European Ombudsman

Follow-up

to critical and further remarks

How the EU institutions responded to the Ombudsman's recommendations in 2011

November 2012

EN

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Foreword

This is the sixth study produced by the European Ombudsman to examine the EU institutions'[1] follow-up to all the critical and further remarks issued during a particular year. Critical and further remarks[2] contain constructive criticism and suggestions from the Ombudsman, resulting from inquiries conducted on his own initiative or following complaints.

The purpose of the present study, which deals with the remarks made in 2011, is to examine the extent to which the EU institutions have examined critical and further remarks, drawn lessons from them, and introduced systemic changes that should make maladministration less likely to occur in the future. As such, the study provides a partial picture of compliance with the Ombudsman's suggestions. The study includes cases in which the Ombudsman made a critical remark following rejection by the institution concerned of a proposal for a friendly solution, a draft recommendation, or both. For the first time this year, we are also producing a *"compliance report"* covering cases in which a friendly solution or draft recommendation was accepted by the EU institution in question. That report is intended to complement the present study to provide a comprehensive account of the extent to which the EU institutions comply with the Ombudsman's suggestions.

I am pleased to report that the overall compliance figure for 2011 is 82%: in other words, out of the 120 instances in which the Ombudsman was called upon to make remarks and recommendations in the context of cases closed in 2011, the institutions provided 98 positive replies[3]. These replies came in the form of friendly solutions achieved, draft recommendations accepted, or constructive follow-up responses to critical and further remarks. As outlined above, the replies to critical and further remarks are covered in this follow-up study, while the new compliance report deals with friendly solutions and draft recommendations accepted. While the report and the study are being produced separately this year, which covers 2011, the study covering the year 2012 will combine both publications.

In ten cases in this study, the follow-up to the relevant critical or further remark was exemplary and I have designated these as "*star cases*". Half of these cases concern EU Agencies, while the European Anti-Fraud Office's follow-up to a further remark sees an OLAF case among the star cases for the second year in a row. More generally, I am delighted to report that all the follow-up replies from the EU Agencies were positive. I should like to think that this is linked to the efforts that we have made in recent years, through meetings, visits, and own-initiative inquiries, to reach out to the Agencies with a view to enhancing the quality of their administration.

Overall, the institutions gave a satisfactory follow-up to 84% of the critical and further remarks made in 2011. This represents a significant improvement on the result that was registered for 2010 (78%). The rate of satisfactory follow-up to critical remarks (80%) was, once again, considerably lower than for further remarks (89%), but it was much higher than that obtained in 2010 (68%). On the

[1] For brevity, this study uses the term "*institution*" to refer to all the EU Institutions, bodies, offices, and agencies.
[2] A critical remark is premised on a finding of maladministration, whereas a further remark is made without such a finding.
[3] Further explanations as to how exactly this figure is calculated are provided on p.10 in section 5 below.

other hand, the rate of satisfactory follow-ups to further remarks was lower than in 2010 (95%). One should bear in mind, however, that the number of further remarks issued in 2011 was 44, compared to 21 in 2010. Eight of these further remarks were addressed to the European Personnel Selection Office (EPSO), as were also six critical remarks. This compares to only three further remarks, and no critical remarks, in 2010. EPSO appears confident that its new policy for open competitions, introduced in 2010, should resolve many of the problems identified through the Ombudsman's inquiries. I very much hope that this is the case. Finally, with regard to these statistics, I am happy to report that the Commission provided a satisfactory follow-up in 83% of cases — the highest figure recorded since we commenced the follow-up exercise six years ago.

As outlined above, some of the cases presented in this study result from inquiries which I had to close with a critical remark after the institution in question refused to accept a friendly solution, a draft recommendation, or both. It is encouraging that the institution's follow-up to the critical remark is often constructive. In other cases, however, the closure of the case does not lead to a change of approach and the follow-up consists of a verbatim repetition of the arguments that the Ombudsman already found unconvincing in the course of his inquiry. As I have explained in the past, the follow-up exercise is not an invitation to contest the findings in the Ombudsman's decision or an additional mechanism for an eventual review of that decision. The exercise is geared solely at securing improvements for the future and, in the case of critical remarks, providing reassurance that the maladministration identified will not occur again. It is in this spirit that most institutions provided their follow-up, although, as I said, in a handful of cases the institution chose to contest the Ombudsman's finding of maladministration rather than look to the future. Case **715/2009/ANA** is a case in point. Furthermore, in case **803/2007/ANA**, the Commission used the opportunity of the follow-up study to question the Ombudsman's mandate, while in case **1403/2010/GG**, it actually reverted to an even less citizen-friendly approach in response to the Ombudsman's further remark.

On the whole, however, the very many positive follow-up replies that are detailed in this study confirm to me the value of this exercise. I truly hope that, in the years ahead, the Ombudsman's remarks continue to serve as a stimulus for the institutions to reflect on whether the experience of handling a complaint has provided any information that can be used to raise the quality of their administration for the future.

P. Nikiforos Diamandouros

27 November 2012

Study

1. Introduction

The present study explains the purpose of critical remarks and further remarks and the different kinds of circumstance which give rise to them. It analyses the follow-up which the institutions, bodies, offices, and agencies concerned have given to critical remarks and further remarks made in 2011 and identifies ten star cases. It also looks at cases that are particularly significant for the Ombudsman's key objectives. Finally, conclusions are drawn as regards the main lessons of the study for the future.

The European Ombudsman serves the general public interest by helping to improve the quality of administration and of service rendered to citizens by the EU institutions[4]. At the same time, the Ombudsman provides the Union's citizens and residents with an alternative remedy to protect their interests. That remedy is complementary to protection by the EU Courts and does not necessarily have the same objective as judicial proceedings.

Only the Courts have power to give legally binding judgments and to provide authoritative interpretations of the law. The Ombudsman can make proposals and recommendations and, as a last resort, draw political attention to a case by making a special report to the European Parliament. The effectiveness of the Ombudsman thus depends on moral authority and, for this reason, it is essential that the Ombudsman’s work be demonstrably fair, impartial, and thorough.

2. The purpose of critical remarks and further remarks

Against this background, **further remarks** have a single purpose: to serve the public interest by helping the institution concerned to raise the quality of its administration in the future. A further remark is not premised on a finding of maladministration. It should, therefore, not be understood as implying criticism of the institution to which it is addressed but rather as providing advice on how to improve a particular practice in order to enhance the quality of service provided to citizens.

In contrast, a **critical remark** normally has more than one purpose. Like a further remark, a critical remark always has an educative dimension: it informs the institution of what it has done wrong, so that it can avoid similar maladministration in the future. To maximise its educative potential, a critical remark identifies the rule or principle that was breached and (unless it is obvious) explains what the institution should have done in the particular circumstances of the case. Thus constructed, a critical remark also explains and justifies the Ombudsman's finding of maladministration and thereby seeks to

[4] Article 228 of the Treaty on the Functioning of the European Union (TFEU) empowers the Ombudsman to inquire into maladministration in the activities of the "*Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role*". See also the note of page 3 above for the use of the term "*institutions*" in the present study.

strengthen the confidence of citizens and institutions in the fairness and thoroughness of his work. Moreover, by showing that the Ombudsman is willing publicly to censure the institutions, when necessary, critical remarks enhance public trust in the Ombudsman's impartiality.

A critical remark does not, however, constitute redress for the complainant. Not all complainants claim redress and not all claims for redress are justified. When redress should have been provided, however, closing the case with a critical remark signals a triple *failure*. The complainant has failed to obtain satisfaction; the institution concerned has failed to put the maladministration right; and the Ombudsman has failed to persuade the institution concerned to alter its position[5].

Where redress should be provided, it is best if the institution concerned takes the initiative, when it receives the complaint, to acknowledge the maladministration and offer suitable redress. In some cases, this could consist of a simple apology.

By taking such action, the institution demonstrates its commitment to improving relations with citizens. It also shows that it is aware of what it did wrong and can thus avoid similar maladministration in the future. In such circumstances, it is unnecessary for the Ombudsman to make a critical remark. If, however, there is a suspicion that the individual case may result from an underlying systemic problem, the Ombudsman may decide to open an own-initiative inquiry, even though the specific case has been resolved to the complainant's satisfaction.

3. Critical remarks in cases where a friendly solution or draft recommendation is not appropriate

From the foregoing, it can be seen that many critical remarks represent missed opportunities. The best outcome would have been for the institution concerned to acknowledge the maladministration and offer suitable redress, which in some cases could consist of a simple apology. If it had done so, no critical remark would have been necessary.

The complainant, however, is not always right and the institution concerned is entitled to defend its position. About half of the cases that are not settled by the institution at an early stage eventually give rise to a finding of no maladministration. In these cases, the institution succeeds in explaining to the Ombudsman’s satisfaction (and, in some cases, also to the complainant's satisfaction) why it was entitled to act as it did and why it will not change its position.

Where the Ombudsman disagrees with the institution and finds maladministration for which the complainant should receive redress, the normal procedure is to propose a friendly solution. If the institution rejects such

[5] The Ombudsman's annual reports include many examples of cases in which the institutions have provided redress to complainants. They provide, therefore, a more complete picture of the Ombudsman’s activities to combat maladministration, promote good administration, and improve relations between the European Union and its citizens.

a proposal without good reason, the next step is usually a draft recommendation.

In cases where the Ombudsman considers that the institution is unlikely to accept a friendly solution, or that a friendly solution would not be appropriate, he may proceed directly to a draft recommendation. In proposing a friendly solution, the Ombudsman aims to achieve agreement between the institution concerned and the individual complainant, who is often seeking personal redress. If the maladministration that should be remedied primarily affects the public interest, the Ombudsman may consider it more appropriate to make a draft recommendation than to seek a friendly solution.

Apology as a form of redress deserves special mention in this context. In order to be effective, an apology must be sincere. An apology that is perceived as insincere only makes matters worse. The complainant is more likely to accept that an apology is sincere if it is offered by the institution on its own initiative, rather than in response to a formal suggestion from the Ombudsman. For this reason, the Ombudsman often considers that it would not be useful to propose a friendly solution consisting of an apology. A draft recommendation to apologise is even less likely to be useful.

If nothing can be done to put the maladministration right, a critical remark provides a fair and efficient way of closing the case.

A critical remark in such circumstances is **fair** both to the complainant and to the institution concerned. It is fair to the complainant because it confirms that the complaint was justified, although no redress is possible. It is also fair to the institution concerned because it constitutes the outcome of Ombudsman procedures designed to ensure that the institution is informed of the allegations, claims, evidence, and arguments submitted by the complainant. The same procedures afford the institution the opportunity to state its point of view in full knowledge of the case against it before the critical remark is made.

A critical remark is **efficient** because it avoids prolonging an inquiry that cannot lead to any redress for the complainant.

As regards the public interest, the remark itself provides the necessary educative dimension. The institution to which the critical remark is addressed should draw the appropriate lessons for the future. What is appropriate will depend on the maladministration in question. An isolated incident, for example, may not need any follow-up.

4. Critical remarks following rejection of a friendly solution or a draft recommendation

The institution's acceptance of a friendly solution proposal or draft recommendation normally leads to closure of the case on that ground.

If the **complainant** rejects a proposed friendly solution without good reason, the Ombudsman normally considers that no further inquiries into the case are justified.

The institution's rejection of a friendly solution proposal or draft recommendation may lead to a number of possible outcomes.

First, the Ombudsman may take the view, after considering the institution's response, that his earlier finding of maladministration should be revised.

Second, if the institution's detailed opinion on a draft recommendation is not satisfactory, the Ombudsman may make a special report to the European Parliament. As first pointed out in the Ombudsman's Annual Report for 1998, the possibility to present a special report to the European Parliament is of inestimable value for the Ombudsman's work. Special reports should, therefore, not be presented too frequently, but only in relation to important matters, where Parliament is able to take action in order to assist the Ombudsman.

Finally, the Ombudsman may decide to close the case with a critical remark, either at the stage when the institution rejects a friendly solution, or if the institution's detailed opinion on a draft recommendation is not satisfactory.

In some cases, the case may be closed with a critical remark because the Ombudsman takes the view that the institution has convincingly shown that, although there is maladministration, the remedy proposed in the friendly solution or draft recommendation is unsuitable and no other solution or redress is possible. In such cases, the critical remark is essentially similar in nature to that which would have been made if the case had been closed without a friendly solution or draft recommendation.

Unfortunately, there are also cases in which the institution refuses the Ombudsman's suggestions for reasons that are not convincing. Indeed, there are even a few cases in which the institution refuses to accept the Ombudsman's finding of maladministration.

Such cases risk undermining the moral authority of the Ombudsman and weakening the trust of citizens in the European Union and its institutions. International experience shows that the ombudsman institution functions most effectively where the rule of law is well established and where there are well-functioning democratic institutions. In such contexts, the public authorities usually follow an ombudsman's recommendations, despite the fact that they are not legally binding, even if they disagree with them.

5. Follow-up given to critical remarks and further remarks made in 2011

In 2011, 44 critical remarks were made in 34 decisions, while 44 further remarks were made in 39 decisions. A single decision may contain more than one remark, and both kinds of remark may be included in the same decision. Table 1 shows the distribution of remarks by institution.

Table 1 - Distribution of remarks by institution.

Institution	Number of critical remarks in 2011	Number of further remarks in 2011
European Parliament	2	2
European Commission	29	29
Court of Justice of the EU	0	1
European Personnel Selection Office (EPSO)	6	8
European Aviation Safety Agency (EASA)	0	1
European Institute for Innovation and Technology (EIT)	0	1
European Joint Undertaking for ITER and the Development of Fusion Energy	1	0
Executive Agency for Health and Consumers	1	1
Research Executive Agency	0	1
Eurojust	2	0
European Defence Agency	2	0
European Police Mission for the Palestinian Territories (EUPOL COPPS)	1	0
Total	**44**	**44**

The institutions concerned were invited to respond to the remarks within a period of six months. Responses were received to almost all the remarks made in 2011, although with a delay in some cases. The responses to cases **1294/2009/DK**, **670/2010/MHZ**, and **2073/2010/AN** did not arrive in time to be taken into account in the present study[6]. This contrasts with the previous year, when all responses arrived in time to be taken into account.

Annex I contains a detailed analysis of each of the cases in which one or more critical remarks and/or further remarks were made. Ten of the follow-ups warrant special mention as "*star cases*", which should serve as a model for other institutions of how best to react to critical remarks and further remarks. The "*star cases*" are listed first. Other cases are organised by institution and complaint reference.

[6] In calculating the percentage of satisfactory follow-up replies below, the four critical remarks on which the Commission has not yet responded, and the one critical remark on which EPSO has not yet responded, are not taken into account.

Annexes II and III contain, respectively, lists of the cases in which critical remarks and further remarks were made. In their on-line versions, the Annexes include links to the text of the remark in the decision on the Ombudsman's website (in English and, if different, the language of the complaint).

Taking critical and further remarks together, the rate of satisfactory follow-up was 84%. The follow-up to further remarks was satisfactory in 89% of cases, whilst the rate of satisfactory follow-up of critical remarks was 80%.

Table 2 - Number and percentage of satisfactory replies by institution.

Institution	Number of critical and further remarks	Number of satisfactory replies	% of satisfactory replies
European Parliament	4	3	75%
European Commission	54	45	83%
Court of Justice of the EU	1	1	100%
European Personnel Selection Office (EPSO)	13	10	77%
European Aviation Safety Agency (EASA)	1	1	100%
European Institute for Innovation and Technology (EIT)	1	1	100%
European Joint Undertaking for ITER and the Development of Fusion Energy	1	1	100%
Executive Agency for Health and Consumers	2	2	100%
Research Executive Agency	1	1	100%
Eurojust	2	2	100%
European Defence Agency	2	2	100%
European Police Mission for the Palestinian Territories (EUPOL COPPS)	1	1	100%
Total	**83**	**70**	**84%**

As noted in the foreword, the overall figure in terms of compliance with the Ombudsman's suggestions in 2011 is 82%. This figure has been calculated on the basis of cases closed in 2011, in which a friendly solution proposal or a draft recommendation was made, as well as cases in which a critical remark or further remark was made[7]. The rate of compliance is based on the number of positive replies to these remarks and recommendations. All in all, out of the 120 instances in which the Ombudsman was called upon to make friendly solution proposals, draft recommendations, critical or further remarks in the context of cases closed in 2011, the institutions provided 98 positive replies[8].

[7] The figure is based on the cases included in this study and in the report on responses to friendly solution proposals and draft recommendations. It is possible that a number of other cases closed in 2011 contained friendly solution proposals and draft recommendations that were not accepted, but which did not lead to a critical remark.

[8] It should be noted that in five cases, the institutions refused a friendly solution proposal but accepted the subsequent draft recommendation. In a further three cases, the institutions refused both the friendly solution proposal and the draft recommendation. In order to avoid double counting, these cases are only counted once (in other words, the figure of 120 includes only the draft recommendations and not the friendly solutions in these cases).

6. Cases that are particularly significant for the Ombudsman's key objectives

Some of the cases in the follow-up study are particularly relevant as far as the Ombudsman's key objectives are concerned. These objectives are set out in the Ombudsman's strategy for the 2009-2014 mandate[9] and aim at helping the Union to deliver on the promises it has made to citizens in the Treaty of Lisbon concerning fundamental rights, enhanced transparency, and greater opportunities for participation in the Union's policy-making. In this respect, the following cases are particularly noteworthy:

- In terms of the fundamental rights issues dealt with in this study, case **1348/2009/(CK)RT** concerned the principle of the presumption of innocence in the context of a procurement procedure. In its follow-up reply, the Commission acknowledged and regretted its statement in respect of the complainant and confirmed that it did not intend to include the complainant in the Early Warning System based on the information obtained during its inquiry. The principle of fairness and the right not to be discriminated against were brought up in case **2610/2009/MF** — again, the Commission reacted positively to the Ombudsman's critical remark in this case. Specifically with regard to the complainant's right to be heard, the Commission referred to the amended version of the Practical Guide to Contract Procedures for EU external actions (the 'PRAG'), according to which experts whose replacement is requested by a contractor will be guaranteed this right. The Commission again referred to its efforts to amend the PRAG in its follow-up to the Ombudsman's further remark in case **920/2012/VIK**.

- Many of the cases in this study concern the citizen's fundamental right to good administration, laid down in Article 41 of the Charter of Fundamental Rights of the EU. In this regard, it is particularly encouraging that very many of the follow-up replies refer to the institutions' efforts to ensure full respect for the European Code of Good Administrative Behaviour or for their own Code. Star case **884/2010/VIK** constitutes a good example, while in its follow-up to case **1461/2010/(PL)MHZ**, the Commission assured the Ombudsman that its services take each training opportunity to remind its officials in charge of contracts management of the Commission's duty to justify its decisions as underlined by its Code. The European Defence Agency adopted the European Code as part of its follow-up reply in case **1342/2010/MHZ**, while in case **39/2011/AN**, Fusion for Energy confirmed its commitment to deal with questions or enquiries from candidates in selection procedures in the shortest possible time frame and, in any case, in conformity with the deadlines set out in its Code.

- Other cases in the present study concern the fundamental right of public access to documents[10]. With a view to helping citizens to exercise this right, the

[9] The strategy document is available in 23 languages on the Ombudsman's website at: http://www.ombudsman.europa.eu/resources/strategy.faces

[10] Article 42 of the Charter of Fundamental Rights of the EU and Article 15(3) TFEU.

Ombudsman made a further remark in case **1403/2010GG**. The Commission's disappointing follow-up contrasts with the citizen-friendly approach it adopted during the Ombudsman's inquiry. Similarly, in case **271/2010/GG**, the Ombudsman found the Commission's reply to exhibit a disconcerting tendency to try and limit the scope of application of Regulation 1049/2001 on public access to documents[11]. He reminded the Commission that a confirmatory application under Regulation 1049/2001 can be used to contest not only a refusal of access, but also an assertion that the requested documents do not exist. The Commission's follow-up in case **56/2007/PB**, on the other hand, is encouraging. This case concerned the Commission's handling of complex and extensive information requests. Similarly, in case **1633/2008/DK**, which concerned the Commission's policy vis-à-vis requests for access to an undefined document or documents, the Ombudsman considered the follow-up as satisfactory insofar as the Commission's approach could be used selectively, in cases where it could assist applicants. However, he pointed out that he cannot accept generally an approach that could be used abusively, to evade the Regulation's requirement of reasoning when a requested document is not disclosed in its entirety. Finally, case **2360/2010/MHZ** saw a most constructive reply from the Commission, whereby it agreed that, when it decides not to publish certain acts in the Official Journal, the explanation to be provided to the entity requesting publication will follow a reasoning similar to the one developed for requests under Regulation 1049/2001.

- More generally on transparency, a number of cases in this study concern information requests. In case **3196/20017/(BEH)VL,** the Ombudsman underlined that, in order to live up to the idea of a culture of service, it would be useful for the Commission, in cases where a considerable amount of time passes between the request for information and the provision of such information, to provide applicants with the most up-to-date information. The Commission's follow-up reply was positive. In case **2080/2010/ELB**, the European Institute of Innovation and Technology replied that it takes very seriously the Ombudsman's call to provide accurate, clear, and understandable information about its reasons for rejecting proposals in tender procedures. It promised to incorporate this requirement in future calls, starting with the next call which will take place in 2014. By way of contrast, in a number of cases, the institutions adopted what the Ombudsman believes amounts to an overzealous interpretation of the EU's data protection rules, in order to justify their refusal to provide access to certain information. In case **696/2008/(WP)OV** in particular, the Commission failed to provide a positive follow-up to the Ombudsman's further remark concerning public access to the names of candidates on shortlists, while in case **2586/2010/(ML)TN**, EPSO refused to give out the name of an examiner, on grounds that the Ombudsman found to be very inadequate and, in some respects, blatantly incorrect. The Ombudsman will continue to seek to ensure, always in line with the case-law, a judicious balance between the fundamental right to the protection of personal data and the fundamental right to good

[11] 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.

administration, the fundamental right of public access to documents, and the principle of transparency more generally.

