European Ombudsman

Follow-up

to critical and further remarks

How the EU institutions responded to the Ombudsman's recommendations in 2010

November 2011

EN

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Foreword

This is the fifth study to examine the EU institutions'[1] follow-up to all the critical and further remarks issued by the European Ombudsman during a particular year. It deals with the remarks made in 2010.

Critical and further remarks contain constructive criticism and suggestions from the Ombudsman, resulting from inquiries conducted on his own initiative or following complaints. A critical remark is premised on a finding of maladministration, whereas a further remark is made without such a finding. The purpose of this study 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. In dealing with critical remarks, the study does not focus on the specific instance of maladministration that led to the remark, but on the lessons that the institution concerned has learnt.

This study contains plenty of examples where, as a result of the follow-up to the Ombudsman's remarks, real improvements have been made, in areas ranging from transparency to recruitment. This is extremely encouraging. In seven cases, the follow-up was exemplary and I have designated these as "*star cases*", by analogy with the "*star cases*" identified in my Annual Reports. These cases confirm to me the value of this study in inviting and stimulating reflection on whether the experience of handling a complaint has provided any information that can be used to raise the quality of administration in the future.

Case **865/2008/OV** also deserves special mention. In her follow-up to this case, a new Commissioner looked at the matter again and acknowledged that an error had indeed occurred. I applaud this approach, which reverses the obstinate refusal by the Commission, throughout the course of the Ombudsman's inquiry, to admit the truth. Errors occur in every administration. What damages relations with citizens is usually not the initial error, but a stubborn refusal to face up to the truth, by acknowledging the error.

Last year, I had reason to draw attention to a defensive approach on the part of the institutions when it came to cases concerning calls for tender. I am happy to report that this year's study contains many examples of highly constructive responses in such cases. In cases **485/2008/PB** and **53/2009/MF**, for example, the Commission informed the Ombudsman of important systemic improvements to its procedures that it had made in response to his remarks, while in case **1658/2008/PB**, the Commission agreed to relaunch the relevant tender procedure. Similarly, in a contractual case, **438/2007/RT**, the Commission reported that it was considering adopting a range of measures to address the deficiencies that the Ombudsman had identified.

On the other hand, there are cases in which the institution continues to refuse the Ombudsman's suggestions for reasons that are not convincing. Case **2502/2007/RT** on public access to documents is a case in point. There are even a few cases in which the institution chose to contest the Ombudsman's finding of maladministration rather than look to the future. In cases **1528/2006/VL, 3307/2006/JMA,** and **953/2009/MHZ**, for example, the Commission failed to engage with the Ombudsman's findings in certain infringement cases. Such

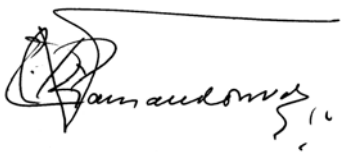
[1] For brevity, this study uses the term "*institution*" to refer to all the EU Institutions, bodies, offices, and agencies.

cases risk undermining the moral authority of the Ombudsman and weakening the trust of citizens in the European Union and its institutions.

In this regard, I regret to have to highlight two European Parliament cases, namely, cases **3289/2008/BEH** and **1953/2008/MF**. The latter involved a member of Parliament's staff with a disabled child. In that case, Parliament refused to take into consideration the principles of good administration advanced by the Ombudsman, remaining insensitive to his arguments in the most difficult of human circumstances. This is particularly disappointing in light of the fact that last year Parliament provided the Ombudsman with an exemplary response to a further remark in another case involving persons with disabilities.

Overall, the institutions gave a satisfactory follow-up to 78% of the critical and further remarks made in 2010 — this is not significantly different from the result they achieved last year (81%). The rate of satisfactory follow-up to critical remarks (68%) was, once again, considerably lower than for further remarks (95%). It was just below the figure for 2009 of 70%. Again the difference is not statistically significant. For further remarks, the corresponding figure in 2009 was 94%. Once again this year, I regret to note the relatively high number of unsatisfactory follow-ups by the Commission to critical remarks (10 out of 33). Most of these unsatisfactory responses related to either infringement cases or cases concerning access to documents. In both instances, the Commission chose, for the most part, merely to go over again points that had already been dealt with during the inquiry. This is clearly not the purpose of the follow-up study. Moreover, as already noted above, the absence of satisfactory responses is damaging both to the moral authority of the Ombudsman but, above all, to the trust which the Union and its institutions should, as a matter of highest priority, seek to inspire in EU citizens. On the other hand, the Commission replied positively to 15 of the 16 further remarks.

I look forward to working with all the EU institutions in the coming years to ensure that lessons continue to be learnt from the results of the Ombudsman's inquiries. I hope that the institutions will continue to engage with me to ensure that the problems encountered by complainants are resolved for the benefit of all. I am convinced that, together, we can help deliver on the promises made in the Treaty of Lisbon to bring about a more open, effective, and citizen-friendly EU administration.



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28 November 2011

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 2010 and identifies seven 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[2]. 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

[2] Article 228 of the Treaty on the Functioning of the European Union 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[3].

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

[3] 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 2010

In 2010, a total of 38 critical remarks were made in 34 decisions and a total of 21 further remarks were made in 21 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 2010	Number of further remarks in 2010
European Parliament	2	2
European Commission	33	16
European Personnel Selection Office (EPSO)		3
European Network and Information Security Agency (ENISA)	1	
European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)	1	
European Aviation Safety Agency (EASA)	1	
Total	**38**	**21**

The institutions concerned were invited to respond to the remarks within a period of six months. Responses were received to all the remarks made in 2010, although with a delay in some cases.

Annex I contains a detailed analysis of each of the cases in which one or more critical remarks and/or further remarks were made. Seven 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.

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 78%. The follow-up to further remarks was satisfactory in 95% of cases, whilst the rate of satisfactory follow-up of critical remarks was 68%. Examples of unsatisfactory responses to critical remarks include those of the European Parliament and the Commission in cases **1953/2008/MF** and **1528/2006/VL** respectively.

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	2	50%
European Commission	49	38	78%
EPSO	3	3	100%
ENISA	1	1	100%
FRONTEX	1	1	100%
EASA	1	1	100%
Total	**59**	**46**	**78%**

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

As explained in the 2009 follow-up study, the Ombudsman's strategy for the 2009-2014 mandate[4] makes clear that the Ombudsman aims to help 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. Once again, some of the follow-up responses to the critical and further remarks made in 2010 are particularly relevant to this aim.

- Among the fundamental rights issues brought to the Ombudsman and examined in the present study are the rights of persons with disabilities. The Commission's helpful follow-up to case **2295/2009/ELB** concerning a visually impaired candidate in a staff selection procedure contrasts with Parliament's intransigence in case **1953/2008/MF**, which involved a member of its staff with a disabled child. In case **53/2009/MF**, which concerned the right to be heard, again the Commission followed up constructively, by introducing changes to give effect to this right in contractual cases. Its disappointing follow-up in case **760/2009/JMA**, on the other hand, led the Ombudsman to state that he will keep the use of contracting-out by the Commission under review to ensure that this practice does not weaken citizens' fundamental right to good administration. Finally, in case **923/2009/FOR**, the Ombudsman welcomed FRONTEX's efforts to address the systemic shortcomings identified in its recruitment procedures, which included breach of a candidate's fundamental right to appeal against a decision adversely affecting him.

- Many cases in the present study concern the fundamental right of public access to documents[5]. In cases **3163/2007/(BEH)KM** and **465/2010/FOR**, the Ombudsman welcomed the Commission's initiative to introduce training to

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

[5] Article 42 of the Charter of Fundamental Rights of the EU and Article 15(3) of the Treaty on the Functioning of the European Union (TFEU).

ensure that its officials are well-informed about their obligations under Regulation 1049/2001 on public access to documents[6]. Similarly, in case **1039/2008/FOR**, he welcomed the steps taken by the Commission aimed at ensuring the full and effective application of Regulation 1049/2001, notably with regard to the issue of a possible overriding public interest in disclosure. As many cases in this area concern delays, the Ombudsman notes the Commission's statement in case **1202/2009/GG** that the system in place is adequately organised to handle requests for access to documents in general within the time-limits established by Regulation 1049/2001. He understands this statement to imply that the Commission regards the said time-limits as realistic and achievable. Case **1438/2008/DK** concerned delays and, more specifically, the Commission's use of Article 6(3) of the Regulation to extend the time limits for handling the application in question. Commitments made by the Commission in case **1302/2009/TS** in terms of how it will apply Article 6(3) of Regulation 1049/2001 in future cases resulted in that case being designated as a star case in this study. In cases **3699/2006/ELB** and **671/2007/PB**, the Commission engaged constructively with the Ombudsman on the important issues of, respectively, access to documents in competition proceedings and public registers in the EU agencies.

On the substance of access to documents requests, the Commission agreed to provide access to the relevant documents in case **676/2008/RT**, although the Ombudsman had to submit a special report to Parliament about the Commission's failure to co-operate with him during the inquiry. In case **2502/2007/RT**, the Commission persisted in its refusal to provide access. Finally, in case **355/2007/FOR**, the Commission informed the Ombudsman that it had received a new request for access to the documents in question. The Ombudsman encourages the Commission, in dealing with this request, to take into account his analysis of its handling of the earlier request.

- More generally on transparency, the Ombudsman welcomed the Commission's commitment in cases **2131/2009/RT** and **2373/2009/RT** to improve communications with the public. Parliament's response in case **1825/2009/IP** is exemplary in this regard, while the European Anti-Fraud Office (OLAF) introduced a new administrative practice to improve its communications with citizens in its follow-up to case **182/2010/MHZ**. Finally, in case **946/2008/ANA**, the Commission explained how it intends to comply with its new obligations under the Treaty of Lisbon to give citizens and representative associations the opportunity to make known and publicly exchange their views, in this case in the area of air transport.

- For citizens who want to participate in, or to scrutinise, the application of EU law, the infringement procedure (through which the Commission fulfils its duties as guardian of the Treaties) is a natural focus of interest. Many cases in this area concern procedure and the Commission's application of its own Communication on relations with the complainant in respect of infringements of Community law ('the Communication')[7]. In its follow-up to cases **219/2009/PB**

[6] 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.
[7] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.

and **294/2009/PB**, the Commission provided useful information to the Ombudsman in terms of how it deals with infringement complaints. One recurrent issue, however, concerns the registration of complaints and the Commission's follow-up in cases **1009/2009/KM, 379/2010/MHZ** and **132/2010/OV** confirms that it tends sometimes to confuse the issue of what is an infringement complaint and what is a *justified* infringement complaint. The Ombudsman expects the Commission's *Complaints Handling - Accueil des Plaignants* (CHAP) registration system to distinguish clearly between these two aspects and to register all complaints as such, even if subsequent analysis shows the complaint not to be justified. The Ombudsman has opened an own-initiative inquiry (**OI/2/011/OV)** into the Commission's handling of infringement complaints and expects this issue to be clarified during that inquiry[8].

