speak "on behalf of and in accordance with instructions from their administrations". They continue, however, to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy. The Ombudsman's power to hear witnesses was not used in 2008.

The requirement for the Ombudsman to maintain the confidentiality of documents and information has been clarified and strengthened by the Statute revision. As amended, the Statute provides that the Ombudsman's access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation 1049/2001<sup>9</sup>, shall be subject to compliance with the rules on security of the Community institution or body concerned. The institutions or bodies supplying such classified information or documents shall inform the Ombudsman of such classification. Moreover, the Ombudsman shall have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

## ■ 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. The Ombudsman's Decision of 3 December 2008 amending the Implementing Provisions, referred to in section 2.2 above, includes changes to Articles 13 and 14, which are designed to bring the Ombudsman's practices in line with the new realities created by the amendment of his Statute.

<sup>8</sup>. See, for example, Case T-412/05 *M v Ombudsman*, Judgment of 24 September 2008, not yet reported (hereinafter "nyr").

<sup>9</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.



# Complaints and inquiries



**C**HAPTER 3 gives an overview of the complaints and inquiries dealt with in 2008. It begins with a look at complaints examined. It then gives an overview of the work on inquiries, including the results obtained and examples of cases. A section on star cases identified by the Ombudsman is followed by a thematic analysis, covering the most significant findings of law and fact contained in the Ombudsman's decisions in 2008. The Chapter ends with a look at the follow-up given to complaints falling outside the Ombudsman's mandate.

### 3.1 Overview of complaints examined

The Ombudsman registered<sup>1</sup> 3 406 complaints in 2008, compared to 3 211 in 2007. A total of 3 346 complaints were processed<sup>2</sup>, compared to 3 265 in 2007. Of all the complaints processed, 24% (802 complaints) were found to be inside the European Ombudsman's mandate.

A total of 293 inquiries were opened on the basis of complaints, while an additional three inquiries were launched on the Ombudsman's own-initiative (this compares with 303 and six, respectively, in 2007).

**Table 3.1: Cases dealt with during 2008**

<b>Complaints registered</b>	<b>3 406</b>
<b>Complaints processed</b>	<b>3 346</b>
<b>Complaints inside the mandate of the European Ombudsman</b>	<b>802</b>
Of which:	<b>281</b> inadmissible <b>228</b> admissible but no grounds for opening an inquiry <b>293</b> inquiries opened on the basis of complaints
<b>Inquiries opened on the basis of complaints</b>	<b>293</b>
<b>Own-initiative inquiries opened</b>	<b>3</b>
<b>Inquiries closed</b>	<b>355</b>
Of which:	<b>144</b> from 2008 <b>102</b> from 2007 <b>109</b> from previous years

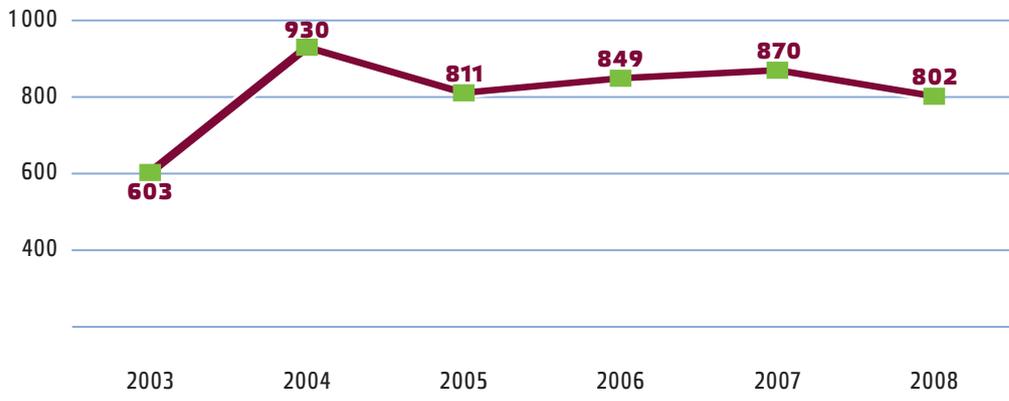
1. As of this year, the European Ombudsman's Annual Report makes use of the statistical category "complaints registered" instead of "complaints received", to distinguish between complaints actually registered during a given calendar year and those received during the same period but registered in the following year.

2. The statistical category "processed" means that the analysis designed to determine whether the complaint (i) falls within the Ombudsman's mandate, (ii) meets the criteria of admissibility, and (iii) provides grounds to open an inquiry has been completed. Because of the time required for this, the number of complaints "processed" in a given year is different from the number of complaints "registered" in the same year.

The Ombudsman closed a record number of inquiries (355) in 2008 (compared to 351 in 2007). Out of this total, 144 had been registered in 2008, while 102 dated from 2007 and 109 from previous years.

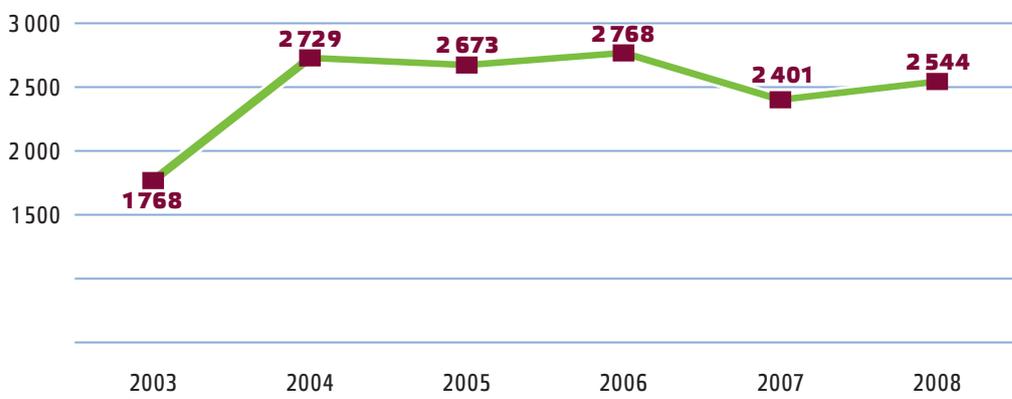
As Figure 3.1 reveals<sup>3</sup>, the number of complaints inside the Ombudsman's mandate over the past five years has gone from a low of 603 in 2003 to 802 in 2008. It peaked in 2004 at 930, with the second highest level reached in 2007 at 870.

**Figure 3.1: Number of complaints inside the mandate 2003-2008**



As Figure 3.2 shows<sup>4</sup>, the number of complaints outside the Ombudsman's mandate has risen in 2008 to 2 544 compared to 2 401 in 2007. It is still below the high levels of 2 729, 2 673, and 2 768 attained in 2004, 2005 and 2006 respectively.

**Figure 3.2: Number of complaints outside the mandate 2003-2008**



Overall, the number of complaints for 2008 confirms a general trend for complaints to stabilise at roughly the historically high levels reached after the 2004 enlargement of the Union.

3. It should be noted that, in 2005, 335 complaints, which were inside the Ombudsman's mandate, concerned the same subject matter. To allow for a more accurate comparison over the years, these have been counted separately in Figure 3.1 only up to and including the eleventh complaint.

4. It should be noted that, in 2006, 281 complaints, which were outside the Ombudsman's mandate, concerned the same subject matter. To allow for a more accurate comparison over the years, these have been counted separately in Figure 3.2 only up to and including the eleventh complaint.

Table 3.2 gives an overview of the geographical origin of complaints registered in 2008. Germany, the EU's most populous country, submitted the greatest number of complaints, followed by Spain, Poland, and France. However, relative to the size of their population, most complaints came from Malta, Luxembourg, Cyprus, and Belgium.

**Table 3.2: Geographical origin of complaints registered in 2008**

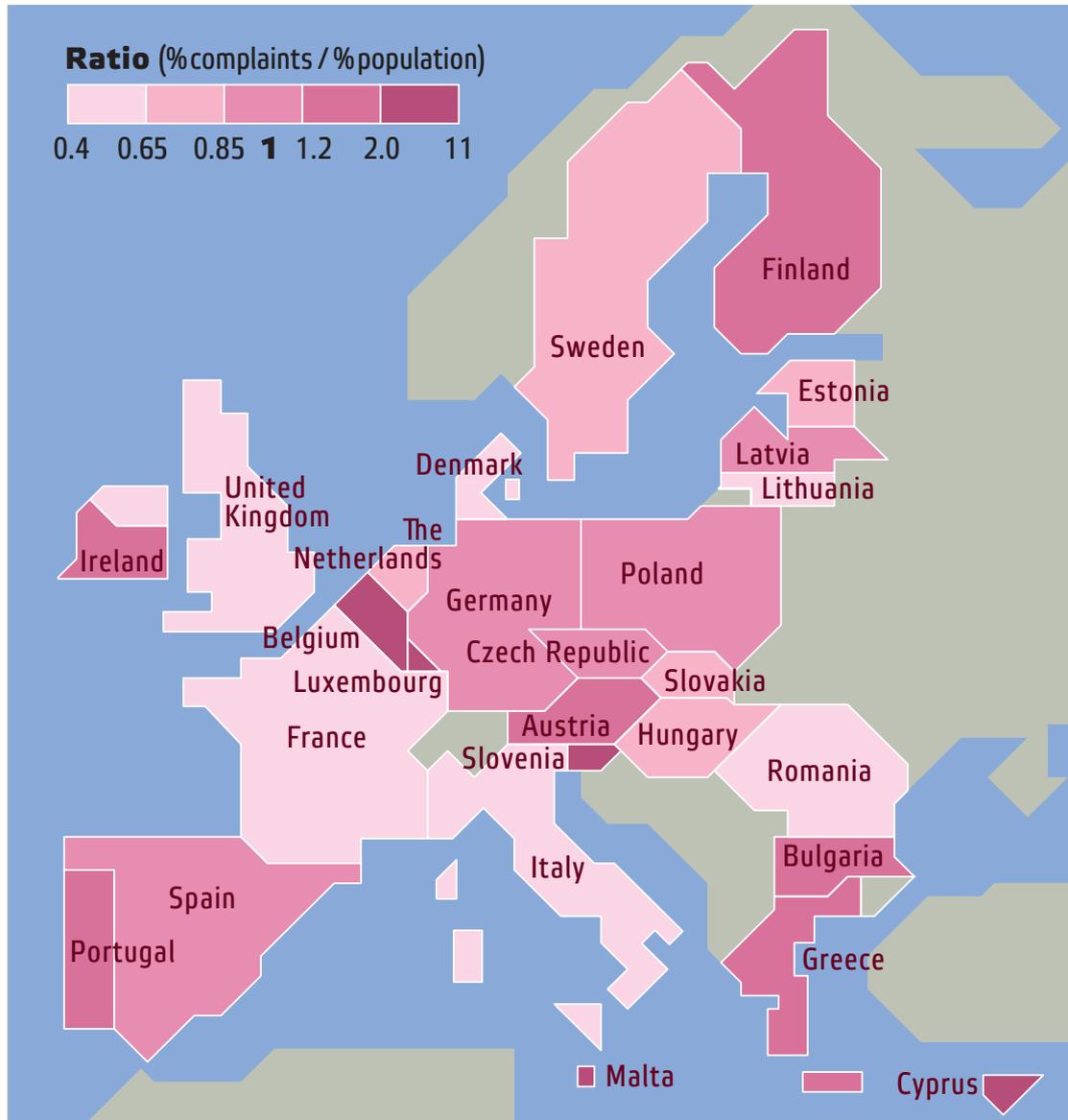
<b>Country</b>	<b>Number of Complaints</b>	<b>% of Complaints</b>	<b>% of EU Population</b>	<b>Ratio</b>
<b>Malta</b>	36	1.1	0.1	11.0
<b>Luxembourg</b>	33	1.0	0.1	10.0
<b>Cyprus</b>	35	1.0	0.2	5.0
<b>Belgium</b>	229	6.7	2.1	3.2
<b>Slovenia</b>	41	1.2	0.4	3.0
<b>Austria</b>	108	3.2	1.7	1.9
<b>Ireland</b>	45	1.3	0.9	1.4
<b>Greece</b>	110	3.2	2.3	1.4
<b>Bulgaria</b>	74	2.2	1.6	1.4
<b>Portugal</b>	95	2.8	2.1	1.3
<b>Finland</b>	49	1.4	1.1	1.3
<b>Spain</b>	352	10.3	9.0	1.1
<b>Poland</b>	270	7.9	7.7	1.0
<b>Latvia</b>	18	0.5	0.5	1.0
<b>Germany</b>	546	16.0	16.6	1.0
<b>Czech Republic</b>	66	1.9	2.1	0.9
<b>Sweden</b>	52	1.5	1.8	0.8
<b>Slovakia</b>	29	0.9	1.1	0.8
<b>Hungary</b>	46	1.4	2.0	0.7
<b>The Netherlands</b>	78	2.3	3.3	0.7
<b>Estonia</b>	7	0.2	0.3	0.7
<b>Denmark</b>	23	0.7	1.1	0.6
<b>Romania</b>	97	2.8	4.4	0.6
<b>France</b>	240	7.0	12.8	0.5
<b>Italy</b>	219	6.4	11.9	0.5
<b>United Kingdom</b>	197	5.8	12.3	0.5
<b>Lithuania</b>	11	0.3	0.7	0.4
<b>Others</b>	221	6.5		
<b>Not known</b>	79	2.3		

NOTE The complaint ratio has been calculated by dividing the percentage of total complaints from each Member State by its percentage of the total EU population. Where it is greater than 1.0, this indicates that the country in question submitted more complaints to the Ombudsman than might be expected given the size of its population. All percentages in the table have been rounded to one decimal point.

In 2008, 12 Member States submitted more complaints than might have been expected given the size of their population, 12 submitted fewer, while three submitted a number of complaints reflecting the size of their population.

The map below provides a graphical illustration of how likely people in each Member State are to complain to the European Ombudsman. It is based on the number of complaints from each Member State relative to the size of its population (see the aforementioned explanation of how the ratio is calculated).

### Geographical origin of complaints registered in 2008



Complaints can be submitted to the European Ombudsman in any of the 23 EU Treaty languages<sup>5</sup>.

Following an agreement signed in November 2006 between the European Ombudsman and the

**Complaints can be submitted to the European Ombudsman in any of the 23 EU Treaty languages.**

Spanish government, citizens may also complain to the European Ombudsman in any of the co-official languages in Spain (Catalan/Valencian, Galician and Basque)<sup>6</sup>. As Figure 3.3 shows, in 2008

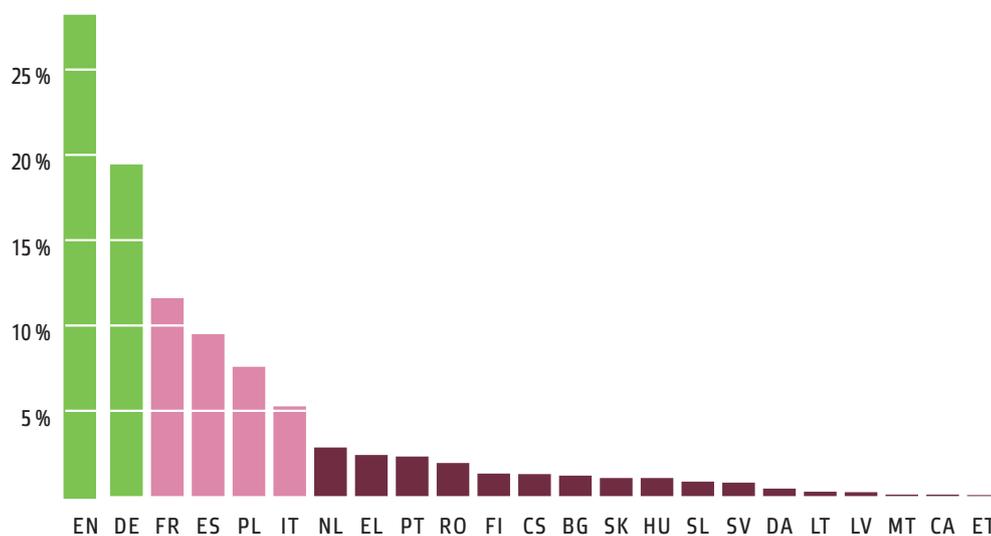
most complainants chose to submit their complaint to the Ombudsman in English, followed by

5. Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, and Swedish.

6. In signing this agreement, the Ombudsman aligned his practice with the June 2005 conclusions of the Council of the EU providing for the use of these languages to facilitate Spanish citizens' communications with EU institutions.

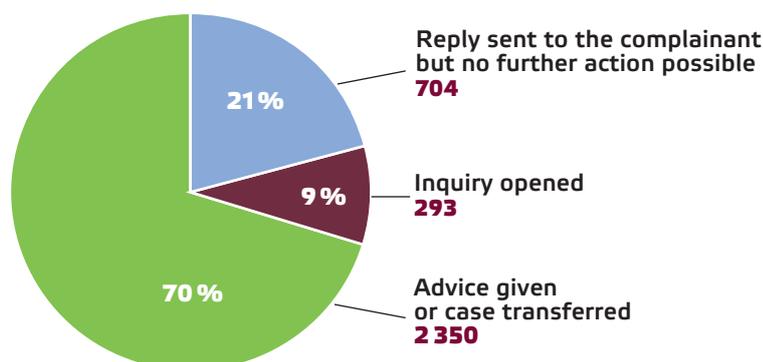
German, French and Spanish. A limited number of complaints were submitted in Latvian, Maltese, Catalan and Estonian.

**Figure 3.3: Language distribution of complaints**



As Figure 3.4 reveals, in almost 80% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case (9% of cases), by transferring it to a competent body or by giving advice on where to turn (70%). Section 3.6 below provides an overview of the cases which were transferred or where advice was given to the complainant. In 21% of cases dealt with in 2008, a reply was sent to the complainant but the Ombudsman deemed that no further action was possible. In some cases, this was because the complainant failed to identify who or what he/she wished to complain about.

**Figure 3.4: Type of action taken by the European Ombudsman following receipt of complaints**



NOTE This includes 158 complaints registered towards the end of 2007, which were processed in 2008 and excludes 220 complaints registered towards the end of 2008, which were still being processed at the end of the year to determine what action to take.