● The possibility for citizens to contribute, via the submission of infringement complaints, to the work of the Commission as it fulfils its role as guardian of the Treaties is important. In the event that they are unhappy with how the Commission has dealt with their complaint, they may turn to the Ombudsman. Many cases in this area concern procedure and, for the purposes of this study, they involve the Commission's application of its own Communication on relations with the complainant in respect of infringements of Community law ('the Communication')[12]. One aim of the Communication is to provide an appropriate procedural framework for the handling of infringement complaints. As the Ombudsman mentioned in his 2010 follow-up study, the Commission's failure to register complaints has been a recurrent issue. In case **66/2010/(KRK)OV**, the Commission insists that its *Complaints Handling - Accueil des Plaignants* (CHAP) registration system now ensures a proper and timely assignment of complaints to the competent Commission departments as well as feedback to complainants. It makes a similar argument in case **2651/2009/ANA**[13].

More generally in this area, the Commission followed up constructively on the Ombudsman's remarks in cases **2587/2009/JF** and **49/2011/AN**. In the latter case, the Commission explained in detail its course of action to the complainant and took the Ombudsman's findings into account in its assessment of the infringement case. Similarly, in case **49/2011/AN**, the Commission apologised for the delay incurred and assured the Ombudsman that, in the future, it would include apologies and reasons for the delay, if any, in correspondence with complainants sent after a complainant submits comments on the Commission's intention to close the infringement file. On the other hand, in case **2711/2009/PB** in which the Ombudsman made a simple suggestion to the Commission to modify the wording of its pre-closure letter to complainants, the Commission declined to take up this suggestion.

7. Conclusions

For the most part, the follow-up replies given to critical and further remarks made by the Ombudsman in 2011 are encouraging. Improvements have been secured in areas ranging from calls for tender, to selection procedures, to the rules governing how institutions carry out their core business. This is largely

[12] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law, COM (2002) 141 final, OJ 2002 C 244 p. 5. This Communication was replaced in 2012 by COM (2012) 154 final: Communication from the Commission to the Council and the European Parliament updating the handling of relations with the complainant in respect of the application of Union law. It is too soon to tell whether the commitments made by the Commission in this new text will lead to fewer complaints to the Ombudsman.

[13] In his 2010 study, the Ombudsman further mentioned that he expects the Commission's *Complaints Handling - Accueil des Plaignants* (CHAP) registration system to register all complaints as such, even if subsequent analysis shows the complaint not to be justified. He recalled that he had opened an own-initiative inquiry (OI/2/011/OV**)** into the Commission's handling of infringement complaints and that he expected this issue to be clarified during that inquiry.

thanks to the institutions themselves. For the most part, they grasp the opportunity to learn the necessary lessons from the Ombudsman's inquiries.

Where they fail to do this, namely, where issues have not been satisfactorily resolved through the follow-up to a critical or further remark, the Ombudsman may decide to open an own-initiative inquiry, thereby ensuring that systemic problems brought to light through the complaints procedure are thoroughly investigated and, where possible, resolved for the future. The Ombudsman's own-initiative inquiry concerning the Commission's handling of infringement complaints, which is referred to in case **2651/2009/ANA** in this study, is a case in point. On the other hand, the exemplary follow-up provided by the Commission in case **1301/2011/GG** meant that the Ombudsman did not need to open the own-initiative inquiry that he originally felt might be necessary in the area of information on air passenger rights.

With a view to providing an overall picture of the extent to which the EU institutions comply with the Ombudsman's remarks and recommendations, the Ombudsman intends to publish, in November 2013, a report combining the study of the follow-up of critical and further remarks made in 2012, with the compliance report — produced for the first time this year — on the cases closed, in which the institutions accepted a friendly solution proposal or draft recommendation in 2012. That report will henceforth be seen as the main study examining the extent to which the EU's institutions, bodies, offices and agencies respond constructively to suggestions made by the Ombudsman in a given year.

Annexes

I. Detailed analysis of cases

A. Star cases

Case 856/2008/BEH

The complainant in case **856/2008/BEH** contacted the European Commission regarding certain irregularities which he believed had occurred in relation to the European Parliament's acquisition of a building in Brussels. The European Anti-Fraud Office (OLAF) opened an investigation, in the course of which it considered the complainant to be a *'person concerned'*, within the meaning of the Regulation governing OLAF's work. It invited him to be heard as a witness, on the basis of Article 4(3)(2) of that Regulation. Following an analysis of the powers that OLAF enjoys in its inquiries, the Ombudsman found that, by inviting the complainant for an interview on the basis of the aforementioned provision, OLAF exceeded the limits of its powers. He made a draft recommendation.

OLAF acknowledged that its practice in this case could have given rise to a misunderstanding. Persons in the complainant's situation could only be asked to provide information in the course of an interview if they so wished, it said. OLAF thus essentially acknowledged that it had acted incorrectly. While it failed to apologise to the complainant, the Ombudsman concluded that it had accepted significant parts of his draft recommendation, including the section that referred to other points raised by the complainant. One of these points related to OLAF's practice of delegating the power to open and close investigations from the Director-General to the Director in charge of operations and investigations. The Ombudsman made a further remark in this regard, namely, that OLAF could consider updating its Manual so as to reflect its new practice regarding the signing of decisions to open and close cases by its Director-General. In his closing decision, the Ombudsman also asked OLAF to inform him whether, in its invitation letters relating to internal investigations, it provides information on the voluntary character of interviews of persons other than Members, managers, and staff of the EU institutions and bodies, in line with the information provided in its Manual.

In reply to the Ombudsman's further remark, OLAF stated that its Director-General had duly informed all OLAF staff of the new practice concerning the signing of decisions to open and close cases. Already in July 2011, its Manual had been revised accordingly. Moreover, the new practice has been confirmed in new '*Instructions to Staff on Investigative Procedures*' (henceforth: 'the Instructions'), which entered into force on 1 February 2012. That document, which replaces the OLAF Manual, sets out the fundamental requirements, not provided for in other legal documents, for the conduct of OLAF activities. Article 6.1 of the Instructions reads as follows: "*After consideration of the opinion provided by the Investigation Selection and Review Unit, the Director-General decides whether to open an investigation or coordination case, or dismiss the case.*" Article 22.1 of the Instructions addresses the closure of investigations and reads as follows: "*The Director-General makes the decision to close an investigation or coordination case. In the event that his decision is not in accordance with the opinion of*

the Investigation Selection and Review Unit, the Director-General will provide reasons for his decision."

As regards the Ombudsman's question concerning the information provided in its invitation letters, OLAF explained that the invitation letters to persons other than Members, managers, and staff of EU institutions and bodies in internal investigations state that "*OLAF **would like to** obtain from them all useful information and explanations which they are able to provide*" (emphasis in the original). OLAF added that the invitation letter does not refer to any legal provisions.

OLAF has fully taken on board the Ombudsman's further remark by including information on its new practice in the Instructions, which replace its Manual. As regards its reply to the Ombudsman's question concerning the information provided in its invitation letters, it would appear that OLAF, by specifying in invitations that it "*would like to obtain*" information and explanations, which the persons concerned "*are able to provide*", provides information as to the voluntary character of interviews. This constructive follow-up should mean that the risk of the maladministration identified in this case occurring again has been significantly reduced.

Case 2605/2009/MF

Case **2605/2009/MF** concerned an attempt by the Commission, following an audit, to recover a grant from a not-for-profit organisation. The Ombudsman asked the Commission to explain why it could not modify the conclusions it had drawn from the audit report, by taking into account documents submitted by the complainant, despite the fact that they were submitted late. The Commission replied that it was prepared to carry out a complete analysis of the documents in question, and review the sum originally claimed in its recovery order.

The Ombudsman made a further remark to the Commission, suggesting that it could consider informing the complainant directly of the date on which it expected its assessment of the further documentation to be finalised. This date should preferably be within two months of the Ombudsman's decision to close the case, he added.

The Commission carried out a reassessment of the documents submitted by the complainant, informed him accordingly, and refunded part of its recovery order, namely, EUR 70 737. The complainant expressed its satisfaction with the outcome.

The Ombudsman welcomes the Commission's speedy and constructive follow-up in this case.

Case 3018/2009/(TN)(TS)TN

The complaint concerned the rejection of a tender for translation services. The complainant alleged that the Court of Justice of the EU (i) wrongly applied the

rules governing tender procedures by excluding his bid on invalid grounds; and (ii) wrongly refused to provide information about the prices offered by the winning tenderers. The Ombudsman concluded that the relevant tender procedure respected the principles of sound financial management, equal treatment, and fairness. With a view to improving further the Court's tender procedures, he suggested that the Court could consider explaining, in its contract notices, the main features of the chosen type of tender procedure. The Court could also consider clearly setting out in the tender specifications that, in a negotiated procedure, it reserves the right to request lower bids, if it considers that the bids already offered are excessive.

In its reply, the Court stated that it subscribes to the increased transparency recommended by the Ombudsman. In future contract notices in respect of legal translation, the Court will, as suggested, provide a description of the main characteristics of a negotiated procedure. It will also clarify, in the corresponding specifications, that it reserves the right, in such procedures, to request lower prices in case it considers that the offered prices are excessive, and to reject those bids which, after such a negotiation, still contain excessive prices.

The Ombudsman welcomes the Court's constructive follow-up to his further remark.

Case 62/2010/RT

The complainant responded to a call for expressions of interest published by the Commission's Directorate-General for Translation. He did not qualify for the second stage of the selection procedure, namely, the oral examination. The complainant asked the Commission to review his application and to provide him with (i) the mark of the 20th candidate admitted to the oral test and (ii) the evaluation sheet of his written test. The Commission refused to disclose the requested information.

The Ombudsman issued a critical remark concerning the Commission's failure to disclose the mark of the 20th candidate admitted to the oral test or properly to explain why it could not do so despite its promise in this respect. As regards the Commission's refusal to disclose the evaluation sheet, the Ombudsman made a further remark recalling that, as shown on the corrected examination paper disclosed to the complainant, the corrections made by the assessor(s) in competitions do not constitute the final assessment. In accordance with the provisions of the Staff Regulations, the final assessment can only be carried out by the Selection Board. Thus, if, in the future, the Commission grants access to the Selection Board's final evaluation sheet, candidates will be able to see the final evaluation of their tests.

In its reply, the Commission stated that it had re-examined its position and informed the complainant of the mark of the 20th candidate admitted to the oral test. In addition, it provided the complainant with a copy of his final evaluation sheet.

The Commission also informed the Ombudsman that DG Translation has created a Steering Committee to monitor closely all temporary agents' selection procedures. The Steering Committee is chaired by a senior official and is

responsible for all procedural and legal aspects of the selection procedure. The chair, or a member of the Steering Committee, is systematically represented in the Selection Board for selection procedures. The Commission further explained that the Steering Committee: (i) takes all necessary steps to ensure that the selection procedure is carried out correctly; (ii) appoints the Selection Board members; (iii) defines the terms of the call for expressions of interest; (iv) coordinates contacts with candidates; (v) defines the marking criteria for both the written and oral tests; (vi) ensures that a representative from the Human Resources Unit of DG Translation participates in the Selection Board (according to the Commission, the latter carries out the final assessment of candidates); (vii) informs candidates of their results in the selection procedure (indicating their ranking, in case of success, and the marks obtained, in case of failure); (viii) upon request, discloses the individual marks obtained, by allowing the candidate to see the final evaluation sheet of his/her test (thus, aligning its practice with EPSO competition rules); (ix) whenever necessary, takes all relevant advice from the competent service.

The Commission's follow-up is exemplary, notably in terms of the impressive range of measures adopted to enhance the quality of its selection procedures for temporary agents in the area of translation.

Case 325/2010/OV

The complainant worked for Eurojust on the basis of a three-year, fixed-term temporary agent contract. Two years after starting work, he reported himself ill and went on sickness leave. According to the complainant, his illness was the consequence of psychological intimidation and harassment/mobbing at work, including by his supervisor at the time, an Acting Head of Unit. In several medical certificates, both the complainant's doctor and Eurojust's doctor suggested mediation as soon as possible. They also recommended the complainant's reintegration at Eurojust, but away from direct contact with his former colleagues.

A mediation attempt took place in July 2009, and was unsuccessful. The complainant refused to sign his Career Development Report (CDR) and the Joint Instance (the relevant appeal body) was convened. This Joint Instance concluded that the complainant's CDR had not been drawn up fairly and objectively, because it was mainly based on the content provided by the complainant's former supervisor. The Administrative Director of Eurojust informed the complainant that his CDR would be annulled and not included in his personal file. He also informed the complainant that his temporary agent contract would expire, as foreseen, and would not be renewed.

Following his inquiry into this case, the Ombudsman criticised the fact that: (i) Eurojust did not act as rapidly as it could and should have done in relation to the complainant's reintegration. There was therefore unnecessary delay on behalf of Eurojust; (ii) Eurojust's decision to annul the complainant's CDR without resuming the procedure was incorrect.

In response to the first critical remark, Eurojust stated that it took as a lesson learned that it must have in place a mechanism to ensure a swift response to a mediation request. It stated that, with that objective in mind, a tender procedure would be launched for a framework contract for the provision of

mediation services. In addition, in order to provide, in the shortest possible time frame, mediation and other services that might be needed to assist a staff member, Eurojust will examine the possibility of setting up a more expeditious way to conclude fast track contracts for the provision of services by external contractors to cover emergency situations.

In its reply to the second critical remark, Eurojust stated that it regretted that it had apparently failed to explain sufficiently the material impossibility with which it was confronted for amending the complainant's CDR, due to the fact that the complainant's first supervisor had left Eurojust and that the complainant had constantly expressed his refusal to participate in any appraisal exercise involving his second supervisor (namely, the Acting Head of Unit). Eurojust acknowledged, however, that, by annulling the complainant's CDR, it had taken a decision which was not foreseen in the relevant rules. This was a mistake. Eurojust acknowledged that it should have limited itself to either confirming or amending the CDR. It again stated that it took as a lesson learned that, in future similar circumstances, it will adhere to the two options foreseen in Article 8(7) of the *Eurojust Decision of 24 April 2009 on General Implementing Provisions on the Yearly Performance Appraisal*, i.e., either confirm or amend the CDR. It added that, in the event that it were to amend the CDR, it would resume the CDR procedure at the stage prior to the one where the relevant error occurred.

Eurojust has not only acknowledged its mistakes in this case but has also set out a series of measures aimed at avoiding similar mistakes in the future. These measures should help ensure that the risk of the maladministration identified in this case occurring again is low.

Case 413/2010/BEH

In case **413/2010/BEH**, the Executive Agency for Health and Consumers (EAHC) rejected the complainant’s request for financial support for a conference, on the grounds that it was not scheduled to take place within the time frame set out in the call for proposals. In one section of the proposal, the complainant had erroneously indicated that the conference would take place in September 2009, whereas it was, in fact, to take place in September 2010. The correct date was mentioned in other parts of the proposal. The Ombudsman found that it was not obvious why an applicant would invest a significant amount of time and resources into drafting a proposal for a conference that was outside the relevant time frame. The EAHC should therefore have had doubts as to the correctness of the information that the complainant provided in the relevant field and could easily have verified that information. The Ombudsman took the view that EAHC did not do all it should have done, in line with principles of good administration. Considering that it was no longer be possible for EAHC to remedy this instance of maladministration, the Ombudsman closed the case with a critical remark. At the same time, the Ombudsman applauded the fact that EAHC had taken steps designed to rule out a repetition, in future calls, of the problem the complainant had encountered. He also made a further remark, stating that, in future calls for proposals, EAHC could consider providing applicants with precise information about the instances in which it will make contact with their legal representatives and/or contact persons. EAHC could moreover consider informing applicants, in its decisions rejecting proposals, of the possibilities available to them to challenge or appeal those decisions.

In reply to the critical remark, EAHC reiterated that it had taken measures, before the launch of the 2010 call for proposals, to rule out, as far as possible, problems similar to those faced by the complainant, notably by encoding the year in which the conference is to be organised in the electronic application form. EAHC pointed out that it had maintained this practice for the 2011 call for proposals.

EAHC further explained that it had decided to amend its notification procedure, which follows the initial screening of proposals. It pointed out that it would inform all applicants whose proposals are not admitted to the evaluation procedure immediately after the initial screening of proposals, and not only once the Commission adopts the award decision. EAHC stated that it would inform applicants concerned of the reason for the non-admission of their proposals, as well as of the possibility to submit a reasoned request for review within a set deadline. This would, among other things, give applicants the possibility to draw EAHC's attention to any element, which could lead to the admission of their proposals to the evaluation stage.

In reply to the first part of the Ombudsman's further remark, EAHC stated that it had decided to revise the guide for applicants. The guide now explicitly provides that the letter, by means of which applicants are informed of the decision on their proposal, will be addressed to the organisation's legal representative. At the same time, EAHC pointed out that it had left unchanged the descriptions of the roles of the *"contact person"* and of the *"legal representative"*. In light of these descriptions, EAHC considered it to be indisputable that the legal representative will receive any information pertaining to the proposal and will, as the case may be, sign the grant agreement. On the other hand, the contact person will be contacted for issues related to the organisation of the conference and overall management.

In relation to the second part of the further remark, EAHC pointed out that it had revised its notification letter, which now contains detailed information on available remedies and applicable deadlines. EAHC attached a sample letter and pointed out that the notification letter refers to the possibility to bring an action for annulment against the Commission's decision rejecting a proposal, as well as a complaint to the Ombudsman. The notification letter also informs applicants of the possibility to submit a request for additional information within one month, making it clear that such a request does not suspend applicable deadlines for making use of a remedy.

As regards the critical remark, the Ombudsman notes that EAHC, by (i) informing applicants concerned at the end of the initial screening of the exclusion of their proposal and (ii) providing for the possibility to submit a reasoned review, has fully taken into account the need to clarify possible clerical mistakes. Moreover, by maintaining its novel practice of encoding in the electronic application form the year in which a conference is to take place, EAHC has minimised the risk for such mistakes to occur in relation to the conference date. EAHC has, moreover, fully taken up the suggestions contained in the Ombudsman's further remark.

EAHC's reply to the Ombudsman's remarks is exemplary and extremely constructive.

Case 1301/2010/GG

When an Icelandic volcano erupted in April 2010, thousands of flights in Europe were cancelled. On 4 May 2010, the Commission published, on different websites, information for affected air passengers, including a question and answer document. The next day, the European Regions Airline Association sent an e-mail to the Commission, drawing its attention to what it considered to be misleading information. In particular, it pointed out that the document wrongly implied that passengers had an automatic right to compensation in all cases involving delayed luggage. It took the Commission two weeks to conclude that part of the information in the document was indeed misleading, and more than a month to remove it from the relevant website. The Ombudsman criticised the Commission for publishing misleading information. He also concluded that the length of time it took the Commission to withdraw the misleading information from the website was unacceptable. The Ombudsman felt that much swifter action was necessary because the relevance of the information diminished as the situation at European airports began to return to normal.

In its follow-up reply, the Commission expressed its regret for the fact that it did not act more promptly in this case. It provided the following detailed reasoning to explain the delay: for each point or question raised by the complainant, the Directorate-General Health and Consumers ('DG SANCO') had to undertake consultations with other departments of the Commission (notably, Directorate-General for Mobility and Transport ('DG MOVE') and Directorate-General for Justice ('DG JUST'), all of which were already busy dealing with the crisis. This inevitably extended the time needed to respond and rendered the handling of the case more complicated. Moreover, the issues concerned legislation that is itself complex. In particular, one of the points contested and which was in the end found to be potentially misleading turned on the inter-relation between two pieces of complex legislation. In addition, the case also required the advice of the Commission's Legal Service. DG SANCO's line of conduct was guided by the objective of diligently pursuing the internal coordination needed to make an informed decision on the issues raised by the complainant while, at the same time, bearing in mind the need to take into account the urgency of the situation.

The Commission explained that, since the events at the centre of this complaint, it has been especially aware of the importance of ensuring that information provided to consumers on their rights is accurate and correct. The incident offered the opportunity for a closer examination of the legislation at issue, as well as its application to far-reaching and exceptional events. The lessons learned would feed into the review of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, it said. Furthermore, the Commission explained that, on several occasions, it had demonstrated its cooperative approach and capacity to react promptly to stakeholders' claims in the area of passenger rights, as shown by the Passenger Rights Campaign of summer 2010 and the recent follow-up to the Air Passenger Rights public consultation carried out between the end of 2009 and early 2010. The Commission added that, since 2005, it has developed regular contacts with the European airline associations. These contacts include several informal meetings per year on air passengers' rights. Moreover, DG MOVE has systematically involved the industry in each information activity it has developed since 2005 and taken due account of its input and advice.

The Commission went on to say that, following the incident at issue, DG SANCO has made an additional effort to raise awareness among its staff about the care required in handling information published on the Consumer Affairs webpage. Staff was reminded of the internal procedures required to ensure that appropriate upstream coordination and checks are carried out before the publication of information on the website can be authorised. In addition, measures were laid down to address possible objections raised by third parties. This implies involving the Legal Service from the outset, in addition to the line departments concerned, in order to ensure consistency and legality in the presentation of information in situations similar to that at the heart of the present case.

Given the importance of promptly remedying errors contained in information provided to the public in unusual and unexpected cases, further precautions are to be taken if the accuracy or correctness of the information published is challenged. In particular, where the points raised require coordination and consultation with other departments, the consultation will be handled as a matter of urgency rather than under standard procedures. This means treating the request under much shorter deadlines than those fixed for treating normal requests. Where it turns out that the issue raises serious doubts requiring a more in-depth examination, the contested material will be removed immediately from the website until the issue can be clarified.