7. Conclusions

Once again, the follow-ups given to critical and further remarks in 2010 show that the Ombudsman's efforts to reach out to the institutions and to promote a culture of service to citizens are continuing to bear fruit. In certain cases, the follow-up has been exemplary, clearly showing that those responsible recognise the value of this exercise in improving the service they provide to citizens. In others, the response has been defensive and disappointing, indicating that further work remains to be done, by the Ombudsman and the institutions themselves, to ensure a top class EU administration.

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 aforementioned own-initiative inquiry concerning the Commission's handling of infringement complaints is a case in point. On the other hand, the helpful follow-up provided by FRONTEX in case **923/2009/FOR** meant that the Ombudsman did not need to open an own-initiative inquiry, as he had envisaged in his decision in that case.

The Ombudsman intends to publish in November 2012 the study of the follow-up of critical and further remarks made in 2011.

[8] As the purpose of the own-initiative inquiry is to resolve the outstanding issue for the future, the outcome in the relevant cases is deemed to be positive for the purpose of this study.

Annexes

I. Detailed analysis of cases

A. Star cases

Case 485/2008/(IG)(IP)PB

Case **485/2008/(IG)(IP)PB** was submitted by an Italian researcher who was unhappy with the handling of his appeal against a decision to reject his research proposal. It involved one of the first calls for proposals made by the European Research Council (ERC)[9]. The complainant's main grievance was that the Redress Committee, to which he sent his appeal, failed to deal with some of his key arguments. In particular, he considered that it failed to address his argument that the reviewers applied certain criteria incorrectly or applied criteria that were irrelevant.

The Ombudsman found the complainant's allegation to be justified. He made a critical remark noting, in summary, that the Redress Committee appeared to have adopted an approach that was too narrow and which, essentially, led it to ignore the important issue of a possible inconsistency between the criteria and the concrete evaluation in the complainant's case. In a further remark[10], he stated that he would be grateful to receive information on the instructions or guidelines now provided to independent reviewers and the Redress Committee on how to carry out their respective assessments and reviews of applications.

In its detailed and constructive reply, the Commission said that, since 2007, an ERC Guide for peer reviewers ('ERC Guide'[11]) is provided to independent reviewers, on their appointment, for peer review evaluations. The objective of the ERC Guide is to provide information to peer reviewers on reviewing proposals and, in particular, on allocating marks and comments in individual reviews according to the evaluation criteria. Section 8 of the ERC Guide reminds peer reviewers that the *"evaluation criteria and their interpretation are described in the Work programme"*, and that *"all judgment on proposals must be made against the evaluation criteria, and these criteria alone"*. The ERC Guide is updated every year to take account of any changes or improvements made to the evaluation process, such as those made following the Ombudsman's remarks.

Concerning the Redress Committee procedure, the instructions contained in the ERCEA Redress Procedure provide for the Redress Committee to *"ensure that the provisions of the 'ERC Rules for submission of proposals and related evaluation and award procedures' and of the respective Work Programme have been complied with and*

[9] The ERC consists of an independent Scientific Council and an administrative arm, the ERC Executive Agency (ERCEA). While the ERC was officially launched in 2007, the Commission continued to carry out some of the Agency's tasks for a significant period of time. For the purpose of the Ombudsman's examination of this case, the relevant institution is the Commission.

[10] The Ombudsman's further remark acknowledged the Commission's success in handling a number of research applications that went well beyond what was anticipated for the procedure concerned. He also welcomed the fact that, in the new procedures, applicants were given access to the individual assessments of the independent reviewers. This set an important new standard of transparency for EU calls for proposals, which the Ombudsman applauded.

[11] Available on the ERC web site: http://erc.europa.eu/pdf/Guide_ERC_Peer_Reviewers_2011.pdf

that the evaluation and/or eligibility processes have been carried out in accordance with the methodologies and procedures in force". The Commission also informed the Ombudsman that, in case of doubt, the Redress Committee may ask the *"scientific officers/panel coordinators [...] to submit a short written input on the points raised by the complainant"* or the relevant legal units to provide *"procedural and legal advice"*.

The Commission made the Redress Committee aware of the Ombudsman's comments through an explanatory note. This note recalls that the new ERC Guide for peer reviewers, approved in September 2010, makes clear that panel reviewers have to base their evaluation only on the evaluation criteria established in the ERC Work Programme. The note also specifies that the Redress Committee should be reminded that the application of the wrong criteria constitutes a procedural mistake that might justify re-evaluation of the proposal. In such instances, the Redress Committee should evaluate the impact of the procedural mistake on the panel's final decision. The redress procedure will therefore cover any deviation from the work programme criteria, which will be considered as a procedural mistake. During the briefing of experts, panel reviewers will be asked to pay particular attention to this point.

In conclusion, and following the Ombudsman's remarks in this case, the ERCEA has improved the information provided to peer reviewers in the ERC Guide, as well as to the ERC Redress Committee.

The Commission's response to the Ombudsman's critical and further remarks is exemplary and encouraging. It demonstrates that the Commission took these remarks very seriously and that it re-examined what happened in this specific case. It also gives a detailed insight into very important systemic changes, at different levels, that it has already implemented.

Case 1039/2008/FOR

Case **1039/2008/FOR** concerned the Commission's refusal to grant a request for public access to documents[12] in an anti-dumping investigation. The Ombudsman found the Commission's refusal to be justified but made the following further remark:

"The Commission should always, ex officio, carry out its own full examination as regards whether there is an overriding public interest in disclosure in relation to requests for public access under Regulation 1049/2001. The Ombudsman would be grateful to receive a copy of any internal guidelines or rules that the Commission may decide to update in order to ensure that its services are aware of the obligation to carry out the said examination."

In its follow-up reply, the Commission informed the Ombudsman that its Secretary-General and the Director-General of its Legal Service have circulated a note to all Directors-General regarding the handling of requests for public access under Regulation 1049/2001. A quality check list was attached to that note. One of the criteria on the list is to carry out an examination of the possible

[12] 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.

overriding public interest. The Commission also stated that its Secretary-General intends to issue new internal guidelines in which more emphasis is put on the need to carry out an assessment of overriding public interest.

The Ombudsman welcomes the fact that the Commission is addressing the issue of how to ensure that an effective assessment of overriding public interest is carried out. This has important implications as regards the full and effective application of Regulation 1049/2001.

Case 1658/2008/(STM)PB

Case **1658/2008/(STM)PB** was about a Commission tender, which the complainant lost. The winning bid was submitted by a company that already held a contract for work which was essentially preparatory to the work for which the tender in question was issued. The tender in question contained a rule that the bidders could not propose the involvement of experts who, in summary, would have duties that overlapped with the duties that they would have under the contract in question. The complainant considered that this rule had not been respected in the case of the winning bidder. It pointed out that there was a phasing-in period for the contract in question, and that the winning bidder had only won the contract because, in its case, the Commission had simply done away with this phasing-in period. If the complainant had known about the possibility of proposing this option, it could have included a similar suggestion in its own tender.

The Ombudsman found in favour of the complainant and made a proposal for a friendly solution, according to which the Commission could agree to organise a new and open tender at the end of the initial contract duration foreseen, and allow other tenderers, including the complainant, to submit a tender for the second 36-month period.

After the Commission rejected the Ombudsman's friendly solution proposal, the Ombudsman closed the case with a critical remark, stating that the Commission had wrongly allowed the winning bidder to disregard Clause 4.1 of the Instructions to Tenderers.

The Commission sent a short but highly constructive reply. While it upheld its opinion that the tender procedure was carried out correctly, it decided to launch a new tender procedure, rather than to extend the existing service contract for another three years as originally envisaged. A forecast notice was published on 25 November 2010. To ensure that there is no gap in operations, and to provide for sufficient time for the tendering evaluation and contracting process, the Commission expressed its intention to extend the current service contract for a limited period of time only. This will also allow the company awarded the new contract time to prepare to take over operations, it concluded.

The Ombudsman welcomes the fact that, even though it believes that the original tender procedure was carried out correctly, the Commission now intends to implement his friendly solution proposal to launch a new tender procedure.

Note: In December 2011, following the finalisation of this follow-up study, the complainant informed the Ombudsman that the Commission relaunched the tender procedure, and that his company won the contract.

Case 923/2009/(BB)(TN)(BB)FOR

The complainant in case **923/2009/(BB)(TN)(BB)FOR** contested the recruitment procedures used by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

In his decision, the Ombudsman identified a range of shortcomings in FRONTEX's recruitment procedures. In particular, he noted that the effectiveness of the right to appeal a decision within three months is significantly hampered if candidates are not informed of the decision concerning their candidatures. Indeed, candidates who do not guess that a decision may already have been taken in relation to their candidatures, may not ask for a copy of the decision relating to them until the three month deadline has already elapsed. Further, even if candidates were to obtain a copy of the decision at some time during the three month period, they would have lost at least some of the three months available to them to lodge an appeal. The Ombudsman thus considered that a letter containing the result obtained by the candidate and the precise instructions for lodging an appeal is indispensible to make effective a candidate's right to appeal.

The Ombudsman underlined that he characterised the instance of maladministration identified in this case as serious and systemic. In this respect, he stated that he would analyse the merits of opening an own-initiative inquiry into the recruitment procedures of FRONTEX in the event that he did not receive a satisfactory response to his critical remark, which read as follows:

"By failing to inform the complainant as regards the status of his applications, FRONTEX did not respect principles of good administration. This failure was particularly serious as it made more difficult the exercise of the complainant's fundamental right to appeal a decision adversely affecting him."

In a detailed and helpful reply, FRONTEX informed the Ombudsman of the measures undertaken in response to his decision:

- From the beginning of 2010, FRONTEX started to inform candidates about the possibility of contacting its Human Resources Sector in order to get information about the status of recruitment procedures. This information is available in the relevant part of the FRONTEX website as well as in each vacancy notice.
- FRONTEX announced that it would, from January 2011, acknowledge, by e-mail, the fact of receiving applications for vacant posts. In the same e-mail, candidates will be informed that, in case they do not receive, within three months, an invitation for an interview, this will mean that they have been disqualified from the further steps of the recruitment procedure.
- Information about the appeals procedure has been included in each vacancy notice since January 2009.
- Successful candidates selected for interview receive relevant information in due time. Candidates not invited for interview receive, on request, additional information by telephone, e-mail, or letter. Such a practice is similar to that applied in other EU Agencies and is mainly due to limited administrative staff and the large number of job applications. This policy is announced in each vacancy notice.