## 3.2 Analysis of inquiries opened<sup>7</sup>

All of the complaints which were deemed to fall inside the Ombudsman's mandate were further analysed to determine admissibility. Out of these 802 complaints falling within the mandate, 281 were found to be inadmissible, while for a further 228 which were admissible, the Ombudsman found no grounds for opening an inquiry.

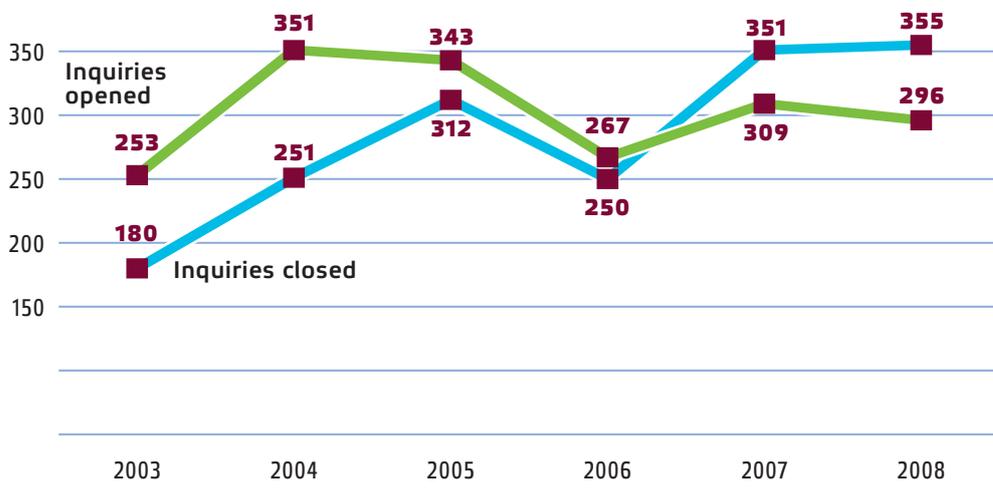
**Figure 3.5: Complaints within the mandate of the European Ombudsman**



A total of 293 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began three inquiries on his own initiative.

As Figure 3.6 reveals, the number of inquiries opened in 2008 (296) is slightly lower than it was in 2007 (309), 2005 (343), and 2004 (351), but higher than it was in 2006 (267), and 2003 (253). Inquiries closed will be analysed in section 3.3 below.

**Figure 3.6: Evolution in the number of inquiries**



7. It should be noted that the analysis in this section is based on the number of inquiries opened in 2008, rather than — as in previous years — the total number of inquiries dealt with during the year (i.e., including cases carried over from previous years). This new method of calculating the statistics should give a better indication of trends, year-on-year.

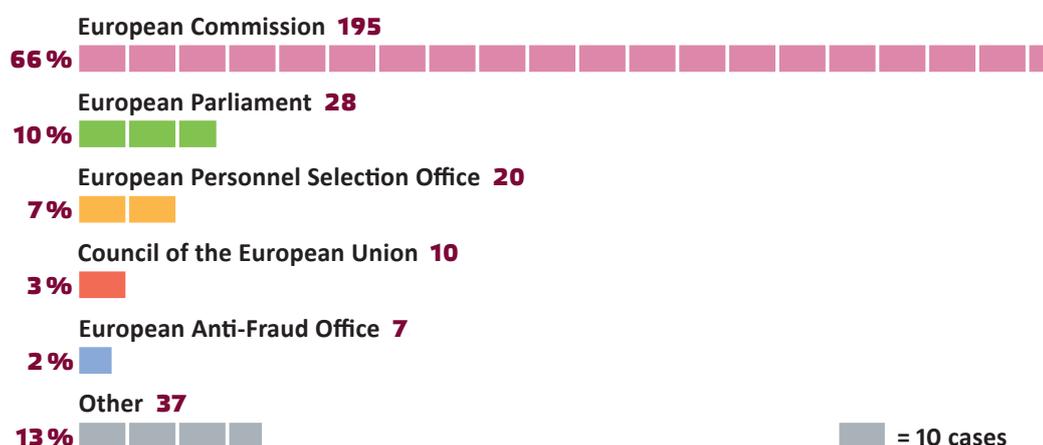
A total of 74% of complaints leading to inquiries were submitted by individual citizens, whereas 26% were submitted by companies and associations.

**Table 3.3: Source of complaints leading to inquiries**

<b>Companies and associations</b>	<b>26% (75)</b>
<b>Individual citizens</b>	<b>74% (218)</b>

Most inquiries opened by the Ombudsman in 2008 concerned the European Commission (66%). Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints. Complainants also targeted the administration of the European Parliament (10%), the European Personnel Selection Office (7%), the Council (3%), and the European Anti-Fraud Office, OLAF (2%)<sup>8</sup>. Twenty other EU institutions and bodies were the subject of a further 37 inquiries<sup>9</sup>.

**Figure 3.7: Institutions and bodies subject to inquiry**

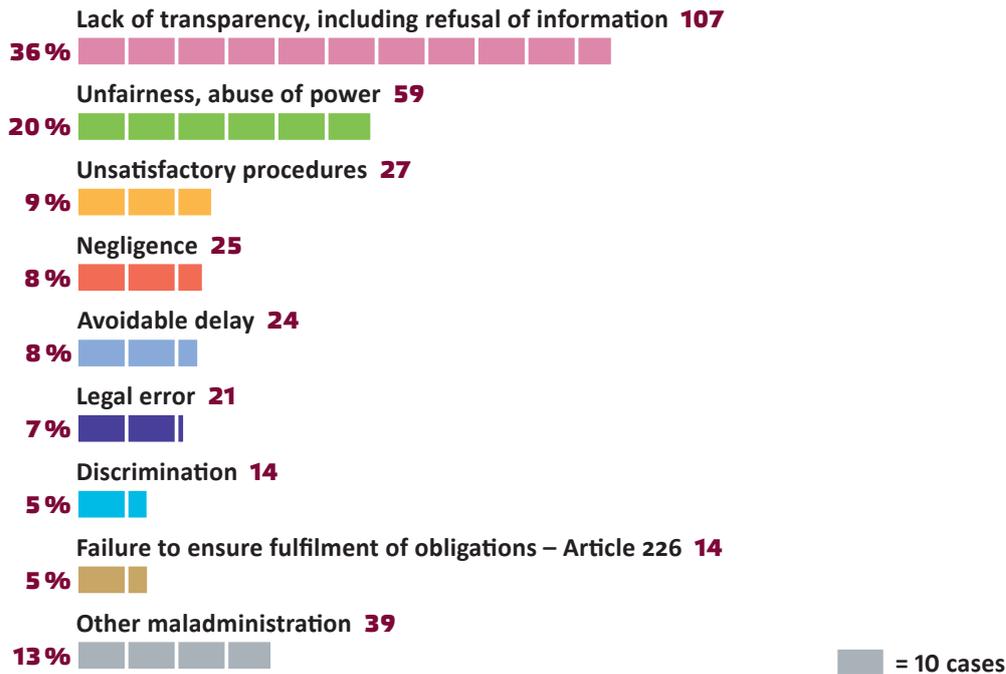


NOTE In one case, the same inquiry concerned two institutions. These percentages therefore total more than 100%.

The main types of maladministration alleged in inquiries opened in 2008 were lack of transparency, including refusal of information (36% of inquiries), unfairness or abuse of power (20%), unsatisfactory procedures (9%), negligence (8%), avoidable delay (8%), legal error (7%), discrimination (5%), and failure to ensure fulfilment of obligations, that is, failure by the Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (5%).

<sup>8</sup>. In terms of potential OLAF investigations concerning the Ombudsman, it should be noted that, on 2 June 2008, the Ombudsman acceded to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF. On the same day, the Ombudsman adopted a decision on the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests.

<sup>9</sup>. European Central Bank (4 inquiries), European Medicines Agency (4), Court of Justice of the European Communities (3), Committee of the Regions of the European Union (3), Europol (3), Education, Audiovisual and Culture Executive Agency (3), European Centre for the Development of Vocational Training (2), European Agency for the Management of Operational Co-operation at the External Borders of the EU (2), Office for Official Publications of the European Communities (2), European Data Protection Supervisor (1), European Investment Bank (1), Economic and Social Committee of the European Communities (1), European Aviation Safety Agency (1), European Chemical Agency (1), European Agency for Reconstruction (1), Translation Centre for Bodies of the European Union (1), European Research Council Executive Agency (1), European Joint Undertaking for ITER and Development of Fusion Energy (1), Executive Agency for Competitiveness and Innovation (1), Euratom Supply Agency (1).

**Figure 3.8: Types of maladministration alleged**

NOTE In some cases, two or more alleged types of maladministration were examined in the same inquiry. These percentages therefore total more than 100%.

### 3.3 Findings of the Ombudsman's inquiries

As Figure 3.6 above shows, the Ombudsman closed a record number of inquiries (355) in 2008. This figure is almost twice the number of inquiries closed in 2003. Of these, 352 were linked to complaints and three were own-initiative inquiries.

Most of the inquiries closed by the Ombudsman in 2008 were closed within one year (52%). Over one-third (36%) were closed within three months. This includes cases that the Ombudsman was

**The Ombudsman closed a record number of inquiries (355) in 2008. Most of the inquiries closed by the Ombudsman in 2008 were closed within one year (52%).**

able to resolve very quickly, for example, by telephoning the institution concerned to propose a solution<sup>10</sup> (see section 2.5 above). Almost 70% of inquiries were closed within 18 months, while the remaining cases took longer, due to their complexity or to delays.

On average, cases took 13 months to close. The Ombudsman aims to further improve the institution's performance in 2009 by taking even less time to close cases. It is important to note, in this regard, that the additional work which resulted from the significant rise in the number of complaints from 2004 onwards, has now been completed.

**Table 3.4: Cases closed in 2008 following inquiries**

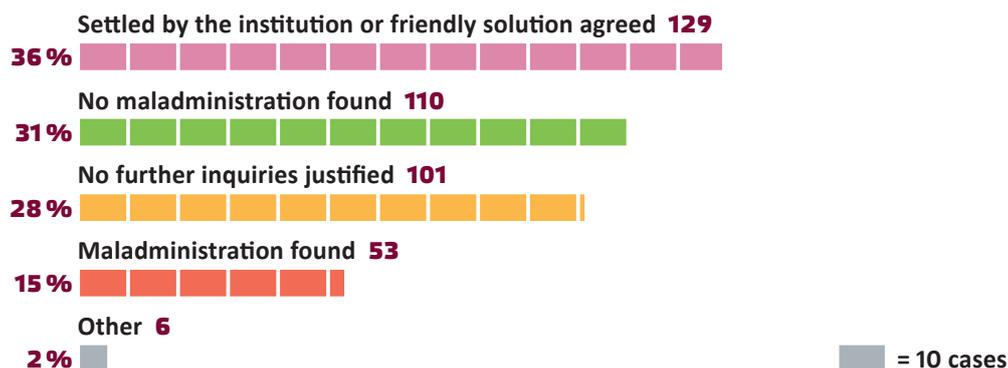
<b>Average length of inquiry</b>	<b>13 months</b>
<b>Cases closed within 3 months</b>	<b>36%</b>
<b>Cases closed within 12 months</b>	<b>52%</b>
<b>Cases closed within 18 months</b>	<b>68%</b>

NOTE These figures are based on a month consisting of 30 days. It should also be noted that the percentages represent cumulative figures.

10. It also includes cases where the Ombudsman would have conducted a full inquiry were it not that the complainant withdrew the complaint, and cases where the Ombudsman could not proceed with his inquiry due to the complainant's decision to go to Court.

As can be seen from Figure 3.9, a positive outcome was readily achieved for the complainant in 129 cases closed in 2008 (36% of the total). These cases were either settled by the institution or a friendly solution was agreed. The comparable figure for 2007 was 134 cases. In a further 101 cases, the matter was clarified so that no further inquiries were needed, while in 110 cases, the Ombudsman found no maladministration. The Ombudsman concluded that there was maladministration in 53 cases, but was nevertheless able to obtain a positive outcome for the complainant in eight such cases, through the acceptance of the draft recommendation that he made to the institution concerned (see Figure 3.10). These findings are further detailed below<sup>11</sup>.

**Figure 3.9: Results of inquiries closed**



NOTE In some cases, inquiries were closed on two or more grounds. These percentages therefore total more than 100%.

## ■ No maladministration

In 2008, 110 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 obtaining the Ombudsman's independent analysis of the case. At the same time, such a finding serves as tangible evidence that the institution or body concerned has acted in conformity with the principles of good administration.

### Irregularities in a design contest for architects in Austria

An Austrian architect complained to the Ombudsman about the way in which the Commission dealt with his infringement complaint. In his complaint to the Commission, the architect alleged that Austria infringed Community law on the award of public service contracts in a number of design contests for architects. While the Commission confirmed that Community law had been infringed, it decided not to take any further steps, referring to a modification in the Austrian procurement law which, in its view, ensured that cases such as the present one would not arise again. The Ombudsman understood the complainant's disappointment over the Commission's decision not to take any further steps, after nearly five years of dealing with the matter. However, he recalled that, according to established case-law, it is within the Commission's discretion to decide whether or not to bring the matter before the courts. He found the Commission's justification plausible and closed the case with a finding of no maladministration.

3570/2005/WP ■

11. The analysis that follows is based on inquiries closed during 2008. If an inquiry dealt with more than one allegation or claim, these may have given rise to several findings by the Ombudsman.

## ■ 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 insti-

**Whenever possible, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against.**

tutions 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 2008, 125 cases were settled by the institution or body itself following a complaint to the Ombudsman<sup>12</sup>.

### ■ Settlement of payment dispute between research institute and Commission

In 2004, a Dutch research institute signed a grant agreement with the Commission for a research project on human influenza. In December 2006, the institute turned to the Ombudsman, alleging that the Commission had not paid an instalment of EUR 288 000. The Commission argued that it had not paid the instalment because the institute had not yet delivered an adequate budget table for the project. The Ombudsman inspected the relevant files and noted that the Commission had, in the meantime, sent the necessary explanations to the institute to allow it to submit such a budget table. The Commission subsequently announced that it would unblock the final payment. The Ombudsman commended the Commission for its efforts to assist the institute, pointing out that he considered this manner of dealing with complainants as an example of good administration.

3794/2006/FOR ■

If an inquiry leads to a preliminary finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. Four cases were closed during the year after a friendly solu-

**If an inquiry leads to a preliminary finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible.**

tion had been achieved. At the end of 2008, 25 proposals for friendly solutions were still under consideration.

### ■ Ombudsman achieves friendly solution with Commission on Italian state aid case

In 1993, an Italian shipping company lodged a complaint with the Commission concerning a Sardinian aid scheme for shipping companies. According to the complainant, the aid scheme discriminated against companies established in Sardinia but having their head offices elsewhere. In 1997, the Commission concluded that the aid scheme constituted unlawful state aid and was therefore incompatible with the common market. In 2000, the European Court of Justice annulled the Commission's decision on procedural grounds. The Commission, however, did not adopt a new decision. The Italian company lodged a complaint with the Ombudsman. The Ombudsman considered the long delay to be maladministration and proposed a friendly solution. In December 2007, the complainant informed the Ombudsman that the Commission had adopted a new decision.

2713/2006/IP (Confidential) ■

<sup>12</sup>. As outlined in Chapter 2, 101 of these were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence.

In some cases, the complaint can be settled or 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.

**In some cases, the complaint can be settled or a friendly solution can be achieved if the institution or body concerned offers compensation to the complainant.**

### →→→ Council pays compensation in recognition of inconvenience caused

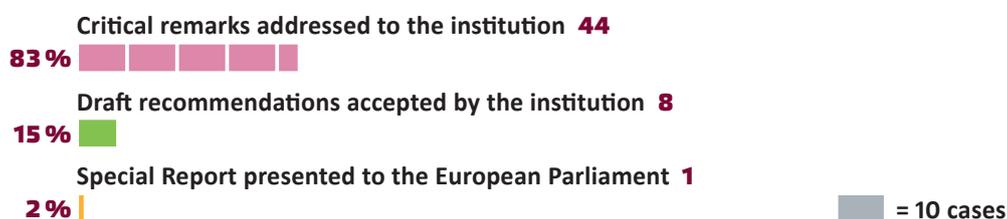
The Council agreed to make an *ex gratia* payment of EUR 1 000 in recognition of the inconvenience and stress that the complainant had suffered. The Council initially offered the complainant a one year contract and then changed the terms when it realised that the complainant would turn 65 during that period. The Ombudsman did not find maladministration, however, as regards the complainant's allegation of age discrimination.

1162/2007/FOR (Confidential) ■

## ■ Maladministration found

The Ombudsman concluded that there was maladministration in 15% of cases closed in 2008. In 44 such cases, the case was closed with critical remarks to the institution or body concerned (55 cases in 2007). Eight cases were closed when the institution concerned accepted a draft recommendation made by the Ombudsman. In one case where the Commission failed to do so, the Ombudsman submitted a special report to the European Parliament. These findings are analysed in more detail below.

### Figure 3.10: Inquiries where maladministration was found



### Critical remarks

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 in cases where the institution or body concerned fails to accept a draft recommendation but the Ombudsman does not deem it appropriate to submit a special report to Parliament.

**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 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.

### **Unjustified restriction of languages to be used in proposals**

A German association wanted to participate in the Commission's call for proposals for a rehabilitation project for torture victims, which formed part of the programme entitled "European Initiative for Democracy and Human Rights". The NGO turned to the Ombudsman, claiming that the Commission insisted that applications had to be submitted in English, French or Spanish. It argued that the Commission had a legal obligation to accept the use of any of the official EU languages in applications submitted in response to its calls for proposals. The Commission stated that a restricted use of language had been chosen for pragmatic reasons. The Ombudsman closed the case with a critical remark, concluding that the Commission's insistence that English, French or Spanish be used for project applications constituted an instance of maladministration.

259/2005/(PB)GG ■

### **Questionable eligibility of staff costs in agricultural project**

A German university, which participated in a project co-financed by the Community, turned to the Ombudsman, arguing that the Commission should have claimed back advance payments made to a Spanish university which was originally in charge of co-ordinating the project. The Ombudsman's inquiry revealed that there were reasonable doubts as regards staff costs amounting to EUR 38 000, which should have induced the Commission to carry out further checks. As the Commission refused to do so, the Ombudsman closed the case with a critical remark, stating that the institution had failed to examine, in a sufficiently thorough and proper manner, the complainant's strong arguments concerning the staff costs which had been accepted.