All of these elements were summarised in an internal note, a copy of which was submitted to the Ombudsman. The Commission added that further efforts would be made in the future to improve the guidance provided to consumers in an accurate and timely manner.

While the Ombudsman is not entirely convinced by the explanations provided by the Commission as regards the delay incurred in the present case, the concrete follow-up action taken by the Commission, which is also described in a note addressed to DG SANCO's heads of unit, is exemplary. The Ombudsman is particularly pleased to note that the own-initiative inquiry that he mentioned in his decision in this case, into possible systemic problems in this area, appears no longer to be necessary. The Commission's constructive follow-up seems to have addressed the underlying issues.

Case 1342/2010/MHZ

In 2010, the complainant submitted a whistleblower complaint to the Head of the European Defence Agency ('EDA'), claiming that some irregularities had occurred in the area of EDA staff management. The Head of the EDA did not reply to that aspect of the complainant's complaint. The complainant therefore turned to the Ombudsman, claiming that the EDA should reply to his whistleblower complaint, and that an appropriate administrative investigation should be carried out in respect thereof. This led to the EDA withdrawing the complainant's access to its databases on the grounds that he had disclosed confidential information to the Ombudsman.

As a result of the Ombudsman's intervention, the EDA replied to the complainant and carried out an investigation. The Ombudsman found, however, that the investigation was not sufficiently thorough and complete. He issued a first critical remark to that effect. In addition, since the complainant

did not accept the EDA's apology for withdrawing his right of access to its databases, the Ombudsman made a second critical remark, stating that such a withdrawal constitutes an unlawful measure, which amounted to sanctioning a whistleblower. The Ombudsman also reminded the EDA that the entry into force of the Treaty of Lisbon empowered him to receive complaints made against the EDA, including any confidential information which they may contain.

In its follow-up reply, the EDA stated that it (i) accepted the findings of the Ombudsman's inquiry; (ii) had taken steps to prevent similar issues in the future, and (iii) apologised to the complainant. In addition, in order to improve the EDA's performance in respect of good administration, and to reinforce its commitment to EU standards and procedures, the EDA adopted the European Code of Good Administrative Behaviour. Furthermore, an Ombudsman representative briefed EDA staff members on standards of good administration and provided them with a copy of the Code. This was also a result of talks between the Ombudsman and the Chief Executive of the EDA, which took place in May 2011.

The Ombudsman welcomes the measures taken by the EDA to enhance the quality of its administration.

OI/1/2010/(BEH)MMN

A Norwegian citizen applied for a position as IT manager with the European Police Mission for the Palestinian Territories ('EUPOL COPPS'). Although he was included in the short-list and participated in an interview, his application was ultimately unsuccessful.

The relevant vacancy notice provided that applicants should be EU nationals or nationals of a third country which contributed to EUPOL COPPS. It was not disputed that Norwegian nationals fall within the latter category. The vacancy notice further stipulated that the successful candidate needed to have security clearance. It added that it would be an advantage if a candidate had obtained such clearance already as, otherwise, applicants would have to undergo a security screening.

In its letter informing the applicant that his application had been unsuccessful, EUPOL COPPS indicated that the reasons for its decision were two-fold. First, the complainant was a third-country national. Second, he did not have the necessary security clearance. In its opinion, EUPOL COPPS argued that there had been a mistake and that the relevant position should not have been opened to third-country nationals.

The Ombudsman noted that, according to well-established case-law, the appointing authority cannot depart from the terms of the vacancy notice. The Ombudsman concluded that, by basing its rejection of the complainant’s application on the aforementioned two reasons, EUPOL COPPS clearly failed to observe the relevant vacancy notice. He therefore made a critical remark.

In its follow-up, EUPOL COPPS informed the Ombudsman, first, that, as a result of his inquiry, it has strived to enhance its administrative procedures, including its recruitment procedures. In particular, the vacancy notices that are

now published mention mandatory security clearance, which is required for EU and third country nationals. In the case of sensitive positions, the vacancy notices indicate whether an equivalent security clearance from a third country is accepted or not. Second, EUPOL COPPS announced that, in collaboration with the European External Action Service, it would endeavour to review with even greater care applicants' qualifications and security clearance. Third, it will only undertake official communications with applicants through the human resources department. Informal communication will be avoided. Finally, EUPOL COPPS added that it did not act in bad faith and that it will continue to streamline its operating procedures in order to guarantee respect for citizens' rights.

The instance of maladministration identified by the Ombudsman in this case was EUPOL COPPS' failure to comply with the conditions set out in the relevant vacancy notice. EUPOL COPPS could therefore avoid committing this type of maladministration in the future by clarifying or amending, where necessary, its vacancy notices and by making sure that applications are carefully processed in accordance with the conditions set out therein. It appears from the reply submitted to the Ombudsman that the first and second measures outlined above aim at achieving this goal.

The Ombudsman is satisfied that the measures adopted by EUPOL COPPS should help minimise the risk of the maladministration identified in this case occurring again.

Case 439/2011/AN

The complainant took part in a selection procedure organised by the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter 'Fusion for Energy'). She submitted a number of grievances to the Ombudsman. In his decision, the Ombudsman found that candidates in EU selection procedures can reasonably expect to be provided with at least an estimated timetable as regards the main steps. The information provided by Fusion for Energy on its website, and in its replies to the complainant, was manifestly insufficient. The Ombudsman issued a critical remark. As regards Fusion for Energy's failure to reply to the complainant's final request for information, the Ombudsman noted that Fusion for Energy had apologised for that behaviour.

In its follow-up reply, Fusion for Energy informed the Ombudsman that practical arrangements had been taken, or are being taken, in order to enhance future selection procedures and to demonstrate commitment to an administrative culture of service. These arrangements include the following:

- inclusion of information about the average duration of a selection procedure (normally six months) in the vacancy notice;
- publication on Fusion for Energy's website of an indicative timetable for each individual stage of the selection procedure. The planning will be updated regularly on the website in case delays are expected, so as to duly inform candidates.

In addition, Fusion for Energy confirmed its commitment to deal with questions or enquiries from candidates in the shortest possible time frame and, in any

case, in conformity with the deadlines set out in Fusion for Energy's Code of Good Administrative Behaviour.

Fusion for Energy has replied constructively to the Ombudsman's critical remark. It has taken measures to improve the transparency of its selection procedures and has demonstrated a clear commitment to an administrative culture of service.

B. Other cases by institution

1. The European Parliament

Cases 2986/2008/MF and 2987/2008/MF

On 1 May 2004, the EU Staff Regulations introduced a new career structure and new salary scales. Transitional provisions included a *"multiplication factor"* (MF) to determine the proportion of the new salary scale that was to be paid to each official recruited before 1 May 2004. The complainants in cases **2986/2008/MF** and **2987/2008/MF** alleged that Parliament's practice, whereby the MF for its officials would automatically increase to one, two years after their first promotion under the new system, was incompatible with the Staff Regulations as it was automatic, and thus arbitrary. The Ombudsman agreed and called on Parliament to change its practice. Parliament refused, saying that its interpretation had not been criticised by any court judgment. It maintained its position, despite the Ombudsman's drawing its attention to the General Court's interpretation of the relevant provision in its judgment of 2 July 2010 (the '*Lafili case*'). The Ombudsman criticised Parliament for this serious instance of maladministration. He noted that Parliament's practice differed from that of all other EU institutions with the result that, in some cases, it gave a considerable financial advantage to its officials over officials working for other institutions. This practice is in breach of Articles 4 ('lawfulness'), 5 ('absence of discrimination'), and 11 ('fairness') of the European Code of Good Administrative Behaviour and constitutes a serious instance of maladministration, he said.

In its reply, Parliament stated that, some six years after the introduction of its practice, all but 204 (out of 7 000) members of its permanent and temporary staff now have an MF of one. Moreover, Parliament insisted that there had not been any judgment delivered by the Court concerning its interpretation of the relevant provision (Article 7 of Annex XIII), which would oblige it to modify its practice. Parliament also referred to the inherent complexity of the provision in question.

At the same time, Parliament acknowledged that the lack of a uniform application of the provisions of Annex XIII throughout the EU institutions was to be regretted. It stated that it could only agree with the Ombudsman's call that, in the future, such divergences be eliminated. Parliament's view was that the necessary mechanisms to prevent such divergences are in place at the interinstitutional level, in the form of the Staff Regulations Committee, the College of Heads of Administration, and the Preparatory Committee for

Administrative Questions. These mechanisms should greatly contribute to giving timely guidance as to how the institutions should apply any new complex provisions of the Staff Regulations. Parliament concluded by saying that it was pleased to inform the Ombudsman that it was prepared to promote interinstitutional cooperation on these issues and to strengthen the legal counsel on its administration's best practices.

While it is regrettable that Parliament’s administration still refuses to acknowledge that its practice is not in accordance with the authoritative interpretation of the applicable provision that is to be found in the case-law, the Ombudsman notes Parliament's expression of support for measures to prevent similar maladministration in the future.

Case 3135/2008/MF

In 2005, Parliament awarded two merit points to the complainant, a Parliament official. This was reflected in his staff report. In early 2006, the complainant became seriously ill and had to go on sick leave until September 2006. He came back to work on a part-time basis for the remaining part of the year. In 2007, Parliament awarded him one merit point for the 2006 promotion exercise. The Ombudsman criticised Parliament for this decision, which he deemed to be unfair.

In its reply, Parliament stated that it did not take into account the complainant's health situation and the objective constraints that that imposed on his performance when deciding to award merit points for 2006. It further stated that the relevant article of its Implementing Measures concerning the award of merit points and promotions is very clear and provides for an automatic awarding of the same number of points as for the previous year only if the official concerned is absent throughout the entire reference year. This was not the complainant's case. Parliament had therefore to comply with its internal rules and to proceed with an actual assessment of the complainant's merits for 2006.

Parliament maintained that the complainant was not entitled to be automatically awarded the same number of merit points for the 2006 reporting exercise as he obtained in the previous exercise. Taking into account the applicable internal rules, Parliament announced its inability to take any further action.

Parliament's follow-up in this case is not satisfactory. In its reply, Parliament merely repeats the arguments it already put forward during the course of the Ombudsman's inquiry.

Case 1329/2010/MF

Case **1329/2010/MF** also concerned, among other things, Parliament's method of calculating the multiplication factor applicable to officials who were recruited before 1 May 2004 and promoted after that date. The complainant alleged that Parliament used a method of calculation of his salary which was different from

that used by all other EU institutions. The Ombudsman found that Parliament's method of calculation was not based on a clearly erroneous interpretation of the relevant provision (Article 7(2) of Annex XIII to the Staff Regulations). He pointed out, however, that the principle of the unity of the European Civil Service implies that all the institutions should interpret and apply the Staff Regulations in a consistent manner. The different methods of calculation led to differences in salaries which were unacceptable and, contrary to Parliament's view, could not be considered minimal. The Ombudsman closed the case with the suggestion that the EU institutions should agree on a common methodology for calculating officials' new basic salaries after promotion. He also suggested that before the next revision of the EU Staff Regulations, the EU institutions should put in place a mechanism to identify difficulties of interpretation of the revised provisions and reach a common position at an early enough stage to avoid divergences occurring in practice. According to the principle of loyal cooperation, each institution should avoid premature commitments and decisions that would make it difficult for it to accept and implement a common position.

Parliament thanked the Ombudsman in its reply and assured him that it fully supports the principle of the unity of the European civil service. Parliament further stated that it wished to reassure the Ombudsman that its representatives in the various interinstitutional forums, and notably in the Preparatory Committee for Administrative Questions (CPQS), would strive to achieve a common approach by all the Institutions concerning matters related to the implementation of the rights and obligations contained in the Staff Regulations. If, despite its best efforts, a common position between all the institutions could not be found, Parliament, however, reserved the right to adopt an interpretation of the Staff Regulations that, in its view, best corresponds to the spirit of the relevant provisions of the Staff Regulations and the interests of its personnel.

The Ombudsman notes that Parliament has shown its willingness to support the principle of the unity of the European civil service and the idea of a common approach to be taken by all the EU institutions concerning the implementation of the Staff Regulations.

Note:

The Ombudsman informed the Presidents of the institutions that contributed to his inquiry (namely, the European Commission, the Council of the EU, the Court of Justice, the European Economic and Social Committee, the Committee of the Regions, and the European Court of Auditors), as well as the Presidents of the administrative bodies in charge of harmonising the implementation of the EU Staff Regulations (namely, the College of Heads of Administration and the Staff Regulations Committee) of his decision. By letter of 17 February 2012, the Commission informed the Ombudsman that it also considers it unsatisfactory that there are divergent interpretations regarding Article 7(2) of Annex XIII to the Staff Regulations and consequently, a lack of common practice. It also noted that a mechanism for discussion on these questions already exists in the form of the College of the Heads of Administration (CCA), which is often successful in mediating between the positions of the different institutions. Finally, the Commission stated that the CCA and its subordinate committee will seek to find solutions to the questions raised by the Ombudsman.

2. The European Commission

Case 56/2007/PB

This case concerned a request for information and documents, submitted to the Commission in late 2006. The complainant, who was a retired official, asked the Commission to provide him with detailed information relating to the work of the Common Sickness Insurance Scheme or, alternatively, documents from which he himself could extract that information. In the light of his inquiry, which involved an inspection that revealed a number of shortcomings in the Commission's handling of the case, the Ombudsman made a critical remark and a further remark.

The critical remark noted that, although the Commission took some positive steps in response to the complainant's extensive information request, it refrained from fully respecting the relevant standards for handling such requests, notably an appropriate level of service-mindedness, diligence, and objectivity.

The further remark noted that the present case raised issues concerning the Commission's handling of complex and extensive information requests. The Ombudsman encouraged the Commission to adopt and issue additional guidelines to its services in this respect. The guidelines should aim to ensure that full or partial refusal of information requests, which are complex and/or extensive and which are not obviously abusive, include an approximate estimation of the time or resources that the services would otherwise have to invest to meet the information request. The Ombudsman further recalled that, in 2008, he published a study on the issue of access to information in databases. This study, which was sent to the Commission at the time for its information, is available on the Ombudsman's website. The Commission may wish to draw inspiration from the content of this study, he said.

The Commission informed the Ombudsman of the measures it plans to take or has already taken. With regard to the availability of the data, the Commission pointed out that it would, in the future, produce statistical information that would be more easily accessible, notably in respect of accidents and work-related illnesses. In the absence of the immediate possibility to introduce a new informatics system, the Commission will guarantee access to such statistical information through the contractor in charge of insuring officials in relation to Article 73 of the Staff Regulations. In fact, the relevant contract stipulates that the provider of the insurance services should furnish such information.

With regard to the workload, this remains a concern for the service in question, the Commission said. It is particularly difficult to identify and research documents that contain strictly confidential data of a personal and medical nature. It is, therefore, very difficult to tell in advance how much time and work it will require to extract such information or data.

By way of conclusion, the Commission stated that it is in the process of implementing the necessary measures in order to satisfy the complainant's request and to facilitate responses to future requests.

The Commission is taking concrete measures to address the maladministration identified in this case and to secure the desirable improvements sought by the Ombudsman's remarks.

Case 803/2007/(VIK)(CK)ANA

The complaint concerns the Commission's alleged failure to carry out its obligations under the EU Structural Funds Regulation. The Ombudsman opened an inquiry into the complainant's allegations that the Commission failed to (i) reply to him and investigate the allegations he reported, (ii) ensure the smooth functioning of the management and control systems of Operational Programme (OP) X, including the existence of objective procedures for evaluating the Managing Authority's (MA) personnel, and (iii) ensure compliance with EU public procurement rules.

The Ombudsman took the view that the Commission's reaction to the complaint was not adequate and issued a draft recommendation requesting the Commission to investigate the complainant's allegations thoroughly and provide him with a specific and adequate reply. In its detailed opinion, the Commission stated that it carried out an audit of the audit files held by the relevant national authorities and the MA of OP X, interviewed staff, and reviewed the relevant public procurement procedures. The Commission found no significant irregularities. In his observations, the complainant argued that the Commission's audit ignored the issues he had raised.

In his decision, the Ombudsman criticised the Commission for failing thoroughly to investigate the complainant's allegations and to provide him with a specific and adequate reply.

In its response to the critical remark, the Commission expressed the view that it took the necessary steps to investigate the complainant's allegations by requesting information from the relevant national authorities, carrying out an audit, and informing OLAF, which carried out and conducted a separate inquiry into the matter. Taking into account the fact that the Structural Funds are implemented under "*shared management*" with the Member States, the Commission insisted that its services acted to the extent to which they were competent to act. Moreover, the Commission stated that the scope of the Ombudsman's review is limited to examining the adequacy of the Commission's reaction to the complainant's allegations against the relevant national authorities. Any examination of how the Commission manages and applies Structural Funds is the responsibility of the Court of Auditors.

The Ombudsman notes that the Commission has failed to engage with, and address, the issues he highlighted in his critical remark. It maintains the narrow understanding of its own responsibilities that it adopted from the beginning of the Ombudsman's inquiry. Moreover, the Commission’s insinuation that the Ombudsman's inquiry overlapped with the audit responsibilities of the Court of Auditors is without foundation. In dealing with the present complaint, the Ombudsman, acting in accordance with his mandate, examined whether there was maladministration by the Commission in carrying out its responsibilities for the implementation of the Structural Funds.

The Ombudsman regrets that the Commission's reply provides no assurance that similar maladministration will not recur in the future.

Case 1146/2007/(BU)JF

The complainant, who is divorced from a Commission official, received dependent child and education allowances for their two sons in the name, and on behalf of, her ex-husband. Following an internal check of the official's file, the Commission found that some of these allowances had been overpaid. It claimed back the corresponding amounts from the complainant.

During his inquiry, the Ombudsman noted that the complainant was aware that her sons submitted all relevant evidence justifying the allowances to their father, the Commission official, who then, in principle, forwarded them to the Commission. He further discovered that the Commission failed to inform the complainant in a timely manner about the rules applicable to the allowances in question, and that the complainant was not aware of the irregularity in the Commission's payments. He, finally, emphasised that the complainant, who was unemployed, had always transferred the dependent child and education allowances to her sons. It was they who subsequently took out a loan and reimbursed the amounts claimed back to the Commission.

In light of the above, the Ombudsman proposed, first, a friendly solution and, later, a draft recommendation to the Commission for it to refund to the complainant one half of the allowances recovered (that is, EUR 5 269.41). In the Ombudsman's view, this was a reasonable amount. The Commission refused both the friendly solution proposal and the draft recommendation. The Ombudsman closed the case with a critical remark.

In its follow-up, the Commission underlined that the decision in the case at hand was the result of both the specific features of the complainant's case and the procedures used at the time for the recovery of overpayments. It stressed its constant and ongoing commitment to inform its staff and other persons properly, also with regard to the relevant applicable rules.

Although the Commission states in general terms that it is committed to properly informing staff and third parties as regards the rules applicable to, among others, allowances, there is nothing in its reply to indicate that it has tried to learn lessons from this case, in order to reduce the risk of similar maladministration occurring in the future.

Case 2395/2007/VIK

In its efforts to expand its pool of IT experts, the complainant sent job offers to IT professionals who were working for the Commission as external consultants. The complainant used the email addresses, which the Commission had set up for its external consultants. The Commission asked the complainant to stop sending the recruitment messages forthwith and launched an inquiry in order to determine whether the complainant had breached its contractual obligations and/or rules pertaining to personal data protection. In its complaint to the Ombudsman, the complainant contested the actions taken by the Commission. The Ombudsman found maladministration on three accounts and concluded his inquiry with three critical remarks, as follows.

"By accusing the complainant of abusing the Commission's internal e-mail system and of breaching its contractual obligations before having even launched and carried an

investigation into the relevant issues, the Commission failed to demonstrate impartiality vis-à-vis the complainant at this point in time. The institution consequently failed to comply with the requirement of impartiality, laid down in Article 8, point 1 of the ECGAB (European Code of Good Administrative Behaviour) and in Article 41 of the Charter.

By ordering the complainant to stop sending the recruitment e-mails without having a legal basis for doing so, the Commission breached Article 4 of the ECGAB.

The Commission did not present the Ombudsman with valid reasons why it needed to copy its letter of 3 July 2007 to the other members of the complainant's consortium. The Ombudsman, therefore, concludes that the Commission's action to that effect failed to respect the principle of proportionality, laid down in Article 6 of the ECGAB."

As regards the first critical remark, the Commission clarified that the internal investigation carried out by its Security Directorate had started on 7 November 2006. The Commission admitted that the wording of its letter of that date should have made it clear that the Commission was referring to a potential abuse and to a possible serious breach of the contract in question, and that the purpose of the investigation was to ascertain whether such an abuse had indeed been committed. The Commission confirmed that it would apologise to the complainant for the wording of its letter and did so on 20 June 2012.

With regard to the second critical remark, the Commission argued that it was required to act as it did in order to put an end to the unlawful use of personal data which was taking place and for which it could ultimately be held liable. Nevertheless, it conceded that the situation would have been easier to handle if there had been more clarity as to the standard of acceptable behaviour which it is entitled to expect from successful tenderers and contractors. The Commission informed the Ombudsman that the department in charge of this file will draw up a Code of Conduct which will cover, in particular, the transition between the phase-out of an existing contractual framework and the phase-in of the following one. This Code will issue guidance of acceptable behaviour and refer, where necessary, to legal provisions and deontological principles which remain applicable even after the framework contracts signed with the outgoing contractor may have expired or — as it was the case in the present file — even before the framework contracts with the incoming contractor have been signed.