In light of the above measures, FRONTEX considers that its recruitment procedures and its communications with candidates are in accordance with the European Code of Good Administrative Behaviour. General information on the status of recruitment and selection procedures has been provided on the FRONTEX website[13] since July 2009. The status of ongoing recruitment procedures is described according to the different stages of the procedure. This information should allow candidates to track their applications throughout the procedure.

Finally, in the second half of 2011, FRONTEX plans to introduce the e-recruitment tool. This will facilitate communication with applicants even more. The tool will introduce automated processes related to the exchange of information between FRONTEX and applicants, informing them about the status of their applications. After each stage of the recruitment process, applicants will receive, in due time, relevant messages with information about the results of that particular stage.

The Ombudsman welcomes the detailed and constructive follow-up provided by FRONTEX in this case.

Case 1302/2009/TS

The complainant in case **1302/2009/TS** alleged that the Commission unnecessarily delayed replying to the initial applications for access to documents and information concerning EU-India, EU-ASEAN, and EU-Korea trade negotiations and, in so doing, infringed Regulation 1049/2001 on public access to documents[14].

In his decision, the Ombudsman noted that Regulation 1049/2001 establishes a two-step procedure for processing applications. If the institution does not reply to an initial application within 15 working days, the applicant is entitled to make a confirmatory application. If the confirmatory application is refused, or if no reply is received within 15 working days, the applicant has the right to bring the issue before the General Court, or to submit a complaint to the European Ombudsman. In the present case, the complainant did not make a confirmatory application, but chose to await the Commission's decision on the initial applications. In the course of handling the initial applications, the Commission informed the complainant on several occasions that, due to their complexity, these could not be handled within the time limits foreseen in Regulation 1049/2001. Since the complainant chose not to make a confirmatory application, even though it was entitled to do so, the Ombudsman concluded that the complainant was, at the time of the ongoing inquiry, satisfied by the Commission's explanations. The Ombudsman therefore considered that no further inquiries were necessary.

The Ombudsman noted, however, that the Commission did not give the complainant an indication of how long it would take to deal with the initial applications. The Ombudsman considered that it would be appropriate for the

[13] www.frontex.europa.eu
[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.

Commission to provide such an indication in future cases, in order to allow an applicant to make an informed decision regarding the merits of immediately making a confirmatory application. He made a further remark in this regard.

In its reply, the Commission welcomed the Ombudsman's decision and, in particular, his recognition of the complexity and broad scope of the request for access in this case. It took note of the further remark, according to which it should inform the complainant of the time needed to deal with initial applications. It confirmed that DG Trade, the Directorate-General in question, has now taken steps better to inform applicants. In line with Article 6(3), which provides that *"(i)n the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution*", it will set out timelines for fair solutions and will keep applicants regularly informed, at least on a monthly basis. It agrees to be as realistic as possible when dealing with complex and voluminous cases. The Commission added that DG Trade had brought the Ombudsman's finding to the attention of senior and middle management in the Commission.

The Ombudsman welcomes the constructive steps taken by the Commission in this case, including its decision to draw his finding to the attention of management.

Case 1825/2009/IP

The complainant in case **1825/2009/IP** was an Italian citizen who wrote to Parliament's Correspondence with Citizens Unit. He received an automatically generated acknowledgment of receipt informing him that his message would be dealt with as soon as possible. When the complainant did not receive the information he had requested, he turned to the Ombudsman. Parliament provided the complainant with the information he was looking for during the course of the Ombudsman's inquiry. The Ombudsman thus concluded that Parliament had settled the case to the complainant's satisfaction. He made the following further remark, however:

"Principles of good administration require that institutions provide citizens with clear and unambiguous information. In the Ombudsman's view, any person who receives an acknowledgment of receipt similar to the one received by the complainant can reasonably expect to receive a reply from the institution. An institution making such a clear commitment to answer should indeed provide an answer to the citizen concerned."

Parliament informed the Ombudsman of the measures it had adopted in response to his remark. They can be summarised as follows:

- The acknowledgement of receipt generated by the system and automatically sent in the past has been modified to provide clear and unambiguous information to citizens. Citizens are now informed about situations in which, in accordance with Article 14(3) of the European Code of Good Administrative Behaviour, they may not receive a reply.
- Parliament's responsible services have been equipped since February 2011 with new software specifically designed to deal effectively with citizens'

requests. The new software allows better detection, monitoring, and follow-up of repetitive requests.

- Guidelines have been drafted and training organised in order to reinforce the staff's competencies in delivering information to citizens when dealing with repetitive inquiries. In case of unclear questions, supplementary information and clarifications are systematically requested from citizens.
- In case of abusively repetitive correspondence, the citizen concerned will receive an *"end of correspondence"* letter including a summary of the answers already provided on the same topic, as well as the reason why the institution has decided to discontinue correspondence with the citizen in question.

The Ombudsman welcomes Parliament's adoption of measures to improve its handling of correspondence from citizens.

Case 182/2010/(AR)MHZ

In case **182/2010/(AR)MHZ**, a Polish farmer complained to the European Anti-Fraud Office (OLAF) that the Polish Agency which manages EU subventions granted directly to farmers in Poland in the framework of the Common Agricultural Policy committed fraud. OLAF contacted the Polish authorities to ask for explanations, but failed to inform the complainant of its actions. When it finally did so, OLAF's letters were drafted in Polish in such a way that the information was distorted. The Ombudsman criticised OLAF in this particular respect, stating that:

"Principles of good administration require that, regardless of which official EU language is used, correspondence addressed to citizens should be drafted carefully, clearly, and in an understandable way. OLAF failed to do so in its letters of 3 July and 27 October 2009, which it addressed to the complainant in Polish."

OLAF replied that, in good faith and in order to speed up the process, the translation of the letters in question into Polish was done in-house by an OLAF staff member who is a native speaker. Following the Ombudsman's critical remark, OLAF decided to send all the correspondence addressed to citizens to the Directorate General for Translation either for an official translation or for a linguistic check of its in-house translation, unless the language chosen for the correspondence by the citizen concerned is one of the working languages of the European Institutions or the mother tongue of the author of the document.

The Ombudsman welcomes the fact that, following his critical remark, OLAF has introduced a new administrative practice.

B. Other cases by institution

1. The European Parliament

Case 1953/2008/MF

Case **1953/2008/MF** was lodged by a European Parliament official. As a result of his child's disability, the complainant received the EU double dependent child allowance foreseen by the Staff Regulations, as well as an allowance at the national level. Parliament considered the two allowances to be of the same nature and deducted the amount of the national allowance from the EU double allowance. A few months later, the Court of Justice of the EU held that the two allowances were not of the same nature[15]. On the basis of this judgment, the complainant requested Parliament to pay him the double dependent child allowance retroactively. Parliament refused on the grounds that the judgment only applied to the parties in the legal proceedings.

The Ombudsman considered that, even though Parliament was not legally obliged to implement the judgment in relation to officials in similar circumstances but who were not parties to the case, it was not legally prevented from doing so. To do so would not only be perfectly legal, but also in conformity with principles of good administration. He found an instance of maladministration in Parliament's refusal to compensate the complainant for the illegal deduction of the EU double dependent child allowance. Parliament's refusal was aggravated by the fact that the complainant specifically asked it to wait for the Court's judgment before making the deduction, but Parliament failed to do so. The Ombudsman made a draft recommendation accordingly, which Parliament rejected.

In response to the Ombudsman's critical remark, Parliament repeated the arguments it already put forward during the course of his inquiry to show that, from an administrative and legal point of view, the complainant had no valid claim to receive the double dependent child allowance without deductions for a period before the Court's judgment was handed down. The Court itself pointed to the importance of compliance with the time-limits for bringing an action and the consequences of failure to comply with these time-limits. The complainant did not make use of the judicial appeals procedure open to him to challenge the contested decision. As a result, Parliament considered that that decision had become definitive with all its effects.

The Ombudsman regrets that Parliament's follow-up in this case continues to focus on the undisputed fact that the complainant has no enforceable legal right to receive the payment. Parliament has failed to engage with the Ombudsman's point, which is that there is no legal obstacle to Parliament's making the payment and that it would be in accordance with principles of good administration for it to do so.

[15] Case T-33/04 *Weißenfels v European Parliament* [2006] ECR-SC I-A-2-1, II-A-2-1.

Case 3289/2008/BEH

In case **3289/2008/BEH** an official challenged Parliament's decision on merit points by means of a complaint pursuant to Article 90(2) of the Staff Regulations. He then complained to the Ombudsman, who made the following critical remark:

"*Principles of good administration require that situations should be avoided where the impression is given that a person or authority called upon to decide on a matter might be perceived as being partial. However, this risk clearly exists when the person or authority dealing with an Article 90(2) complaint against a decision was closely involved in the adoption of that very same decision. An official to whom any such decision is addressed could have legitimate reason to doubt whether his or her Article 90(2) complaint was handled properly.*

In the present case, the Secretary-General made a decision on the Article 90(2) complaint which the complainant submitted against the decision to award him only two merit points, even though his prior decision not to make a third merit point from his reserve available for the complainant largely determined the said decision. The Secretary-General should, therefore, have left the decision to the President of Parliament. The fact that the Secretary-General made a decision on the complainant's Article 90(2) complaint constituted an instance of maladministration."

Parliament maintained its position in its reply and, in support, referred to Case 101/79 *Vecchioli v Commission*[16]. Commenting on Advocate-General Légér's opinion in Case C-185/95 P *Baustahlgewebe*[17], as well as the ECHR's case-law on impartiality, both of which were referred to in the Ombudsman's decision, Parliament essentially submitted that these cases concerned legal requirements applicable to courts but not to administrative complaints procedures. Parliament also stated that any final decision made in the administrative complaints procedure remains subject to the judicial review of the Civil Service Tribunal. It finally submitted that before signing the decision Parliament's Legal Service had been consulted.