576/2005/GG ■

### **Alleged systematic exclusion from tenders for electronic publications**

A Dutch company developed navigation and retrieval software for electronic publications of the EU. It complained to the Ombudsman that, after a change of the officials responsible for the matter within the Office for Official Publications, its products were systematically excluded from being selected in tender procedures. The company referred to four cases which the Ombudsman investigated. He concluded that the Publications Office had failed to carry out a proper review of the first contract. He also criticised it for having excluded the possibility of extending the second contract on the basis of reasons that were clearly unfounded and erroneous. However, the Ombudsman concluded that there was no evidence that the Publications Office had systematically excluded the complainant's product from tender procedures.

1128/2004/GG ■

### **Public access to allowances paid to Members of the European Parliament**

In 2005, Parliament rejected a journalist's request for information about the allowances paid to the five Maltese MEPs, citing data protection reasons. The journalist lodged a complaint with the Ombudsman, arguing that taxpayers have a right to know how MEPs spend public money. After having consulted the European Data Protection Supervisor, who agreed with the Ombudsman's position, the Ombudsman called on Parliament to disclose the requested information, in the light of the public's legal right of access to documents. Parliament maintained its refusal. It announced, however, that it would publish general

information on MEPs' allowances on its website and alluded to the possibility of re-assessing the situation in 2009. The Ombudsman issued a critical remark, regretting that Parliament had not complied with the law as interpreted by the Court of First Instance. He, however, welcomed Parliament's decision to better inform the public about MEPs' allowances via its website.

3643/2005/(GK)WP ■

In some cases, the complainant's only claim, express or implied, is public acknowledgment that there was maladministration. In such cases, a critical remark also provides adequate redress to the

**In some cases, the complainant's only claim, express or implied, is public acknowledgment that there was maladministration.**

complainant. However, a better outcome from the perspective of improving relations between citizens and the Union institutions is for the institution concerned itself to acknowledge and apologise for the maladministration. Such action also shows that the institution knows what it has done wrong and can thus avoid similar maladministration in the future.

It is equally with a view to improving the EU institutions' performance in the future that the Ombudsman has made increasing use of further remarks, when he identifies an opportunity to enhance the quality of the administration. The Ombudsman made further remarks in a total of 41 cases in 2008, including the following:

### **Delayed handing of an infringement complaint**

The Ombudsman received a complaint from an individual about the Commission's handling of an infringement complaint concerning Spanish legislation on increases in capital taxation. He issued a critical remark concerning the Commission's failure to adequately inform the complainant, once it had decided to formally start an infringement proceeding. The Ombudsman also issued a further remark, containing suggestions as to how the Commission might consider improving its procedures.

3737/2006/(BM)JMA ■

It is with a view to ensuring that the institutions and bodies learn from their mistakes and that maladministration is avoided in future that the Ombudsman published on his website, in 2008, two studies of the follow-up undertaken by the institutions involved to all critical remarks and further remarks issued in 2006 and 2007. The Ombudsman identified a small number of cases in these studies, which should serve as a model for other institutions of how best to react to critical and further remarks. He has designated these as star cases. They are summarised below. The Ombudsman envisages informing the public on an annual basis of his findings on the institutions' follow-up to critical and further remarks.

### **Follow-up given to critical and further remarks →→→ Star cases in the 2007 Study**

Six of the follow-up actions examined in the Ombudsman's 2007 study warrant special mention as star cases. The **European Parliament** took several initiatives to give better effect to the principle of equal treatment of candidates in competitions in relation to pregnancy and childbirth (**3278/2004/ELB**). The **Commission** took a number of constructive steps, including establishing a consultancy service, to ensure that scientific fellows at its Joint Research Centre receive adequate information and advice about their contractual rights and obligations and the applicable national law (**272/2005/DK**). The Commission also introduced new rules to fill a gap in the sickness insurance cover for ex-spouses of officials suffering from serious illnesses and agreed to publish and widely distribute a booklet explaining the new rules (**368/2005/BM**). The **European Central Bank** responded to the Ombudsman's suggestions by amending its rules on procurement so as to specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender (**1137/2005/ID**). The **European Investment Bank** clar-

ified the responsibilities of its operational services as regards environmental documentation, designed new procedures for Framework Loans, including the environmental monitoring performed by the Bank's services and provided numerous concrete examples of its commitment to constructive engagement with NGOs and other civil society organisations (**1807/2006/MHZ**). The **European Personnel Selection Office** responded constructively to criticism of differences in the linguistic requirements in open competitions following the 2004 enlargement of the Union by deciding to apply a common linguistic regime to future EU11 and EU10 competitions (**3114/2005/MHZ**). ■

### →→→ Star cases in the 2006 Study

The **European Parliament** introduced a new model for declarations of conflict of interest that takes into consideration previous contacts with, or activities relating to, tenderers (**3732/2004/GG**). The **Commission** took a number of constructive steps (i) to improve its communications with applicants for traineeships (**2471/2005/BU**); and (ii) to ensure that its external Delegations were fully informed of a further remark concerning the role of the Commission in ensuring that the Contracting Authorities in delegated procedures respect their obligations as regards prompt preparation and transmission of contract award notices (**3706/2005/MHZ**). The Commission also responded to a critical remark by offering compensation to a complainant, despite the fact that it disagreed with the Ombudsman's finding of maladministration (**495/2003/ELB**). Further examples of good practice include the **European Investment Bank's** improvements to its policies and procedures to deal with requests for access to information and complaints (**994/2004/IP** and **3501/2004/PB**) and the **European Defence Agency's** decision to amend its recruitment procedures to include written evaluation forms for each candidate (**2044/2005/BM**). ■

## Draft recommendations

In cases 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 2008, 23 draft recommendations were issued. In addition, four draft recommendations from 2007 led to decisions in 2008, while two further cases were closed, following draft recommendations made in 2004 and 2006. Eight cases were closed during the year when a draft recommendation was accepted by the institution (see illustrative example below). One case led to a special report to the European Parliament. Ten cases were closed with critical remarks. At the end of 2008, 12 draft recommendations were still under consideration, including two made in 2007 and ten made in 2008.

### Alleged denial of justice by the Board of Governors of the European Schools

A lawyer lodged a complaint against the Commission concerning two decisions of the Board of Governors of the European Schools to increase school fees in the School in Luxembourg. He alleged that there was a denial of justice by the Board of Governors because the Parents' Associations were denied the right to appeal to the Complaints Board against decisions of the Board of Governors concerning school fees. The Ombudsman's inquiry led him to call on the Commission to support, in the context of its role on the Board of Governors, the view that the jurisdiction of the Complaints Board covers appeals against acts of the Board of Governors, such as the one in question. The Commission replied that it intended to ask the Secretary-General, in one of the next meetings of the Board of Governors, for the introduction of an amendment to the General Rules of the Schools to allow such appeals.

2153/2004/MF ■

## Special reports

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.

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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 constitutes 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<sup>13</sup>. 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 2008. It is summarised below.

### Age discrimination concerning freelance interpreters

A Belgian freelance interpreter who had been hired by the institutions for specific conferences and meetings for more than 35 years complained to the Ombudsman after he stopped receiving job offers upon turning 65. The Ombudsman confirmed that this constituted age discrimination. In response to his draft recommendation, Parliament agreed to change its practice (case 186/2005/ELB). The Commission, on the other hand, while refusing to change its practice, failed to adequately justify why it treated such interpreters older than 65 differently. Since the case raised an important issue of principle, the Ombudsman submitted a special report to Parliament.

185/2005/ELB ■

## 3.4 Star cases exemplifying best practice

Eight cases closed in 2008 constitute illustrative examples of best practice and have been designated as star cases. They serve as a model for all EU institutions and bodies, in terms of how best

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to react to issues that the Ombudsman raises.

The **European Personnel Selection Office (EPSO)** agreed to disclose to candidates, at their request, the evaluation criteria used in selection procedures, as well as a breakdown of individual marks. This followed an own-initiative inquiry by the Ombudsman, who praised EPSO for adopting such a transparent

approach (**01/5/2005/PB**). The **European Anti-Fraud Office (OLAF)** reacted constructively to a request for access to documents. By releasing two versions of the relevant report, one with the complainant's personal data and the other without, it complied with the EU's access to documents rules, while demonstrating a citizen-centred approach (**754/2007/BU**). Also concerning access to documents and information, an Austrian citizen complained to the Ombudsman about inadequate information she had received from the Registry of the **European Court of Justice**. After the Ombudsman's intervention, the Registry sent the complainant a letter with more detailed infor-

<sup>13</sup>. To give an example, in 2008, Parliament adopted a resolution supporting the Ombudsman's findings in his special report in case 1487/2005/GG. This concerned the language regime for the websites of the Council Presidencies.

mation and confirmed to the Ombudsman that it had included these additional indications in its standard letters for similar cases (**2448/2008/WP**, see also section 2.5 above).

The Ombudsman praised the **Commission** in two contractual cases for its constructive approach. In a case concerning a payment dispute with an Italian company over an EU project to supply water for displaced persons in Liberia, the Commission was thorough and constructive throughout the procedure, even to the point of accepting additional relevant payments identified by its own services and the complainant. As a result, the Italian company received more than EUR 100 000 (**3490/2005/(ID)PB**). In a case concerning an Austrian institute involved in a research and development contract in the field of chemical engineering, the Commission agreed to pay EUR 54 000. This followed the Ombudsman's request that it reconsider its refusal to pay an outstanding sum because it had not received the final cost statements on time (**3784/2006/FOR**). In case **2672/2008/VL**, the Ombudsman used a simplified inquiry procedure and was encouraged to note that the Commission responded positively by resolving, in a rapid and exemplary manner, a contentious e-mail dispute that had taken place between an academic researcher and a Commission official (see also section 2.5 above).

Further examples of best practice include case **1162/2007/FOR**, where the **Council** agreed to make an *ex gratia* payment of EUR 1 000 in recognition of the inconvenience and stress that the complainant had suffered. The Council had initially offered the complainant a one year contract and then changed the terms when it realised that the complainant would turn 65 during that period (see also section 3.3 above). Finally, for the third year running, the response of the **European Aviation Safety Agency** (EASA) to a complaint brought to its attention should be applauded. In case **893/2006/BU**, EASA not only apologised for a mistake it had made in a selection procedure, but also agreed to give the complainant the information he required and committed itself to doing so in future procedures.

## 3.5 Thematic analysis of inquiries closed

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. During 2008,

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A selected number of cases are made available on the Ombudsman's website in summary form in all 23 official EU languages. The summaries reflect the range of subjects and of Community institutions and bodies covered by the 355 decisions closing cases in 2008, as well as the different reasons for closing cases.

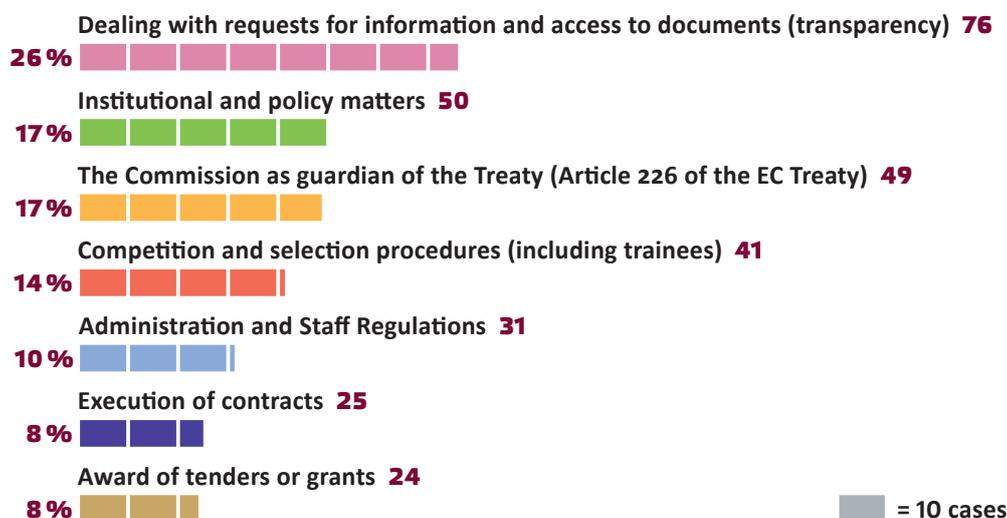
This section analyses the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2008. It is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around the following seven main categories:

- Openness, public access and personal data;
- The Commission as guardian of the Treaty;
- Award of tenders and grants;
- Execution of contracts;
- Administration and staff regulations;
- Competitions and selection procedures; and
- Institutional, policy matters and other.

It should be noted that there is substantial overlap among the above categories. For example, issues of openness are often raised in complaints concerning recruitment or the Commission's role

as guardian of the Treaty. It should also be noted that the categories are not listed in the order in which they appear in Figure 3.11<sup>14</sup>.

**Figure 3.11: Subject matter of inquiries**



## ■ Openness, public access and personal data

As mentioned in the introduction to this Report, the Ombudsman acts as guardian of transparency. This section reviews the Ombudsman's decisions in 2008 on complaints concerning (i) public

**As mentioned in the introduction to this Report, the Ombudsman acts as guardian of transparency.**

access to documents, (ii) public access to information, and (iii) the protection of personal data and the right of data subjects to have access to their data.

### Public access to documents

Article 1 of the Treaty on European Union refers to decisions in the Union being taken "as openly as possible", whilst 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>15</sup>. On 30 April 2008, the Commission put forward a proposal<sup>16</sup> to amend and replace Regulation 1049/2001. Chapter 4 below refers to the Ombudsman's participation in the public debate concerning the Commission's proposal.

Following own-initiative inquiries by the Ombudsman in 1996 and 1999, many other Community institutions and bodies also adopted rules on access to documents.

Regulation 1049/2001 gives applicants a choice of remedy: they may challenge a total or partial refusal of access either in court proceedings under Article 230 of the EC Treaty, or by complaining to the Ombudsman. During 2008, the Ombudsman closed inquiries into 12 complaints concerning the application of Regulation 1049/2001, six of which were against the European Commission, two against the European Parliament, two against the European Anti-Fraud Office (OLAF), one against Europol, and one against the European Medicines Agency (EMA).

Five complaints involved allegations of delay. The Commission apologised for late handling of two applications. In case **255/2007/PB**, it explained that the service concerned had a heavy workload

<sup>14</sup>. Figure 3.11 provides information on all inquiries *opened* in 2008 based on subject matter, while the thematic analysis provides an overview of the most significant findings contained in a selection of cases *closed* in 2008. The graph is positioned in this section to give the reader an indication of the significance of the subject matter discussed in terms of the Ombudsman's overall caseload.

<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>. COM(2008) 229 final.

in dealing with the reform of Regulation 1049/2001 and reassured the Ombudsman that it would be reorganised and strengthened by the recruitment of additional staff. In case **2420/2007/BEH**, the Commission apologised for its failure to decide on the complainant's confirmatory application. The complainant accepted its explanation as to why it could not give access to the document concerned. The Ombudsman criticised the Commission in case **3208/2006/GG** for failing to set up a comprehensive register of the documents it produces or receives, as required by Regulation 1049/2001. Given that such a register should have been in place already in 2002, the Ombudsman called on the Commission to act quickly and the European Parliament, in a resolution, supported the Ombudsman's call. Case **1161/2007/TN** concerned applications to the European Medicines Agency (EMA). The Ombudsman considered that the distinction and categorisation made by EMA as to whether the requests were for access to documents or for access to information was reasonable. Although he considered that there had been a slight delay in replying to two of the requests for information, the Ombudsman found no maladministration overall. In case **111/2008/TS**, dealt with through the simplified inquiry procedure, Europol apologised for its delay in handling an application and gave access to the requested document.

In case **2681/2007/PB**, the Ombudsman criticised the Commission for denying the existence of a certain document during an earlier inquiry. It subsequently acknowledged the document's existence after the complainant received a copy from another source. The Ombudsman pointed out that the presumption of truthfulness of the administration's factual statement that a certain requested document does not exist implies a particularly strict duty of care to ensure the accuracy of such statements.

The Ombudsman dealt with six complaints concerning refusal of access. In case **3824/2006/IP**, the Commission accepted the Ombudsman's proposal for a friendly solution, which involved giving access to the requested documents. The Commission also settled case **1452/2007/PB** by giving access. In case **3398/2006/PB**, the European Anti-Fraud Office (OLAF) agreed to give partial access to the document in question.

Three cases involved Article 4(1) (b)<sup>17</sup> of Regulation 1049/2001. The Ombudsman consulted the European Data Protection Supervisor (EDPS) on these complaints, pursuant to the Memorandum of Understanding signed on 30 November 2006.

In case **152/2007/GG**, OLAF refused the complainant's application for access to a document concerning the extension of the secondment of a national civil servant to OLAF. On the basis of an inspection of the document, the Ombudsman considered it possible that public access to the whole document could actually and specifically undermine the protection of the privacy and integrity of the persons concerned. As the complainant made clear that he did not wish to pursue the complaint, the Ombudsman considered that there were no grounds for further inquiries.

The other two cases concerned complaints against the European Parliament arising from requests which Parliament chose to handle in the framework of Regulation 1049/2001. The decisions closing the two cases were made on the same day.

Case **3643/2005/WP** concerned a journalist's request for information concerning the allowances paid to the Maltese MEPs. Parliament rejected the request on grounds of data protection. The EDPS advised that although MEPs should not be denied protection of their privacy, the basic consideration had to be that the public had a right to be informed about their behaviour and especially about the expenditure of public funds entrusted to them. The Ombudsman made a draft recommendation that the requested information should be disclosed. Parliament accepted only part of the draft recommendation, rejecting the rest by relying on a legal interpretation of the relationship between

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17. "The institutions shall refuse access to a document where disclosure would undermine: (...) (b) the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

Regulation 1049/2001 and Regulation 45/2001<sup>18</sup> which the Ombudsman considered inconsistent with the judgment of the Court of First Instance in the Bavarian Lager case<sup>19</sup>.