In the Commission's view, the Ombudsman's reasoning as regards the third critical remark was contradictory. Nevertheless, it stated that it would inform the members of the complainant's consortium that the investigation on a possible breach of contract was eventually closed without any further action and that the complainant was then, and remains, a respected IT service provider of the Commission. It did so on 20 June 2012.

The Ombudsman welcomes the Commission's constructive follow-up to the critical remarks, particularly in light of the fact that it has reservations over some of the issues identified therein.

Note

The Commission wrote to the Ombudsman on 29 October 2012 to draw attention to what it referred to as a wrong admission that it had made during

the inquiry and which it understood to have been the main reason for the second critical remark issued by the Ombudsman. The Commission apologised for this administrative error, which, it said, may have prevented the Ombudsman from fully comprehending all the elements of this complex file. The Commission considered that, despite the very late stage of the procedure, it was worth correcting this most regrettable administrative error, and to keep the European Ombudsman informed in full transparency.

Case 3031/2007/(BEH)VL

The Ombudsman concluded in case **3031/2007/VL** that (i) the information that the Commission provided regarding the Erasmus Mundus programme led students from outside the EU to believe that their scholarship would enable them to enjoy a decent standard of living by European standards, and (ii) the amount available was not sufficient for that purpose. In the Ombudsman's view, the information published by the Commission did not provide students with correct and reliable information. In a draft recommendation, the Ombudsman proposed that the Commission make an *ex gratia* payment of EUR 1 500 to each of the students concerned for the inconvenience they had experienced. He closed the case with a critical remark after the Commission rejected the draft recommendation.

In its reply, the Commission maintained its view that it did not commit an instance of maladministration. Nevertheless, it deeply regretted the fact that the complainant incurred negative consequences, and stated that it had already taken the necessary steps to avoid any similar incidents in future.

Specifically, the Commission and the Education, Audiovisual and Culture Executive Agency (EACEA) have since taken measures to specify and clarify further the information contained in the materials and tools addressed to beneficiaries of the Erasmus Mundus programme. For example, the FAQ section on the EACEA website now contains specific answers to the questions on the scholarship and the costs covered.

Moreover, the Commission and EACEA have taken measures to improve the information given to potential Erasmus Mundus students by the participating consortia, notably through their websites. This information concerns specifically the level of the tuition fees and the sum remaining once the tuition fees have been deducted. The guidelines for consortia websites also contain detailed instructions on the information that consortia participating in the Erasmus Mundus programme should provide to prospective students.

As regards the structure of the Erasmus Mundus scholarships, the Commission submitted that, since 2009, the Erasmus Mundus scholarships have been modified, so as to respond better to the different kinds of costs incurred — contribution to travel, installation, and any other type of costs; a maximum contribution to the Erasmus Mundus master course participation costs, and a monthly allowance. This new structure should give students benefiting from the programme a clearer picture of the overall costs involved, including the level of their monthly living allowance.

It is regrettable that the Commission insists on refusing to accept that maladministration occurred in this case. Such stubbornness risks undermining the Commission's legitimacy in the eyes of citizens.

Nevertheless, the measures now adopted by the Commission, namely, reserving an amount of the scholarship for living costs, and providing detailed information on the structure of the scholarships, should ensure that a situation similar to that encountered by the EuMAS 2006-2008 students should not occur in the future.

Case 3196/2007/(BEH)VL

This case concerned a request for information about ongoing infringement proceedings relating to Directive 95/46/EC on the protection of personal data. After a careful examination of all the arguments, the Ombudsman made a proposal for a friendly solution. Emphasising that it is good administrative practice to provide the information citizens request, unless there is a valid reason for not doing so, he proposed that the Commission should either provide the complainant with the information he had requested or put forward a convincing explanation as to why this was not possible. Following the Commission's rejection of his proposal, the Ombudsman made a corresponding draft recommendation. In its detailed opinion, the Commission informed the Ombudsman that it had provided the complainant with summary information on each of the articles of Directive 95/46/EC allegedly infringed. Against this background, the Ombudsman considered that the Commission had accepted his draft recommendation and taken satisfactory steps to implement it.

The complainant subsequently informed the Ombudsman that there was a discrepancy between the information, notably concerning the aforementioned articles, provided by the Commission and the UK authorities. The Ombudsman therefore invited the Commission to explain the apparent difference. The Commission explained that (i) in its reply, it had only taken into consideration those articles of Directive 95/46/EC that were of relevance to the infringement proceeding at the time of the complainant's request for information; and (ii) there was an overlap with other articles concerning certain issues. The Ombudsman made a further remark with regard to point (i), in which he underlined that, in order to live up to the idea of a culture of service, it would be useful for the Commission, in cases like the present one where a considerable amount of time passes between the request for information and the actual provision of this information, to provide applicants with the most up-to-date information.

The Ombudsman welcomes the Commission's assurance, communicated to him in the context of its reply to the further remark, that it will strive to live up to the culture of service expected of it in the future, particularly in cases like the present one.

Case 696/2008/(WP)OV

The complaint concerned the Commission's recruitment procedure for the position of Executive Director of the European Chemicals Agency ('ECHA'). Following a selection procedure, the Commission adopted a shortlist of two candidates to be proposed to the Management Board of the ECHA. The Management Board appointed Mr D. The Ombudsman carried out an inquiry at

the end of which he criticised the Commission's failure to document the reasoning underpinning the establishment of the shortlist of candidates. This made it impossible to verify that the Commission did not unduly and arbitrarily restrict the range of candidates for the post of ECHA Executive Director and did not abuse its discretion in the matter. The Ombudsman also made a further remark suggesting that the Commission should, in the future, make public, upon request and in accordance with Regulation 1049/2001/EC on public access to documents[14], the shortlists of candidates it proposes in selection procedures for high level posts in the Commission itself and the agencies. Candidates should be informed of this policy, in the vacancy notice for these posts.

As regards the critical remark, the Commission recalled the case-law according to which the Appointing Authority, and, by analogy, the Authority adopting the shortlist of candidates, has a wide discretion — in particular where the post to be filled is a senior management position — when comparing the merits of the candidates[15]. The Commission stated that, in the present case, there was no indication whatsoever that it acted unduly or in an arbitrary manner. By adopting, on the basis of the recommendations of the portfolio Commissioners, a shortlist of two candidates, the Commission made use of its generally recognised wide discretion.

The Commission underlined that the existence of this wide discretion also affects the necessary extent of documentation. By adopting a shortlist of candidates for the post of Executive Director of ECHA, the Commission implicitly confirmed that it remained within the limits of its discretionary powers. An express confirmation in this sense, namely, stating that it has respected the vacancy notice and the applicable procedural rules, would not have any added value. The Commission also noted that, according to the case-law, the statement of reasons may, as regards the decisions on promotions or the filling of vacant posts, be confined to the fulfilment of the legal conditions on which the validity of the procedure depends under the Staff Regulations[16].

As regards the further remark, the Commission stated that it does not consider that a general access of the public to the shortlist of candidates would be appropriate. It argued that it is not generally in the interest of shortlisted candidates who are eventually unsuccessful to have their names made public. These data protection considerations are duly taken into account in Article 4(1)(b) of Regulation 1049/2001, which, in contrast to paragraphs 2 and 3 of Article 4, does not even allow disclosure in case of an overriding public interest.

The Commission added that, while it is true that, from a formal point of view, candidates could be considered to have given their agreement to disclosure by applying — if the vacancy notice were to contain a clear clause on public access to the shortlists — its view is that such a reformulation of the clause would not be appropriate since potential candidates could, in fact, refuse to give their agreement only by refraining from applying.

[14] 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.
[15] Case T-113/05 *Angelidis v Parliament*, [2007] ECR-SC I-A-2-237, II-A-2-1555, paragraph 60 and the case-law cited therein.
[16] Case T-370/03 *WXunenburger v Commission*, [2005] ECR-SC I-A-189, II-853.

The Commission also argued that the clause of the vacancy notice mentioned in the Ombudsman's decision — the vacancy notice for Executive Director of the ECHA indicated that *"[c]andidates should note that, from* [the moment of] *its adoption by the Commission, the shortlist will be publicly available"* — was intended to inform candidates about the fact that, following its adoption by the Commission, the shortlist would be transmitted to ECHA and that, consequently, the Commission could no longer guarantee its secrecy. The Commission acknowledged that a clearer formulation in this sense would have been preferable and indicated that it would not use this formulation in future cases.

The Ombudsman notes that, as regards its failure to document its reasoning for the establishment of the shortlist of two candidates, the Commission basically argues that the large discretionary power it has in filling the posts for senior management positions also affects the need, or rather the absence of such a need, to document its decision. The Commission's argument that, by adopting a shortlist of candidates for the post of Executive Director of ECHA, it implicitly confirmed that it remained within the boundaries of its discretionary powers is far from convincing. This reasoning is also not in line with the relevant case-law which foresees that, even where the institution has a large discretionary power, it still has to respect the applicable procedural rules of the selection process[17].

As regards the procedural rules in the present case, it should be pointed out that the selection procedure was governed by the Commission Guidelines of 13 May 2005 for the appointment of heads of Community agencies[18] (*'the Guidelines'*). As underlined in the Ombudsman's decision, point 3.6 of these Guidelines provided that "*particular attention* [should be paid] *to ensure that each and every step in the selection procedure is fully documented*" (emphasis added). The interviews with the portfolio Commissioners, after which the shortlist was reduced from 3 to 2 candidates, was clearly a "step" in the selection procedure and should thus have been fully documented. The Commission's argument that it did not need to document its decision to further reduce the shortlist from 3 to 2 is clearly in contradiction with the rules it itself adopted in the Guidelines.

The Ombudsman wrote again to the Commission outlining his above analysis. In its reply, the Commission maintained its opinion.

As regards the further remark, the Commission's reaction seems to be based on the wrong assumption that the Ombudsman called upon it to publish the shortlists. In fact, the further remark asked the Commission to make the shortlists public "*upon request and in accordance with Regulation 1049/2001/EC"*[19].

[17] Case T-113/05 *Angelidis v Parliament*, [2007] ECR-SC I-A-2-237, II-A-2-1555, paragraphs 61-2.
[18] COM(2005)190 final.
[19] Considering that the present case raises the important issue of the balance to be struck between public access under Regulation 1049/2001/EC and protection of personal data of the shortlisted candidates under Regulation 45/2001/EC, the Ombudsman consulted the European Data Protection Supervisor (EDPS). The Ombudsman asked the EDPS to give his views on how to deal with an eventual request for public access to shortlists of candidates the Commission proposes in selection procedures for high level posts in the Commission and the agencies. The EDPS replied that an eventual request for public access to the shortlists in question is a request for a document which manifestly contains personal data. In line with the *Bavarian Lager* case-law, such a request should be dealt with under Article 8(b) of Regulation 45/2001/EC, which was further interpreted by the General Court in *Dennekamp*. The EDPS also referred to his background paper of 24 March 2011 "*Public access to documents containing personal data after the Bavarian Lager ruling*".

As the Commission rightly points out, candidates' right to protection of their personal data must be ensured. However, the problem raised by the Commission, namely, that the only option for candidates who do not wish to have their names released would be to refrain from applying for the position, could easily be overcome by offering candidates, in the notice of vacancy, the possibility to request that their name not be disclosed in the event of a request for public access to the shortlist.

The Ombudsman regrets that the Commission's follow-up to the critical remark appears to be based on the view that there is no duty to give reasons for the exercise of a broad discretionary power. This implies that discretion is the same as arbitrary power. Such an approach reveals a basic misunderstanding of the principles of administrative law and of good administration. It is also regrettable that the follow-up to the further remark appears to regard data protection as a handy justification for administrative secrecy, rather than as fundamental right that needs to be balanced with the fundamental right of access to documents.

Case 1633/2008/DK

The Commissioner for Trade met representatives of a business organisation in 2008. A civil society organisation sought access to the minutes of this meeting and obtained them only in part. It complained to the Ombudsman, who found that the Commission did not adequately reason its decision to refuse access to certain parts of the document, and to delete a section from it. In reply, the Commission provided revised grounds for its decision and granted access to the part which it had previously deleted. The Ombudsman took the view that the Commission's reply to his proposal for a friendly solution was largely satisfactory. However, he made the following further remark.

"*In the case at hand, the complainant made a request for public access to a 'document', and not a request for access to 'information'. The Commission dealt with this request in accordance with Regulation 1049/2001 regarding public access to documents. However, (...) it follows from the Regulation that the Institutions cannot decide that, because a certain part of an existing document contains a different kind or type of information, it constitutes a 'sub-document', or a separate document. Therefore, the Ombudsman would like to encourage the Commission to follow, in future similar cases, an approach which is consistent with the above consideration.*

In addition, the Ombudsman points out that references to the attachments to a given document also form part of the latter and should therefore not be excluded when the Institutions analyse a request for access to such a document. The Ombudsman would therefore like to invite the Commission to follow a practice whereby, irrespective of whether an attachment forms part of the document that refers to the attachment, references to attachments are always dealt with as forming part of the main document to which access has been requested.".

In its follow-up reply, the Commission noted that the notion of a *"document"* is very close to the notion of *"information"* in laws on access to information. In both cases, access is granted to the content of a *"document"* or a *"record"*. The decisive point is that the information must be available on an existing medium. However, there is no obligation for public bodies to create or process information for the purpose of satisfying a request.

In general, when applicants request access to one or more specific documents, these documents are considered for disclosure in their entirety, including their annexes. When the Commission receives a request for access to an undefined document or documents, its services search for relevant documents in archives or databases. Such documents, many of which are of an informal nature, may deal with a number of different subjects, which are not related to the subject matter of the request. In such a case, the Commission extracts relevant parts of the documents and considers those parts for disclosure. This method is favourable to the applicant, since it enables the services to retrieve the information sought by the applicant without obliging him or her to identify specific documents. The Commission adds that the Ombudsman considered, in his decision on complaint 2502/2007/RT, that this practice is reasonable[20].

In conclusion, the Commission stated that it handles requests for access to well defined documents in line with the remarks made by the Ombudsman. The practice of selecting relevant parts of documents in reply to requests for access to *"any documents"* concerning a given topic is a satisfactory way of dealing with the latter type of request.

The Ombudsman notes that the Commission may be right in considering that, when it receives an unclear or imprecise request for access to documents, its approach to look for the *"relevant information"* contained in parts of various documents is favourable to transparency. However, the concept of *"relevant parts of a document"* is not to be found in Regulation 1049/2001, which clearly provides that access to a part of a document can only be refused if one or more of the exceptions, as set out in Article 4 of the Regulation, is applicable. Therefore, the Commission (and the Institutions generally) must accept that, during the process of clarifying the scope of the application, applicants might want to have access to the whole document(s) and not only to the *"relevant parts"*. If the applicant expresses such a wish, the Institutions are not entitled to rely on the argument that the other parts of a requested document are not *"relevant"*.

In light of the above, the Ombudsman considers the follow-up as satisfactory insofar as the Commission's approach could be used selectively, in cases where it could assist applicants. However, the Ombudsman cannot accept generally an approach that could be used abusively, to evade the Regulation's requirement of reasoning when a requested document is not disclosed in its entirety.

Case 2273/2008/MF

In the framework of the certification procedure allowing AST officials to become AD officials, the Commission awarded the complainant, a French citizen, eight points for his engineering diploma. The Commission considered that the complainant's diploma was a French *"second cycle"* qualification. The complainant argued that the diploma he obtained was a *"third cycle"* qualification for which the Commission should have awarded him 10 points.

[20] See, in particular, paragraphs 55 to 57 of the Ombudsman's decision in that case.

The Ombudsman concluded that the Commission failed (i) to contact the French authorities as regards the complainant's diploma and (ii) to explain, on the basis of the relevant French legislation, why it did not consider the complainant's diploma to be a third cycle qualification. The Ombudsman therefore made a draft recommendation, inviting the Commission to contact the relevant French authorities in order to determine the level of the complainant's diploma. The Commission contacted the French authorities, which confirmed that the complainant's diploma was a second cycle qualification.

The Ombudsman therefore found that no further inquiries were justified and closed the case. He made a further remark, suggesting that, unless it already possesses up-to-date information from the relevant national authorities, the Commission could consider establishing a practice whereby it systematically contacts the said authorities through ENIC-NARIC[21] before deciding on the level of national diplomas of its staff.

In its reply, the Commission informed the Ombudsman that it does consult NARIC if it has any doubts regarding national diplomas. It also possesses NARIC publications containing updated information on diplomas and maintains a database with their levels and any relevant information on changes. In its view, therefore, the practice recommended by the Ombudsman is already relied upon when deciding on the level of national diplomas for its staff.

The Ombudsman welcomes the clarification provided by the Commission in its follow-up reply.

Case 3328/2008/(ELB)FOR

This complaint concerned a dispute about the grading of staff. The complainant was recruited as Chief Procurement Officer to work in a European Security and Defence Policy (ESDP) mission. When establishing his grading, the Commission considered that a part of his experience was fully relevant and that another part was partially relevant. The complainant disagreed with that assessment. The Ombudsman closed the case with a critical remark, according to which the Commission adopted an overly formalistic view of what constitutes relevant professional experience. It was wrong, he said, to require the complainant to provide the exact proportion of his overall responsibilities which were dedicated to public procurement during the periods in question.

In its follow-up reply, the Commission argued that the Ombudsman wants to substitute his own assessment for the Commission's assessment. It explained that it is tasked with verifying the contracts/grading of international staff before the Head of Mission signs contracts. In this context, it makes a judgment as regards the relevance of applicants' professional experience. The Commission argued that relevant experience should only be *"directly relevant experience"* since there is no time for training on such missions. The mere *"potential"* of candidates is not taken into account. Moreover, only experience in public procurement can be taken into account.

[21] ENIC stands for European Network of Information Centres, while NARIC stands for National Academic Recognition Information Centres.

The Commission also considers that the burden of proof lies with the applicant for a job to prove the relevance of experience. It added that the complainant in this case was asked to produce evidence of experience a number of times, and failed to do so.

Notwithstanding these comments, the Commission agreed that the wording it used in its requests to the complainant, namely, its requests for the "*exact proportion*" of experience should not be used in this context.

Despite its defensive tone, the Commission's reply accepts that the request to provide evidence of the "*exact proportion*" of time spent on public procurement was not appropriate and should not be used in this context. This was the problem identified in the critical remark. Given that the Commission's follow-up implies that it will not use the inappropriate wording in future, the follow-up is satisfactory.

Case 3399/2008/ELB

In 2007, the complainant, a member of staff at the European Network and Information Security Agency (ENISA), requested the Agency to open an invalidity procedure in relation to him. The procedure starts with the appointment of the Invalidity Committee, which consists of three doctors, one appointed by the complainant, one by the institution or body concerned, and one appointed with the first two doctors' mutual agreement. In this case, ENISA appointed a doctor from the Commission's medical service.

In his complaint, the complainant alleged that the Commission did not carry out the invalidity procedure correctly because (i) the Commission's doctor erred by transmitting medical data concerning the complainant to the Head of the Commission's medical service; (ii) the Head of the Commission's medical service was not a qualified medical doctor; and (iii) the Commission's medical service erred as regards the appointment of a third doctor.

The Ombudsman pointed out that a transfer of medical data is possible provided that it is necessary to comply with employment law, and is subject to adequate safeguards. While the Ombudsman expressed doubts as to whether it was necessary to transfer medical data to the Head of the Commission's medical service, he was unable, on the basis of the information in the file, to ascertain whether, in fact, medical data were transferred. The Ombudsman also considered that, in view of the administrative role of the Head of the Commission's medical service in the complainant's invalidity procedure, it is not relevant whether or not the former was a medical doctor. As regards the appointment of a third doctor, the Ombudsman considered that both doctors should show mutual trust and respect. They should also each explain why they might not agree on the names put forward by the other. In two further remarks, the Ombudsman underlined the importance of the data protection rules, and of the need for doctors in invalidity procedures to engage in dialogue.

In its reply, the Commission explained that, while its medical service staff have already been informed of their duty of secrecy arising from their function and the handling of medical files, the Heads of its medical services have decided to remind staff of their duties. As regards the dialogue between doctors seeking to appoint a third member of an Invalidity Committee, the Commission stated that

the doctor appointed by the Commission is in the habit of informing and reasoning his/her decision not to accept the proposal made by the other doctor. However, the Commission will again remind doctors, likely to be members of an Invalidity Committee, of this requirement.

The Ombudsman welcomes the fact that the Commission has decided to remind its staff of their duties as regards (i) the handling of medical files and (ii) the dialogue between doctors seeking to appoint a third doctor of an Invalidity Committee.

Case 705/2009/DK

The complainant submitted a proposal to the European Research Council (*'the ERC'*) for an ERC Advanced Grant. His proposal was rejected. He submitted a request for redress, in which he pointed out that the comments of the panel and of the reviewers referred to another project and not to his own project proposal. The redress request was examined by the ERC's Redress Committee. The complainant was informed that the Redress Committee had discovered a factual error during the preparation of the Evaluation Report of his proposal. The complainant's proposal was therefore sent for re-evaluation. Five months later, the complainant was informed that his proposal had again been rejected and was therefore not proposed for funding.

The complainant turned to the Ombudsman to complain about the length of the redress procedure, and the almost identical content of the initial assessment and the report produced following the re-evaluation. The Ombudsman found no maladministration. Specifically, as regards the length of the redress procedure, the Ombudsman recalled that the European Code of Good Administrative Behaviour requires that a decision on every request or complaint shall be made within two months from the date of receipt, unless the complexity of the matters which it raises justifies a longer period. The Ombudsman considered that the explanations provided during the course of his inquiry indeed justified the amount of time it had taken to deal with the complainant's redress request. Nevertheless, he suggested that, in order to obtain concrete information to support the Commission's commitments relating to the future length of its redress procedures, the Commission inform him of the average length of its subsequent redress procedures in similar cases concerning ERC Advanced Grants.