The Ombudsman notes that, in its response, Parliament did not comment on the aim of its internal rules regarding the competence to make a decision on an Article 90(2) complaint. Instead, it relied on the judgment in *Vecchioli*. It is doubtful whether that judgment could possibly be relied on in order to call into question the Ombudsman's findings, given that, as submitted by Parliament itself, this case was about whether the participation of an individual Member of the Commission in the Commission's collective decision-making in relation to an Article 90(2) complaint was lawful. In the case at hand, it is clear that a Secretary-General who decides on an Article 90(2) complaint does not take part in collective decision-making. The Ombudsman's decision addressed a situation in which the person who dealt with an Article 90(2) complaint against a decision was closely involved in the adoption of that very decision. In such a situation, it would appear difficult to see which purpose bringing an Article 90(2) complaint could serve. It is furthermore unclear how the consultation of

[16] In that case, the Court had to consider the plea that the Commission Member responsible for personnel and administration matters should not take part in the collective decision-making concerning an Article 90(2) complaint. The Court rejected that plea and stated that the complaint procedure provided for by the Staff Regulations is not a means of appeal but is intended to compel the authority having control over the official to reconsider its decision.
[17] Case C-185/95 P *Baustahlgewebe v Commission* [1998] ECR p. I-8417.

Parliament's Legal Service could have addressed the concerns raised in the Ombudsman's decision.

The Ombudsman regrets that Parliament's reply in this case is defensive and fails to take the opportunity to improve the quality of its administration in the future. Parliament's unwillingness to engage with the Ombudsman on this issue renders this failure all the more regrettable.

Case 885/2009/MF

In case **885/2009/MF**, the Ombudsman issued a further remark in which he encouraged Parliament to explore all possibilities to help the complainant in his dealings with the French authorities so that the period of time he worked for the institution could be taken into account in the calculation of his pension rights. The complainant, who was employed by Parliament as an auxiliary agent during sessions in Strasbourg from 1977 to 1981, alleged that Parliament failed to give legal grounds for not paying contributions on his behalf to the French national pension scheme. He claimed that Parliament should assist him in his efforts to secure the co-operation of the French authorities in order to pay the pension contributions corresponding to the time he worked for Parliament.

In its reply, Parliament informed the Ombudsman that, as stated in its opinion, it already invited the complainant to contact the Private Office of the Secretary General in order to clarify his case. However, the complainant had not yet made use of this opportunity. Parliament nevertheless stated that should the complainant be willing to discuss his situation, the competent service would be at his disposal.

The Ombudsman welcomes Parliament's positive reply to the further remark in this case.

2. The European Commission

Case 2904/2005/(TN)FOR

Case **2904/2005/(TN)FOR** resulted from an earlier case brought before the Ombudsman concerning the European Commission's refusal to let the complainant retake an oral exam in an internal competition. While the Ombudsman concluded that this did not violate any binding rule or principle, he stated that, as a matter of good administrative behaviour, the Commission should include a clause in future invitations to oral examinations informing candidates of the possibility, in exceptional circumstances, to change an examination date.

The complainant subsequently submitted a request for compensation to the Commission and turned to the Ombudsman concerning the Commission's handling of this request. While the Ombudsman did not find that there was a basis for the Commission to incur non-contractual liability, he considered that the maladministration identified in the first case gave rise to a certain moral damage. Consequently, he found that the Commission should have considered

paying the complainant *ex gratia* compensation. The Commission refused. The Ombudsman closed case with a critical remark, concluding that the Commission failed properly to handle the complainant's request for compensation. The Ombudsman also voiced his regret that the Commission refused to deal with his arguments and to enter into, and engage in, a genuine dialogue with him concerning his assessment of the case.

In its follow-up to the critical remark, the Commission recalled its position that *"an ex gratia payment is recommended only when there is a conflict between a moral obligation and a legal impossibility"*. This was not the case in the matter at hand, it said. It underlined that it had improved the information for candidates that they may, under certain conditions, postpone the tests of a competition, when prevented by medical reasons from taking them in the first place. It also reiterated that its *"constant policy"* is to engage in a constructive dialogue with the Ombudsman.

The Ombudsman regrets that the Commission failed to take the opportunity of the Ombudsman's inquiry to achieve closure in this case.

Case 1528/2006/(GG)(WP)VL

Case **1528/2006/(GG)(WP)VL** concerned the Commission's handling of an infringement complaint regarding the regeneration of waste oils. The Ombudsman made the following critical remark:

"*The Commission decided to reject the complaint lodged in 2002, in which the complainant alleged that Germany failed to comply with Article 3(1) of Directive 75/439*[18]*. This was in spite of the fact that Germany maintained a tax exemption for the use of waste oils as fuel that the Court of Justice declared to be contrary to the spirit of Article 3(1) of Directive 75/439 and to the aim this provision was supposed to achieve. In his draft recommendation, the Ombudsman considered that, in light of the judgment in Case C-102/97, the Commission failed to provide a satisfactory explanation to demonstrate the correctness of its view that Germany had properly implemented Directive 75/439.*

In its detailed opinion, in order to justify its position, the Commission referred to its discretionary powers in this field and argued, for the first time, that Directive 75/439 and the priority for regeneration it establishes would be repealed by Directive 2008/98, which has to be implemented by Member States by December 2010. The Ombudsman takes the view, however, that the discretionary powers that the Commission enjoys in this field cannot be so construed as to entitle it to abstain from carrying out its role as the Guardian of the Treaties by not enforcing a specific legal obligation long before the latter's validity had come to an end and the obligation itself had been repealed. The Ombudsman further takes the view that complainants have the right to be informed of the reasons that lead the Commission to reject a complaint and to close an infringement procedure. Those reasons must not only be correct but they must also be clear and unequivocal. The Ombudsman recalls that the reason put forward by the Commission for rejecting the complaint was that Germany had properly implemented Directive 75/439. The Ombudsman therefore considers that the Commission cannot now rely on the change in legislation that has meanwhile occurred in order to justify its decision to

[18] Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, OJ 1975 L 194, p. 23.

reject the complainant's infringement complaint, given that it did not invoke this reason when that decision was adopted."

In its reply, the Commission maintained its view that Germany had properly implemented the Directive and suggested that the reference to the repeal of Directive 75/439 was meant to be understood as contextual information. The latter did not affect its conclusion that the German implementation was, in itself, satisfactory. It insisted that it had given the complainant comprehensive and clear reasons for its closure of the infringement complaint and had handled the complaint in line with its code of good administrative behaviour and all applicable procedural rules.

From a general point of view, based on Article 258 TFEU and the established case law of the Court of Justice, the Commission recalled that it has very broad discretion as to whether or not to use its enforcement powers. It needs to be able to assess whether the launching of an infringement procedure is proportionate to the objective of re-establishing compliance with EU law. With respect to other Member States, as referred to by the complainant in this case, the Commission failed to see how commencing an infringement proceeding for a theoretical violation of a legal obligation, which was about to disappear, was a proportionate use of its scarce resources.

The Ombudsman is pleased to note that the Commission has clarified that it did not rely on the future change in the law to justify its position with regard to the infringement complaint. The Ombudsman regrets, however, that the Commission has not provided a convincing explanation of its view that the German implementation of Directive 75/439 was correct.

Case 3307/2006/(PB)JMA

Case **3307/2006/(PB)JMA** concerned the Commission's handling of an infringement complaint relating to the Austrian ban on wild animals in circuses. The Commission stated that, in closing the infringement proceedings, it had made use of its discretionary powers. It further argued that animal welfare questions should not be decided at EU level but should rather be left to the Member States. The Ombudsman understood that the Commission's decision to close the case, regardless of the possible existence of an infringement of EU law, was a decision taken on political grounds and accepted that the Commission can choose to exercise its discretion by deciding to drop an investigation before it has been completed and before it has taken a decision about whether a Member State is in breach of EU law. In view of these considerations, the Ombudsman did not deem it justified to inquire further into the complainant's claim that the Commission should re-examine the infringement complaint. However, he considered it necessary to close the inquiry with a critical remark as regards the reasoning which the Commission put forward as grounds for closing the case. The critical remark read as follows:

"The statement used by the Commission in order to justify its political stance in the present case, that is, that 'animal welfare questions are better left to Member States' appears to be tantamount to acknowledging that, in all matters concerning animal welfare, the Commission is ready to abdicate from its role as guardian of the Treaties. Such a statement does not comply with the duty to provide correct, clear and understandable reasons to justify the exercise of the Commission's discretionary powers

to close an inquiry on an infringement complaint. This was an instance of maladministration."

The Commission replied that it did not share the Ombudsman's view that there was an instance of maladministration in the reasoning of its position. It considered that it had informed the complainant in a clear and unequivocal way about the reasons why the institution had closed the case. The Commission pointed out that the conclusion drawn by its services in this case did not concern animal welfare questions in general, but the protection of wild animals in circuses. It was decided that this very particular issue should rather exceptionally be left to the Member States. It considered the Ombudsman's allegation that it had abdicated from its role in an entire area not to be founded.

The Ombudsman regrets that the Commission maintains its opinion that the explanation it provided when exercising its discretion to close the infringement case in question was sufficient.

Case 3699/2006/ELB

Case **3699/2006/ELB** concerned the Commission's refusal to grant a request for public access to documents referred to in an EU competition law decision taken by the Commission. The complainants wanted to use the documents in an action for damages brought before a national court against the company which the Commission had found to be in breach of EU competition law. The Ombudsman asked the Commission to balance public interest in disclosure against protecting the purpose of an investigation and protecting commercial interests, which were the reasons given by the Commission for its refusal to grant access. In this context, he asked the Commission to consider whether it would be in the public interest for documents to be disclosed if, as a result, the deterrent effect of EU competition law would be increased by making it easier to bring actions for damages before national courts. The Commission carried out the balancing exercise but disagreed, on principle, that disclosing the documents in the present case was in the public interest.

The Ombudsman found no maladministration. However, in a further remark he pointed out that the Commission could promote the public interest in private enforcement by indicating, when replying to a request for access under Regulation 1049/2001 to documents in the Commission's competition files, (i) that, under Article 15 of Regulation 1/2003[19], national courts are empowered to request documents from the Commission for the purposes of applying Articles 101 and 102 TFEU and (ii) whether the documents in question might be relevant for damages actions before national courts.

The Commission responded that it would comply with the Ombudsman's further remark on a case by case basis if it is correct and useful to refer the applicant to the procedure under Article 15 of Regulation 1/2003. It would be reluctant systematically to refer applicants for access to competition files to that procedure, as the application of this provision requires that a case is already pending before a national court. Furthermore, it is not the only or the preferred option for damage claimants as they may, under procedural rules of national

[19] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4 January 2003, p. 1.

courts, have a possibility to order the other party to submit the documents. More generally, the Commission stated that, when it intends to reject a request for access to documents under Regulation 1049/2001, but considers that there may be an alternative way of satisfying the applicant's request, it informs the applicant accordingly. This practice is not limited to competition cases.