In case **655/2006/ID**, Parliament refused to give the complainant access to the list of members of the Additional Pension Scheme for MEPs. The Ombudsman made a preliminary finding of maladministration and proposed a friendly solution, which Parliament rejected. Since Parliament rejected in plenary a concrete proposal from its Budgetary Control Committee to publish the list of names, the Ombudsman closed the case on the grounds that, in so acting, Parliament transformed the issue into a matter of political responsibility, for which it, appropriately, is accountable to the electorate and not the Ombudsman.

### Public access to information

The Ombudsman dealt with nine inquiries into complaints alleging failure to provide information<sup>20</sup>. In two cases, the Ombudsman found that Parliament had in fact provided the information requested. The other seven cases were closed because the institutions and bodies concerned provided the information as a result of the Ombudsman's inquiry. Four of the cases involved the Commission, one involved OLAF and two involved the Court of Justice. Four of these cases were dealt with using a simplified inquiry procedure.

### Data protection

In addition to the cases referred to above concerning the application of Article 4(1) (b) of Regulation 1049/2001, the Ombudsman made three decisions on complaints which raised data protection issues.

In case **1129/2007/MF**, the complainant asked the Commission for details of the salary of her former husband (a Commission official) for use in divorce proceedings. While the Commission refused to provide the information, citing data protection reasons, it made clear that it would accept any request from a competent judicial authority for the information. The Ombudsman considered the Commission's position to be reasonable.

In accordance with the explicit provision of Article 2(7) of his Statute, the Ombudsman closed case **2585/2006/BU**, in which the complainant alleged that the Committee of the Regions was unlawfully processing personal data concerning his private finances, when the complainant brought legal proceedings against the Committee. However, the inquiry allowed for important issues to be clarified by the EDPS concerning the right to access one's personal file and to have inaccurate or incomplete data rectified.

→→→ In case **754/2007/BU**, the complainant claimed that OLAF should send him the final report of an investigation which it had opened on the basis of information he had provided. OLAF provided a copy of the final report, from which it had removed information that was protected from disclosure under Regulation 1049/2001, including personal data of the complainant. It also provided a second copy, for transmission only to the complainant, from which his own personal data had not been removed. The Ombudsman considered that OLAF had acted properly, closed the case and included it in his list of star cases for the year 2008. ←←←

**18.** 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.

**19.** Case T-194/04 *Bavarian Lager v Commission* [2007] ECR II-4523.

**20.** Many more cases of failure to provide information were settled through a direct telephone contact with the institution in question (see section 2.5 above).

## ■ 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>21</sup>. Article 226 of the EC Treaty creates a general

**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.**

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.

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 Member State authorities. The Ombudsman's inquiry is only directed at examining the Commission's behaviour in analysing and treating the infringement complaint presented to it. The Ombudsman can deal with both procedural and substantive aspects of the Commission's behaviour. However, the Ombudsman's inquiries and conclusions fully respect the Commission's discretionary powers, recognised by the Treaties and the case-law of the Community courts, when deciding whether or not to start an infringement procedure and to bring a case before the Court of Justice against the Member State concerned.

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>22</sup>. The Communication lays down a certain number of procedural obligations relating to the registration of complaints submitted to the Commission and the exceptions to this obligation, as well as deadlines for dealing with complaints and for informing the complainants. This Communication was issued in 2002, as a response to the Ombudsman's previous inquiries and criticisms he had expressed towards the Commission in relation to these matters. The Ombudsman considers this Communication to constitute a very important step forward in terms of increasing the trust citizens have in the Commission as the guardian of the Treaty. In 2008, the Ombudsman's review of how the Commission applies its own rules revealed a certain number of shortcomings in the application of the Communication. An illustrative sample of these is presented and analysed immediately below.

As identified in the follow-up to a critical remark made in the framework of the decision on case **880/2005/TN**, there exist different linguistic versions of point 8 of the Communication. Whereas the English and the Swedish versions foresee that the institution informs the complainant when it has not been able to take a decision on the substance of the complaint within one year<sup>23</sup>, the other linguistic versions add that this obligation only exists if the complainant so requests. The Commission considers that the correct linguistic versions are those that foresee the need for a specific request by complainants. The Ombudsman considers that, in light of the second sentence of this point, this was not the intention of the Commission when it adopted the Communication. The same problem surfaced in the inquiry into case **3737/2006/(BM)JMA**, which concerned Spanish legislation on increases in capital taxation. It took two years for the Commission to issue a reasoned opinion to the Spanish authorities and it failed to inform the complainant after one year of registering the complaint. The Ombudsman issued a critical remark as well as a further remark, suggesting that the Commission could consider adopting the following approach: it could inform citizens of the

21. 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".

22. 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.

23. "As a general rule, Commission departments will investigate complaints ... within not more than one year from the date of registration ... Where this time limit is exceeded, the Commission department responsible for the case will inform the complainant in writing."

standards of good administration to be followed by its services in pursuing infringement proceedings. Such standards could include estimates of the time needed to investigate complaints after the letter of formal notice has been issued, or the information to be given to complainants after such a letter has been sent.

The issue of inadequate information is a recurrent problem detected in the Ombudsman's inquiries into the way the Commission deals with Article 226 complaints presented by citizens. In case **885/2007/JMA**, the Ombudsman criticised the Commission because it failed to reply to the complainant's letter after announcing to him its intention to close its investigation into his complaint. The Commission also failed to inform him that the case had been formally closed. The same kind of failure to inform a complainant was detected in case **2697/2006/(ID)MF**, but the Ombudsman closed the inquiry without making a critical remark because the Commission apologised for its failure.

Still in relation to procedural obligations laid down in the Communication, the Ombudsman, in case **1512/2007/JMA**, made a further remark, in which, while confirming that there was no maladministration in the Commission's handling of the complaint, invited the institution to try and implement point 4(5) of its Communication by explaining to complainants the possible alternative forms of redress in cases of alleged infringement of Community law by Member States.

A further recurrent problem detected in the Ombudsman's inquiries in this area relates to the registration of complaints. The Commission's Communication foresees an obligation to register the complaints it receives in the central registry (point 3(1) of the Communication). The exceptions to this obligation are enumerated in the following paragraph: "[w]here there is doubt as to the nature of an item of correspondence, the Secretariat-General of the Commission shall consult the department(s) concerned within 15 calendar days of receipt. If the department(s) fails to reply within 15 working days, the complaint shall be formally recorded at the central registry of complaints." This clear obligation has given rise to numerous problems. For instance, the Ombudsman discovered that letters from citizens were not registered as complaints, even if they were clearly intended as such. Moreover, the Commission did not invoke specific grounds for not doing so. This was the case in inquiry **2152/2006/OV**, where the Commission accepted a friendly solution proposal to register the complaint. However, in case **2914/2006/WP** which concerned competition law, the Commission refused to admit that it had erred. Although it identified and invoked a particular exception to the obligation to register, it maintained its view that it was not obliged to do so. It equally considered that it was not obliged to inform the complainant of the reasons for not registering the complaint. The same kind of problem relating to failure to register a complaint, and failure to inform the complainant of the reasons for not doing so, occurred in case **431/2008/ELB**. In this particular case, the substantive matter was being dealt with as a petition by Parliament and the Ombudsman did not investigate it. He closed the case with a further remark, however, reminding the Commission of its obligations as laid down in the Communication.

The Ombudsman can also review the substance of the analyses and conclusions reached by the Commission when investigating infringement complaints. The Ombudsman's review aims at verifying whether the conclusions reached by the Commission are reasonable and whether they are well argued and thoroughly explained to complainants. If the Ombudsman were to fundamentally disagree with the Commission's assessment, he would say so but underline that the highest authority in interpreting Community law is the Court of Justice. Disagreements of this kind are, however, exceptional. In most of the above mentioned cases, the Ombudsman considered the Commission's stance on the substance of the case to be correct.

In case **841/2008/BEH**, the complainant, a producer of an alcoholic mix-drink, had contested the Commission's decision to close a case which concerned an alleged infringement of the principle of the free movement of goods. The Ombudsman considered the Commission's position to be reasonable, taking due account of the fact that Member States enjoy a margin of discretion as regards the exceptions foreseen in Article 30 of the EC Treaty. Case **1551/2007/JMA** also concerned this Treaty provision, and, more specifically, the Commission's investigation of a decision by the French authorities to ban the import of eggs from Spain following a case of salmonella. The Ombudsman

concluded that the Commission had respected all the procedural requirements set out in the aforementioned Communication and considered reasonable the Commission's position that it was for Member States to decide on the appropriate level of protection of public health, while taking into account the potential adverse effects of a product and the available scientific data.

Case **885/2007/JMA** concerned a project in the Canary islands which could have a negative environmental impact on two areas classified as "Sites of Community Importance". The complainant alleged that the Commission had not taken account of information concerning alternative sites. The Ombudsman found that the Commission had analysed the complainant's concerns in detail and had explained the reasons which led it to conclude that, subject to certain conditions, the project in question could proceed. He criticised the Commission, however, for failing to reply to the complainant's last letter, to address the specific arguments made in that letter, and to inform the complainant of the formal closure of his complaint.

Case **789/2005/(GK)ID** concerned an alleged infringement by the Greek authorities of the Community Directive concerning environmental impact assessment studies (EIAs) in relation to the construction of the Athens tramway. The Ombudsman proposed that the Commission consider re-examining the complainant's arguments regarding the adequacy and propriety of the EIA. He also suggested that it reconsider whether adequate publicity had been given to the relevant public consultation. The Commission refused to follow the Ombudsman's recommendation and the Ombudsman closed the case with two critical remarks.

In case **2152/2006/OV**, a Dutch pensioner residing in France complained to the Commission that the Netherlands was infringing Community rules on social security benefits. As has already been mentioned in this section, the Commission failed to register the complaint and to reply to essential points in it. It did so after the Ombudsman intervened. However, it maintained its view on the substance of the case. In closing the case, the Ombudsman stated that he trusted that, in examining the case, the Commission would duly take into consideration the latest arguments put forward by the complainant and pointed out that the latter could lodge a new complaint if he were not satisfied with the Commission's final decision on the case.

In case **3249/2006/(PB)WP**, a German citizen complained to the Ombudsman after the Commission refused to take action against Germany for having violated his freedom of movement. This followed a dispute over a tax bill. The Ombudsman recalled that the main purpose of infringement procedures is to ensure future compliance of Member States with Community law and that these procedures are not designed to provide redress for complainants regarding events in the past. He considered that further inquiries were not justified.

Case **1962/2005/IP** concerned a road by-pass project consisting of three individual sections. The complainant argued that the environmental rules contained in Community law had not been followed before the construction process was launched. The Commission closed the infringement procedure stating that there had been no violation of Community law. The Ombudsman did not find the Commission's explanation as to why it had decided to close the case to be sufficient and coherent. He made a critical remark.

## ■ Award of tenders and grants

The Ombudsman deals with complaints about the award, or non-award, of tenders and grants. However, he considers that the institutions and, in particular, the evaluation committees and the

**The Ombudsman deals with complaints about the award, or non-award, of tenders and grants.**

awarding authorities in tenders, have a broad discretion with regard to the factors they take into account when deciding whether to award a contract following an invitation to tender. He considers

that his review of such cases should be limited to checking whether the rules governing the procedure are complied with, the facts are correct, and that there is no manifest error of assessment or misuse of powers. Moreover, he can examine whether the institutions have complied with their duties to state reasons and if these are coherent and reasonable.

In several cases where complainants alleged a breach of tender rules and challenged the decisions taken by the awarding authorities, the Ombudsman concluded his inquiries with findings of no maladministration<sup>24</sup>. He, however, made a further remark in one case with a view to enhancing the quality of future procedures<sup>25</sup>, and a critical remark in another because the institution concerned failed to indicate the appeal mechanisms against the decisions taken<sup>26</sup>.

Case **546/2007/JMA** concerned the exclusion of a company from several calls for tender issued to implement a certain project. The complainant had previously conducted a feasibility study for this particular project and the institution considered that there was a possible conflict of interest. The Ombudsman considered that the reasons put forward by the institution were reasonable and found no maladministration.

In case **3113/2007/ELB**, a tenderer was excluded because it was considered not to have the appropriate economic and financial capacity to execute the contract. The Ombudsman recalled that it was for the administration organising the call for tenders to assess whether applicants fulfil the relevant conditions and that he must not substitute his own assessment for that of the administration. He considered that the institution had provided a reasonable explanation of its position in this case.

In case **3346/2005/MHZ**, concerning a tender for supplying an IT system, the complainant alleged that the Commission failed to give adequate reasons for rejecting its offer, wrongly applied the award criteria, and cancelled the tender for invalid reasons. The Ombudsman confirmed an improper handling of the tender procedure. He criticised the Commission for refusing his friendly solution proposal, underlining that the possibility for him to achieve an outcome acceptable to both parties depends on the institution's willingness to adopt a citizen-friendly approach.

Case **2283/2004/GG** concerned a German NGO, supporting refugees and victims of war. It had applied to the Commission to co-finance several projects. The Ombudsman found, among other things, that the Commission failed to handle the complainant's applications fairly and objectively and that it made unfounded accusations of fraud against the complainant. The Commission apologised for the fact that it only specified the reasons for its decisions nearly three years after the decisions had been adopted and expressed its regrets for its overreaction as regards the accusation of fraud. It also stated that it had considerably improved its system of eligibility checks and also apologised for some of its actions. It failed, however, properly to address the most serious instances of maladministration identified by the Ombudsman. He went on to criticise the Commission, by emphasising that its reaction was not likely to inspire confidence among citizens and concerned stakeholders alike.

## ■ Execution of contracts

The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it. Maladministration may thus also be

**The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it. Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by Community institutions or bodies is concerned.**

found when the fulfilment of obligations arising from contracts concluded by Community institutions or bodies is concerned.

However, the scope of the review that the Ombudsman can carry out in such cases is necessarily limited. The Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question can only be dealt with effectively by a court of competent jurisdiction, which would have the possibility to

hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

24. Cases 118/2006/PB, 1667/2007/(BM)JMA, 494/2006/TN, 3006/2004/BB and 3114/2004/IP.

25. Case 3148/2007/BEH.

26. Case 2989/2006/OV.

In cases concerning contractual disputes, the Ombudsman considers it justified to limit his inquiry to examining whether the Community institution or body has provided him with 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. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction. If the parties do so, the Ombudsman will close his inquiry immediately with no further assessment, in light of the provision in Article 2(7) of his Statute<sup>27</sup>.

On the basis of the aforementioned examination, the Ombudsman has closed several inquiries with findings of no maladministration or has considered that no further inquiries were justified. Cases concerned included disputes about work days recognised and accepted as a basis for payment<sup>28</sup>, disputes over eligible costs and/or amounts to be recovered or paid after audit actions<sup>29</sup>, refusal to pay interest for late payment<sup>30</sup> or excessive delay in pre-financing payments of a certain grant<sup>31</sup>.

In relation to delays in payment, various inquiries were closed as settled because the institution concerned (the Commission) was able to pay the complainants and satisfy their claims, after the Ombudsman launched his inquiries<sup>32</sup>. It should be noted that, in 2008, the Ombudsman closed an own-initiative inquiry (**OI/5/2007/GG**) into late payment by the Commission, which concluded that progress in this area still has to be made.

A further type of problem dealt with by the Ombudsman in contractual cases relates to the particular contracts the Commission establishes for executing EU-funded actions or programmes. The

**In 2008, the institutions, and particularly the Commission, made a real effort to accept friendly solutions proposed by the Ombudsman in contractual disputes.**

Commission establishes a contractual relation with a certain firm or consortium which then implements the project in question by using sub-contractors, experts or its own employees. Some of these contracts and the respective framework programmes give

the Commission some rights in relation to the contractor's experts or employees. This particular contractual environment can give rise to disputes between the Commission's contractors and their staff or experts, with respect to which the Ombudsman considers that the Commission has a certain degree of responsibility<sup>33</sup>. Case **193/2007/JMA** concerned the dismissal of a project leader after the Commission expressed its dissatisfaction with the work he had provided. Although the Ombudsman found no maladministration, he drew attention to the fact that the position expressed by the institution should be made in writing so as to allow the person in question to present his views to his employer who was the Commission's contractor. The Ombudsman made the same remark in case **1084/2006/MHZ**, concerning relations between the contractor and its sub-contractor.

The Ombudsman would like to underline that, in 2008, the institutions, and particularly the Commission, made a real effort to accept friendly solutions proposed by the Ombudsman in contractual disputes.

→→→ In case **3490/2005/(ID)PB**, which features among this year's star cases, the Ombudsman found the Commission's response to be exemplary. It had been thorough and constructive throughout the procedure, even to the point of accepting additional relevant payments identified by its own services and the complainant. The settlement implied that the balance of the project account was closed with payments of EUR 48 486.79 and USD 101 938.40 to the complainant. Case **3784/2006/FOR**, another star case for the year 2008, concerned an Austrian institute which claimed that the Commission had not paid an outstanding sum of EUR 97 000 for a research and development contract in the

27. Case 2392/2005/OV.

28. Case 1331/2007/JMA.

29. Cases 3394/2005/(TN)DK, 3736/2006/JF, 1367/2007/ELB, 2689/2005/BB, and 1785/2005/OV.

30. Case 1644/2007/FOR.

31. Cases 3794/2006/FOR and 1564/2006/VIK.

32. Cases 338/2008/BEH, 1945/2007/WP, 2272/2008/JMA, and 2273/2007/MF.

33. Examples of this issue, in addition to those detailed here, can be found in cases 579/2007/(TN)TS, 2306/2007/(OV)BEH, 3375/2006/JF, and 3090/2005/(GK)MHZ.

field of chemical engineering. To justify its refusal to pay, the Commission explained that it had not received the final cost statements on time. The Ombudsman judged its reaction to be disproportionate and asked it to reconsider its position. The Commission agreed to pay EUR 54 000. The institute accepted the proposal and thanked the Ombudsman for his intervention. ←←←

The Commission also settled case **2273/2007/MF** by agreeing to pay compensation to the complainant whose contract it had terminated after it identified an irregularity in the tender award procedure. Since the reason to terminate the contract was not attributable to the complainant, the Commission acknowledged that the firm was entitled to compensation. The complainant subsequently informed the Ombudsman that a new call for tender had been launched and that the firm was among the list of short-listed tenderers.