In its reply, the Commission explained that, following the redress procedure for the ERC Advanced Grants in 2008, there were two other redress procedures for ERC Advanced Grants: one in 2009 and one in 2010. The Commission noted that during the relevant calls, applicants had the possibility to introduce redress requests following each step of the procedure. There could therefore be several redress deadlines and redress procedures.

The Commission then gave a detailed account of how the relevant procedures (submission of proposals, evaluation, and feedback) had been carried out in 2009 and 2010; and of when and how the redress procedures were conducted in those years. The Commission reminded the Ombudsman of the actions it had taken to reduce the delays in the procedures in 2010. It concluded by stating that (i) the length of the redress procedure where there was no re-evaluation dropped from an average of 3.1 months in 2009 to an average of 2.2 months in

2010; and that (ii) the length of the redress procedure where a re-evaluation was carried out dropped from an average of 7.2 months in 2009 to an average of 3.5 months in 2010.

The Commission not only complied with the Ombudsman's request to inform him about the average length of its redress procedures in similar cases concerning ERC Advanced Grants, but has also undertaken a range of measures to reduce the average length of these procedures.

Case 715/2009/(VIK)ANA

Case **715/2009/(VIK)ANA** concerned the Commission's statements, published in a report under the Cooperation and Verification Mechanism, according to which (i) the Bulgarian government continues to tolerate duty-free shops at Bulgaria's external borders, (ii) these shops have seen a substantial increase in turnover in 2007, and (iii) they are a focal point for local corruption and organised crime. Following an inspection of the file, the Ombudsman made a draft recommendation in which he asked the Commission to acknowledge that statements (ii) and (iii) were not substantiated by concrete evidence in its possession, and that statement (i) was misleading. As the Commission did not accept his draft recommendation in this regard, the Ombudsman closed the case with a critical remark. He also made a further remark to the effect that the Commission should ensure that the reports it issues under the Cooperation and Verification Mechanism comply with the principles of good administration. To this end, he said, the Commission could issue appropriate instructions or guidelines to its services to ensure that statements included in public reports contain accurate information, which the Commission is in a position to defend. Moreover, the Commission should ensure that it offers adequate opportunity of consultation and due regard to the interests of affected parties.

With regard to the critical remark, the Commission replied that it appreciates the work of the Ombudsman and has taken note and considered his conclusions with care. However, it is not in a position to accept the finding of maladministration. The Commission defended its view on the grounds that its statements in its Interim Report were based on compelling evidence collected from several independent sources, which consistently supported the Commission's findings. The evidence made available to the Ombudsman demonstrated a lack of effective control over duty-free shops and duty-free petrol stations by the Bulgarian authorities and pointed to repeated abuses including smuggling, fraudulent imports, and links to corruption and organised crime.

As regards the first aspect of the Ombudsman's further remark, the Commission emphasised that it is responsible for the content of the CVM reports and is committed to their quality, the objectivity of the analysis, and the applied methodology. In support of this position, the Commission underlined that these Reports have been supported and endorsed by the EU Member States. The CVM reports are prepared in a spirit of cooperation and dialogue with Bulgaria and Romania, both of which have consistently approved and endorsed the methodology applied by the Commission and the objectivity of its assessment. Moreover, the Commission stated that it is committed to ensure adequate consultation of interested parties and pays due regard to their interests. While the Commission stated that it has taken note of the

Ombudsman's remarks and that the services in charge of reporting under the CVM have been made aware of the remarks, the Commission did not consider it necessary to issue additional instructions or guidelines to its services on the preparation of the CVM reports. By way of conclusion, the Commission stated that it considers that its CVM reports satisfy the requirements of proportionality, impartiality, objectivity, and diligence as laid out in its Code of Good Administrative Behaviour.

The Commission's reply to the Ombudsman's critical and further remarks constitutes a verbatim repetition of the arguments it put forward in its detailed opinion on the Ombudsman's draft recommendation. In its follow-up reply, the Commission remains in denial, so much so that it renders it impossible to achieve the purpose of the follow-up study which is, it should be recalled, "*to examine the extent to which the EU institutions have examined critical and further remarks, drawn lessons from them, and introduced systemic changes that should make maladministration less likely to occur in the future*".

The Ombudsman regrets that the Commission did not constructively engage with him in its follow-up to the remarks in this case.

Case 1348/2009/(CK)RT

The complainant participated in a call for tender organised by the Commission's Delegation in Montenegro. During the evaluation of the tenders, the complainant raised doubts over the impartiality of the Chairman of the Evaluation Committee. The Commission did not react. Before the official results of the call for tender were published, the complainant found out that the Evaluation Committee had rejected its tender. It subsequently contested the entire tender procedure. In response, the Commission argued that the complainant had attempted to obtain confidential information during the evaluation procedure. The complainant then turned to the Ombudsman, who closed the case with the following critical remark:

"By stating that the complainant breached confidentiality, without providing proof to that effect, the Commission infringed the principle of the presumption of innocence. In the absence of irrefutable evidence, the Commission cannot reasonably uphold its statement that the complainant attempted to obtain confidential information, which could lead to it being included in the Early Warning System and excluded from future contracts and grants financed by the EU budget. Likewise, the Commission's statement that the leak of information was 'suggestive of favouritism for the benefit of the complainant' cannot be maintained unless supported by evidence to that effect."

In its reply, the Commission expressed regret for stating that the complainant breached the confidentiality rule without providing irrefutable evidence in this respect. It informed the Ombudsman that it did not intend to include the complainant in the Early Warning System based on the information obtained during its inquiry.

The Commission also agreed with the Ombudsman that it could not maintain its statement that the leak of information was *"suggestive of favouritism for the benefit of the complainant"* unless supported by evidence to that effect. In this respect, it admitted that neither the circumstances of the breach of confidentiality, nor how the complainant became aware of the leaked

information, had been established. The Commission also expressed regret for the above statement.

The Commission's follow-up in this case is satisfactory.

Case 2587/2009/JF

The complainant in case **2587/2009/JF** alleged that the Commission failed properly to deal with his concerns relating to EU environmental and energy legislation in Ireland. During the Ombudsman's inquiry, the Commission explained that it had, in the meantime, registered some of the complainant's subsequent correspondence as a complaint and was investigating it. It also organised a meeting, during which the complainant was able personally to explain his concerns. The Commission insisted that it was committed to pursuing its task of supervising the correct implementation of EU environmental legislation and that it would examine all documented breaches of the relevant *acquis*.

The Ombudsman's view was that the Commission had taken steps to deal properly with the complainant's grievances and that no further inquiries were justified. He nevertheless emphasised that the complainant had invested a considerable amount of time and effort in trying to provide the Commission with the relevant information. In a further remark, he stated that he trusted that the Commission would also take the complainant's latest correspondence to the Ombudsman into due consideration when assessing the infringement complaint. Finally, the Ombudsman noted that the complainant had also approached the Aarhus Compliance Committee (ACCC) with a complaint against the EU. He forwarded the complainant's entire correspondence to the Commission and closed the case.

In its reply, the Commission expressed some doubts as regards the approach adopted by the Ombudsman in this case. It noted that, when examining the information submitted with a complaint, the Commission takes account of all other information that it considers relevant. However, where the complainant is engaged in a separate contentious procedure against the Union, as in this case, it is important to recognise the dividing line between the scope of the complaint and the scope of that separate procedure.

The Commission indicated that part of the correspondence sent to the Ombudsman by the complainant was also sent by him to the Commission in the framework of his complaint. In this respect, the Commission claimed that it had duly analysed that correspondence in accordance with the principles of good administration. Notwithstanding this fact, the Commission assured the Ombudsman that it was ready to look at it again. In addition, the Commission pointed out that a considerable amount of the correspondence sent by the Ombudsman to the Commission for investigation was not covered in the complainant's complaint to the Commission. That correspondence was included in the complainant's communication with the ACCC. In requesting the Commission to follow up on correspondence exclusively related to the ACCC case against the Union, the Ombudsman appeared to be mixing the Commission’s assessment of a complaint under EU law with a procedure against the Union in the entirely separate forum, the ACCC.

The Commission concluded that it would review the correspondence sent to the Ombudsman by the complainant to the extent that it relates to the complaint made regarding an alleged violation of EU law by Ireland. However, where a complainant is engaged in a separate contentious procedure against the Union, the Commission can only be expected to deal with the complaint in the light of the submissions made as part of the complaint and not in the light of submissions made as part of that separate procedure.

It should be noted that the intention of the Ombudsman's remark was that the Commission should look at the forwarded documents only in the framework of the complaint against Ireland. The Commission has therefore satisfactorily followed-up on the Ombudsman's further remark. It was not the intention of the Ombudsman that the Commission investigate, in the framework of the complaint, also the matters raised under the complainant's separate complaint to the ACCC. Notwithstanding this fact, it cannot be excluded that some of the information the complainant submitted to the ACCC may have an impact on the complainant's complaint to the Commission against Ireland. Since the Commission explicitly stated that it would look into all the correspondence that is related to the complainant's complaint to it, it has satisfactorily replied to the Ombudsman's further remark.

The Commission's follow-up in this case is satisfactory.

Case 2610/2009/(BU)MF

The complainant in case **2610/2009/MF** — a subcontractor in external aid projects — alleged that, as a result of problems she encountered with the Commission in the framework of projects in Sudan and Chad, she could no longer find employment in EU funded projects. She felt that she was the victim of blacklisting and discrimination. The Ombudsman concluded that, by (i) failing to inform the complainant in writing of its reasons for asking for her dismissal from the EU project in Sudan and (ii) failing to check whether the complainant, before being dismissed, was given the opportunity to present her views on the request for her dismissal which the Commission addressed to her employer, the Commission did not act fairly. The Ombudsman closed the case with a corresponding critical remark.

In its reply, the Commission stated that it had taken good note of the Ombudsman's decision and his critical remark. It further stated that, as it had mentioned previously in its follow-up to cases 53/2009/MF and 2449/2007/VIK[22], the Commission agrees that experts whose replacement is requested by a contractor have a right to be heard. Such a right can be ensured by a system in which the contractor hears the expert and conveys to the Commission any observations he/she may make. The Commission recalled that the Practical guide to contract procedures for EC external actions (PRAG) was modified accordingly in November 2010.

The follow-up is satisfactory. In its reply, the Commission refers to the amended version of the PRAG according to which experts, whose

[22] These cases are dealt with, respectively, in the Ombudsman's 2010 and 2009 follow-up studies.

replacement is requested by a contractor, will be guaranteed the right to be heard.

Case 2651/2009/ANA

Case **2651/2009/ANA** concerned the Commission's handling of an infringement complaint. In his decision, the Ombudsman found that the Commission failed to handle the complaint with due diligence and in accordance with the procedure for the registration and handling of infringement complaints provided for in its *Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law* ('the Communication')[23]. In a further remark, the Ombudsman invited the Commission to inform him of any additional steps, such as the adoption of guidelines, it intends to implement in order to ensure that complaints which bring to light measures or practices which are contrary to Union law are registered as such, in accordance with the Communication, and handled with the required diligence.

In its follow-up reply, the Commission acknowledged that the infringement complaint should have been formally registered as such, since none of the exceptions listed in the Communication applied. It expressed its belief that the new *Complaints Handling - Accueil des Plaignants* (CHAP) registration system renders the repetition of such cases much less likely nowadays. Moreover, the Commission expressed its commitment to fully respect complainants' rights under the Communication.

The Commission concluded its reply by stating that it had not identified any additional steps necessary to ensure that complaints which bring to light measures or practices that are contrary to Union law are registered as such. It argued that the Ombudsman had not provided any clear indication of the issues not fully addressed by the Commission's practices which, it added, have already been improved.

The Ombudsman would refer the Commission, in this latter regard, to his decision, in which he provided clear and detailed guidance to the Commission concerning the diligent handling of infringement complaints in circumstances such as those here concerned.

The Ombudsman notes that the problems identified in this case can be pursued in the context of his own-initiative inquiry OI/2/2011/OV on the handling of infringement complaints.

Case 2711/2009/PB

This case concerned alleged maladministration in the Commission's handling of an infringement complaint about free movement rights in Malta. The Ombudsman concluded that no further inquiries were necessary into the

[23] See footnote 12 above.

substance of the case. He made a further remark as regards procedure, as follows:

"Citizens who submit infringement complaints to the European Commission are invited to respond to a 'pre-closure letter' announcing the intention of the Commission's services to close the file on the relevant infringement complaint. In the pre-closure letter, the services shall set out the grounds on which they intend to close the file. In his or her response, the citizen may contest these grounds, be they factual, administrative or legal. This does not put into question the Commission's wide competence for deciding on whether and how to pursue potential or actual infringements by Member States.

The Ombudsman encourages the Commission closely to examine the extent to which its services recognize and implement the citizens' right to challenge its services' substantive findings, including their legal assessment, when responding to pre-closure letters issued under its 2002 Communication.

The Ombudsman encourages the Commission to amend the wording of the pre-closure letter to ensure that citizens are made fully aware that the invitation to submit comments includes an invitation to make any relevant challenge to the services' legal assessment.

It goes without saying that the Ombudsman would be ready to comment on a first draft of such a reformulated pre-closure letter."

The Commission assured the Ombudsman that its services take into account all the relevant information and remarks whenever the citizen who submitted an infringement complaint responds to the pre-closure letter. The Commission added that, when it has an opportunity to update the so-called *'pre-closure'* letter, it would consider rendering the text more precise.

The Ombudsman notes that it would have taken the Commission only a short moment to revise the pre-closure letter in line with the Ombudsman's suggestion. It did not do so, and it did not provide reasons for not doing so.

Case 66/2010/(KRK)OV

The present complaint concerned the way the Commission dealt with the complainant's infringement complaint concerning the procedure for registering cars in the Netherlands. When opening his inquiry, the Ombudsman asked the Commission to explain whether it dealt with the infringement complaint in line with the *Commission communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law* ('the Communication')[24].

The Ombudsman identified several failures by the Commission in terms of respecting the provisions of the Communication. He issued a critical remark highlighting the Commission's failure to abide by points 3 (recording of complaints), 4 (acknowledgement of receipt), and 8 (time-limit for investigating complaints) of the Communication.

[24] See footnote 12 above.

In its reply, the Commission regretted that it took a long time to react to the infringement complaint and that it did not inform the complainant that the examination of the case required more time than expected. The Commission explained that this was due to lengthy internal discussions among its services and delayed replies from the Dutch authorities on the Commission's requests for further clarification.

The Commission indicated that, with the introduction of the *Complaints Handling - Accueil des Plaignants* (CHAP) registration system in September 2009, it now has an IT tool which is specifically designed to register and manage complaints and inquiries. It stated that CHAP ensures a proper and timely assignment of complaints to the competent Commission departments as well as feedback to complainants in line with the Communication. According to the Commission, it seems highly unlikely that such a situation could reoccur in the future.

The Commission's follow-up reply in this case is satisfactory.

Case 271/2010/GG

The present case concerns the Commission's handling of a request for access to documents. The Ombudsman closed the case with a critical remark concerning the Commission's failure properly to reply to the complainant's confirmatory application for access and to do so within the relevant deadlines foreseen in Regulation 1049/2001 on public access to documents[25].

The Commission stated that it fully agreed with the remark made by the Ombudsman and expressed its regret for the fact that it failed to reply to the complainant's confirmatory application.

The Commission added, however, that the confirmatory application was devoid of purpose, as the Commission did not refuse access to any documents. The issue between the complainant and the Commission was not a refusal to grant access to documents, but whether the administrative file concerning the complainant's application to sign the relevant Framework Partnership Agreement should contain more documents. The reply that had been sent to the complainant was therefore not a rejection of the latter's request for access to documents. Since there was no refusal to grant access to documents, there were no grounds for a confirmatory application.

Despite the promising way in which it begins its reply, the Commission adopts a position which is ultimately unsatisfactory. In the first section of its follow-up comments, the Commission itself recalls that the Ombudsman arrived at the conclusion that the complainant's confirmatory application was not devoid of purpose. The fact that, shortly afterwards, the Commission reiterates its position that the confirmatory application was devoid of purpose can only mean that, notwithstanding its statement to the contrary, the Commission does not agree with the Ombudsman in so far as the present case is concerned. This is confirmed by the fact that, even though the Ombudsman explained in his

[25] 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.

decision that his critical remark was made because no apology for the maladministration he identified had been offered, the Commission — in its follow-up reply — reiterated the expression of regret that the Ombudsman had already declared insufficient in his decision.

The Commission's reply would also appear to exhibit a disconcerting tendency to try to limit the scope of application of Regulation 1049/2001. The reply is all the more unconvincing in view of the fact that the Commission explicitly informed the complainant of its right to make a confirmatory application for access in accordance with Regulation 1049/2001.

The Ombudsman regrets that the Commission's response indicates that it has failed to draw an appropriate lesson from this case. The Ombudsman will, therefore, try to help the Commission to do so by providing it with the following clarification:

A confirmatory application under Regulation 1049/2001 can be used to contest not only a refusal of access, but also an assertion that the requested documents do not exist. A confirmatory application that puts forward reasonable grounds for believing that, in fact, the documents do exist cannot be described as "devoid of purpose". It must receive a proper answer, which addresses the points made by the applicant.

Case 476/2010/ANA

Case **476/2010/ANA** concerned the Commission's handling of conflict of interest issues in relation to the appointment of an unpaid Special Adviser to a Commissioner. The Ombudsman found a number of instances of maladministration and made corresponding critical remarks, as well as two further remarks. As far as the critical remarks are concerned, the Ombudsman found that (i) in 2007, the Commission failed to obtain a declaration on the absence of a conflict of interest before nominating the Special Adviser; (ii) in 2009, the Commission failed to obtain a Sworn Statement and Declaration of Activities from the Special Adviser before providing a Declaration of Assurance; and (iii) in 2007, 2008, and 2009, the Commission failed adequately to examine the issue of a potential conflict of interest in the appointment of the Special Adviser to Commissioner Kuneva. In terms of the further remarks, the Ombudsman noted that (iv) it would be good administrative practice to ensure that, when a Special Adviser makes a substantial change to his/her Declaration of Activities, a new Declaration of Assurance be submitted by the responsible Commissioner; and (v) the Commission could consider modifying the Declaration of Activities of a prospective Special Adviser to obtain sufficient information about the Special Adviser's outside activities to enable it to examine any potential conflict of interest between the Special Adviser's tasks and his/her outside activities. In addition, the Commission could require the prospective Special Adviser to certify that the Declaration is complete and that, as far as he/she is aware, there is no conflict of interest with his/her prospective functions as a Special Adviser.

As regards the critical remarks, the Commission took note of the Ombudsman's conclusions but stressed that the engagement of the Special Adviser "*did not lead to a situation of (the appearance of) conflict of interest*." The Commission also noted

that, although the inquiry was "*against the Commission*", this was not always made clear in the media coverage. The Commission regretted that doubts may have been cast on the Special Adviser's integrity. It insisted that the Special Adviser acted at all times in accordance with the rules and that there is no indication that he was or might have been influenced by any interest. The Commission enclosed a copy of a letter from the Special Adviser in which he refuted in detail all the allegations made against him.

As regards the first further remark (point (iv) above), the Commission agreed to adapt its practice so that, when a Special Adviser makes a substantial change to his/her Declaration of Activities, the responsible Commissioner will submit a new Declaration of Assurance. As regards the second further remark (point (v) above), the Commission argued that the present Declaration of Activities allows it to obtain sufficient information in order to examine the potential conflicts of interest between the prospective Special Adviser's tasks and his/her other activities. Nevertheless, it undertook to ask the prospective Special Adviser to provide additional information on an *ad hoc* basis. The Commission also accepted the part of the second further remark suggesting that the prospective Special Adviser should certify that the Declaration of Activities is complete. The Commission had thus far understood that, by certifying that the information is true, the prospective Special Adviser also certified its completeness. Nevertheless, the Commission agreed to make this explicit by modifying the Declaration of Activities. As regards the aspect of the second further remark proposing to the Commission to require the prospective Special Adviser to certify that, as far as he/she is aware, there is no conflict of interest, the Commission did not consider it necessary to modify the Declaration of Activities. Each prospective Special Adviser has to sign a Declaration of Honour that there is no conflict of interest. A further certification in the framework of the Declaration of Activities would not have any added value and, instead, would lead to a proliferation of similar declarations.

By way of conclusion, the Commission underlined the importance that it attaches to the avoidance and management of conflicts of interest involving Special Advisers and promised to examine, in the course of 2012, whether, in addition to implementing the Ombudsman's remarks, further measures should be taken.

While the Ombudsman regrets that the Commission did not specifically address the content of the first and second critical remarks in this case, he notes its commitment to avoid conflicts of interest and, in addition to implementing the further remarks he outlined in his decision, to examine whether further measures should be taken in this area. Overall, the Commission's follow-up actions should greatly reduce the risk of similar maladministration occurring in the future.

Case 884/2010/VIK

Case **884/2010/VIK** concerned alleged lack of transparency in the Commission's selection of election observers and an allegedly unprofessional tone in the Commission's correspondence with the complainant. When the complainant, whose application had not been retained, insisted on receiving further information concerning the criteria used to select short-term observers, the Commission official dealing with the matter replied: "*See you in court*". The

Commission apologised to the complainant for the tone of the e-mail and provided a detailed reply to his request for information. The Ombudsman concluded that the Commission had taken steps to settle the matter but made two further remarks with a view to improving the institution's performance in the future.

First, the Ombudsman remarked that in order to provide citizens with good service, Commission staff need to be courteous and service-minded. The Ombudsman considers that compliance with these standards is crucial in building up and maintaining trust between citizens and the European public administration. He stated that he trusted that the Commission is taking the necessary measures in order to sensitise its staff to the above needs.