With regard to the second part of the further remark, the Commission stated that it does not consider that it can give an indication as regards the relevance of the documents it holds for an action for damages. The Commission's investigation into competition cases is primarily aimed at establishing whether there has been anticompetitive behaviour. It does not necessarily contain a detailed analysis of the damage caused by such behaviour. Therefore, the documents held by the Commission are not always the best source to calculate the damages and to support concrete claims for compensation. In many cases, this can only be derived from documents of the undertakings that infringed competition rules which are not in the Commission's possession. Furthermore, the relevance of documents for specific actions for damages depends largely on the rules for gathering evidence and the requirements for establishing the facts that apply under national law. Finally, as a public enforcer, the Commission must remain neutral in civil actions and should not be perceived as favouring one of the parties in such actions.

The Commission nevertheless specified that it was currently reflecting on a policy as regards actions for damages in case of infringements of Articles 101 and 102 TFEU.

The Ombudsman welcomes the Commission's constructive engagement with him on the issues raised in this case.

Case 355/2007/(TN)FOR

In case **355/2007/(TN)FOR**, the Ombudsman criticised the Commission for failing to fulfil its obligations under Article 4(5) of Regulation 1049/2001 on public access to documents[20]. He found that the Commission had not verified, through a genuine dialogue with the Spanish authorities, that adequate reasons existed for applying to the documents in question the relevant exception, namely, Article 4(2), second indent concerning court proceedings and legal advice. The documents were sought by a federation of environmental organisations and concerned the Commission's decision to consider that an industrial port project in Granadilla, Tenerife, complied with EU environmental rules. Spain asked the Commission not to release documents it held that originated from Spanish authorities.

In its follow-up reply, the Commission pointed out that it had now received a new request for access to the same documents from another applicant. It has thus recommenced its dialogue with the Spanish authorities in order to determine whether the relevant exception still applies. It stated that if it decides

[20] 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. Article 4(5) of the Regulation provides that *"[a] Member State may request the institution not to disclose a document originating from that Member State without its prior agreement"*.

to disclose the documents, it will inform the Ombudsman and also provide copies to the complainant in this case.

The Ombudsman continues to consider that, for the reasons given in his decision, the original refusal to give access to the documents in question was not justified. He encourages the Commission to take into account the Ombudsman's analysis in dealing with the new request.

Case 438/2007/(TN)RT

In case **438/2007/(TN)RT**, the complainant alleged that the Commission had acted unlawfully and in a discriminatory way in a contractual case. The Ombudsman criticised the Commission for failing to put forward sufficiently convincing reasons why the contract at issue in this case was not a public contract within the meaning of the Financial Regulation. It also failed to justify its decision to select the new supplier without conducting an appropriate call for tender.

The Commission sent the Ombudsman a very detailed reply, in which it referred to the complexity of the case, provided further explanations regarding the set of facts it contested, and insisted that it had not acted unlawfully[21]. At the same time, it informed the Ombudsman of the following measures it had in mind to address the issues identified in this case:

- Contractual documents related to the acquisition of cost-free products (such as software licenses for certain Open Source Software (OSS) products) should always be clearly labeled, so as not to leave any possible doubt as to what the acquisition actually covers.
- The Commission is considering the possibility of documenting certain files involving the choice and acquisition of software platforms with associated services following the formalities prescribed in the Financial Regulation, even in cases where the acquisition can take place through an already existing framework contract which is itself the result of an open call for tenders. In such cases, the authorizing officer could, for example, appoint an evaluation committee, require from it an evaluation report, and adopt an award decision under Articles 146 and 147 of the Implementing Rules of the Financial Regulation.

The Commission concluded that its services in charge of this file would further assess these proposals and issue appropriate guidelines.

[21] The Commission also expressed concerns as regards the fairness of the Ombudsman's procedure because it did not have the possibility to submit its views on the complainant's observations (or the inspection report and the reply to the Ombudsman's further inquiries). The Ombudsman notes that, in the present case, he conducted one round of further inquiries, which gave the Commission the opportunity to see and react to the complainant's observations on the Commission's opinion. However, he did not consider it necessary to conduct a second round of further inquiries on the basis of the complainant's observations on the Commission's reply to the further inquiries. The Ombudsman's decision in the present case and his finding of maladministration did not rely on the second set of the complainant's observations. Furthermore, the Ombudsman explicitly decided not to take up the new allegation and claim submitted in these observations.

The Ombudsman applauds the Commission's constructive follow-up, which envisages measures designed to improve the transparency of the process of selection of Open Source Software.

Case 671/2007/PB

Case **671/2007/PB** concerned an application for access, under Regulation 1049/2001 on public access to documents[22], to certain tender-related documents from the European Agency for Reconstruction (EAR). The Ombudsman noted that the unsatisfactory outcome in this case, namely, the Commission's inability to identify or find the documents concerned after the Agency was closed down, appeared, at least in part, to be due to inadequate record keeping. In his further remark, he reminded the Commission of the declaration that Parliament, Council, and itself had issued in 2001, according to which "*agencies and similar bodies*" should have rules on access to their documents which conform to those of Regulation 1049/2001. Article 11 of the Regulation foresees the creation of a public register of documents. It was not clear to what extent Parliament, Council, and the Commission had kept an eye on the extent to which that aspect of the Regulation had been implemented by the agencies. The Ombudsman therefore asked the Commission to provide him with any information that it may have regarding the existence of public registers in "*agencies and similar bodies created by the legislator*".

In its reply, the Commission stated that it shares the Ombudsman's concerns on record-keeping and traceability of documents. In the present case, the difficulty involved in identifying relevant documents was primarily due to inadequate document management. Even in the absence of public registers, proper record-keeping would have enabled the EAR and, subsequently, the Commission to identify the relevant documents. Moreover, adequate document management is a prerequisite for setting up public registers, it said.

As regards the implementation of Article 11 by agencies, the Commission noted that all agencies, both regulatory and executive, have posted key documents on their websites. In a number of cases, they also provide search screens enabling users to search for other documents. Some agencies operate publicly accessible databases that can be accessed through links posted on their web pages.

The Commission finally recalled that the purpose of Article 11 is to enable members of the public to identify documents that could be of interest to them. The Commission considers that all agencies comply with their obligations under this provision by informing the public on their activities and making members of the public aware of the information and documents they hold. Furthermore, by making key documents directly accessible on their websites, agencies also comply with Article 12 of the Regulation.

The Ombudsman welcomes the Commission's constructive engagement with him in this case.

[22] 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.

Case 2115/2007/FOR

Complaint **2115/2007/FOR** was lodged by a UK and Irish organisation representing farmers, which alleged that the Commission refrained from banning beef imports into the EU from Brazil, despite evidence obtained in March 2007 that such imports posed risks, due, in particular, to foot and mouth disease, which affects certain animals such as cattle. During the course of the inquiry, the complainant made an additional allegation, namely, that the Commission, having received the report of a November 2007 mission to Brazil by its Food and Veterinary Office, failed to act reasonably and proportionately in order to deal with the threat to animal and public health posed by beef imports from Brazil.

The Ombudsman found no maladministration regarding the Commission's decision to conduct further checks rather than to impose a ban. As regards the additional allegation, the Ombudsman again did not consider that there was a manifest error by the Commission when it imposed specific conditions, rather than a full ban. These conditions essentially required the Brazilian authorities to implement a system of approved cattle holdings which would create a "*closed system*" for exports to the EU. The Ombudsman criticised the Commission, however, for failing to justify adequately why, between 1 February 2008 and 15 March 2008, it permitted imports of consignments of beef from Brazil into the EU despite the fact that all the holdings from which such beef emanated had not been audited and inspected in accordance with the requirements which the Commission deemed necessary in order to eliminate risks to animal health. He also made a further remark that the Commission should continue to conduct regular missions to third countries for the purposes of conducting systematic checks.

In its reply, the Commission reiterated arguments it put forward in the course of the Ombudsman's inquiry, according to which it was acting in line with commitments taken at international level for good trading practices. Once again, the Ombudsman does not find this explanation, in itself, very convincing.

The Commission added a further argument, however, namely, that blocking those consignments of beef which were produced before the entry into force of the new requirements and were travelling towards the EU would have been a disproportionate measure and would have created very complex legal problems, as traders could claim that the beef in question was certified in accordance with existing EU requirements when they were dispatched from Brazil, and that any rejection would therefore be illegal. The Ombudsman finds that this consideration is not without merit. It could not be excluded that importers would be able to contest the application of the Regulation to them or to demand damages. As such, it is reasonable to consider that the Commission has now justified adequately why it took the transitional measures.

As regards the Ombudsman's further remark, the Commission stated that, between January 2007 and October 2010, a total of 32 inspectors carried out nine veterinary inspection missions in Brazil on the production of beef destined for the EU and covering the animal and public health controls in place. The Commission reassured the Ombudsman that a high level of vigilance in relation to imports from third countries of animal products, including beef, remains in place so as to ensure an equivalent level of protection to that which is provided for within the EU.

The Ombudsman welcomes the additional information provided by the Commission in response to his critical and further remarks in this case.

Case 2502/2007/RT[23]

In case **2502/2007/RT**, the Ombudsman criticised the Commission for failing to grant full access to documents relating to carbon dioxide emissions from cars. This followed a complaint from a non-governmental organisation. In refusing the request for access, the Commission argued that disclosure of the documents would undermine its decision-making process relating to the adoption of a Proposal for a Regulation setting emission performance standards for new passenger cars.

In its follow-up reply, the Commission recalled that the documents were briefings for Vice-President Verheugen drafted in preparation for meetings with external interlocutors. They contained facts, but also recommendations for the position to be taken by the Commissioner and so-called defensive points, enabling him to respond to possible criticism from his counterparts. By definition, briefings are documents for internal use; they are drafted for the sole purpose of providing a Commissioner with all the elements he or she may need for defending a position vis-à-vis his or her counterparts. The Commission emphasized that it had reconsidered its decision not to grant access to the documents, taking into account the fact that the Regulation in question has been adopted in the meantime. It pointed out that it had granted full access to seven briefings and a very wide partial access to five remaining ones with only very limited deletions. Some paragraphs were deleted as they reflected internal discussions and contained detailed information on diverging views by two Directorates-General. A further paragraph was deleted as it was of a purely speculative nature. The Commission concluded that, in its view, it had granted the widest possible access to the briefings requested by the complainant.

The Ombudsman regrets that the Commission failed to grant full access to the documents in question in this case.