## ■ Administration and staff regulations

Every year the Ombudsman receives a certain number of complaints concerning the administrative activities of the institutions (31 inquiries or 10% of the total opened in 2008). These activities

Every year the Ombudsman receives a certain number of complaints concerning the administrative activities of the institutions.

relate to the application of the Staff Regulations for officials and other relevant texts. The nature of these cases varies considerably and they concern almost all institutions and bodies.

In 2008, the Ombudsman closed four cases concerning either officials or their relatives who complained to him about what they considered to be unfair recovery orders of monies unduly paid by the institutions. The Ombudsman's approach in such matters is based on the case-law of the Community courts<sup>34</sup> and on considerations of fairness and reasonableness regarding these recovery orders. The fact that undue payments are made to officials or to third persons who are less aware of the Community rules and regulations obviously plays a role in this respect. The Ombudsman appreciates and underlines the fact that the institutions concerned have generally made efforts to respond positively to his friendly solution proposals or draft recommendations. In case **902/2007/(MHZ)RT**, Parliament accepted the draft recommendation to partially reduce the recovery order. In another case, **3464/2004/(TN)TS**, the Ombudsman found no maladministration regarding Parliament's issuance of a recovery order against a retired official, but criticised the institution for the manner in which it had carried this out, that is, without informing the complainant of its decision or of its rationale. After the Ombudsman decided to conduct further inquiries in case **3778/2005/ELB** involving a delay of eight years in issuing a recovery order, the Commission cancelled the order, also recognising that the costs of recovering the monies were likely to exceed the debt itself. In another case, **2879/2008/BU**, after the Ombudsman initiated a simplified procedure, the Commission agreed to cancel a recovery order of less than EUR 200 concerning interest due.

The Ombudsman closed nine cases in 2008 relating to the external relations (RELEX) domain of the Commission's activities. Three of these cases related to various problems concerning the "Junior Experts" programme for the Commission's Delegations. The nature of the problems included selection<sup>35</sup>, recruitment and working conditions<sup>36</sup> and living allowance adaptations<sup>37</sup>. The Ombudsman also closed several cases concerning grading decisions for local agents<sup>38</sup>, dismissal of consultants working for an EU-funded project<sup>39</sup>, refusal to envisage special arrangements concerning the participation of local agents in competitions organised by EPSO<sup>40</sup> and recruitment procedures for IT managers in the Commission's Delegations<sup>41</sup>. The outcome of these inquiries varies consider-

34. Case T-205/01 *Ronsse v Commission* [2002] ECR-SC II-1065.

35. Case 3738/2006/(SAB)TS.

36. Case 1054/2007/MHZ.

37. Case 554/2006/(BM)FOR.

38. Cases 1104/2005/ELB and 2851/2005/PB.

39. Case 1411/2006/JMA.

40. Case 2507/2007/VIK.

41. Case 887/2007/(BM)JMA.

ably but the relatively high number of complaints received by the Ombudsman appears to indicate that there is room for improvement in the domain of staff management in this highly decentralised area of the Commission's activity.

The Ombudsman is pleased to acknowledge that, in the field of staff complaints, a considerable number of cases resulted in positive outcomes because of the proactive attitude of the administration.

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In case **1918/2007/ELB**, relating to a complaint about delays in implementing a series of court judgments relating to the complainant's career, the Commission settled the matter to the complainant's satisfaction. A friendly solution proposed by the Ombudsman was accepted in case **693/2006/(BM)FOR**, which

concerned a dispute over the amount of settlement allowances to be paid to an agent employed in the field of humanitarian food and co-operation aid to third countries. The Ombudsman was also able to close as settled by the institution case **2331/2007/RT**, which involved the payment of funeral expenses. A positive outcome was also found in case **2465/2004/(TN)DK**, even if it was obtained after the Commission originally refused a friendly solution proposal to give an official who was challenging his grade access to the form used by a grading committee in reaching its decision on the matter. In case **3579/2006/TS** concerning failure to reimburse the costs of medical examinations carried out in the course of a recruitment procedure, the Commission agreed to the reimbursement in the course of the Ombudsman's inquiry. The Ombudsman made a further remark with regard to the Commission's overall handling of the complainant's application.

In case **2782/2006/(MHZ)RT**, even if the Commission paid the indemnity insurance benefits to which the complainant was entitled, the Ombudsman closed the case with two critical remarks because of the delay with which this had occurred and because of behaviour which the Ombudsman considered discourteous towards the complainant. Two other inquiries were closed with no findings of maladministration by the Commission. These concerned the transfer of a temporary agent's pension rights from the Community scheme to a national scheme (**743/2007/(BM)MF**) and the change of an agent's job title (**2393/2007/RT**). The Ombudsman made further remarks to help ensure future improvements. A less positive conclusion was reached in case **1584/2006/OV**, where a candidate who had succeeded in a competition and was placed on a reserve list, participated in various interviews for a job but was never recruited. The complainant put forward eleven allegations of substantive and procedural errors. The Ombudsman closed the inquiry with two critical remarks concerning the Commission's procedural failures in dealing with the complainant's applications.

The Ombudsman also closed four staff cases relating to Parliament. In three of these, he found no maladministration. They concerned (i) the recruitment and grading of candidates after an open competition, which started before the new Staff Regulations entered into force<sup>42</sup>; (ii) the recruitment of a freelance interpreter<sup>43</sup>; and (iii) the failure to promote an official after she obtained a certain number of merit points<sup>44</sup>. In another case (**3051/2005/(PB)WP**), also concerning the absence of a comparative assessment of the complainant's merits, the Ombudsman concluded that there had been maladministration and, after Parliament failed to properly implement his draft recommendation, closed the case with a critical remark.

One decision was taken in relation to staff cases concerning the Council in 2008.

→→→ In case **1162/2007/FOR**, which features among this year's star cases, the Council agreed to make an *ex gratia* payment of EUR 1 000 in recognition of the inconvenience and stress that the complainant had suffered. The Council first offered the complainant a one year contract and then changed the terms when it realised that the complainant would turn 65 during the term of employment. The Ombudsman did not, however, find maladministration as regards the complainant's allegation of age discrimination (see, on the other hand, in the next section, case **185/2005/ELB** regarding age discrimination in the Commission). ←←←

42. Case 3770/2006/JF.

43. Case 2485/2006/MF.

44. Case 1586/2007/(MHZ)RT.

Case **1473/2006(SAB)TS** against the European Economic and Social Committee (EESC) concerned a Hungarian translator who requested access to the institution's Harassment Panel's report on her case, as well as information about the EESC's follow-up on the matter. She also complained about administrative irregularities and raised allegations regarding serious problems of discrimination relating to anti-Semitism. After the Ombudsman opened his inquiry, the EESC provided the complainant with the report and its follow-up. The Ombudsman criticised the Committee for its delay in doing so.

The Ombudsman also closed a certain number of inquiries relating to staff cases in the agencies. In case **524/2005/BB**, the European Medicines Agency (EMA) paid financial compensation after the Ombudsman found that it had failed to provide the complainant with accurate, clear and adequate information about her contractual situation resulting from the new Staff Regulations. In case **2209/2007/VIK** concerning the reimbursement of travel expenses to a candidate, the problem was settled by the Fundamental Rights Agency in the course of the Ombudsman's inquiry. Similarly, in case **2467/2007/MF**, which concerned allegations of moral harassment and abuse of power, the European Railway Agency (ERA) dealt effectively with the issue. Case **1180/2006/ID** against the European Centre for the Development of Vocational Training (CEDEFOP) concerned the termination of a contract and the reassignment of an agent. The Ombudsman found maladministration because the agency had failed to reason its decision. He closed the case with a critical remark.

## ■ Competitions and selection procedures

Since the establishment of the European Personnel Selection Office (EPSO), most of the Ombudsman's inquiries concerning open competitions and other selection procedures are directed against

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this relatively new Community body. Given EPSO's clear potential to serve as a prominent and privileged point of contact with a significant number of EU citizens, it is particularly important that it develop a culture of service towards citizens and operate transparently in its selection procedures and general activities.

While the Ombudsman is aware, through his inquiries, of the inevitable tension arising from the need to ensure that selection boards are free from any undue interference or pressure, and the equally important need to ensure transparency and accountability in their activities, he remains persuaded that these issues can be reconciled and is encouraged by recent case-law of the Community courts on this issue<sup>45</sup>. Many of the following examples illustrate the very positive attitude EPSO has shown regarding this need to reconcile these issues.

The Ombudsman launched an own-initiative inquiry in 2005 (**OI/5/2005/PB**) into the possibility of EPSO granting access to the evaluation and marking criteria used in tests it administers. In 2008, he made a draft recommendation, calling on EPSO to disclose to candidates, at their request, the evaluation criteria, if any, adopted by selection boards for written or oral tests, as well as the detailed breakdown of marks, if any, awarded to them for their performance. EPSO's positive response represents a major step forward as far as the transparency of selection procedures is concerned and should help build citizens' trust in EPSO's work. With regard to specific complaints, EPSO responded positively to the Ombudsman's draft recommendation in case **1000/2006/TN**, agreeing that the partial breakdown of a candidate's marks in an oral exam should be disclosed to her. In case **50/2007/DK**, the Ombudsman concluded that there was no maladministration in EPSO's refusing to give the candidate the breakdown of his marks following an oral exam because the Board had not produced a document or relevant information relating to candidates' evaluation. However, the Ombudsman reminded EPSO of his draft recommendation in the aforementioned own-initiative inquiry and did the same in a number of other cases<sup>46</sup> which were closed in 2008. In several other cases, the

45. Case F-74/07 *Meierhofer v Commission*, Judgment of 14 October 2008, nyr.

46. Cases 801/2007/ELB, 1312/2007/IP, and OI/8/2006/BU.

Ombudsman concluded that the information provided by EPSO in the evaluation sheets forwarded to candidates was sufficiently clear to inform them why they had not succeeded in certain exams<sup>47</sup>. The Ombudsman closed these cases with a finding of no maladministration.

A further issue relating to EPSO's work led the Ombudsman to launch another own-initiative inquiry (**OI/4/2007/(ID)MHZ**). It concerns access by unsuccessful candidates in computer based tests (CBT) to the questions and answers they gave. EPSO refuses access to that information, on the grounds, inter alia, that disclosing questions would imply that they can no longer be used in future competitions. Having received a substantial number of individual complaints about this practice and having concluded that it was an instance of maladministration<sup>48</sup>, the Ombudsman launched his inquiry. Many other complaints have since been submitted to him on this subject. He has reassured these complainants that they will be informed of the outcome of the own-initiative inquiry and that they can follow its progress by consulting his website<sup>49</sup>.

Another type of case presented to the Ombudsman in relation to EPSO selection procedures relates to material problems encountered in connection with the tests, which are considered disadvantageous to candidates. Illustrative examples of such cases include the identification of incorrect questions in tests that have to be annulled and that allegedly cause candidates to lose time<sup>50</sup>, noise and disturbance of some of the candidates in a particular exam room<sup>51</sup>, unequal conditions for left-handed people sitting computer based tests<sup>52</sup>, and an erroneous spell-check function in the computer used by a disabled candidate<sup>53</sup>. In some cases, EPSO apologised for the mistake or offered to rectify the problem, where possible.

Another area leading to a substantial number of complaints concerned decisions taken by selection boards about which particular diplomas give access to a certain competition. The high number of complaints in this area suggests that EPSO could produce more explicit notices of competition, specifying the type of diplomas which can give access to the profiles sought. It could also better explain how candidates can prove their professional experience in order to avoid complaints and requests for the boards to re-examine their decisions in this area<sup>54</sup>. One particular complaint is worth highlighting. In case **2826/2004/PB**, the Ombudsman concluded that the Selection Board had wrongly excluded a candidate from a competition for English-speaking secretaries because her diploma did not give access to university studies. After a long inquiry, EPSO was still reluctant to admit the mistake, despite the fact that the pertinent national authorities meanwhile confirmed in writing that the decision of the Board was substantively wrong, and even after the Court of First Instance annulled similar wrong decisions by the same Selection Board. EPSO's initial reaction was that it would only implement the Court's judgments in cases where the candidates chose to go to court. The Ombudsman insisted that the same kind of redress should be given to the complainant and EPSO finally agreed.

Two other cases concerning EPSO are worth mentioning. One relates to alleged discrimination concerning the use of certain languages in competitions (case **3147/2006/IP**), while the other relates to alleged lack of impartiality of a member of a selection board, who had previously been a trainer in a preparation course for exams organised by EPSO in which the complainant had participated (case **688/2008/RT**).

Even if the majority of complaints concerning recruitment are directed against EPSO, the Ombudsman occasionally receives complaints against other institutions or bodies, in particular newly established agencies which are still in the process of consolidating their recruitment procedures. The Ombudsman would like to underline the generally positive approach of agencies to his

47. Cases 2589/2006/BU and 2900/2006/BU.

48. Case 370/2007/MHZ.

49. Cases 3492/2006/(WP) BEH, 1312/2007/IP, 7/2007/PB, and 801/2007/ELB.

50. Cases 7/2007/PB and 1850/2006/IP.

51. Case 2214/2006/IP.

52. Case 1848/2007/(WP)BEH.

53. Case 2596/2007/RT.

54. Cases 2189/2007/RT, 1500/2007/VIK, 1641/2007/VIK, and 3224/2006/(SAB)TS.

inquiries and recommendations. For instance, case **1678/2005/(ID)MF** concerned a series of selection procedures organised by the European Medicines Agency (EMA). After a thorough analysis of the evidence provided, the Ombudsman confirmed that there had been maladministration and called on EMA to apologise and pay the complainant EUR 1 000 as compensation for moral damages suffered. EMA agreed and informed the Ombudsman that it would take his observations and conclusions into account in future selection procedures. In case **1332/2007/(BM)MF** against the European Centre for Disease Prevention and Control (ECDC), the Ombudsman welcomed the ECDC's decision to adopt its own Code of Good Administrative Behaviour and its commitment to respect principles of good administration. As for the substance of the case, the Ombudsman considered that the ECDC provided a reasonable explanation, which was both sufficient and coherent, for its decision to reject the complainant's application.

→→→ One complainant turned to the Ombudsman regarding a selection procedure that was organised by the European Aviation Safety Agency (EASA). EASA reacted very positively to the Ombudsman's inquiry. In case **893/2006/BU**, which constitutes a further star case for the year 2008, the agency not only acknowledged the mistake and apologised for it, but also agreed, during the inquiry, to give the complainant the information he required and committed itself to doing so in future procedures. ←←←

Two parallel cases, one against Parliament (**186/2005/ELB**) and another against the Commission (**185/2005/ELB**), led to different outcomes. Whereas Parliament accepted the Ombudsman's draft recommendation, the Commission refused to do so. These cases relate to discrimination on the grounds of age, and more specifically, the decision to stop hiring Auxiliary Conference Interpreters (ACIs), that is, freelance interpreters hired for specific conferences and meetings, who are older than 65 years of age. The complainant had worked for these institutions for more than 35 years as an ACI, but stopped receiving job offers once he turned 65. The Ombudsman took the view that the Commission had not adequately justified why it treated ACIs over 65 differently. Since the case raised an important issue of principle, the Ombudsman submitted a special report to Parliament. This was the only special report issued by the Ombudsman in 2008.

## ■ Institutional, policy matters and other

This residual heading covers a range of complaints made against the institutions regarding their policy making activities or their general functioning.

In case **284/2006/PB**, a Danish complainant complained about the implementation of Community legislation on the introduction of digital tachographs in vehicles. Specifically, he alleged that the Commission had no legal authority to establish a moratorium on the compulsory installation of the said tachographs in all vehicles. The Ombudsman found that the allegation was justified and made a critical remark.

Case **2487/2006/DK** concerned a complainant who considered that he had been wrongly refused access to Commission buildings. The Ombudsman found that the complainant's access had not been refused, but had rather been made subject to certain conditions. He concluded that the Commission's decision reflected a reasonable exercise of its authority to regulate access to Community premises. In case **2819/2005/BU**, the Ombudsman criticised the European Parliament for the rough treatment given by its security services to the complainant, a former assistant of an MEP, after the latter decided to terminate her contract. The Ombudsman concluded that the treatment violated the principle of proportionality and made a draft recommendation. Parliament refused to offer the complainant the apologies and compensation proposed by the Ombudsman.

Case **2235/2005/(TN)TS** concerned allegations that the Commission had failed properly to monitor a pension insurance scheme for individual experts and had mismanaged the tender procedures launched in order to find a new insurer. The Ombudsman concluded that the Commission neither exceeded the bounds of its discretion in the field concerned, nor acted in a manifestly unreasonable way.

Although the European Schools are not a Community body, the Ombudsman has conducted some inquiries which relate to the general framework under which the European Schools operate. Such inquiries are directed against the Commission which has a representative in the Schools' Management Board and which is also responsible for a very substantial part of the Schools' operating budget. In 2008, the Ombudsman closed a number of inquiries into the role played by the Commission in the functioning of the European Schools. Case **262/2006/OV** concerned alleged discrimination arising from the rule setting out a maximum nine-year period for the secondment of teachers to the Schools. Case **2153/2004/MF** concerned two decisions of the Schools' Board of Governors to increase school fees. The complainant alleged a denial of justice because the Parents' Associations were denied the right to appeal to the Complaints Board against those decisions. In response to calls from the Ombudsman, the Commission stated that it intended to ask the Secretary-General, in one of the next meetings of the Board of Governors, to introduce an amendment to the General Rules of the European Schools to allow appeals against such decisions.

The Ombudsman criticised the Commission in case **101/2004/GG** which concerned a request by a former scientific assistant of the Institute for Transuranium Elements (ITU) in Karlsruhe for the Commission to investigate several breaches of security rules at the ITU, which is part of the Commission. One particularly serious incident concerned an allegedly deliberate illegal export of radioactive material to a laboratory in the United States in 1997. The German authorities examined the complainant's allegations, and the Commission took action to remedy certain shortcomings and to prevent similar problems from arising in the future. However, the Ombudsman concluded that the Commission had not shown that it had properly examined all of the complainant's allegations, in particular the aforementioned incident. While he accepted that, since the recipient institution in the United States had refrained from providing information on this issue, it was not possible to establish whether radioactive material had indeed been shipped to the United States illegally, he criticised the fact that the Commission failed properly to consider and examine all the remaining elements that were relevant in this context.