The Ombudsman also suggested that it would be useful if the Commission were to look into possible ways of monitoring the pre-selection procedure for selecting observers at national level, so as to ensure the fairness and integrity of the selection procedure as a whole.

The Commission welcomed the Ombudsman's remarks. Regarding the first remark, it referred to the Code of Good Administrative Behaviour and emphasised that courtesy and service-mindedness are the basic standards for the Commission's staff. These interpersonal skills are often tested in selection procedures, it said. Moreover, upon taking up their duties after recruitment, the Commission's staff receives information about the obligations in this regard that they are required to respect. Furthermore, the Commission undertakes regular activities, such as organising training programmes, ethics days, and seminars, in order to raise awareness among its staff and to encourage respect for these rules and principles.

Regarding the second remark, the Commission underlined that the pre-selection and ranking of observers is at the sole discretion of the national Focal Points. Nevertheless, in accordance with the Ombudsman's proposal, the Commission is endeavouring to standardise the pre-selection procedures at the national level. During the last bi-annual Focal Point meeting in Brussels, the Commission put forward recommendations to the national Focal Points with a view to strengthening the consistency, integrity, transparency, and fairness of the entire selection procedure.

The Ombudsman welcomes the Commission's helpful follow-up to his further remarks.

Case 920/2010/VIK

The complainant led a consortium which submitted a tender bid to the Commission for the development of a farmer register system in Kosovo. The Commission rejected the bid because it found that one of the members of the consortium (a legal entity) was not "*established in*" the European Union. The complainant disagreed with the Commission's interpretation of this term. It argued in this context that the information provided to tenderers failed to comply with the principle of transparency.

The Ombudsman closed his inquiry with two critical remarks as follows:

"It is good administrative practice in tender procedures for the administration clearly and unambiguously to set out the conditions that applicants must fulfil. In the present case, the Commission used at least three different terms in order to clarify the eligibility condition that tenderers had to fulfil. Neither of these terms was defined in the procurement notice and in the applicable legislation and neither had any precise meaning that normal diligent tenderers would obviously understand in the same way. Moreover, the Ombudsman found the information provided in the other documents related to the procurement procedure in question to be incomplete and inconsistent.

The Commission failed to put forward convincing arguments in support of its view that Company M had failed to comply with the eligibility requirements pertaining to the place of establishment of legal persons and laid down in the relevant procurement documentation."

The Ombudsman also made the following further remark:

"In view of the terminological confusion that the present case revealed and in order to avoid any possible misunderstandings in the future, the Ombudsman considers it useful to invite the Commission to review the documentation it provides in the context of its procurement procedures, so as to eliminate any lack of precision and terminological inconsistency and to ensure that tenderers are clearly and unambiguously informed of the eligibility conditions relating to their establishment/incorporation/registration/nationality. It would also be useful if, in the context of this review, the Commission could ensure that such key terms in the procurement process are clearly defined either in the procurement notice itself or in a document to which it makes clear reference and which is easily accessible."

In reply to the Ombudsman's further remark, the Commission underlined that it took steps to re-draft the Practical guide to contract procedures for EU external actions (PRAG) in November 2010. In addition, in light of the Ombudsman's decision, the Commission pointed out that it would gladly take up the Ombudsman's invitation to review the documentation provided in the framework of its procurement procedures regarding eligibility conditions and in particular the notion of establishment/incorporation/registration/nationality of tenderers.

As regards the first critical remark, the Commission acknowledged and expressed regret that different terms of equivalent meaning had been used as regards the eligibility condition. In order to minimise the risk of confusion in the future, the Commission stated that it would issue instructions to EU Delegations within the remit of the enlargement countries — namely, candidate countries and potential candidates — to pay greater attention to the wording used as regards eligibility conditions during the preparation of tender documents.

As regards the second critical remark, the Commission maintained its view that it had carried out the tender procedure correctly and that the Contracting Authority was entitled to exclude the complainant. As regards the facts of the case, the Commission reiterated arguments it put forward in the course of the Ombudsman's inquiry, which the Ombudsman continues to find unconvincing. The Commission, however, committed itself to making systemic improvements,

which will make the occurrence of the instance of maladministration identified in the second critical remark less likely to occur in the future.

Overall, the Commission's follow-up reply is satisfactory, in that the Commission promises systemic improvements which should reduce the risk of similar maladministration occurring in the future.

Case 1403/2010/(FS)GG

Case **1403/2010/GG** concerned an alleged failure by DG Competition to deal with a request for access to documents relating to a state aid investigation in time and correctly. The Commission replied to the complainant during the course of the Ombudsman's inquiry and apologised for the delay that had occurred. As regards substance, the Commission referred to the judgment of the Court of Justice in *Technische Glaswerke*[26], according to which there was *"a general presumption that disclosure of documents in the administrative file in principle undermines protection of the objectives of investigation activities"*. The Ombudsman noted that the approach adopted by the Commission was in conformity with EU law, as interpreted by the Court. He further considered that the complainant had not shown that there were documents on the Commission's file that were not covered by that presumption and that had not been disclosed, or that there was an overriding public interest in disclosure. He noted, however, that it was unlikely that an applicant would ever be in a position to rebut the above-mentioned presumption unless he knew what documents are contained in the file. The Ombudsman was therefore pleased to note that the Commission had provided the complainant with a list of the documents on its file in the present case. He made a further remark in which he invited the Commission to do likewise in all cases in which it intended to invoke the said presumption.

In its reply, the Commission pointed out that it has no obligation to establish detailed lists of documents contained in such files. The obligation provided for in Article 6(2) of Regulation 1049/2001, according to which the institution must assist the applicant in clarifying his application if this is not sufficiently precise, does not entail such an obligation either, it said.

The Ombudsman is aware that there is no legal obligation to provide applicants with a list of the documents on a given file. However, the Commission's response completely ignores the Ombudsman's considerations, which were clearly based on the idea that, in addition to ensuring that it respects legal obligations, the Commission should aim to be helpful to persons who wish to exercise their fundamental right of access to documents. If the Commission's record-keeping were adequate, little or no extra work would be involved in complying with the Ombudsman's suggestion. The Ombudsman, therefore, finds the Commission's answer disturbing, because it is not only unhelpful to citizens, but also creates doubts as whether the relevant Commission services actually maintain adequate records.

The Commission has failed to engage with the Ombudsman on the fundamental issue raised in his further remark, namely, that it would be in the interests of good administration to provide the list in question.

[26] Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau*, judgment of 29 June 2010, not yet reported.

Case 1461/2010/(PL)MHZ

The Commission signed a contract with a consortium (hereinafter *'the consortium'*) for the provision of consultancy services for an EU reconstruction works project in Honduras. It signed a further contract with another consortium for the execution of the above works. The project was managed by a Unit established by the Commission and the beneficiary country. The consortium's experts occupied top positions within the Unit. The project failed due to bad reconstruction works and the Commission took the view that the complainant (a member of the consortium) was contractually responsible for the supervision of the Unit and thus for the reconstruction works. It refused, therefore, to settle the complainant's final invoice pending the outcome of audits and investigations that would determine in a definitive manner who was responsible for the project's failure. In addition, it terminated its subsequent contract with the consortium, which was concluded in order to remedy the defects in the project. The Commission did so when the consortium refused to sign an addendum to this contract concerning the substitution of experts. The Commission gave a number of contractual reasons for the above termination.

The consortium complained to the Ombudsman, alleging that the Commission wrongly managed the contracts and that its refusal to settle invoices, as well as the termination of the second contract, were not justified.

The Ombudsman found that the Commission had properly explained, in its opinion on this case, why it could claim that the consortium was responsible for the performance of the Unit. The Ombudsman also considered reasonable the explanation provided by the Commission for its view that the expected results of the technical audit, as well as of the financial audit and of the investigation by OLAF, which were both on-going, justified the suspension of the balance payment for the contract. Finally, although the Ombudsman agreed that the termination of the second contract was contractually justified, he took the view that the Commission failed to indicate clearly the correct contractual basis for its decision to terminate it. He made a critical remark in this regard.

The Commission informed the Ombudsman that it agreed in full with his findings. It assured him that its services take each training opportunity to remind the officials in charge of operations and contracts management of the Commission's duty to justify its decisions as underlined by the Code of Good Administrative Behaviour.

The Commission's reply is encouraging.

Case 1561/2010/FOR

Case **1561/2010/FOR** concerned the Commission’s alleged failure properly to investigate whether Spain respected EU environmental rules. A Spanish citizen argued that a large scale building project had damaged the natural habitat of *Picris Willkommii*, a rare plant found only near the mouth of the Guadiana River in Spain. The Ombudsman found the Commission’s justification for its decision to exercise its discretion to close the case to be adequate. Essentially, the Commission explained that the continuation of the infringement procedure would not ensure better protection measures for *Picris Willkommii* than those already taken or planned by the Spanish authorities which had agreed to take

various conservation measures. The Ombudsman made a further remark, however, calling on the Commission to bring all possible national remedies to the attention of complainants in future similar cases.

The Commission replied that it informs all complainants of the right to seek redress at national level in the acknowledgment of receipt of their complaints. The Commission recalls that, in line with its wish to increase the focus on effective instruments at national level, where EU legislation refers to national procedures or channels of dispute resolution, it always indicates these to complainants. However, when closing a case, the Commission does not indicate to complainants all possible national remedies as it lacks this sort of information. Member States are under no obligation to keep the Commission informed of the available means of redress and the specific instances where they apply. Moreover, the situation as regards remedies at national level may differ depending on a range of factors unknown to the Commission. The Commission mentioned, nevertheless, that it maintains an ongoing project on access to justice in environmental matters via the E-justice portal launched on 16 July 2011. This is available, not only to complainants, but to all interested persons.

The Ombudsman welcomes the fact that, in response to his further remark, the Commission is seeking to improve the situation to the best of its ability.

Case 2127/2010/AN

The complainant worked for the Fourth Pillar of the United Nations Interim Administration Mission in Kosovo (UNMIK), whose activities were funded by the EU by means of financing decisions adopted under the relevant EU Regulations. The financing decision in question established that EU funds could also be used to award retention bonuses, that is, bonuses to staff whose posts were discontinued by the Pillar in view of its dismantlement and who were not offered an alternative job.

The Ombudsman's inquiry into this case concerned the Commission's possible failure to comply with its duty to supervise the use of the funds by the Fourth Pillar of UNMIK. In its opinion, the Commission provided sufficient explanations to show that it did supervise the Pillar's activities, and especially its expenditure, and that it maintained regular communication with the Pillar. Moreover, as long as the Commission fulfilled its objectives and respected the principles of EU law, it could validly refrain from establishing more concrete and detailed rules for awarding the bonus in question, thus leaving such bonuses at the Pillar's discretion. Finally, the Commission contacted the Pillar's management regarding the concerns raised by the complainant and made sure that it followed the correct internal procedures and sought appropriate legal advice regarding the complainant's case, while fully respecting the principles of transparency, equal treatment, and non-discrimination.

The Ombudsman issued a further remark, in which he stated that, in order to avoid false impressions concerning the nature and extent of its involvement in situations like the one described by the complainant, the Commission could consider requesting its partners to mention clearly, in their contacts with third parties, that it is not a party to the contracts in question and cannot be held responsible for contractual shortcomings.

In its follow-up reply, the Commission pointed out that it is provided in Section 5.3 of the Financial and Administrative Framework Agreement of 29 April 2003, concluded between the European Community and the United Nations, that "*the UN is fully responsible for the co-ordination and execution of all contracted activities*". This is also confirmed by the Annex to the Commission Decision (2007)2367 of 31 May 2007, concerning the Financing of the Fourth Pillar from 1 June 2007 to 31 January 2008, which provides in its section 4.1 that "[the] *Head of UNMIK will be responsible for implementing the proposed activities of Pillar IV"*.

The Commission acknowledged that, in situations in which the Commission appears *prima facie* to be very much involved, third parties may believe that they are in a direct contractual relationship with the EU and thus under its protection. The Commission therefore envisages mentioning the point made by the Ombudsman in its regular contacts with the United Nations and it will raise the issue with its contractors, when appropriate. The Commission cannot, however, undertake any obligation in terms of the outcome of these actions.

The Ombudsman welcomes the Commission's helpful reply in this case.

Case 2360/2010/(PL)MHZ

The Commission decided not to publish in the Official Journal Decision 774/2010 containing sensitive security information but rather sent the Decision to the Member States for them to implement it. The Decision was adopted under the Commission's implementing powers, laid down in the Regulation on civil aviation security (Regulation 300/2008). As the Decision imposed obligations on private cargo operators and it was possible that the various Member States would not disseminate the content of the Decision in the same way and to the same extent, the complainant complained to the Ombudsman. The complainant argued that the Commission's failure to justify the non-publication of the Decision in the Official Journal went against the Court's judgment in *Heinrich* and could ultimately distort competition.

In its opinion, the Commission justified the non-publication of the Decision by briefly referring to certain legal provisions. It did not take into account the relevance of Regulation 1049/2001 on public access to documents[27], nor did it demonstrate that the legal basis for the non-publication of the Decision could be found in the Regulation on civil aviation security. Since the above legal basis did in fact exist, and as the complainant did not submit observations, the Ombudsman concluded that further inquires were not justified. However, he made a further remark that in future cases in which the Commission decides not to publish its acts issued on the basis of Regulation 300/2008, it should prepare reasoning equivalent to that which it would give in answer to a confirmatory application for public access to documents, justifying its decision to refuse access on the basis of the public security exemption contained in Regulation 1049/2001. This reasoning could either be published, or made available immediately upon request.

[27] 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.

In its follow-up to the further remark, the Commission welcomed the Ombudsman's decision. It put forward the view that it had acted correctly, in the public interest, and in line with established rules on document security. The Commission added that, in accordance with Decision 774/2010, private sector operators with a need to know shall be given access to the necessary information by the Member States and that the disclosure of this information should be made in a non-discriminatory and non-distortive way. In this regard, the Commission reminded the Member States in the Aviation Security Regulatory Committee of their obligation to unrestrictedly disclose the security-sensitive legislation to those operators and entities that have to implement security measures.

The Commission stated that, in future similar cases, when it decides not to publish acts adopted on the basis of Regulation 300/2008, the answer to be provided to the entity requesting publication will follow a reasoning similar to the one developed for requests under Regulation 1049/2001.

The Commission's reply is constructive. It has accepted the Ombudsman's remark and committed itself to justifying, in the future, the non-publication of acts adopted on the basis of Regulation 300/2008 by providing reasoning based on Regulation 1049/2001.

OI/4/2010/ELB

This own-initiative inquiry concerned the way EU institutions, notably, the Parliament, Council, and Commission, deal with requests, submitted under the Staff Regulations, to replace decisions which are incompatible with evolving case-law. The institutions took the view that they had no obligation to review such decisions. They pointed out that if a decision has not been challenged within the legal time-limit, it becomes definitive. They further recalled that the effects of a court ruling are limited to the parties to the case and stated that they apply a court ruling to other parties in exceptional circumstances only. The Ombudsman made a further remark, according to which an institution is not prevented from choosing to review a request made under Article 90(1) of the Staff Regulations aimed at replacing a definitive decision with a new decision applying for the future, which takes due account of evolving case-law. In accordance with principles of good administration, an institution should take all relevant factors into consideration when exercising such extensive powers of discretion.

The Commission replied that Article 90(1) requests are always examined on a case by case basis, taking due account of their specific circumstances, principles of law, and the case-law. It stated that, ordinarily, it applies principles of Union case-law to future cases and therefore agrees that it should draw all reasonable conclusions from rulings of the Court. As regards the Ombudsman's statement that the administration can always examine whether it should replace one administrative decision with another, the Commission confirmed that it carefully examines the admissibility and the substance of each Article 90(1) request.

The Commission further stated that it appreciates the Ombudsman's recognition of its practice as regards applying the possible benefits of *"pending"* court cases to all officials, including those who did not challenge the decisions

in question, thus preventing mass appeals. The Commission also shares the Ombudsman's view that, when exercising its discretion, it should carefully balance the principle of legal certainty, on the one hand, with considerations relating to fundamental rights and the principle of fairness on the other. It states that it is committed to continue to exercise its margin of discretion in compliance with the principles of good administration and taking due account of the fundamental rights of staff members.

Finally, the Commission highlights that the principle of legal certainty will, in general, prevail over an individual's aspirations to obtain a more favourable decision based on a change in the case-law. In particular, as already detailed in its opinion, and as confirmed by the case-law, such a request under Article 90(1) cannot be used to circumvent the statutory deadlines under Article 90(2).

In its reply to the Ombudsman's further remark, Parliament reassured the Ombudsman that its competent services closely follow the case-law and that it will take due account of the Ombudsman's findings when exercising its extensive powers of discretion as defined in the further remark.

No response was received from the Council.

The Ombudsman notes, with regard to the Commission's position, that the principle of legal certainty will, *in general*, prevail over an individual's aspirations to obtain a more favourable decision based on a change in the case-law. This means that the Commission agrees with the principle that it can use its discretion to review cases in light of new case-law. The Commission goes on to state that a request under Article 90(1) cannot be used to circumvent the statutory deadlines under Article 90(2). This statement could be understood to mean that a person can make an Article 90(1) request, and that it would be in the institution's power to respond to that. If, however, it chose to respond negatively, thereby confirming the definitive decision that already exists, or if it failed to respond, the Commission's view is that the person would not have a right to complain under Article 90(2). This position is not inconsistent with the further remark.

The follow-up in this case is satisfactory.

OI/5/2010/JF

The complainant, a non-governmental organisation (NGO) based in Damascus, complained to the Ombudsman about the Delegation of the EU to Syria (the 'Delegation')[28]. According to the complainant, the Delegation unlawfully rejected its applications for a number of Commission-sponsored tenders. The Ombudsman found no evidence that could support the complaint. In light of the applicable rules, specifically concerning financial capacity to meet the financial contribution required in order to implement the project, the Delegation was correct to refuse the complainant's applications.

[28] In light of the fact that the complainant was a legal person established in a country outside the European Union, the Ombudsman could not deal with the complaint. However, the matters underlined by the complainant merited further consideration by the Ombudsman. He therefore decided to investigate those matters by means of an own-initiative inquiry.

Notwithstanding this fact, the Ombudsman was able to conclude that the Delegation had been less strict in the past as regards the complainant's financial capacity. He proceeded to emphasise the difficulties faced by NGOs in third countries as a result of a very strict application of the relevant rules. In closing the case, he addressed a further remark to the Commission, inviting it to reflect on how it might allow such NGOs to provide alternative evidence of their financial capacity. Specifically, he said that the Commission could reflect on how it might allow trustworthy NGO applicants to its calls for proposals, which, at the time of submitting their applications may not have sufficient funds of their own, to provide alternative evidence. Such evidence of funding could include signed commitments from external sponsors and/or bank guarantees, relating to their financial capacity to carry out the Commission-sponsored projects in question.

In its follow-up reply, the Commission stated that it is aware that many co-donors condition their contribution to the EU contribution, particularly when the EU finances the largest part of the costs of an action. This is why applicants are generally not required to submit any proof of co-financing when submitting their applications. They are required to submit such evidence only with the report for the calculation of the final amount of the grant on the basis of real eligible costs and real revenue.

However, when, on the basis of the applicant's latest accounts as required in the relevant call for proposals, the Commission has doubts about that applicant's financial capacity to implement the given project, it may request additional evidence of resources sufficient to maintain its activity during the project and to contribute to its funding. This alternative evidence may take the form of signed commitments from external sponsors, as suggested by the Ombudsman in his further remark. The Commission will then be able to check, "*on a trustworthy basis*", that the necessary financial resources will be available.

The Commission expressed a number of reservations with regard to bank guarantees. It further pointed out that it must ensure that the proposed action will be carried out in its entirety and that the benefits resulting from the corresponding project will be obtained. If the co-financing required is not available, or the beneficiary experiences financial shortages during the implementation of the action, there will not be enough funds to implement all the activities and the results expected will not be achieved. This would constitute a waste of public funds and should therefore be avoided at all costs. The subsequent recovery proceedings that the Commission would have to initiate would further deteriorate the situation of the beneficiary and lead it to bankruptcy. It is for these reasons that the Commission must identify the risks during the evaluation procedure and reject applicants with insufficient financial capacity. Moreover, the rules providing for the Implementation of the Financial Regulation clearly identify financial capacity as one of the criteria to be fulfilled when submitting an application.

Finally, the Commission takes account of the need for applicants not to depend overwhelmingly on EU funds, by carefully comparing the amounts of the grants requested and the applicants' revenues. Trustworthy NGOs without sufficient funds of their own should rather apply for smaller grants, namely, those below

EUR 25 000, where the contracting authority does not request documents in support of their financial capacity other than a declaration of honour.

The Ombudsman welcomes the Commission's acknowledgment that external sponsors may offer commitments as regards applicants' financial capacity. He also finds the Commission's reservations over bank guarantees to be reasonable. Overall, the follow-up reply is satisfactory.

Case 49/2011/AN

Case **49/2011/AN** concerned the Commission's failure to open infringement proceedings against Spain on the basis of a complaint which was based on findings of the Aarhus Compliance Committee. The complainant approached the Committee after his opposition to industrial projects that allegedly harmed the environment had elicited responses by the relevant public authorities which, in its view, amounted to harassment.

The Ombudsman did not find any instance of maladministration in the Commission's handling of the issue of harassment. He also concluded that no further inquiries were justified as regards the Commission's statement of reasons for not opening infringement proceedings. He made a further remark, however, suggesting that the Commission not only inform the complainant in due time of the final outcome of its ongoing investigation concerning environmental matters in Spain, but also of each new step taken in relation to that investigation. By doing so, the Commission would comply with point 7 of its *Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law*[29] and, at the same time, would act in a constructive and citizen-friendly manner. This would set an example of good administration, he said.