Case 2834/2007/BEH

In case **2834/2007/BEH**, the Ombudsman identified instances of maladministration relating to an audit which the Commission carried out following a recommendation by the European Court of Auditors (ECA). He made the following critical remark:

"*Principles of good administration require the Union institutions to take action within a reasonable period of time if, following the emergence of new evidence, they take the view that such action is needed. In the present case, the Commission failed to follow-up on the ECA's recommendation within a reasonable period of time. This constitutes maladministration.*

[23] See also Case 676/2008/RT below.

The Commission should have taken adequate measures to ensure that the complainant received a copy of the preliminary audit report in the German language. At the very least, it should have provided the complainant with a German translation. This failure to do so constitutes maladministration by the Commission.

The Commission failed sufficiently to explain why an audit of four days was proportionate in the present case. This constitutes another instance of maladministration.

The Commission's failure to give reasons for its decision to launch an audit constitutes a further instance of maladministration."

The Commission submitted that the audit here at issue exhibited a number of exceptional features and was not representative of its regular ex-post control policy. Regular policy foresaw that auditees are notified of audits in due course and informed of the reasons, modalities, and the scope of the audit visit. Specific linguistic requirements which may arise "*in very exceptional circumstances*" are dealt with on an ad hoc basis with a view to finding a mutually satisfactory solution.

In relation to the present case, the Commission informed the Ombudsman that the original English language version of the final audit report was sent to the beneficiary on 4 December 2009; a translation into German was sent on 18 March 2010. In order to respect the complainant's rights of defence, the latter was invited to comment on the audit findings within 40 days after receipt of the audit report in German. Given that the complainant did not present any new elements or documents, the Commission informed the complainant on 24 June 2010 of its decision to recover the unduly paid funds, as established by the audit report.

The Commission finally pointed out that it had taken good note of the Ombudsman's findings in relation to this particular case and confirmed that its standard procedures comply with the requirements of good administrative behaviour.

The Ombudsman welcomes the Commission's assurance that its standard procedures are consistent with his findings in this case.

Case 3163/2007/(BEH)KM

In case **3163/2007/(BEH)KM**, a German journalist raised a number of procedural issues with regard to the Commission's application of Regulation 1049/2001 on public access to documents[24]. The Ombudsman closed the case with two critical remarks. He found that the Commission failed to indicate a valid reason for extending the time-limit for dealing with the complainant's confirmatory application. He also found that the Commission should have forwarded the complainant's initial request for access to its Secretariat-General, or at least informed the complainant where he should submit his application.

[24] 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 reply to the Ombudsman's first critical remark, the Commission acknowledged that it would have saved time and effort if it had either rejected the complainant's application on the ground that the requested document did not exist, or asked the complainant whether he wanted access to the draft or final version of the relevant document. It added that it acted as it did because it wanted to give the complainant the widest possible access to its documents. With regard to the second remark, the Commission explained that the first person to whom the complainant sent his request for access interpreted it as a request for information and replied swiftly. However, the Commission acknowledged that the request should have been identified as a request for access to documents at an earlier stage and forwarded to the Secretariat-General. It apologised for the inadequate handling of the request. It added that it should not be necessary for an applicant clearly to label his request as a request under Regulation 1049/2001 — Commission staff should recognise such requests and deal with them accordingly.

The Commission informed the Ombudsman that Regulation 1049/2001 was now included in its training for newly recruited officials and that the Secretariat-General was running monthly training courses on the Regulation, as well as specific awareness-raising sessions.

The Ombudsman applauds the actions taken by the Commission, most notably concerning its training initiatives which should improve matters for the future.

Case 676/2008/RT[25]

In case **676/2008/RT**, the Ombudsman criticised the Commission for failing properly to justify why it refused access in their entirety to three letters sent by Porsche AG to former Vice-President Verheugen. A non-governmental organisation had asked the Commission for access to information and documents relating to meetings held between the Commission and representatives of car manufacturers, during which the Commission's approach to carbon dioxide emissions from cars was discussed. The Commission gave only partial access to the requested documents. It refused to grant access to the three letters, arguing that their disclosure would undermine the protection of Porsche AG's commercial interests.

In his decision closing the case, the Ombudsman considered that the Commission did not provide convincing additional explanations regarding the individual facts of the case to justify its decision to provide only partial access to the documents concerned. He made a critical remark.

In its reply, the Commission informed the Ombudsman that it had received a new application for full access to the three letters from Porsche AG, made by another applicant. The Commission reconsidered its decision to grant partial access and, having consulted Porsche AG, it decided to disclose the three letters in their entirety. Since the Commission had released the three letters to the second applicant, it sent full copies of these letters to the complainant as well.

[25] See also Case 2502/2007/RT above.

The Commission also pointed out that the letters are now in the public domain and accessible to any other member of the public requesting access to them.

The Ombudsman is pleased to note that the letters at issue in this case have now been disclosed in their entirety.

Case 865/2008/OV

Case **865/2008/OV** concerned a 10% reduction in 2007 in the number of fishing days, allocated to a specific category of vessels fishing cod in the West of Scotland. The complainant, representing fishermen in that area, alleged that the reduction was the result of an error by the Commission in a so-called 'non-paper', which formed the basis of discussions surrounding this issue in the Council. According to the complainant, the Commission mistakenly interchanged the relevant columns concerning the West of Scotland and the North Sea in a table setting out the proposed reductions. Upon a close examination of the non-paper, the Ombudsman found that an administrative error had indeed occurred. He closed the case with a critical remark after the Commission rejected his draft recommendation, inviting it to acknowledge the error and, as far as was still possible, to take rectifying measures.

The Commission's reply was sent by the new Commissioner for Maritime Affairs and Fisheries, Ms Damanaki, shortly after having taken up her new duties. She expressed her regrets for the error made, but pointed out that she understood that it had ceased to exist after the adoption of the Commission's formal legislative proposal, which no longer contained the error[26].

The Commissioner pointed out that the autumn session is an extremely busy time for Directorate General Maritime Affairs and Fisheries and that tight deadlines apply for the submission of proposals to the Council working party on fishing opportunities for the next year. She stated that the fact that errors occurred, although regrettable, was maybe understandable given the working conditions, where officials repeatedly work under time pressure during evenings and weekends.

The Commissioner, however, stated that she had asked her services to do their utmost to avoid similar errors in the future, irrespective of whether they are preparing non-papers or official Commission proposals.

The Ombudsman welcomes this helpful reply after the consistently negative submissions the Commission sent to him in this case. The Commissioner has explicitly recognised that there was an error and has expressed regrets for this. She has also tried to identify the reason for the error and stated that everything will be done to avoid similar errors in the future.

[26] The Ombudsman notes that the error in question was, in fact, repeated in the Commission's formal proposal. It was another similar error in the non-paper that was subsequently corrected in the Commission's formal proposal, namely, the inversion in non-paper No 3 between categories 4.a.iii/8.1.a and 4.a.iv/8.1.a as regards fishing in the Kattegat.

Case 946/2008/(BEH)(VL)ANA

Case **946/2008/(BEH)(VL)ANA** was lodged by a British author in aviation law who contacted the Commission, arguing that the draft Convention of the International Civil Aviation Organisation (ICAO) establishing the no-fault liability of aircraft operators is incompatible with Member States' obligations under Directive 2004/80/EC relating to compensation to crime victims[27]. The complainant also argued that it would be unjust for innocent parties to be held liable for crimes committed by others. While the Ombudsman found no maladministration regarding the complainant's specific allegations, he made a further remark in which he drew the Commission's attention to the enhanced scope of the institutions' duty, as foreseen in the Treaty of Lisbon, to: *"... by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action"*. In this regard, he requested information as to how the Commission intends to provide those opportunities for consultation and dialogue in the field of EU air transport.

In its reply, the Commission acknowledged its new responsibilities under Article 11(1) TEU. In carrying out its obligations thereunder, the Commission:

- Consulted stakeholders with an interest in aviation insurance and liability issues within "*an ad hoc insurance group*". The Commission dedicated two meetings in 2008 to this end, in the run-up to the 2009 Montreal Diplomatic Conference which led to the agreement on the modernisation of the 1952 Rome Convention.
- Held bilateral meetings "*with various stakeholders and authorities to consult more in depth on various more specific issues*".
- Carried out consultations with stakeholder organisations present in Montreal.
- Confirmed that any decision on the implementation of the Convention will be preceded by a further consultation of affected parties.

The Ombudsman notes that the Convention on the modernisation of the 1952 Rome Convention was signed in Montreal in May 2009. In this regard, the consultation which the Commission carried out, and to which it refers in the first three points above, took place before the entry into force of the Treaty of Lisbon. In this regard, the information provided, while not immediately relevant to the further remark, should be treated as an illustration of the minimum of consultation opportunities which the Commission intends to afford to representative associations in the future. The Commission's final point contains a specific undertaking to consult affected parties before taking a decision on the implementation of the Convention. This does not provide the level of specificity and detail which the Ombudsman would ideally expect to receive. He understands the "*affected parties*", referred to by the Commission, essentially to refer to the "*interested stakeholders*" also used by the Commission, which suggests a broader potential group than the seemingly more narrow "*affected parties*".

The Ombudsman welcomes the positive signals given by the Commission in this case.

[27] Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ 2004 L 261, p. 15.

Case 1339/2008/MF

In case **1339/2008/MF**, the Ombudsman found that the Commission did not comply with the requirement to act consistently when failing to ensure that all its services involved in the recruitment of seconded national experts (SNEs) were formally informed of instructions providing that SNEs should no longer be recruited from the private sector. This followed a complaint lodged by an individual working in the private sector in Greece, who had applied for a vacancy to work as an SNE within the Commission. In January 2008, the Commission informed him that he had been accepted for an SNE post, but needed to wait two months for a final decision. However, at the end of March 2008, the Commission informed him that his secondment had finally not been authorised. This was due to the aforementioned internal decision that SNEs should no longer be recruited from the private sector. In its opinion on the case, the Commission explained that the formal communication of the internal decision to its services only occurred in June 2008. Between January and June 2008, the services only knew about this decision "*informally*" and interviewed candidates from the private sector who, in fact, stood no chance of being seconded.

In its follow-up to the Ombudsman's critical remark, the Commission admitted that it should have formally communicated the new policy to all Commission services before June 2008 and that it should not have relied exclusively on an informal communication vehicle. It could only apologise for this. The reasons for the delay, which have already been communicated to the Ombudsman, related to the need to define the new border between *"public"* and *"private"* employers.