## 3.6 Transfers and advice

If a complaint is outside the European Ombudsman's mandate, he tries to advise the complainant of another body that could be competent to deal with the complaint, especially if the case involves

**If a complaint is outside the European Ombudsman's mandate, he tries to advise the complainant of another body that could be competent to deal with the complaint.**

EU law. If possible, and provided there appear to be grounds for the complaint, the Ombudsman, with the prior consent of the complainant, transfers it directly to another competent body.

**The European Ombudsman co-operates closely with his national and regional counterparts in the Member States through the European Network of Ombudsmen.**

States. Many such cases can best be handled by another member of the European Network of Ombudsmen. The European Ombudsman co-operates closely with his national and regional counterparts in the Member States through the European Network of Ombudsmen (see section 4.2 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.

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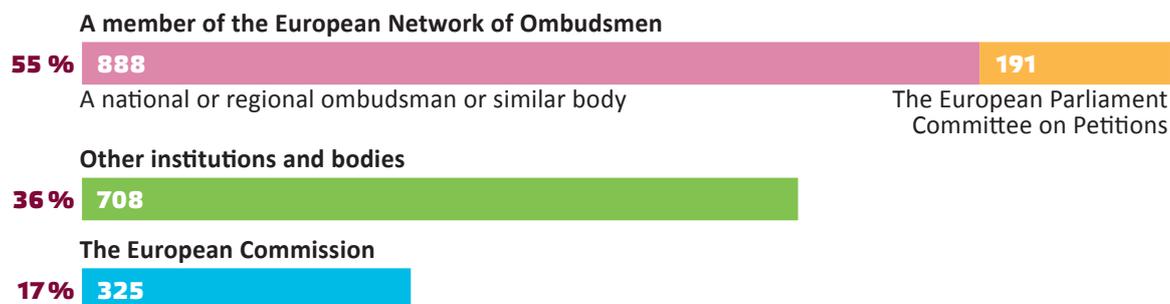
In some cases, the Ombudsman considers it appropriate to transfer the complaint to the Commission or to SOLVIT, a network set up by the Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market. Before transferring a complaint or advising the complainant, the Ombudsman's services make every effort to ensure that the most appropriate advice is given.

In 70% of all cases examined in 2008, advice was given or the case was transferred. As can be seen from Figure 3.12, in 1 079 cases, the complaint was transferred to a member of the European

Network of Ombudsmen or the complainant was advised to contact a member of the Network (888 were referred to a national or regional ombudsman, while 191 were referred to the European Parliament's Committee on Petitions). An additional 325 complainants were referred to the European Commission<sup>55</sup>, while 708 cases were referred to other institutions and bodies, such as SOLVIT or specialised ombudsmen or complaint-handling bodies in the Member States.

The rest of this Chapter contains examples of cases transferred or where advice was given.

### Figure 3.12: Complaints transferred to other institutions and bodies Complainants advised to contact other institutions and bodies



NOTE 1 This includes 158 complaints registered towards the end of 2007, which were processed in 2008 and excludes 220 complaints registered towards the end of 2008, which were still being processed at the end of the year to determine what action to take.

NOTE 2 In some cases, more than one type of advice was given to a complainant. These percentages therefore total more than 100%.

#### Complaints involving the European Network of Ombudsmen

A French citizen lodged a complaint against a French Regional Health Insurance Office relating to difficulties he had experienced with regard to his claims for pension payments. The European Ombudsman contacted his French counterpart to ensure that he could deal with the matter. He then contacted the complainant, who agreed for his complaint to be transferred to the French Ombudsman. The latter investigated the complaint and confirmed that the complainant's pension payments would be paid to him with retrospective effect.

1617/2008/CHM ■

The European Ombudsman received complaints from Bulgarian citizens about energy companies (suppliers of central heating and warm water) in Bulgaria. Since the complainants alleged that Community law on energy end-use efficiency and energy services had not been properly transposed, the Ombudsman advised them to consider filing an infringement complaint with the Commission and informed the Commission about the matter.

The Bulgarian Ombudsman had received hundreds of similar complaints, covering issues from violations of consumer rights to the methodology used for the calculation of individual bills. As the energy companies in question fall within his mandate, the Bulgarian Ombudsman investigated the complaints and issued a report with recommendations to the Government, specialized governmental agencies, the local administration and the utility companies. He subsequently informed the European Ombudsman about developments in this area, most notably concerning changes to the Bulgarian law on energy efficiency.

2349/2008/VIK and similar cases ■

55. 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 with the Ombudsman.

A Spanish national complained to the European Ombudsman, on behalf of a political party, about an alleged violation of fundamental rights by both Spanish national and regional authorities. He argued that the Spanish authorities had failed to take all necessary measures to ensure that citizens who live in certain Spanish regions which have their own regional languages are able to exercise their rights, in particular as regards the use of Spanish in schools and universities, and to ensure that citizens do not feel threatened by the terrorist organisation ETA. The Ombudsman transferred the case to the Spanish Ombudsman who could launch the necessary initiatives regarding these allegations.

The complainant also argued that the European Commission had failed to take action against the Spanish authorities to ensure compliance with these rights and freedoms. Since he had not yet contacted the institution to inform it about his concerns, the European Ombudsman advised the complainant to lodge a complaint with the Commission.

3009/2007/SMG ■

A complainant, who lives in Hungary, lodged a complaint with the European Ombudsman. The complainant pays alimony to his ex-wife who lives in France. He complained about the fact that, in Hungary, the alimony is not deductible from his taxable income. According to the complainant, if he lived in France, the alimony would be deductible. He considered that the EU should act concerning this matter.

The Ombudsman transferred this complaint to the European Parliament to be dealt with as a petition. The Committee on Petitions began to examine the petition, asking the European Commission to carry out a preliminary study into the different aspects of the problem.

2592/2007/LR ■

### Complaints transferred to the European Commission

The European Ombudsman received a complaint from the Regional Ombudsman of Andalusia, Spain, concerning an oil spill caused by the collision of two ships near the coast of Cadiz and the Gibraltar area. According to the complainant, the oil spill was seriously affecting the nearby area and the responsible authorities had failed to take appropriate action. Specifically, he considered that the situation violated Community law on environmental liability.

Since the case involved a potential infringement of Community law by a Member State, the Ombudsman transferred the case to the Commission. The latter informed the Ombudsman that it had written to the Andalusian Ombudsman and explained that the relevant Directive had not yet been transposed by the authorities of Gibraltar and that it was pursuing this aspect of the case through an infringement procedure. As regards the specific problem, the Commission mentioned that it had asked the United Kingdom authorities to provide further information about the nature of the material being transported and whether or not the United Kingdom authorities had complied with their obligations under Community law. It undertook to inform the Andalusian Ombudsman of any further developments in its inquiry.

2017/2008/JMA ■

The European Ombudsman received two complaints about problems encountered by the spouses of EU citizens who needed a visa to enter another Member State. In the first case, a Nigerian national married to a Romanian national, was asked for a visa to enter the United Kingdom. In the second case, a Thai national married to a United Kingdom citizen was asked for a visa to enter Spain. Both cases concerned potential violations of Community law on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The Ombudsman transferred the cases to the Commission.

The Commission provided helpful explanations in both cases. Specifically with regard to the second case, it said that Spain may have wrongly transposed the relevant Directive. It informed the complainant that his case details would be taken into account in its overall examination of compliance of national legislation with the Directive. The Commission further advised the complainant to contact SOLVIT United Kingdom concerning his complaint or to lodge a formal complaint with the Commission if the problem remains unresolved.

2709/2008/EC and 2733/2008/EC ■

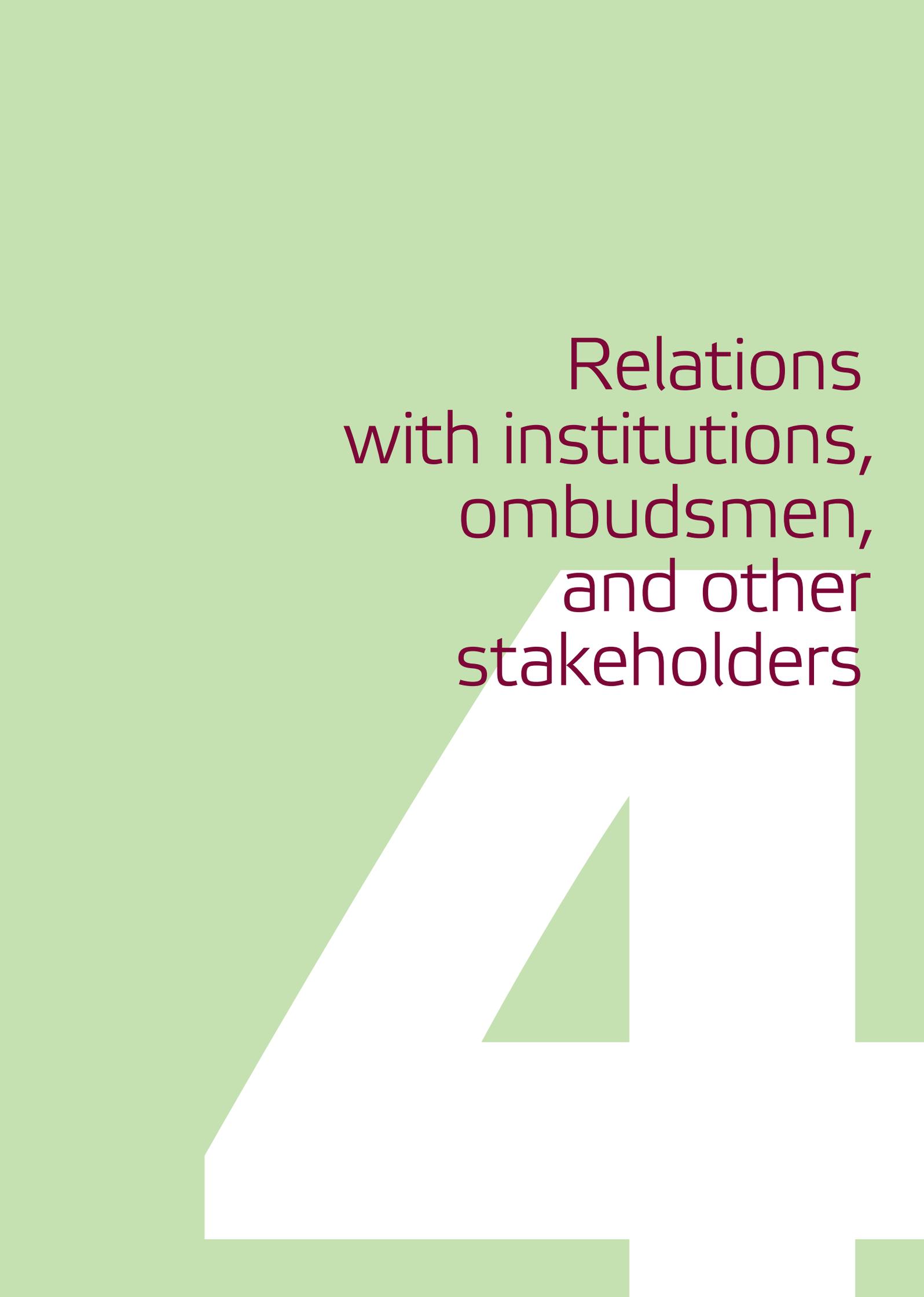
### **Complaint transferred to SOLVIT**

An individual complained to the Ombudsman alleging that the Civil Service Commission in Cyprus had refused to recognise the years she had worked in the United Kingdom when calculating her retirement pension because, at that time, Cyprus was not an EU Member State. The complainant felt she was being discriminated against, since she would have to work longer than other civil servants in order to retire with a full pension.

The complaint was transferred to SOLVIT, which contacted the Ministry of Labour and Social Insurance in Cyprus. The latter confirmed that there should be no problem recognising the complainant's period of work in the United Kingdom. Since the complainant had, in her subsequent contacts with SOLVIT, clarified that her complaint was against the Public Service Commission for not recognising her work period in the United Kingdom for promotion purposes and that she had brought her case to the national courts, SOLVIT informed her that it could not deal with her specific complaint.

796/2008/TIS ■



The background features a large, abstract white shape on the left side, resembling a stylized letter 'L' or a bracket, set against a solid green background. The text is positioned to the right of this white shape.

# Relations with institutions, ombudsmen, and other stakeholders



**T**HE European Ombudsman devotes considerable time to raising awareness about his work combating maladministration and promoting transparency and good administration. This Chapter provides an overview of the Ombudsman's efforts to reach out to the EU institutions and bodies, to his ombudsman colleagues, and to other key stakeholders.

## 4.1 Relations with EU institutions and bodies

Constructive relations with the EU institutions and bodies are hugely important for the European Ombudsman to help achieve the best possible results for complainants. The Ombudsman meets

**Constructive relations with the EU institutions and bodies are hugely important for the European Ombudsman to help achieve the best possible results for complainants.**

regularly with Members and officials of the institutions to discuss ways of raising the quality of the EU administration. His activities in this area are detailed below.

### ■ European Parliament

The European Parliament elects the Ombudsman and he reports to it, most notably via the presentation of this Annual Report and also via special reports. The Ombudsman enjoys an excellent working relationship with Parliament's Committee on Petitions, which is responsible for Parliament's relations with the Ombudsman and prepares a report on his Annual Report. At the Committee's request, the Ombudsman was represented by a member of his staff at each of the meetings held by the Committee in 2008.



**The European Parliament elects the Ombudsman and he reports to it, most notably via the presentation of his Annual Report. The Ombudsman is pictured here presenting his Report 2007 to Mr Hans-Gert PÖTTERING, President of the European Parliament. Strasbourg, 12 March 2008.**

On 12 March 2008, the Ombudsman presented his Annual Report for 2007 to the President of Parliament, Mr Hans-Gert PÖTTERING MEP. The following day, he delivered it to the President of the Committee on Petitions, Mr Marcin LIBICKI MEP, and, on 19 May, had the opportunity to present it to the Committee itself. Ms Dushana ZDRAVKOVA MEP drafted the Committee's Report on the Ombuds-

man's activities. At its plenary session on 23 October, Parliament adopted, by 465 votes to 1, a Resolution based on her Report. In its Resolution, Parliament declared its satisfaction with the Ombudsman's work, with his constructive co-operation with the institutions, and with his public profile.

Also of importance in terms of the Ombudsman's relations with Parliament in 2008 was the revision of the European Ombudsman's Statute. At the end of 2007, Parliament's Committee on Constitutional Affairs was considering a draft report on the proposed changes to the Statute (*rapporteur* Ms Anneli JÄÄTTEENMÄKI MEP). On 24 January 2008, Mr DIAMANDOUROS made a second presentation of his proposals to revise the Statute to that Committee, and on 10 March, Ms JÄÄTTEENMÄKI's Report was adopted in Committee by 19 votes to 0. As outlined in Chapter 2 of this Annual Report, Parliament adopted a decision<sup>1</sup> revising the Statute on 18 June (by 576 votes to 8). The revised version of the Statute entered into force on 31 July 2008.

The ongoing reform of Regulation 1049/2001 on public access to documents<sup>2</sup> also featured on the Ombudsman's interinstitutional agenda in 2008. The Ombudsman's views on the Commission's proposal to revise this Regulation were presented to Parliament's Committee on Civil Liberties, Justice and Home Affairs at a meeting in Brussels on 2 June, and again, on 11 December, at a seminar in Brussels organised by the Parliament of Finland and the Ministry of Justice of Finland. The Ombudsman encouraged the European Parliament to use its role as co-legislator on this Regulation to ensure the widest possible access to documents for citizens. As part of his contribution to the debate on this issue, the Ombudsman conducted a comparative study on the law and practice in the Member States relating to public access to information in databases. He took inspiration from the study to make concrete proposals in relation to the reform of the access to documents rules.

## ■ Council of the EU

The revision of the Ombudsman's Statute featured high on the agenda of most meetings that Mr DIAMANDOUROS held with representatives of the Member States in the Council in the first half of 2008. On 16 May, the Ombudsman made a presentation to the General Affairs Group of the Council to explain the purpose of the Statute revision and to answer any questions from the Member State delegations. The Council indicated its approval of the revised Statute in a statement by Mr Janez LENARČIČ, President-in-office of the Council, at Parliament's plenary session on 18 June.

## ■ European Commission

The European Commission is the institution accounting for the highest proportion of inquiries carried out by the Ombudsman. Regular meetings with Commissioners and senior staff are there-

**The European Commission is the institution accounting for the highest proportion of inquiries carried out by the Ombudsman.**

fore important to ensure constructive working relations and satisfactory responses to the Ombudsman's inquiries. During 2008, Mr DIAMANDOUROS met with Commission President José Manuel

BARROSO, Commission Vice-President responsible for Institutional Relations and Communication, Ms Margot WALLSTRÖM, Commissioner for Science and Research, Mr Janez POTOČNIK, and Commissioner for Employment, Social Affairs and Equal Opportunities, Mr Vladimír ŠPIDLA.

With a view to ensuring the best possible service to complainants, the Ombudsman co-operates closely with other redress mechanisms, including those co-ordinated by the Commission. On 20 November, Mr DIAMANDOUROS presented his work to the SOLVIT Network at a workshop in Luxembourg. SOLVIT is a network set up by the Commission to help people who face obstacles when trying

1. Decision of the European Parliament 2008/587/EC, Euratom of 18 June 2008, amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 2008 L 189, p. 25.

2. 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.

to exercise their rights in the Union's internal market. Both sides agreed that more work needs to be done to improve signposting so that complainants turn to the most appropriate redress mechanism first time around. In this context, the Ombudsman drew attention to the interactive guide being developed by his office as part of the institution's new website.

## ■ European Investment Bank (EIB)

The Ombudsman devoted considerable time to developing relations with the EIB in 2008, meeting with the President, Mr Philippe MAYSTADT, Vice-President, Mr Plutarchos SAKELLARIS, and other senior officials. Reciprocal staff exchange visits also took place, which proved to be extremely instructive for members of both institutions.

Of particular importance during the year in question was the signing of a Memorandum of Understanding<sup>3</sup> between the Ombudsman and the EIB President on 9 July. The purpose of the agreement is to improve stakeholders' protection from any possible maladministration as regards the EIB's activities. It foresees that stakeholder protection will be extended to those who are not citizens or residents of the EU or who do not have a registered office in the EU. Moreover, in case of alleged maladministration, a complainant will have recourse to an effective internal EIB complaints procedure before turning to the Ombudsman. This procedure is defined in the Complaints Mechanism Policy launched by the Bank, which will be subject to a Public Consultation in 2009<sup>4</sup>.