The Commission wrote to the complainant, describing all the steps taken in the relevant infringement procedure and the information taken into account in its assessment of the latter. The Commission mentioned that one of the elements taken into account was the Ombudsman's decision on the complainant's case. The Commission further explained that its assessment has not revealed any infringement of EU law by Spain, although the complainant's specific case, which formed the object of the communication to the Aarhus Compliance Committee and of the infringement complaint, was regrettable. The Commission thus informed the complainant of its intention to terminate the procedure and invited it to submit its observations in that regard within one month of receiving the Commission's letter.

The Commission has explained in detail its course of action to the complainant. It also took the Ombudsman's findings into account in its assessment of the infringement case.

[29] See footnote 12 above.

Case 409/2011/RT

In a complaint to the Ombudsman, a former Commission official alleged that the Commission failed properly to reason its decision not to reimburse him removal expenses a second time. The Ombudsman did not find an instance of maladministration. However, he suggested that, if an official serving in a third country terminates his/her service and simultaneously retires, the Commission could remind him/her that the request for the reimbursement of removal expenses to a place which is different to his/her place of origin will preclude a subsequent second reimbursement of removal expenses to the place of origin. The Ombudsman made a further remark in this respect.

In its reply, the Commission stated that the issue now falls under the remit of the European External Action Service (EEAS), which is responsible for informing its staff about the criteria for reimbursement of removal expenses. The Commission promised to inform the EEAS about the Ombudsman's further remark.

The Ombudsman will ask the EEAS for its follow-up in this case.

Case 427/2011/MHZ

Regulation (EC) 2187/2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts, and the Sound (hereinafter *'the Regulation'*) required the Commission to ensure, by 1 January 2008, that a scientific assessment of the effects of using, in particular, gillnets, trammel nets, and entangling nets on cetaceans is conducted and that its findings are presented to the European Parliament and Council. The Commission asked a scientific institute (ICES) to carry out this assessment but the latter was not able to do so due to the lack of relevant reports on incidental catches of cetaceans. These reports should have been submitted to the Commission by the Member States, pursuant to another Regulation (Regulation 812/2004). The Commission therefore reported to Parliament and the Council that it was not possible to conduct the scientific assessment. The complainant, a Polish fisherman, argued that, as a result, the Commission failed to comply with its obligation under the Regulation and turned to the Ombudsman.

Throughout the Ombudsman's inquiry, the Commission failed to justify why it had not used all the means at its disposal to ensure national compliance with Regulation 812/2004 and thus provide the scientific institute with the necessary data for the assessment required by the Regulation. It explained that the format used by the Member States for reporting was not adequate and that, in 2009, the Commission proposed a new format. The Ombudsman wondered why the Commission did not work, well before 1 January 2008, on a standard format for reporting which, reasonably, could have facilitated the timely submission of proper national reports as required by Regulation 812/2004. The Ombudsman considered that the Commission's failure to act on time constituted an instance of maladministration. He issued a critical remark to that effect.

In its follow-up reply, the Commission acknowledged that it did not meet the 1 January 2008 deadline set out in the Regulation. The Commission reiterated that this was because the relevant data, namely, those required by Regulation 812/2004, were sent by the Member States in a format which lacked detailed

information. It also explained that the Member States faced difficulties in implementing Regulation 812/2004. With an eye to identifying these specific difficulties and ways of addressing them, the Commission organised a workshop in 2009. The workshop revealed that the level of data precision required by Regulation 812/2004 is very ambitious and may even be impossible to achieve in some cases of rare by-caught species. The Commission tried to address this problem by launching an open call for tenders on cetacean by-catch data collection in the Baltic, Kattegat, and the Sounds but no applications were received. In 2011, the scientific institute in question confirmed that the Baltic Sea Harbour porpoise remains critically endangered and that further mitigation measures for the Baltic Sea Harbour porpoise are needed. In a Communication issued in September 2011, the Commission indicated that improved mitigation measures could be incorporated under the new technical measures that will be developed as part of the reform of Common Fisheries Policy. This will set the scope, objectives, and targets to be met in relation to cetacean by-catch and the Member States will have the possibility to take specific measures for specific fisheries. The monitoring requirements could be incorporated into the Data Collection Framework, the Commission concluded.

As regards the Ombudsman's finding that nothing prevented the Commission from providing, well before 1 January 2008, a standard format for Member States' reporting which, reasonably, could have facilitated the timely submission of proper national reports as required under Regulation 812/2004, the Commission explained that, together with the relevant scientific institutes, it had finalised a common reporting format in 2008. The participants in the aforementioned workshop encouraged the use of this format in the 2009 national reports. In May 2010, the Committee for Fisheries and Aquaculture agreed that it should be used by the Member States as from that date. The most recent assessment was carried out in 2012. It was found that all relevant Member States are now using the standard reporting format. In addition, the scientific institute in question has reviewed all the data now collected by the Member States and has created a database containing all this information.

The Commission has explained in detail the measures it has taken to tackle the problem identified by the Ombudsman and further explained that, at present, the Member States are able to provide the required data because they dispose of an adequate standard reporting format adopted by the Commission in the meantime. As a result, a scientific assessment of the effects on cetaceans of using, in particular, gillnets, trammel nets, and entangling nets may now be carried out.

Case 489/2011/(GRK)MHZ

Case **489/2011/MHZ** concerned a seven-month delay, which the Commission was not able to justify, in reacting to the complainant's observations in an infringement case. The Ombudsman found, however, that the Commission provided an exemplary statement of reasons, in letters sent directly to the complainant, underpinning its decision to close the case. The Ombudsman made a further remark to the effect that the Commission would comply with principles of good administration if, after complainants submit comments on its announcement that it intends to close the infringement file, it would come to the final decision within a reasonable time. If delays occur, the Commission should explain why and apologise if appropriate.

The Commission first thanked the Ombudsman for having expressed his satisfaction with the quality of the Commission's explanations to the complainant. The Commission admitted that its holding reply, as well as the other letters sent to the complainant after the submission of his comments (or additional information), did not offer explanations or apologies for the Commission's delayed response. Whilst regretting that it omitted to offer explanations and an apology for the delayed response, the Commission stated that, in the case at hand, a proper balance needed to be struck between the accuracy of the analysis of the circumstances of the case and of applicable legal provisions, and the speed of this analysis. According to the Commission, the complainant would be more affected by a discrepancy in the analysis than by a delay in the procedure.

The Commission assured the Ombudsman that it would make every effort in the future so that, where there is a delay at the second stage of dealing with a complaint, the reasons for such a delay and apologies, if appropriate, will be included in the correspondence to the complainant.

The Commission apologised for the delay in the present case and assured the Ombudsman that, in the future, it will include apologies and reasons for the delay, if any, in correspondence with complainants sent after a complainant submits comments on the Commission's intention to close the infringement file. This is most welcome.

3. The Court of Justice of the EU

See case **3018/2009/(TN)(TS)TN** above under "*Star cases*".

4. The European Personnel Selection Office (EPSO)

Case 1251/2009/(CK)ANA

This case concerns the information that EPSO provides to candidates in open competitions. The Ombudsman opened an inquiry into EPSO's alleged failure to provide the complainant with a sufficiently reasoned explanation as regards the results of his written test. In its opinion, EPSO addressed the complainant's arguments and provided a weighted breakdown of the complainant's performance in light of the competition criteria. The Ombudsman made the following further remark:

"*It is good administrative practice for EPSO to ensure that the evaluation sheet used by the Selection Board in the written test stage of an open competition contains (a) a detailed breakdown of the marks awarded for each evaluation criterion and (b) information on the weighting the Selection Board applies to each evaluation criterion.*"

In its follow-up reply, EPSO pointed out that the open competition in question was published in 2007 and was administered during 2008. Following the adoption of EPSO's Development Programme, EPSO made changes in the organisation of open competitions which it already presented to the

Ombudsman. EPSO elaborated on the nature of the new procedure and focused on the manner in which the evaluation takes place in the assessment centre under the new regime. EPSO also highlighted the role of the passport of competences.

As regards the information available to candidates under the new procedure, EPSO noted that candidates receive information which concerns them directly and individually. At the CBT (computer-based test) stage, candidates receive not only a breakdown of their marks but also their chosen responses alongside the correct responses to the questions. As regards the assessment centre, candidates receive their overall marks for each of the general and specific competences which are being assessed and a copy of their passport of competences. Upon request, candidates may receive a copy of their written exams.

EPSO pointed out that, under the previous regime, candidates used to receive more limited information. With regard to the new regime, EPSO pointed out that the passport of competences is a useful tool not only for the candidates but also for the institutions. The latter receive a copy of successful candidates' passport of competences.

The Ombudsman recalls that the inquiry in this case concerned the information available to candidates about their performance in written tests under the previously applicable system governing EU selection procedures. In this regard, the Ombudsman's further remark reflects EPSO's undertaking to provide candidates with a detailed breakdown of the marks and the weighting which the Selection Board applies to each evaluation criterion. EPSO provides a detailed reply on the question of available information to candidates in open competitions under the new regime, including both the CBT and the assessment centre stage. Specifically, as regards information relating to the evaluation of candidates' general competences and specific competences in the assessment centre, EPSO addresses the question of the marks awarded for each competence and the weight of each mark in the candidates' evaluation. While a substantive evaluation of EPSO's response would be premature, EPSO clearly engages with the Ombudsman's rationale leading to the further remark. In view of this, EPSO's reply is satisfactory.

As regards the evaluation of candidates' specific competences at the assessment centre, EPSO's reply did not make it clear whether separate marks are awarded under each evaluation criterion and sub-criterion and what the weighting of such marks in the overall mark for each competence is. This lack of clarity is addressed in EPSO's follow-up to case **14/2010/ANA** below.

Overall, EPSO's follow-up is satisfactory.

Case 2179/2009/(TS)ELB

The complainant participated in an open competition organised by EPSO (EPSO/AD/116/08). She obtained insufficient results in the written tests and was therefore not invited to the oral exam. She requested EPSO to give her access to her test papers and the corresponding evaluation sheets. She also requested the Selection Board to review her performance in the tests. The Selection Board subsequently confirmed her results. In her complaint to the Ombudsman, the

complainant alleged that EPSO's delay in sending her the tests papers and evaluation sheets prevented her from requesting a review of her tests.

EPSO admitted that its replies to the complainant's requests for documents were late. However, it noted that the Selection Board carried out two reviews of the complainant's written tests and confirmed her marks. It concluded that the complainant was not deprived of her right to request a review of her tests.

The Ombudsman noted that test papers and evaluation sheets are not secret and that their disclosure to candidates does not impact on the secrecy of Selection Boards' proceedings. He referred to the case-law of the Union Courts regarding selection board decisions and the disclosure of candidates' marks in competitions. In this regard, the Ombudsman outlined that the disclosure of documents to candidates is the result of the need to reconcile the secrecy of selection board proceedings with the obligation to state reasons. Consequently, when candidates are informed of their test results, EPSO should – following a candidate's request – automatically provide access to the documents they are entitled to obtain. He therefore made a further remark to that effect. The Ombudsman also criticised EPSO for its late reply to the complainant's requests for documents. Finally, he took the view that, in her complaint to the Ombudsman, the complainant submitted no reasoned arguments, based on the documents EPSO sent her, to warrant a new review of her tests. He thus considered that a further inquiry into this aspect of the case was not justified.

In its reply to the Ombudsman's remarks, EPSO stated that, already in its opinion on this case, it admitted that there were problems when replying to the complainant's request for additional information. EPSO acknowledged that it was late in submitting documents to which the complainant was entitled and apologised for this. EPSO asked the complainant to accept its apologies.

EPSO further explained that, in the present case, the complainant received all the documents to which she was entitled: marks to her written tests (a), (b) and (c); her answers and the correct answers to test (a); the evaluation sheets of tests (b) and (c); and her test papers (b) and (c). However, she had to request them. EPSO noted that the complaint dealt with Open Competition EPSO/AD/116/08, which was published and organised in 2008. It drew the Ombudsman's attention to the fact that, since 2010 and according to EPSO's Development Programme, the selection procedure has been modified, as can be seen from the competition notices and the guide to open competitions. According to the new guide to open competitions, candidates automatically receive their overall marks for each competency assessed and their passport of competences. The passport of competences summarises the strengths and weaknesses of the candidate for each area of competence and indicates the corresponding score obtained by the candidate. The data are gathered through the various exercises of the assessment centre. The passport of competences does not provide the score by exercise, however. Candidates also automatically receive their test results for the computer-based tests, as well as their replies to these tests and the correct replies. The wording of the questions and of the answers is not disclosed to candidates. Moreover, candidates have to request a copy of their answers in the written/practical tests.

EPSO's follow-up in this case is satisfactory.

Case 2470/2009/(TS)TN

The complaint concerns EPSO's handling of a request for information. Specifically, the complainant alleged that EPSO failed to reason its refusal to inform him about the number of candidates invited to the oral test in which he was to participate. In a critical remark, the Ombudsman noted that EPSO did not provide, in accordance with Article 18 of the European Code of Good Administrative Behaviour, a sufficiently clear explanation as to why information about the number of candidates admitted to the next stage of a competition could not be given. In a further remark, he noted that, if EPSO receives a request for information in relation to a competition and that information is already available in the relevant notice of competition, and is therefore not published on EPSO's website, it would be appropriate for EPSO to refer the person in question to the notice of competition, rather than simply state that the information sought is not published on its website.

EPSO replied that, with the introduction of the new style competitions, the following information for each competition is published on its website:

Steps for which information is provided

- Number of (validated) applications — raw data by field, grade, language and/or option (depending on the competition).
- Booking period for admission tests — only if the same for all candidates.
- Computer-based admission test period.
- Publication of admission test results in candidates' EPSO accounts.
- Publication of admission results.
- Threshold for admission (CBT points).
- Threshold for admission (talent screener - 1st round) — if applicable.
- Threshold for admission (talent screener - 2nd round) — if applicable.
- Names of Selection Board members.
- Invitation to the case study published in the candidates' EPSO accounts and the date(s) of the case study.
- Assessment centre in Brussels/Luxembourg from dd/mm/yy to dd/mm/yy.
- Invitation to the assessment centre published in candidates' EPSO accounts, including the number of candidates invited.
- Publication of assessment centre and final competition results in candidates' EPSO accounts.
- Number of candidates on the reserve list, by field, grade, language, and/or option.
- Threshold to be included on the reserve list.
- Reserve list.

EPSO is therefore convinced that problems such as those at the origin of the present complaint will not re-occur in the future.

The Ombudsman agrees that the increase in information automatically provided by EPSO as regards open competitions implies that the problem giving rise to the present complaint is less likely to occur in future.

Case 14/2010/ANA

Case **14/2010/ANA** allowed the Ombudsman to examine EPSO's apparently contradictory obligations, on the one hand, to provide reasons for its decisions and, on the other hand, to protect the confidentiality of Selection Board proceedings. The Ombudsman recalled that these obligations find a balanced compromise in EPSO's decision, undertaken following his own-initiative inquiry on transparency in EU recruitment procedures, to provide on the evaluation sheet a breakdown of the marks against the evaluation criteria and sub-criteria used by the Selection Board. The Ombudsman regretted the fact that the Selection Board did not provide such a breakdown in the case at hand. In a critical remark, he said that EPSO failed to take steps to ensure that the Selection Board provided a breakdown of the marks on the final evaluation sheet for the test here concerned.

In its follow-up reply, EPSO pointed out that the Open Competition in question was published in 2008 and concerns specifically the evaluation sheet which the Selection Board established for translation tests. That evaluation sheet provided for a global mark which was awarded to candidates on the basis of evaluation criteria previously established by the Selection Board and comments in relation to the translation errors committed. Given that the Selection Board did not award marks for each of the evaluation criteria it had established, the evaluation sheet did not provide a breakdown of the global mark.

Focusing on open competitions for lawyer-linguists, EPSO's reply also dealt with the information available to candidates under its new regime for open competitions, including both the CBT (computer-based tests) and the assessment centre stage. Through their passport of competences, candidates receive the information relating to the evaluation of both the general and the specific competences in the assessment centre, including the marks awarded for each competence and the weight of each mark in the candidates' evaluation.

The above general statement applies also to the evaluation of the specific competence of translation, EPSO said. In fact, in relation to the specific competence of translation, the passport of competences contains the marks awarded for each criterion and the comments from the Selection Board. In addition, the Selection Board establishes an evaluation sheet for translation tests which indicates the criteria on the basis of which it has marked the test and the marks awarded for each criterion. This helps to clarify whether the candidates' evaluations on the specific competences at the assessment centre contain marks for each evaluation criterion and sub-criterion and the weighting of such marks in the overall mark for each competence (see case **1251/2009/(CK)ANA** above).

The Ombudsman welcomes the fact that EPSO has engaged with the rationale leading to the critical remark in this case. EPSO's reply suggests that the level of information offered under the new regime to candidates in open competitions for lawyer-linguists is in conformity with EPSO's undertaking to the Ombudsman in own-initiative inquiry OI/5/2005/PB.

Case 1220/2010/(VL)BEH

Case **1220/2010/BEH** concerned allegedly incorrect information on an EPSO online application form, according to which applicants could use up to 4 000 characters when answering each of the sub-sections on their reasons for applying. The Ombudsman found that the information given on the German version of the form was indeed incorrect and likely to mislead candidates. At the same time, he concluded that, by providing possibilities for candidates to report on problems encountered and by publishing updated information on its website concerning the maximum number of characters, EPSO took appropriate action to correct the error. As regards the updated information given on EPSO's website, the Ombudsman made the following further remark:

"*In so far as it has not yet done so, EPSO could consider incorporating in the German version of the relevant application forms information on the maximum number of available characters. As far as necessary, the same could be done with the other language versions of the relevant application forms.*"

In its follow-up reply, EPSO stated that candidates wishing to apply for an open competition are required to consult the '*Online Application Manual*' (the '*Manual*') on its website beforehand. EPSO explained that the Manual contains information on the maximum number of available characters in relation to various fields on the application form. Thus, as regards a candidate's professional experience, the Manual specifies that, for the section on the '*Nature of duties*' a maximum of 1 500 characters, including spaces and special characters ('ä', 'ö', and 'ü', for instance), may be used for each experience. The Manual provides for an analogous limitation for the section on a candidate's motivation (a maximum of 2 000 characters for each sub-section) and the Talent Screener (a maximum of 4 000 characters). EPSO considered that the information published on its website fully takes into account the concern expressed by the Ombudsman.

The Ombudsman recalls that, in his further remark, he invited EPSO to consider making information on the maximum number of characters available on the application form. EPSO's reply does not suggest that relevant information has been made available on the application form itself. Instead, EPSO refers to the Manual. The Ombudsman notes that, in the online portal for applicants, the Manual is referred to as '*essential reading*'. What is more, the online portal gives the following instruction to applicants: "*Before starting your online application, you must read the following documents and accept the terms and conditions for the competition.*" The list of documents following that phrase includes the Manual. In view of these circumstances, it is clear that EPSO, by providing relevant information in the Manual, has taken some steps to ensure that applicants are aware of the maximum number of characters they may use. It should be noted, however, that EPSO subsequently specified that the information on the application form itself does not include a reference to the fact that the maximum number of characters includes spaces and special characters.

The Ombudsman notes that, although applicants are required to read the Manual before starting their application, it would be helpful to remind them on the application form itself of the details of the limits on characters and that these limits include spaces. Taking up the Ombudsman's suggestion would have demonstrated a service-minded approach. In view of these circumstances, EPSO's reply must be considered to be only partially satisfactory.

Case 1299/2010/MHZ

The Ombudsman found, in case **1299/2010/MHZ**, that EPSO failed to ensure proper conditions for the complainant to sit the CBTs (computer-based tests) and that it would have been fair for EPSO to have allowed him to sit the tests again. However, EPSO did not react to the complaint quickly enough to remedy the situation when there were still no technical or organisational constraints. Moreover, neither in its opinion on the complaint nor in its reply to the Ombudsman's draft recommendation did EPSO admit its wrongdoing and apologise to the complainant. The Ombudsman criticised EPSO for these instances of maladministration.

EPSO reacted in strenuous terms to the critical remark, including by asking the Ombudsman to review the file. EPSO challenged the facts of the case, as they were established in the Ombudsman's decision. EPSO also contested the part of the Ombudsman's critical remark relating to giving the complainant the possibility to sit his test again. With an eye to the future, however, EPSO pointed out that the procedure for the 2010 competitions was new and that EPSO had already examined the possibilities for improvement. In the case of competitions involving a huge number of candidates, EPSO had asked its contractor, Prometric, to (i) provide for two additional examination centres in Luxembourg and (ii) install a panel in the middle of each additional table designed to accommodate two candidates. On a less positive note, EPSO concluded that, regardless of the number and capacity of test centres provided, there would always be candidates sitting near the door and who, pursuant to the instructions given to candidates, start their tests before the scheduled time while other candidates come in to and go out of the examination room. (These were the issues raised in this case).

Upon receiving this follow-up reply, the Ombudsman wrote to the Director of EPSO. He commented that, while he was disappointed with most of EPSO's comments on the critical remark, he noted that some of those comments can be considered as constructive, specifically the ones outlined in the previous paragraph.

On the other hand, he noted that EPSO now appears to be arguing that it considers it unavoidable, if not normal, for candidates seated near the door to be constantly disturbed by the gradual arrival of other candidates. In its reply to the draft recommendation, EPSO provided the Ombudsman with a more constructive response, namely, that together with Prometric, it would examine the technical and organisational possibilities that would help avoid placing future candidates near the door of a test room and would help ensure that such candidates would start their CBTs earlier than others only if other places are available. The Ombudsman remains persuaded that technical possibilities exist which could help ensure that the distance between candidates' tables and the door of the examination room is sufficient to prevent those candidates entering the room at a later stage from disturbing candidates who have already commenced the test.