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

Case 1438/2008/DK

In case **1438/2008/DK** concerning Regulation 1049/2001 on public access to documents[28], the Ombudsman made the following critical remark:

"*(...) the Ombudsman finds that the Commission failed to respect the provisions of the Regulation regarding the timeliness of handling requests for access to documents in the following three respects: (i) It further extended the already extended deadline to deal with the complainant's confirmatory application by relying on Article 6(3) of the Regulation, but without putting forward any valid or adequate explanations; (ii) it purported to apply the possibility of extending the deadline in accordance with Article 8(2) of the Regulation, but did so without providing any valid and adequate explanations; and (iii) it grossly delayed its reply to the complainant by taking five months to reach a decision on the latter's application.*"

In its follow-up reply, the Commission acknowledged that there were significant delays in the handling of the complainant's application. These were mainly due to the volume of the requested documents and to the fact that they related to a sensitive issue on which interinstitutional debates were on-going.

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

The Commission acknowledged that these circumstances should have been explained to the complainant. As regards Article 6(3) of the Regulation, which provides that *"(i)n the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution*", the Commission put forward a number of reasons as to why it does not share the Ombudsman's view that this Article can only apply to initial applications. The Commission concluded its reply by stating that, although it took more than five months to deal with the complainant's application, it "*took the risk of exceeding the time limits with a view to provide him with the best possible outcome*".

The Ombudsman regrets that the Commission's follow-up to the critical remark in this case does not indicate that it has tried to learn lessons as to how unjustified delays can be avoided in the future.

OI/2/2008/(WP)VIK

Own-initiative inquiry **OI/2/2008/(WP)VIK** concerned recruitment competitions for temporary agent posts in the European Research Council Executive Agency (ERCEA) and the Research Executive Agency (REA). In 2008, the Commission launched calls for expressions of interest concerning the relevant posts that were limited to nationals of EU Member States. It subsequently decided to open these calls to nationals of FP7 partner countries, that is to say, partner states under the EU's Seventh Framework Programme for Research and Development. A number of weeks later, the Commission again changed its mind and limited the said recruitment procedures to nationals of EU Member States. To justify its decision, the Commission invoked administrative and time constraints. Allowing candidates from FP7 partner countries to participate would delay the process, it said.

The Ombudsman criticised the Commission's actions. Good administrative practice requires that, before taking a decision, an institution must properly examine the negative consequences to which such a decision could lead. In the present case, after initially limiting the calls to EU nationals, the Commission admitted applicants from FP7 partner countries without properly examining the consequences. Its subsequent decision again to exclude candidates from FP7 partner countries, without providing clear and convincing evidence or arguments to show that this decision had to be taken for imperative reasons, constituted maladministration.

In its reply, the Commission submitted that it would take the Ombudsman's observation into account in future selection procedures for temporary agent posts. Since the present case concerned the selection procedure for temporary agent posts in ERCEA and REA, the Commission pointed out that it would coordinate with both agencies in order to raise awareness of this issue.

The Ombudsman welcomes the fact that the Commission has committed itself to ensure that the comments he made in his decision will be taken into account in future selection procedures.

Case 2905/2008/GG

Case **2905/2008/GG** concerned measures taken against the complainant in response to acts that, in the Commission's view, constituted harassment against a former colleague of the complainant. In particular, the Director of the Institute for Reference Materials and Measurements (IRMM) in Geel (Belgium), which is part of the Commission's Joint Research Centre (JRC), decided that the complainant should no longer be allowed onto the premises of the IRMM.

The Ombudsman closed the case with the following critical remarks:

"(1) Principles of good administration require that cases of alleged harassment are properly examined, taking due account of the need to respect the presumption of innocence, and that the decisions that are taken are justified and proportionate. In the present case, the Commission failed to comply with these requirements when adopting its 2008 decision banning the complainant from access to the premises of the Institute for Reference Materials and Measurements ("IRMM") in Geel (Belgium). This is an instance of maladministration.

(2) It is good administrative practice to give the person affected by a decision the right to present observations before adopting this decision. In the present case, the complainant was not heard before the entry ban was imposed. This constitutes a further instance of maladministration.

(3) Principles of good administrative practice require that information that is liable to affect the reputation of a person is only forwarded to third parties if there is a good reason for doing so. In the present case, the Commission forwarded to third parties without any proper justification a letter it addressed to the complainant, in which it stated that the latter's 'physical presence on IRMM premises has caused problems in the past'. This constitutes a third instance of maladministration. "

With regard to the first critical remark, the Commission insisted that the principle of the presumption of innocence was taken into account. However, it had to be balanced against the JRC management's duty to protect its staff in line with the Commission's rules on combating harassment. The actions undertaken were considered by the JRC management as appropriate and justified, and were not the result of bad will. However, having taken due account of the Ombudsman's findings, the 2008 decision to ban the complainant from access to the IRMM's premises had been lifted. The Commission recalled nevertheless that the granting of access permits remained within its discretion and that, in this context, the Commission's interests, in particular the interests of its staff and the interest of the service, would have to be taken into account. The complainant's potential requests for physical access to any of the JRC Sites will be examined on a case-by-case basis, taking this very context into account, it concluded.

With regard to the second critical remark, the Commission recalled that it had admitted that it was responsible for certain procedural deficiencies, in particular for not informing the complainant that he would not receive an access permit, should he request one. It acknowledged that the complainant was not given an opportunity to exercise his right to express observations before the decision was actually taken and, once again, apologized for this deficiency. The JRC's management would take the Ombudsman's conclusions into account *"should similar situations arise in the future"*, it said.

Finally, the Commission admitted that including the relevant wording in the *"letter of information ... indeed might have had an effect distinct from that intended by the Commission. The Commission therefore apologizes to the complainant for this act, whilst continuously emphasising that the only reason for copying the letter to the PTB was to inform the latter of the complainant's allegation to have a mandate from PTB to work with the IRMM and not, as suggested by the complainant, to defame him."*

The Commission's comments on the first critical remark are welcome to the extent that they show that the Commission has now lifted the ban that was at issue in the Ombudsman's inquiry. However, the further statement made by the Commission is far from clear. This statement could be understood as meaning that the JRC's management was, at the time when the ban was adopted, of the opinion that this ban was justified. In that case, the Commission's comments would not be useful, given that the Ombudsman already knows that this was the opinion of the JRC's management. The Ombudsman had asked the Commission to indicate how it proposed to follow up on his critical remark and not how its relevant service had perceived matters at the time. The Commission's statement could also be understood as suggesting that this ban was justified at the time when it was adopted. Whatever meaning the Commission intended to convey, the fact remains that the Commission has, once more, failed to explain how a ban on entering the IRMM's premises could be justified in order to protect a person who did not work there.

With regard to the second critical remark, the Commission's apology is welcome. However, the wording used by the Commission creates the impression that it has already apologized for the violation of the complainant's right to be heard (*"again"*). This is not the case, as the first apology merely concerned the fact that the complainant was not even informed of the entry ban after it had been adopted.

Also with regard to the third critical remark, the Commission's apology is welcome, even though it was not the wording of the relevant letter that the Ombudsman criticized but the fact that this letter was forwarded to a German research institute (PTB). However, the value of the apology is somewhat diminished by the fact that the Commission insists that all it intended to do was to inform PTB that the complainant claimed to have a mandate from the latter. If this was indeed the *"only"* reason for copying the relevant letter to PTB, one wonders why the words quoted in the critical remark were included at all.

The Ombudsman concludes that it is difficult to avoid forming the impression that, in its follow-up in this case, the Commission tries to do two things that are incompatible, that is to say, agree with the Ombudsman's findings and at the same time suggest that its actions were nevertheless basically correct. The Ombudsman finds this incompatibility disturbing and the lack of clarity in the Commission's position regrettable.

Case 2954/2008/MF

Case **2954/2008/MF** concerned a complaint from a Commission official who challenged the Commission's refusal (i) to grant him an exemption from the deadline for the submission of invoices for blood tests carried out in 2003, and (ii) to reimburse him at the normal rate for the costs incurred for the blood tests. The complainant made his request following the judgment in *Patricia Botos v*

Commission of the European Communities[29], where the court decided that expenses incurred for blood tests should be reimbursed at the normal rate. In its opinion, the Commission stated that the complainant did not appeal against the decision of 2003 within the prescribed deadline, and that the judgment in *Botos* did not apply to his situation.

During the course of his inquiry, the Ombudsman pointed out that, in view of the Commission's failure to offer a coherent explanation concerning the decision it made in 2003, there might be good reason for derogating from the internal administrative deadline, in order to allow the complainant to apply for the reimbursement of his medical expenses. The Commission insisted that, according to the relevant rules, reimbursement could not be paid, even if the complainant were to be granted an exemption from the relevant deadline. The Ombudsman criticised the Commission for not being able to offer a coherent explanation concerning its decision of 2003, until it finally implicitly admitted that the said decision was wrong.

The Commission replied that it had taken good note of the critical remark. It has examined the circumstances of the facts at the origin of the complaint in order to avoid that such a situation occurs again in the future.

The Ombudsman welcomes this positive commitment from the Commission.

Case 53/2009/MF

The Ombudsman closed case **53/2009/MF**, which concerned a Commission request for a sub-contractor to be replaced, with the following further remark:

"The Ombudsman recalls that his response to the Commission's public consultation on review of the Financial Regulation[30] *expressed the view that a sub-contractor (such as an expert in the position of the complainant in the present case) should have the right to know of any criticism by the Commission of his or her performance and the right to be heard in relation to that criticism. The Ombudsman also recalls his exchange of correspondence with the Commission concerning a critical remark in another case concerning the replacement of sub-contracted experts*[31]*. In substance, the Commission took the view that the rights of an expert whose replacement was requested could be ensured by a system in which the Contractor would hear the expert and convey to the Commission any observations he or she might make. In his reply of 11 August 2010, the Ombudsman did not exclude that the communication of the Commission's criticisms to the sub-contractor, and the opportunity to be heard in relation thereto, could both be delivered by the Contractor. In this context, the Ombudsman considers it useful to point out that a system of the kind which the Commission appears to envisage for guaranteeing procedural fairness when the Commission requests replacement of a sub-contractor (i.e., a system which depends on the Contractor's actions) would not be compatible with the Commission's statement in its opinion that 'it was unable to check how the consortium carried out the complainant's dismissal given that it could not*

[29] Case F-10/07, *Patricia Botos v Commission of the European Communities* Judgment of the Civil Service Tribunal of 18 September 2007, not yet published in the ECR.
[30] Available on the Ombudsman's website: http://www.ombudsman.europa.eu/resources/otherdocument.faces/en/4957/html.bookmark
[31] See case 2449/2007/VIK, available at: http://www.ombudsman.europa.eu/cases/decision.faces/en/4497/html.bookmark

interfere in third-party relationships'. On the contrary, such a system would imply that the Commission has both the responsibility and the power to require the Contractor to ensure procedural fairness when the Commission requests replacement of a sub-contractor."