## ■ European Personnel Selection Office (EpsO)

Given its central role in EU recruitment activities, and therefore relations with European citizens, EpsO accounts for a relatively high proportion of inquiries carried out by the Ombudsman. To help

**Given its central role in EU recruitment activities, and therefore relations with European citizens, EpsO accounts for a relatively high proportion of inquiries carried out by the Ombudsman.**

ensure the highest standards of service to citizens in this area, the Ombudsman and his staff met with the Director of EpsO, Mr David BEARFIELD, and his team a number of times in 2008. Mr DIAMANDOUROS presented his work to EpsO staff on 15 April. This was followed by a lively exchange of views on how best to respond to complaints. Mr BEARFIELD also used this opportunity to explain EpsO's plans to modernise EU recruitment procedures, under the heading of the "EpsO Development Programme". He presented this programme again on 9 October when he and a delegation of EpsO staff visited the Ombudsman's Brussels antenna to meet with the



**The Ombudsman meets regularly with colleagues from other EU institutions to exchange information and best practice. He is pictured here discussing with the European Data Protection Supervisor (EDPS), Mr Peter HUSTINX, and the Assistant Supervisor, Mr Joaquín BAYO DELGADO. The Ombudsman gave an overview of his relations with the EDPS at an event on 17 December 2008, marking five years of the EDPS and the departure of Mr BAYO DELGADO.**

3. Memorandum of Understanding between the European Ombudsman and the European Investment Bank concerning information on the Bank's policies, standards and procedures and the handling of complaints, including complaints from non-citizens and non-residents of the European Union, OJ 2008 C 244, p. 1.

4. Information about the EIB's Complaints Mechanism Policy is available at: <http://www.eib.org>

Ombudsman, the Secretary-General, the Head of the Legal Department, and the Heads of Legal Unit. The purpose of this meeting was for both sides to get to know each other's work better. The Ombudsman and Mr BEARFIELD held a further meeting on 17 December.

## ■ EU Agencies

The Ombudsman's Secretary-General, Mr Ian HARDEN, attended the Heads of Agencies meeting on 24 October in Lisbon. At that meeting, the Agencies agreed that they all accept the European Code of Good Administrative Behaviour and would consider how best to publicise it among themselves. The Ombudsman very much welcomed this development, which should help clarify for citizens what they can expect when they contact the Agencies. The Code should also act as a guide for staff in the Agencies responsible for relations with the public.

## ■ Other EU institutions and bodies

The Ombudsman held a range of other meetings with representatives of the EU institutions and bodies during 2008. On 24 January, he met with the Presidents of the Staff Committees of the EU institutions to explain his role in raising the quality of the EU administration. On 5 September, he participated in a workshop organised by the Director of the European Union Agency for Fundamental Rights, Mr Morten KJAERUM, in Vienna. On 20 and 21 November, the Ombudsman went to Luxembourg to see the Presidents of the European Court of Justice, Mr Vassilios SKOURIS, the Court of First Instance, Mr Marc JAEGER, and the Civil Service Tribunal, Mr Paul J. MAHONEY. Finally, on 17 December, the Ombudsman gave an overview of relations between his institution and that of the European Data Protection Supervisor (EDPS) at a Seminar organised by the EDPS, Mr Peter HUSTINX, in Brussels. This Seminar marked five years of the EDPS, as well as the departure of the Assistant Supervisor, Mr Joaquín BAYO DELGADO.

## 4.2 Relations with ombudsmen and similar bodies

The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to ensure that citizens' complaints are dealt with promptly and effectively. This

**The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to ensure that citizens' complaints are dealt with promptly and effectively.**

co-operation is equally vital for exchanging information about EU law, tracking important developments in the world of ombudsmen, and sharing best practice. For the most part, this co-operation takes place under the aegis of the European Network of Ombudsmen, although the European Ombudsman also partici-

pates in conferences, seminars and meetings outside of the Network.

## ■ The European Network of Ombudsmen

The European Network of Ombudsmen now comprises almost 90 offices in 31 countries, covering the national and regional levels within the Union, as well as the national level in the applicant coun-

**The Network serves as an effective mechanism for co-operation on case handling.**

tries for EU membership plus Norway and Iceland. The Network serves as an effective mechanism for co-operation on case

handling. The Network is equally active in sharing experiences and best practice — goals which it endeavours to achieve via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Of particular importance in this regard in 2008 was a comparative study conducted by the European Ombudsman on the law and practice in the Member

States relating to public access to information in databases. The Ombudsman contacted his colleagues in the Network to find out about best practices at the national level aiming to ensure maximum public access to databases. He took inspiration from the results of this study to make concrete proposals in relation to the reform of the EU's rules on public access to documents.

The Ombudsmen in the Network adopted a Statement at the Sixth Seminar of National Ombudsmen, held in Strasbourg in October 2007. The purpose of the Statement is to make the EU dimension of ombudsmen's work better known and to clarify the service that they provide to people who complain about matters within the scope of EU law. During 2008, the European Ombudsman worked hard, through his publications and presentations, to raise awareness about the Statement, also making it available on his website in 23 languages. Mr DIAMANDOUROS drew particular attention to the Statement during his information visits to the Member States, which are co-ordinated by his ombudsman colleagues.

### Co-operation on case-handling

Many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. In many cases, an ombudsman in the country concerned can provide

**Many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. In many cases, an ombudsman in the country concerned can provide an effective remedy.**

an effective remedy. When possible, the European Ombudsman transfers cases directly to national and regional ombudsmen or gives suitable advice to the complainant. Further details of this co-operation are provided at the end of Chapter 3.

National and regional ombudsmen 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 European Ombudsman either provides the answer directly or, if more appropriate, channels the query to another EU institution or body for response. During 2008, eight new queries were received (five from national ombudsmen and three from regional ombudsmen). This constitutes a significant increase compared to previous years and reflects growing awareness of the query procedure resulting from the publication of the aforementioned Statement. These queries concerned issues ranging from the interpretation in the Netherlands of EU rules on compensation for air passengers to the Spanish authorities' interpretation of EU rules on public transport.

### Seminars

Seminars for national and regional ombudsmen are held in alternate years and are organised jointly by the European Ombudsman and a national or regional counterpart.

The Sixth Seminar of Regional Ombudsmen of EU Member States took place in Berlin from 2 to 4 November. It was organised by the President of the Committee on Petitions of the Berlin Regional Parliament, Mr Ralf HILLENBERG, and the European Ombudsman, with the support of the



**The Sixth Seminar of Regional Ombudsmen of EU Member States took place in Berlin from 2 to 4 November. Over 90 participants, pictured here, attended the event. The theme of the Seminar was "Protecting the most vulnerable in society: the role of complaints and petitions".**

*Europäische Akademie Berlin*. Around 90 participants, from each of the six countries in which there are ombudsmen at the regional level (namely, Belgium, Germany, Spain, Italy, Austria and the United Kingdom<sup>5</sup>), attended the event. The theme of the Seminar was "Protecting the most vulnerable in society: the role of complaints and petitions". The keynote speech on "The role of ombudsmen in national and European legal protection" was given by Mr Günter HIRSCH, former President of the German Supreme Court and now German Ombudsman for Insurance. This was followed by sessions on: independence of ombudsmen and petitions committees, how to work effectively for citizens, and complaints relating to healthcare, the elderly, social affairs and migration. Discussions at the Seminar were lively and enlightening, and the feedback received confirmed that ombudsmen found the choice of topic to be highly relevant to their everyday work.

Another Network seminar to take place in 2008 was the Sixth Seminar of the liaison officers which was from 1 to 3 June in Strasbourg. Liaison officers act as the first point of contact for the Network within the offices of the national ombudsmen. Their Sixth Seminar saw discussions on a range of subjects, including freedom of expression, access to information and documents, promoting good administration and dealing effectively with complaints. President Paul J. MAHONEY of the EU Civil Service Tribunal made the keynote speech on Day 1, under the heading "The EU Charter of Fundamental Rights and freedom of expression of officials". This was followed by a presentation on the Draft Convention of the Council of Europe on access to official documents, which was made by Judge Helena JÄDERBLOM, Chair of the Group of specialists on access to documents and Chief Judge at the Administrative Court of Appeal in Sweden. The Seminar ended with a session entitled "Ensuring the application of EU law", during which Mr Alain LAMASSOURE, Member of the European Parliament and former French Minister for European Affairs, was the keynote speaker. All in all, 30 participants from 28 European countries attended the Seminar.

### 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 by the European Ombudsman twice a year — in April and October. In 2008, the two issues covered a wide range of topics, including articles on racial discrimination, obstacles to the free movement of persons, migration and asylum issues, European environmental law, the role of ombudsmen in supervising prisons, the rights of people with disabilities, the rights of children, and



**The Sixth Seminar of the liaison officers in the European Network of Ombudsmen took place from 1 to 3 June in Strasbourg. Seminar participants held discussions on a range of subjects, including freedom of expression, access to information and documents, promoting good administration and dealing effectively with complaints.**

5. The countries are listed in the EU's protocol order; that is, alphabetically, based on the name of each country in its own language.

the right to demonstrate. A common theme running through many of these articles is the role of ombudsmen in ensuring that EU law is fully implemented.

### Electronic communications tools

The Ombudsman's Internet discussion and document-sharing forum for ombudsmen and their staff in Europe has proved to be an extremely useful tool for 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 and consult the *Daily News* on a regular basis.

In 2008, 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 the right to strike, freedom of assembly, police oversight mechanisms, euthanasia, disclosure of medical data, the problem of homelessness, access to healthcare for asylum seekers, access to employment within the public sector, and the submission of complaints by e-mail.

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.

## ■ Ombudsman Meetings

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsman-ship and exchanging best practice, Mr DIAMANDOUROS and his staff attended events organised by national and regional ombudsmen throughout Europe, including in Belgium, Bulgaria, Estonia, France, Ireland, and Italy. These events covered issues ranging from access to documents to the establishment of ombudsman networks. The European Ombudsman and his staff also met with a wide range of ombudsmen and representatives of ombudsman institutions from within the EU and further afield during 2008.

## 4.3 Relations with other stakeholders

The European Ombudsman is committed to ensuring that any person or organisation who might have a problem with the EU institutions and bodies is aware of the right to complain to him about

**The European Ombudsman is committed to ensuring that any person or organisation who might have a problem with the EU institutions and bodies is aware of the right to complain to him about maladministration.**

maladministration. Awareness-raising efforts were further intensified during 2008, with around 135 presentations made by the Ombudsman and his staff. Moreover, a new Unit, the Media, Enterprise and Civil Society Unit, was established in the Ombudsman's Brussels antenna, with the aim of reaching out to citizens, NGOs,

associations and companies.

This section gives an overview of the myriad ways in which the Ombudsman sought to raise awareness about the right to complain during the year.

## ■ Conferences and meetings

### Involving the Ombudsman

The Ombudsman spent considerable time in 2008 meeting with key stakeholders to explain his services. He presented his work at over 60 events to members of the legal community, business associations, think-tanks, NGOs, representatives of regional and local administrations, lobbyists and interest groups, academics, high level political representatives and civil servants. These conferences, seminars and meetings were organised in Brussels and in the Member States, often as part of the Ombudsman's information visits (see below).



Mr DIAMANDOUROS travelled to Budapest, on 15 September, to participate in an information event organised by his Hungarian ombudsman colleagues, Mr Máté SZABÓ, Mr Sándor FÜLÖP, and Mr Ernő KÁLLAI. Many journalists attended the event, along with NGOs, business groups and interested citizens.

### Involving the Ombudsman's staff

The Ombudsman's staff is equally active in promoting awareness of the institution. During 2008, over 75 presentations were made to around 2 500 citizens from throughout the EU. The greatest number of such groups of visitors came from Germany, followed by France. 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 resource constraints limit the number of presentations that can be made each year, the Ombudsman attempts, as far as possible, to accept invitations and requests from target groups. All of these presentations are extremely important in helping to give the EU administration a "human face".



Publications explaining the work of the Ombudsman were distributed widely throughout the year, in particular during the Enterprise Europe Network Annual Conference, held in Strasbourg in November, and at the Open Days organised by the European Parliament in Brussels and Strasbourg in May. Several thousand visitors came to the Ombudsman's stand at the Open Days and many had in-depth discussions with the Ombudsman's staff.

## ■ Information visits

With a view to raising awareness about the right to complain and to further intensify his working relations with his national and regional counterparts, the Ombudsman embarked on an intensive

**In 2008, the Ombudsman's information visits brought him to Cyprus, Greece, Latvia, and Lithuania.**

programme of information visits to the Member States and accession countries in 2003. These visits have continued apace. In 2008, the Ombudsman's information visits brought him to Cyprus, Greece, Latvia, and Lithuania.

(i) In Cyprus, the Commissioner for Administration (Ombudsman), Ms Eliana NICOLAOU, organised an intensive programme for the Ombudsman's four day visit from 17 to 20 March. Mr DIAMANDOUROS met with the President of Cyprus, Mr Dimitris CHRISTOFIAS, the President of the Parliament, Mr Marios GAROYIAN, three government ministers, the leaders of political parties, and the President of the Supreme Court, Mr Christos ARTEMIDES. During his time in Nicosia, the Ombudsman delivered two public lectures about his work, met with the Board of the Cyprus Chambers of Commerce, and was awarded the "Yannos Kranidiotis" prize for public service.

(ii) During his visit to Greece from 23 to 28 May, the European Ombudsman met with the President, Mr Karolos PAPOULIAS, the Prime Minister, Mr Kostas KARAMANLIS, the President of Parliament, Mr Dimitris SIOUFAS, the President of the Council of State, Mr Georgios PANAGIOTOPOULOS, three government ministers, the leaders of political parties, as well as with a former President and two former Prime Ministers. Mr DIAMANDOUROS also met with lawyers, NGOs, civil servants and members of the business community, to explain his services. The Greek Ombudsman, Mr Yorgos KAMINIS, and his staff co-ordinated Mr DIAMANDOUROS' information visit.

(iii) The European Ombudsman visited Latvia from 28 to 30 September. The Latvian Ombudsman, Mr Romāns APSĪTIS, organised the visit, during which the Ombudsman presented his work to

**All of these visits were extremely valuable in terms of raising awareness about citizens' rights under EU law, increasing the public profile of the European Ombudsman and his national counterparts, and providing information about the right to complain.**

local government representatives, NGOs, members of the business community, and university students. He held meetings with representatives of the judiciary and explained his work to a number of parliamentary committees. Finally, during his time in Riga, Mr DIAMANDOUROS met with the President of Latvia, Mr Valdis ZATLERS, as well as with three government ministers.

(iv) The Ombudsman went to Vilnius, from 1 to 3 October, for an information visit organised by the *Seimas* (Parliamentary) Ombudsmen, Mr Romas VALENTUKEVIČIUS, Ms Albina RADZEVIČIŪTĖ, Mr Augustinas NORMANTAS, Ms Virginija PILIPAVIČIENĖ, Ms Zita ZAMŽICKIENĖ, and their staff. He met with several committees of the *Seimas*, as well as with the Minister of Justice, Mr Petras BAGUŠKA. The Ombudsman delivered a public lecture to civil servants and to university students and met with representatives of the Lithuanian business community, as well as NGOs.

**LITHUANIA — The European Ombudsman carried out an information visit to Lithuania, from 1 to 3 October 2008. The visit was co-organised with the *Seimas* (Parliamentary) Ombudsmen. Pictured here with Mr DIAMANDOUROS are, from left to right, Ms Virginija PILIPAVIČIENĖ, Ms Albina RADZEVIČIŪTĖ, Mr Augustinas NORMANTAS, Ms Zita ZAMŽICKIENĖ, and Mr Romas VALENTUKEVIČIUS.**



(v) Mr DIAMANDOUROS also travelled to Budapest, on 15 September, to participate in an information event organised by his Hungarian ombudsman colleagues, Mr Máté SZABÓ, Mr Sándor FÜLÖP, and Mr Ernő KÁLLAI.

All of these visits were extremely valuable in terms of raising awareness about citizens' rights under EU law, increasing the public profile of the European Ombudsman and his national counterparts, and providing information about the right to complain.



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**GREECE** — During his information visit to Greece from 23 to 28 May, the European Ombudsman met with many high level officials, including the President, the Prime Minister and the Speaker of Parliament. He is pictured here with the Chair of Parliament's Committee on European Affairs, Ms Elsa PAPADEMETRIOU. During his visit, Mr DIAMANDOUROS also met with lawyers, NGOs, civil servants and members of the business community, to explain his services. The Greek Ombudsman, Mr Yorgos KAMINIS, co-ordinated Mr DIAMANDOUROS' information visit.

**LATVIA** — The European Ombudsman visited Latvia from 28 to 30 September 2008 with a view to raising awareness about his work. The Latvian Ombudsman, Mr Romāns APSĪTIS, co-organised the visit. Mr DIAMANDOUROS is pictured here with Mr APSĪTIS to his right and the President of Latvia, Mr Valdis ZATLERS, to his left.



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**LATVIA** — As part of his information visit to Latvia, from 28 to 30 September 2008, the European Ombudsman presented his work to government representatives and civil servants, NGOs, members of the business community, and university students. He is pictured here with the Latvian Ombudsman, Mr Romāns APSĪTIS, to his left, the President of the Constitutional Court, Mr Gunārs KŪTRIS, to his right, as well as judges and staff of the Constitutional Court.

## ■ Media activities

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 pro-

**A pro-active 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.**

active 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 main media activities in 2008 included press conferences in Brussels to present his Annual Report and in Strasbourg to explain the changes to his Statute, as well as in Athens, Budapest, Nicosia, Riga, and Vilnius, as part of the aforementioned information visits. Press briefings with interested journalists from a range of newspapers and press agencies also gave the Ombudsman the opportunity to explain his work for citizens and his views on relevant topics. Finally, Mr DIAMANDOUROS gave around 30 interviews to journalists from the print, broadcast, and electronic media in 2008, in Strasbourg, Brussels, and elsewhere, most notably during his information visits.