While the Ombudsman notes that EPSO's follow-up contains some positive elements, he considers that a significant risk of similar maladministration occurring in the future remains.

Case 1933/2010/BEH

The complainant in case **1933/2010/BEH** alleged that, by failing to reschedule the test date for her assessment centre test, EPSO failed to take into account her specific situation — namely, that she was pregnant — and to comply with the principle of equal treatment. In view of the exceptional nature of the case, the Ombudsman asked EPSO to send its opinion as a matter of urgency. EPSO complied with this request. In its opinion, EPSO expressed its readiness to take a number of measures to accommodate the complainant's special needs. Although it did not appear to be possible to find a solution for the complainant in this particular case, the Ombudsman found no grounds for further inquiries in view of EPSO's constructive attitude in this case. He nevertheless invited EPSO to look beyond the measures proposed in its opinion and to identify possible ways of accommodating the needs of prospective young mothers who are in a situation similar to that of the complainant.

In its follow-up reply, EPSO underlined the importance of the principle of equal treatment and explained that its current practice seeks to accommodate difficult situations faced by candidates. EPSO examines such situations on a case-by-case basis and takes, as far as possible, specific and reasonable measures, which, however, cannot constitute a disproportionate burden on it.

As regards CBTs (computer-based tests), EPSO pointed out that granting candidates the freedom to choose a suitable test date allows them to enjoy a maximum of flexibility. As a consequence, EPSO has received very few requests from pregnant or breast-feeding candidates to take specific measures. EPSO moreover stated that it had accepted 86% of all requests to change the test dates for CBTs or assessment centre tests (due to end of pregnancy, complicated pregnancy, or recent birth) within the testing period set.

EPSO explained that requests for specific measures from pregnant and breast-feeding candidates are more frequent at the assessment centre stage. In 2011, EPSO accepted 100% of all requests to spread the assessment centre tests over two days, to sit written tests in a separate room, or to contribute to the travel expenses of an accompanying person. EPSO also indicated that requests from breast-feeding candidates for long breaks between tests had been accepted.

In relation to the possibility to change the second language, which was raised in this case, candidates are informed at the time of registering for a competition that such changes are not possible. EPSO also pointed out that changing the second language would not be in compliance with the principle of equal treatment, given that accepting such changes would mean that not all candidates had been assessed according to the same standards. In this regard, EPSO also underlined the great complexity of organising exams in the framework of a competition. EPSO submitted that it did not envisage foreseeing the possibility to change the second language, but would continue to examine, on a case-by-case basis, requests from candidates in a difficult situation and seek to ensure that those candidates can take their tests in the best possible conditions.

Already in the course of the Ombudsman's inquiry, EPSO referred to a number of measures it could take to accommodate specific situations faced by candidates. By referring to the possibility of allowing for long breaks between tests, EPSO has expanded on the list of possible measures in its reply.

At the same time, EPSO underlines that changing test dates could only take place within the timeframe set for such tests. Moreover, EPSO insists that changing a candidate's second language is not possible. It follows that the measures proposed by EPSO could not accommodate candidates in a similar situation to that of the complainant in this case who wish to change their test date to a date outside the timeframe foreseen.

Overall, EPSO's reply is satisfactory.

Case 2586/2010/(ML)TN

The complaint concerned an open competition in the field of data protection, in which the complainant participated. The purpose of the competition was to create reserve lists — one for grade AD 6 officials and one for grade AD 9 officials — from which vacant posts with the European Data Protection Supervisor ('the EDPS') could be filled. During the written test, candidates had to choose either a legal or a technology "*channel*". One reserve list, covering both channels, was to be drawn up for grade AD 6 officials — the notice of competition provided that this reserve list was to contain 12 names — and another reserve list, covering both channels, was to be drawn up for grade AD 9 officials. The complainant participated in the technology channel at grade AD 6. After the tests, he was not put on the reserve list of successful candidates, since he was not among the 12 candidates who obtained the highest marks. 11 legal candidates and 1 technology candidate were put on the reserve list.

The complainant alleged, among other things, that EPSO (i) misused resources by organising a two-field competition with a single reserve list; and (ii) failed to provide the complainant with information he requested, that is, the name of the examiner assisting the selection board. With regard to (i), the Ombudsman made a further remark, according to which if EPSO organises a competition with various channels in the future, EPSO could set out how many successful candidates from each channel would be put on the reserve list, with the number of laureates being determined by the needs of the service. With regard to (ii), the Ombudsman made a critical remark to the effect that EPSO erred by refusing to release the name of the external examiner.

In its reply EPSO pointed out that the decision whether to organise a competition and whether it is to fill a vacant post or to create a reserve list is incumbent upon the appointing authority in accordance with Article 29 of the Staff Regulations. The powers conferred under Article 29 of the Staff Regulations have not been transferred to EPSO. EPSO is therefore completely dependent on the requesting institution. If the requesting institution does not indicate its needs in detail, EPSO cannot take a decision in that respect on its own initiative.

The Ombudsman notes that organising open competitions is EPSO’s core business and that it has specialist knowledge and competence in this regard. If EPSO considers that it would be necessary or useful for the requesting institution to provide more detailed information, it would be in line with principles of good administration for EPSO to open a dialogue with the requesting institution regarding the matter.

Regarding the critical remark, EPSO stated that, according to established case-law, the choice of examiners falls within the remit of the wide discretionary power enjoyed by the selection boards in organising their proceedings and is thus covered by the secrecy surrounding this procedure[30].

EPSO went on to explain that Article 6 of Annex II to the Staff Regulations provides that "[t]*he proceedings of the Selection Board shall be secret*". That secrecy was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all external interference and pressures. Consequently, observance of that secrecy runs counter to divulging the attitudes adopted by individual members of selection boards and also to revealing all the factors relating to individual or comparative assessments of candidates. This includes the choice of examiners.

Based on this principle, the names of examiners are not disclosed. According to EPSO, this is for two reasons: first, in order to guarantee the objectivity of the process. Disclosing the names of examiners would jeopardise the objectivity of the process as examiners are frequently redeployed. Controlling their interactions with (possible) candidates is therefore impossible. Second, contrary to the names of the selection board members, the names of examiners are not made public and examiners may have a legitimate trust in the protection of their privacy rights by EPSO. Due to their very nature, disclosure of these personal data would undermine the protection of the privacy rights of the persons concerned.

With regard to Regulation 1049/2001 on public access to documents, EPSO does not see the overriding public interest in disclosing this information. Nor does it see the possible application of any of the derogations foreseen in Regulation 45/2001 on the protection of personal data to transfer information to anyone other than the Community institutions, in accordance with Article 9 of Regulation 45/2001, including the complainant. EPSO concludes that it does not see which binding rule or principle it has failed to respect by refusing to disclose the name of the examiner.

The Ombudsman notes that EPSO's reasoning would imply that everything that a selection board does, such as choosing an examiner, has to be kept secret. According to EU case-law, the secrecy surrounding the proceedings of selection boards was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all external interference and pressure. Observance of this secrecy precludes the disclosure of the views adopted by individual members of selection boards and the revelation of factors relating to the individual or comparative assessment of candidates. In the Ombudsman's view, the collective decision by the selection board as to the choice of examiners cannot be considered to constitute a view adopted by individual members of selection boards or a factor relating to the individual or comparative assessment of candidates.

EPSO also argues that disclosing the names of examiners would jeopardise the objectivity of the process as examiners are frequently redeployed. The Ombudsman notes in this regard that selection board members, whose names EPSO makes public, are also redeployed.

[30] Case T-132/89 *Gallone v Council*, paragraphs 27-28.

EPSO further argues that disclosure of the names of examiners would undermine their legitimate expectations that EPSO will protect their privacy rights. In this regard, the Ombudsman notes that EPSO's argument is circular. If and insofar as examiners have a legitimate expectation that their names will not be disclosed, this expectation arises because EPSO has not informed them in advance that their names could be disclosed under certain conditions. EPSO could easily change this for the future. In any event, it should be noted that the examiner introduced himself to the complainant during the oral test and that the present case arose because the complainant forgot the name and asked EPSO to be reminded of it.

With regard to EPSO's question regarding the binding rule or principle it has failed to respect, the Ombudsman would refer EPSO to the right to good administration, as set out in Article 41 of the Charter of Fundamental Rights of the EU, which is now legally binding on all Union institutions, bodies, offices, and agencies. In addition, Article 22(1) of the European Code of Good Administrative Behaviour sets out that members of the public shall be provided with the information that they request. Article 22(3) sets out that if the requested information cannot be disclosed because it is confidential, reasons shall be given. In the present case, EPSO has not provided any valid reasons why it could not learn from the present case and change its administrative practice for the future in light of the critical remark.

The Ombudsman regrets that EPSO has failed to follow up constructively on his critical and further remarks in this case.

OI/9/2010/RT

The Ombudsman opened an own-initiative inquiry (**OI/9/2010/RT)** into EPSO's new policy regarding the booking of admission tests, its communication with candidates, and the conditions in the various test centres. In reply to a series of questions put by the Ombudsman, EPSO explained that (i) the measure to reduce the booking period for the CBTs (computer based tests) by a considerable amount was proportionate and necessary to achieve the general objective of reducing the length of the whole selection procedure; (ii) it is currently reflecting on whether to reintroduce its former practice of sending e-mail notifications in the 2011 competition for administrators; (iii) every test centre complies with minimum standard conditions; and (iv) it will make public, on a yearly basis, the global results obtained from different surveys to indicate candidates' levels of satisfaction. The Ombudsman welcomed this information and made two further remarks. In the first, he said that he trusted that EPSO would duly inform him as soon as it reinstates its practice of sending candidates e-mail notifications in the framework of open competitions. In the second, he said that EPSO could reflect on the situation of candidates who, although they have been properly informed of the booking period, are not able to access the internet during that short period and thus cannot book their CBTs (for instance, because of an adequately justified illness). These candidates should not be penalised because of such exceptional and objective circumstances.

In its first reply to the Ombudsman's further remarks, EPSO explained, with regard to the e-mail notifications to candidates, that it has improved its communication with candidates. Candidates are now informed by e-mail of the

necessity to book their admission tests. In order to avoid e-mail notifications being intercepted by spam filters, EPSO decided to send these e-mails by category. EPSO also established regular contacts with internet service providers in order to avoid these e-mail notifications being blocked. Finally, EPSO pointed out that it is conducting an internal reflection in order to find ways constantly to improve its communication with candidates.

Concerning the second further remark, EPSO does not, as a matter of principle, allow candidates to book their admission tests outside the period foreseen for booking the tests, given the simplicity of the booking procedure — the booking can be done from any internet connection and is available 24 hours a day. However, in duly justified cases, if a candidate is not able to access the internet during the period foreseen for booking his/her admission tests and thus cannot book his/her CBTs, EPSO will consider the individual circumstances of the case, in order to allow the booking period to be modified for the concerned candidate. EPSO emphasised that such a practice is exceptional. In this respect, EPSO cannot prolong endlessly the duration of a competition and should be able to end it within a reasonable period of time, in order to be able to preserve the legitimate interests of other candidates and its own interest in establishing a reserve list of successful candidates.

Having received this reply, the Ombudsman sent a letter to EPSO concerning another complaint (case 749/2012/RT), which he received in the meantime and in which he opened a clarificatory inquiry. The Ombudsman noted that similar issues to those raised in the two aforementioned further remarks formed the subject matter of this new complaint. He thus asked EPSO whether it could inform him of the follow-up it had given to the commitments outlined above.

EPSO explained that it has resumed its email notifications to candidates. In this respect, candidates are notified by e-mail of a new message in their EPSO account. In order to avoid the eventuality that e-mail notifications will be intercepted by spam filters, EPSO decided to send these e-mails by using either non-automatic mass mailings (e.g., in the case of simultaneous notifications to all candidates in a given competition) or non-automatic individual mailings (e.g., in the case of replies to requests for review). The publication of CBT booking invitations is, however, not sent to candidates' personal e-mail accounts because of their non-simultaneous publication — the booking invitations are published in a staggered manner, within 48 hours of the validation of the application of any given candidate — and the very high number of candidates concerned. However, EPSO pointed out that it is investigating different mechanisms for delivery alerts with a view to finding a technically reliable solution for this particular type of publication. EPSO emphasized that these notifications are merely a complementary service and that candidates are obliged to consult their EPSO accounts at least twice a week (as stated in point 3.1 of the Guide to Open Competitions). EPSO outlined that it could not take responsibility for the successful delivery of notifications to candidates' personal e-mail addresses, given that the successful delivery of these e-mails depends on a number of external factors, which are beyond EPSO's control.

EPSO reiterated that it may allow candidates to book their CBTs after the expiry date of the originally foreseen booking period — albeit only in exceptional cases, notably, in cases of *vis maior*. EPSO does not accept deadline extension requests in cases where the candidate's inability to book the CBT was entirely due to his/her decision, for example, because the candidate chose to travel in a

place with no internet access during the entire booking period, despite being informed of the booking period in advance.

Finally, EPSO clarified that this approach has been followed ever since the introduction of the combined CBT registration-booking-testing system in 2010. In its view, the combined registration-booking-testing system is candidate-friendly, as candidates are able to choose and book their test date themselves, instead of being allocated a date by EPSO.

The Ombudsman welcomes the measures adopted by EPSO to improve the administration of the general competitions it organises.

5. The European Aviation Safety Agency (EASA)

Case 266/2010/VL

The complainant, a resident of California, travelled to Cologne, EASA's seat, for a job interview, via Copenhagen. On her way to Cologne, the complainant also made a stop-over in Sweden for some days. When she asked EASA for the reimbursement of her travel expenses, the Agency reimbursed the cost of her return flight from Copenhagen to Cologne. However, it refused to reimburse the cost of the return flight from Los Angeles to Copenhagen on the grounds that the complainant had not submitted any price comparisons for such a flight as required by EASA's Financial Contribution Rules. EASA, in fact, insisted on prior approval for travel. If that was not sought, only the costs for travelling from the closest point in Europe to Cologne would be reimbursed. The complainant considered that EASA failed to apply its own rules correctly and that it provided her with vague information concerning the reimbursement of her travel expenses.

After having carefully analysed the submissions of both parties, the Ombudsman took the preliminary view that the Agency had not applied its own rules correctly and that the information provided to the complainant was not as precise and as clear as it should have been. The Ombudsman therefore made a proposal for a friendly solution to EASA, suggesting that the Agency reimburse the cost of the return ticket from Los Angeles to Copenhagen. He also suggested that EASA apologise for having wrongly applied its rules and for having provided the complainant with insufficiently precise information.

Whilst EASA agreed to reimburse the cost of the return ticket from Los Angeles to Copenhagen, it took the view that there had been no maladministration. It nevertheless apologised for what it referred to as a misunderstanding on its part. The Ombudsman pointed out that he maintained his view as regards the incorrect application of the relevant rules and the insufficiently precise and clear information. However, considering that the complainant had informed him that she was happy to accept the reimbursement, he took the view that EASA had taken appropriate steps to settle the complaint. He made the following further remark:

"The Ombudsman strongly encourages EASA to review the information it provides to candidates, and possibly the Financial Contribution Rules themselves, with a view to ensuring that this information is as precise and as helpful as possible."

EASA informed the Ombudsman that a revised version of the Financial Contribution rules is currently being finalised for adoption. It explained that this revision would achieve the necessary clarification by ensuring that, when calculating reimbursements, it would only use distance as a criterion and apply it equally worldwide.

The Ombudsman is pleased to note that, following his further remark, EASA has taken steps to reduce the risk of similar problems arising in the future.

6. European Institute of Innovation and Technology (EIT)

Case 2080/2010/ELB

The complaint concerns alleged errors made by the European Institute of Innovation and Technology (EIT) in relation to a call for proposals. The EIT rejected the proposal submitted by the complainant. The complainant appealed this decision before a redress committee, which confirmed the initial decision.

The complainant alleged that the EIT wrongly based its rejection of the proposal on the fact that the proposal involved the participation of public bodies. The complainant argued that the participation of public bodies was a positive aspect of the proposal.

After a thorough examination of the file, the Ombudsman took the view that the EIT considered the complainant's proposal to be a good one and the participation of public bodies to be a positive element. The Ombudsman therefore found no maladministration. However, he noted that the EIT made statements which were poorly worded and which could be misunderstood. In a further remark, he drew the EIT's attention to the need to provide accurate, clear, and understandable information about its reasons for rejecting proposals.

The EIT replied that it takes very seriously the Ombudsman's call to provide accurate, clear, and understandable information about its reasons for rejecting proposals. It will incorporate this requirement in future calls, starting with the next call which will take place in 2014.

The Ombudsman welcomes the constructive follow-up of the EIT in this case.

7. European Joint Undertaking for ITER and the Development of Fusion Energy

See case **439/2011/AN** above under "*Star cases*".

8. Executive Agency for Health and Consumers (EAHC)

See case **413/2010/BEH** above under "*Star cases*".

9. Research Executive Agency

Case 783/2010/DK

The complainant submitted an application in response to a call for expressions of interest organised by the Research Executive Agency. The Agency informed her that her application was unsuccessful. After carrying out an inquiry, the Ombudsman closed the case with a finding of no maladministration. However, he pointed out that it is good administrative practice expressly to inform individuals of the possibilities to challenge a decision excluding them from a selection procedure. These possibilities are the right to complain to the Ombudsman and the right to bring an action for annulment before the EU courts.

The Agency replied that, since 2010, the vacancy notices it publishes contain information on the possibilities to submit a complaint to the Ombudsman or a judicial appeal before the EU courts. The Agency attached to its reply an excerpt of the vacancy notice for the post of Deputy Head of Unit, published in late 2010, concerning the section "*13. Requests for review - Appeals - Complaints to the Ombudsman*". This describes properly the possibilities open to candidates to challenge aspects of the selection procedure.

The Agency has taken the appropriate action to comply with the Ombudsman's further remark.

10. Eurojust

See case **325/2010/OV** above under "*Star cases*".

11. European Defence Agency

See case **1342/2010/MHZ** above under "*Star cases*".

12. EUPOL COPPS

See case **OI/1/2010/(BEH)MMN** above under "*Star cases*".

II. List of cases in which a critical remark was made

Case reference	Link to text (EN)	Link to text (original language)
0056/2007/PB	EN	DE
0803/2007/(VIK)(CK)ANA	EN	-
1146/2007/(BU)JF	EN	DE
2395/2007/VIK	EN	-
3031/2007/(BEH)VL	EN	-
0696/2008/(WP)OV	EN	-
2986/2008/MF	EN	-
2987/2008/MF	EN	-
3135/2008/MF	EN	FR
3328/2008/(ELB)FOR	EN	FR
0715/2009/(VIK)ANA	EN	BG
1294/2009/(TN)DK	EN	-
1348/2009/(CK)RT	EN	-
2179/2009/(TS)ELB	EN	-
2470/2009/(TS)TN	EN	-
2610/2009/(BU)MF	EN	FR
2651/2009/(MAM)ANA	EN	LT
0014/2010/ANA	EN	EL
0062/2010/RT	EN	-
0066/2010/(KRK)OV	EN	-
0271/2010/GG	EN	DE
0325/2010/OV	EN	NL
0413/2010/BEH	EN	DE
0476/2010/ANA	EN	-
0670/2010/(PL)MHZ	EN	ES
0920/2010/VIK	EN	-
1299/2010/MHZ	EN	ES
1301/2010/GG	EN	-
1342/2010/(PL)MHZ	EN	-
1461/2010/(PL)MHZ	EN	ES

Case reference	Link to text (EN)	Link to text (original language)
2073/2010/AN	EN	ES
2586/2010/(ML)TN	EN	-
0427/2011/MHZ	EN	PL
0439/2011/AN	EN	-

III. List of cases in which a further remark was made

Complaint reference	Link to text (EN)	Link to text (original language)
0056/2007/PB	EN	DE
3196/2007/(BEH)VL	EN	-
0696/2008/(WP)OV	EN	-
0856/2008/BEH	EN	DE
1633/2008/DK	EN	-
2273/2008/MF	EN	FR
3399/2008/ELB	EN	FR
0705/2009/DK	EN	-
0715/2009/(VIK)ANA	EN	BG
1251/2009/(CK)ANA	EN	-
2179/2009/(TS)ELB	EN	-
2470/2009/(TS)TN	EN	-
2587/2009/JF	EN	-
2605/2009/MF	EN	-
2651/2009/(MAM)ANA	EN	LT
2711/2009/(GIS)PB	EN	-
3018/2009/(TN)(TS)TN	EN	SV
0062/2010/RT	EN	-
0266/2010/(BEH)VL	EN	-
0413/2010/BEH	EN	DE
0476/2010/ANA	EN	-
0783/2010/(ANA)DK	EN	-
0884/2010/VIK	EN	-
0920/2010/VIK	EN	-
1220/2010/(VL)BEH	EN	DE
1329/2010/MF	EN	FR
1403/2010/(FS)GG	EN	DE
1561/2010/FOR	EN	ES
1933/2010/BEH	EN	DE
2080/2010/(MB)ELB	EN	FR

Complaint reference	Link to text (EN)	Link to text (original language)
2127/2010/AN	EN	FR
2360/2010/(PL)MHZ	EN	-
2586/2010/(ML)TN	EN	-
OI/4/2010/ELB	EN	-
OI/5/2010/JF	EN	-
OI/9/2010/RT	EN	-
0049/2011/AN	EN	ES
0409/2011/RT	EN	FR
0489/2011/(GRK)MHZ	EN	PL

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