Press conferences are normally organised as part of the European Ombudsman's information visits. The Ombudsman is pictured here with the Chief Parliamentary Ombudsman of Lithuania, Mr Romas VALENTUKEVIČIUS, at a joint press conference, during which they explained the services their offices provide.



In 2008, seventeen press releases were issued and distributed to journalists and interested parties throughout Europe. Among the issues covered were transparency in the area of MEPs' allowances, late payment by the European Commission, the revision of the Ombudsman's Statute, and the revision of the EU rules on public access to documents. With regard to the latter issue, the Ombudsman also published in *European Voice* an open letter to Commission Vice-President, Margot WALLSTRÖM, outlining his concerns about the Commission's proposals in this area.

## ■ Publications

Material about the work of the Ombudsman was distributed widely throughout the year, in particular during the Enterprise Europe Network Annual Conference, held in Strasbourg in November, and at the Open Days organised by the European Parliament in Brussels and Strasbourg in May.

**All of the Ombudsman's publications are available on his website [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu) and can be obtained free of charge from EU Bookshop <http://bookshop.europa.eu>**

Of particular interest in terms of publications in 2008 was a new guide to the Ombudsman's work, produced in the 23 official EU languages. This publication was distributed to key stakeholders and to the general public.

All of the Ombudsman's publications are available on his website <http://www.ombudsman.europa.eu> and can be obtained free of charge from EU Bookshop <http://bookshop.europa.eu>

## ■ Electronic communications

### E-mail communication

Almost 60% of all complaints received by the Ombudsman in 2008 were submitted over the Internet. A large proportion of these was received through the electronic complaint form, which is

**Almost 60% of all complaints received by the Ombudsman in 2008 were submitted over the Internet.**

available on the Ombudsman's website in 23 languages.

In 2008, the main e-mail account of the Ombudsman was used to reply to a total of over 4 300 e-mails requesting information.

Around 3 300 were individual requests for information, all of which received individual replies from an appropriate member of the Ombudsman's staff. This compares with around 4 100 in 2007, and 3 500 in 2006. Of the 4 300 e-mails, around 1 000 were related to a mass mailing, concerning the alleged difficulties encountered by Catalan TV channels to broadcast in the region of Valencia.

### Website developments

The Ombudsman's website was created in July 1998. Throughout 2008, the European Ombudsman's Web Developer continued to work closely with the Head of the Communication Unit, 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 at the beginning of 2009.

The Ombudsman's website was regularly updated with decisions, press releases, and details of his communication activities. From 1 January to 31 December 2008, the Ombudsman's website

**From 1 January to 31 December 2008, the Ombudsman's website received around 440 000 unique visitors.**

received around 440 000 unique visitors. The English-language pages of the site were the most consulted, followed by the French,

German, Spanish and Italian pages. In terms of the geographical

origin of visits, the greatest number of visitors came from the United Kingdom, followed by Germany, France, Spain and Italy. The links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 97 000 visits were made to the links pages during 2008, 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 2008 in the work of the EU Inter-Institutional Internet Editorial Committee (CEiii).

### Internet chats

For the first time in 2008, the Ombudsman's office participated in an internet chat, which was organised by the European Institute in Bulgaria, as part of a project entitled "Now, Interacting with the European Parliament". Under the heading "The role of the European Ombudsman: helping to improve relations between the EU and its citizens", members of the Ombudsman's staff responded to questions on a range of issues linked to the Ombudsman's complaint-handling. The web chat generated a lot of media coverage of the Ombudsman's work in Bulgaria and was deemed to be very successful.

A large, white, stylized number '5' is positioned on the left side of the page, set against a solid green background. The number is partially cut off on the left edge. The word 'Resources' is written in a dark red, serif font to the right of the top part of the number.

# Resources



## 5.1 Personnel

To ensure that the institution can properly carry out the tasks of dealing with complaints about maladministration in 23 Treaty languages, and of raising awareness about the right to complain, the Ombudsman has the support of a well-qualified, multilingual staff. This section describes the work carried out by the various departments and units within the Ombudsman office. It begins with an explanation of the restructuring carried in 2008, as well as a short overview of the annual staff retreat, and the staff meetings that took place during the year.

### ■ Restructuring

An ambitious programme of internal restructuring was carried out in 2008, entering into force on 1 July. It involved the creation of four Units within each of the existing Departments: the Legal

**An ambitious programme of internal restructuring was carried out in 2008, entering into force on 1 July.**

Department and the Administration and Finance Department. This restructuring is aimed at establishing a management structure in which the office's two Heads of Department, corresponding to directors, and reporting to the Secretary-General, are each supported by four Heads of Unit with increased managerial prerogatives.

The Ombudsman implemented the internal re-organisation of his office without the addition of any new staff, the number of staff posts in the establishment plan remaining at 57. The budgetary authority has agreed to an increase of six posts in the 2009 budget.

The Ombudsman is pictured here with his staff at the institution's second retreat, which was held from 27 to 29 February 2008. The staff retreats form part of an annual cycle of events that provide staff and trainees with an opportunity to share views informally on subjects directly linked to the Ombudsman's work. Conclusions drawn from the retreats help shape the Ombudsman's strategic objectives which, in turn, guide the institution's activities.



## ■ Staff retreat

The European Ombudsman's staff retreats form an integral part of the Ombudsman's strategic planning, most notably by providing useful guidance for policy-making and the preparation of the Annual Management Plan (AMP). The retreats are an open forum of discussion, dialogue and brainstorming. They form part of an annual cycle of events that provide staff and trainees with an opportunity to share views on subjects directly linked to the Ombudsman's work. Conclusions drawn from the retreats help shape the Ombudsman's strategic objectives which, in turn, guide the activities of each Unit.

The institution held its second retreat from 27 to 29 February 2008. As part of the preparation for the retreat, members of staff were invited to respond to a questionnaire dealing with the Ombudsman's objectives, the external perceptions of the Ombudsman, and the functioning of the office. The results of the questionnaire, along with other background materials, served as a foundation upon which to frame discussions during the event. Each staff member was encouraged to participate actively in the deliberations, which focused on the institution's objectives and priorities, external perceptions, and the Ombudsman's reactive and proactive work.

The immediate feedback from staff clearly suggests that the second retreat was seen as a very positive experience. The themes and subjects discussed were considered to be highly relevant. The genuine interest, enthusiasm and openness of all contributed to creating an excellent working atmosphere.

## ■ Staff meetings

To help ensure 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 effecting the institution. During the year in question, staff meetings took place on 3 July and 12 December, providing a useful forum for discussion and information-sharing. The latter meeting was the first in which, following the reorganisation of the office referred to above, the Heads of Unit took on a more active role, explaining the activities of their Units and other relevant developments.

## The Ombudsman and his staff

The following gives an overview of the structure of the Ombudsman's office and provides some background information about the Ombudsman and his management staff. It ends with a brief description of the role of the Ombudsman's Staff Committee and the Data Protection Officer.

### 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.

**The Secretariat is responsible for the running of the Ombudsman's private office.**

### Secretary-General

The Secretary-General is responsible for strategic planning within the institution, and for overseeing the general administration of the Office. He advises the Ombudsman on the Office's structure and management, on the planning of its activities and the monitoring of its work and performance. With regard, specifically, to the work of the Legal Department, the Secretary-General assists and advises the Ombudsman in dealing with complaints and inquiries. Finally, the Secretary-General 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.

**The Secretary-General is responsible for strategic planning within the institution, and for overseeing the general administration of the Office.**

### Ian HARDEN — SECRETARY-GENERAL

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. ■

## 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 Legal Department consists mainly of lawyers whose major responsibility is to analyse the complaints received by the European Ombudsman and conduct inquiries.**

the Head of the Legal Department and four Heads of Legal Unit. The Head of the Legal Department also advises the Ombudsman on the legal strategy and direction of the institution and manages the Department.

During 2008, the Department had a total staff of 24, consisting of the Head of the Legal Department, four Heads of Legal Unit, three Principal Legal Advisers, 14 Legal Officers, a Lawyer Linguist, and an Assistant to the Head of the Legal Department. During the year in question, the Legal Department supervised 23 trainees.

### João SANT'ANNA — HEAD OF THE LEGAL DEPARTMENT

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. ■

### — Heads of Legal Unit

Each Head of Legal Unit supervises a team of Legal Officers and trainees with a view to ensuring high quality complaint-handling. They assist the Head of the Legal Department in ensuring that the

**Each Head of Legal Unit supervises a team of Legal Officers and trainees with a view to ensuring high quality complaint-handling.**

Department's work is accurate, timely and consistent. This involves promoting and monitoring compliance with internal procedures, standards and deadlines. Heads of Legal Unit also

have their own responsibilities, similar to those of Legal Officers described below. They also represent the Ombudsman at certain public events. They all report to the Head of the Legal Department, with whom they meet regularly.

There are currently four Heads of Legal Unit. They are Mr Gerhard GRILL, of German nationality, who joined the Ombudsman's office in 2000, Ms Marta HIRSCH-ZIEMBINSKA, Polish, who joined in 2003, and Mr Fergal Ó REGAN from Ireland, who joined in 2006. Mr Peter BONNOR, who is Danish and has worked in the Ombudsman's office since 1998, is a Head of Legal Unit, *ad interim*.

### — 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

**The Legal Officers deal with complaints, which may be submitted to the Ombudsman in any of the 23 Treaty languages of the European Union.**

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 make presentations about the Ombudsman's work.

## 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. Since 1 July 2008, it is made up of four Units, described below, as well as the Complaints Handling Secretariat. 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, proposing and implementing the budgetary and financial strategy of the institution, and for representing the Ombudsman in a number of interinstitutional fora. In 2008, the Department had a total staff of 31.

### **João SANT'ANNA**

HEAD OF THE ADMINISTRATION AND FINANCE DEPARTMENT (*AD INTERIM*) ■

#### — 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

**The Complaints Handling Secretariat is responsible for the registration, distribution, and follow-up of complaints submitted to the European Ombudsman.**

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. Mr Peter BONNOR is Head of the Complaints Handling Secretariat.

#### — Administration and Personnel Unit

The Administration and Personnel Unit's tasks are broad. They include the recruitment and management of staff, dealing with incoming and outgoing correspondence, the telephone switch-

**The Administration and Personnel Unit's tasks are broad. They include the recruitment and management of staff.**

board, 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 Unit 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. This Unit is headed by Mr Alessandro DEL BON, who is of dual German-Italian nationality, and who joined the Ombudsman's office in 1998.

#### — Budgetary and Financial Unit

The Budgetary and Financial Unit is charged with ensuring that the Ombudsman's Office complies with the applicable financial rules and with guaranteeing that available resources are used econom-

**The Budgetary and Financial Unit is charged with ensuring that the Ombudsman's Office complies with the applicable financial rules and with guaranteeing that available resources are used economically and efficiently, and are adequately protected.**

ically and efficiently, and are adequately protected. This Unit is also responsible for establishing and implementing the appropriate internal control mechanisms necessary for attaining these goals. These responsibilities derive from the fact that the European Ombudsman has an independent budget. Financial Officers, under the responsibility of the Authorising Officer by Delegation,

prepare and execute the budget. The Head of this Unit is Mr Loïc JULIEN, who is French, and who started working for the Ombudsman in 2005.

#### — Communication Unit

The Communication Unit is responsible for producing the Ombudsman's publications and promotional material, for maintaining and developing the Ombudsman's websites, and for establishing a

**The Communication Unit is responsible for producing the Ombudsman's publications and promotional material, for maintaining and developing the Ombudsman's websites, and for establishing a visual identity for the institution.**

visual identity for the institution. This Unit also co-ordinates the European Network of Ombudsmen and, more generally, relations with ombudsman associations in Europe and beyond. The Head of this Unit is Mr Ben HAGARD, a British national, who joined the Ombudsman's office in 1998.

### — Media, Enterprise and Civil Society Unit

The Media, Enterprise and Civil Society Unit is responsible for assisting the Ombudsman in reaching out to individuals and organisations who might need his services. It helps raise awareness

**The Media, Enterprise and Civil Society Unit is responsible for assisting the Ombudsman in reaching out to individuals and organisations who might need his services.**

of the Ombudsman's work throughout the Union. The Unit maintains and promotes relations with the media, and organises the Ombudsman's information visits and events. Members of this Unit are also responsible for writing the Ombudsman's publications

and speeches. Ms Rosita AGNEW, who is Irish and who started working for the Ombudsman in 2001, is the Head of this Unit.

### — Staff Committee

The Ombudsman's Staff Committee represents the interests of the staff and promotes continuous dialogue between the institution and the staff. The Staff Committee has greatly contributed to the smooth functioning of the service both by providing a channel for staff to express their opinions and by bringing to the attention of the administration any difficulties concerning the interpretation and application of the relevant regulations. The Staff Committee puts forward suggestions concerning the organisation and operation of the service, as well as proposals to improve staff living and working conditions. In this context, the Staff Committee played an important role in the staff retreats of 2006 and 2008.

### — Data Protection Officer

Every EU institution has a Data Protection Officer (DPO), who co-operates with the European Data Protection Supervisor and ensures that the rights and freedoms of data subjects are unlikely to be adversely affected by data processing operations. The DPO also ensures that data controllers and data subjects are informed of their rights and obligations under Regulation 45/2001<sup>1</sup>. Since March 2006, Mr Loïc JULIEN is the Data Protection Officer in the European Ombudsman's Office.

## 5.2 Budget

### ■ The budget in 2008

Since 1 January 2000, the Ombudsman's budget has been an independent section of the budget of the European Union (currently section VIII)<sup>2</sup>. It 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.

The budgeted appropriations in 2008 amounted to EUR 8 505 770.

### ■ Interinstitutional co-operation

To ensure the best possible use of resources, and to avoid unnecessary duplication of staff, the Ombudsman co-operates with other EU institutions and bodies, where possible. While these services are of course invoiced to the European Ombudsman, this co-operation has allowed for considerable efficiency savings to the Community budget. The Ombudsman co-operates, in particular, with:

1. Regulation (EC) 45/2001 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.  
2. 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.

- (i) the European Parliament, which provides assistance with technical services, including buildings, information technology, communications, medical services, training, translation, and interpretation;
- (ii) the Publications Office of the European Communities on various aspects of publications;
- (iii) the Translation Centre for the Bodies of the EU, which provides many of the translations required by the Ombudsman in his work for citizens.

## ■ Budgetary control

With a view to ensuring effective management of the resources put at the Ombudsman's disposal, an internal auditor, who is an official of the European Parliament, carries out regular checks of the institution's internal control systems and the financial operations carried out by the office.

The institution is also audited by the European Court of Auditors.



## How to contact the European Ombudsman

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### By mail

European Ombudsman  
1 Avenue du Président Robert Schuman  
CS 30403  
67001 Strasbourg Cedex  
FRANCE

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### By telephone

+33 3 88 17 23 13

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### By fax

+33 3 88 17 90 62

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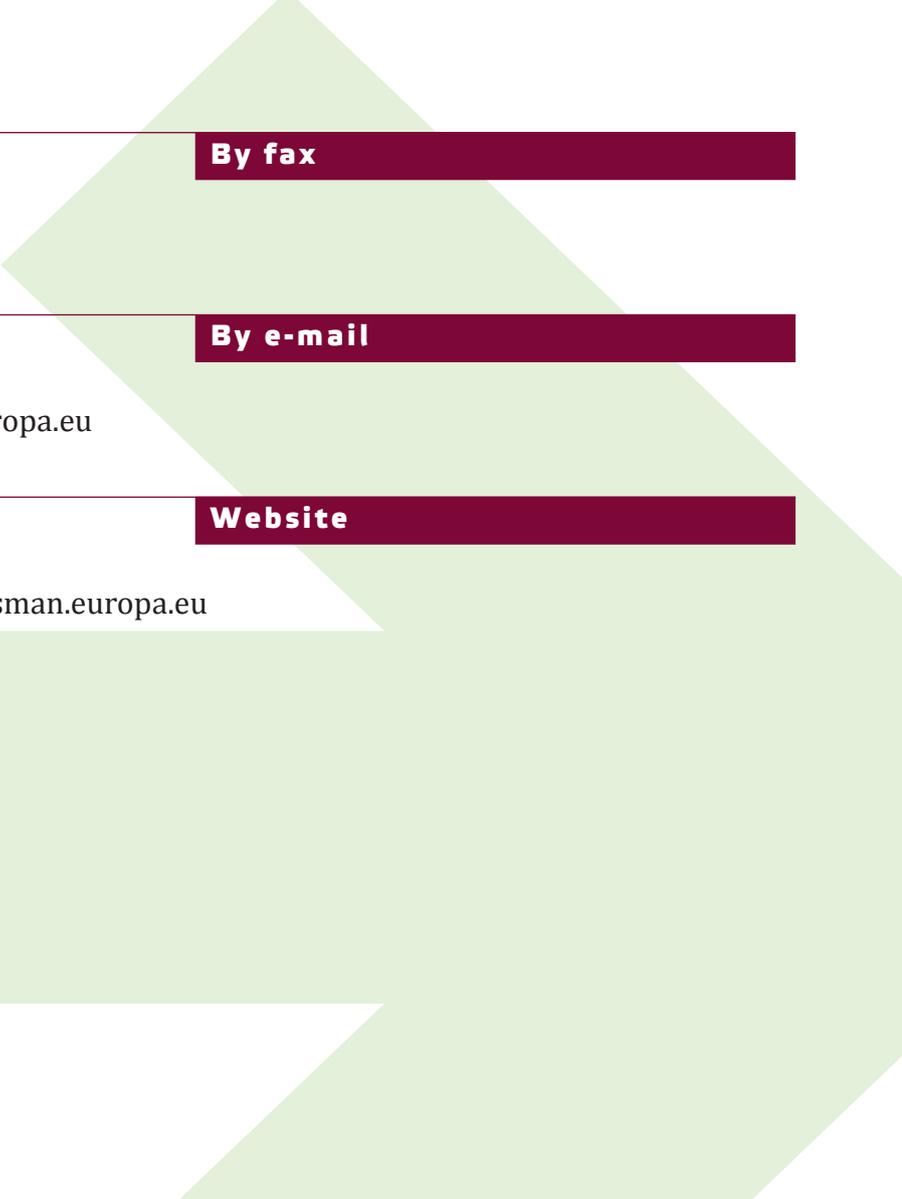
### By e-mail

eo@ombudsman.europa.eu

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### 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)

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