In its follow-up reply, the Commission stated that it had taken good note of the Ombudsman's decision and his further remark. It confirmed its position that the rights of an expert whose replacement is requested should be ensured by a system in which the contractor hears the expert and conveys to the Commission any observations he or she might make. The Commission further stated that, in its comments concerning inquiry 2449/2007/VIK, it announced to the Ombudsman that it would consider adapting its procedures. As a consequence, in November 2010, the Practical Guide to contract procedures for EC external actions (PRAG) has been modified accordingly. Article 17.2 of the General Conditions for service contracts now reads as follows: "*Moreover, in the course of performance, and on the basis of a written and justified request to which the Consultant shall provide his own and the staff member's observations, the Contracting Authority can order a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract*."

The Commission clarified that these procedural changes supersede the Commission statement cited by the Ombudsman in his further remark.

The Ombudsman welcomes the Commission's decision to modify the Practical Guide to contract procedures for EC external actions so as to give effect to the right of a sub-contractor whose replacement is requested to be heard.

Case 173/2009/(BU)RT

In case **173/2009/(BU)RT**, which concerned grants for research and technological development projects under the Fifth (EC) Research, Technological Development and Demonstration Framework Programme (FP5), the complainant contested the Commission's recovery claim on the grounds that the Commission should have considered the three research contracts as a group, for which the complainant used the average cost method to assess staff costs. While the Ombudsman found no maladministration, he suggested that the Commission could consider offering on its website clear guidance to contractors concerning the different accounting methods available for reporting costs incurred in research programmes.

In its reply to the Ombudsman's further remark, the Commission pointed out that all necessary information for contractors related to FP5 was available on the research web site CORDIS. Concerning the seventh and current Framework Programme, the Commission has made available on CORDIS guidelines and guidance notes for the beneficiaries. An enquiry service has also been made available for the contractors. This service includes a specific section on audit and financial audit. All of this information is regularly updated, it concluded.

The Ombudsman welcomes the Commission's very helpful follow-up in this case.

Cases 219/2009/PB and 294/2009/PB

In cases **219/2009/PB** and **294/2009/PB**, the Ombudsman found that there had been a number of serious shortcomings in how the Commission handled the infringement complaint of a Polish citizen living in Denmark who contested the Danish authorities' position on her pension rights. It essentially appeared that the Commission had failed to observe the main rules for handling such complaints, as laid down in its Communication on relations with the complainant in respect of infringements of Community law[32]. These rules provide, among other things, that infringement complaints should be duly registered, unless specific exceptions apply. They also provide that the complainant should be given adequate information if the Commission concludes that a file should be closed without action. In addition, the complainant should be granted a real possibility to challenge the conclusion before the file is closed. In this case, the Commission failed in its duty to respect these rules.

Some months before the Ombudsman arrived at his decision, the Commission introduced measures which were intended significantly to improve its handling of infringement complaints. The Commission informed the Ombudsman of these concrete measures[33], one expected outcome of which should be better practices regarding the registration of infringement complaints. As part of this work, the Commission also intends to redraft its internal manual for handling infringement complaints.

The Ombudsman accordingly considered it appropriate to close the case with a further remark, rather than a critical remark, in which he welcomed the Commission's initiative, and further stated that he wished to receive concrete information on the implementation of the new measures and on their specific impact on the handling of infringement complaints.

The Commission's reply is informative. It states that the first of the two measures which the Commission has tested as a way of improving its handling of complaints is the new process for the separate identification and registration of correspondence and complaints on the application of EU law (the Ombudsman understands this to refer to the CHAP — *Complaints Handling - Accueil des Plaignants* — registration system which is mentioned elsewhere in this study[34]). According to the Commission, this measure ensures that such correspondence is registered either as an inquiry or as a complaint according to the intentions of the author, without any initial analysis or evaluation within the Commission. This guarantees a more direct response to the citizen without, of course, guaranteeing any particular Commission follow-up in the exercise of its discretion of how best to organise its work ensuring the correct application of EU law. The Commission further explained that the appropriate follow-up is organised according to the evaluation made of the issues raised. It confirmed that it is committed to keeping the complainant informed of the main steps taken. This measure has led to a significant increase in the volume of complaints being registered, the Commission concluded.

[32] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.
[33] Letter dated 6 November 2009 - not sent in the framework of this inquiry - from the Commission's Secretary-General to the Ombudsman.
[34] See, in particular, cases 1009/2009/(VL)KM, 132/2010/(KRK)OV, and 379/2010/MHZ.

The second measure described by the Commission is the EU Pilot project, designed to ensure improved cooperation between the Commission services and Member State authorities in answering questions raised or problems encountered by citizens and business in the area of the application of EU law. This project has been the subject of a detailed report by the Commission, which explains the working method involved in EU Pilot and the results achieved[35]. As the report states, EU Pilot is considered to reach a successful conclusion on around 85% of the files treated through it, while some 40 issues taken up through EU Pilot have led to infringement proceedings.

In light of these developments, the Commission stated that it is now possible to indicate the further steps envisaged. First, the initial experience of the functioning of the new system of registration will be evaluated, one year having provided a sufficient basis for conclusions to be drawn. Second, the Commission has, as stated in the EU Pilot Report, sent out invitations to those Member States not yet participating to join in EU Pilot. These developments will contribute to the review of the aforementioned Communication, as referred to in the Commission's 27th Annual report on monitoring the application of EU law. The outcome of the review of the Communication will itself contribute to the envisaged re-casting of the manual of procedures.

The Ombudsman welcomes the concrete information provided by the Commission on the implementation of the measures it has taken, and on their specific impact on the handling of infringement complaints. The Commission furthermore committed itself to keeping the Ombudsman informed of further developments. The Ombudsman looks forward to receiving the relevant information, notably in the context of his own-initiative inquiry (OI/2/2011/OV) into this issue (see case 132/2010/(KRK)OV below).

Case 760/2009/JMA

Case **760/2009/JMA** concerned individuals who took part in a number of tests organised by a recruitment agency responsible for selecting suitable interim workers for the Commission. The agency informed the complainants that they had been successful in the tests. However, it subsequently informed them that they had, in fact, failed one of the tests, and could not be considered for an interim position. The complainants contested the new position taken by the agency and wrote to the Commission. The Commission explained that it had informed the agency of its concern regarding the guarantees that candidates were given of fair and appropriate treatment. The complainants, not satisfied with the Commission's reply, complained to the Ombudsman.

In his decision, the Ombudsman noted that the complainants were entitled to expect an explanation from the Commission after it contacted the agency, of why they had been informed that they had failed the tests, after having initially been told that they had been placed on a reserve list. The Commission did not do so in its reply to the complainants. The Ombudsman, therefore, addressed a further remark to the institution according to which the Commission could consider contacting the agency again to obtain appropriate explanations which would enable it to inform the complainants more clearly as to the reasons why

[35] Report from the Commission of 3 March 2010 - EU Pilot evaluation Report COM(2010)70 final.

the agency initially informed them that they had been successful and subsequently informed them that they had failed the tests.

In its reply, the Commission confirmed its position and stated that the complainants were duly informed that the problem was caused by a *"miscommunication or misinterpretation"*. The Commission underlined that, in any case, there is no statutory link between the candidates and the Commission and that, therefore, the Commission cannot be held responsible for any problems that may have arisen between the candidates and the contractors during the selection process.

The Commission's follow-up in this case is disappointing. The Ombudsman will keep the use of contracting-out by the Commission under review, with a view to ensuring that this practice does not weaken the citizens' fundamental right to good administration.

Case 953/2009/(JMA)MHZ

The complainant in case **953/2009/(JMA)MHZ** is a retired employee of a Spanish firm which went bankrupt. As a result, the complainant lost more than 50% of his retirement benefits. He believed that this loss was a direct consequence of the Spanish authorities' failure to implement, in a timely fashion, Article 8 of Directive 80/987/EEC[36] ('the Directive'), which provides that the Member States should take necessary legislative measures to protect retired employees in the event of their employer's insolvency. In its judgment in *Robins*[37], the Court of Justice stated that the above Article precludes a system of protection capable of leading, in certain situations, to a guarantee of benefits limited to less than 50% of the benefits to which an employee is entitled. The complainant therefore lodged an infringement complaint against Spain with the Commission. The Commission decided not to open an infringement procedure, and the complainant thus turned to the Ombudsman.

The Ombudsman found that, in the Commission's challenged decision and in the opinion it sent to him, the Commission did not take a reasoned position on whether the Spanish authorities had adequately implemented Article 8 of the Directive at the time the complainant's firm went bankrupt. In particular, the Commission failed to refer properly to the interpretation given by the Court of Justice of Article 8 of the Directive. The Ombudsman issued a critical remark. In addition, he criticised the unjustified delay in dealing with the complainant's infringement complaint. The Commission also failed to send the complainant a holding letter before the one-year deadline for the investigation had expired, even though the complainant sent it a reminder.

In response, the Commission stated that, given all the steps it had taken to deal with the complaint, it does not consider 15 months to be unreasonable. Furthermore, it disputed its obligation to send a holding letter when the time limit is exceeded unless the complainant requests it. It pointed out that, by

[36] Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ 1980 L 283, p. 23.
[37] C-278/05 *Carol Marilyn Robins and Others v Secretary of State for Work and Pensions* [2007] ECR -I-1053.

mistake, the English version of point 8 of the Commission's Communication on relations with the complainant in respect of infringements of Community law[38] does not include the information that this letter is only to be sent following a request by the complainant.

With regard to the substance of the case, the Commission replied that, in its view, there was no maladministration given that: (i) it listed the measures in force in Spain at the time of the insolvency; (ii) the breach of the Directive was not sufficiently serious; and (iii) the Spanish court, to which the complainant had turned, found no direct causal link between this breach and the damage sustained by the injured parties.

The Ombudsman regrets that, in responding to his critical remark, the Commission chose merely to go over again points that had already been dealt with during the inquiry. The Ombudsman recalls, in this regard, that the purpose of the follow-up study is to ensure that the administration improves its performance for the future. The institutions should engage constructively with him with this goal in mind.

Case 1009/2009/KM

In case **1009/2009/KM,** the Ombudsman identified a number of procedural deficiencies in the Commission's handling of an infringement complaint. The Commission did not register the complaint, even though the complainant used the complaint form and clearly marked his letter as an infringement complaint. The failure to register the complaint could not be justified by the mere fact that there had been previous correspondence between the Commission and the complainant, given that this is not one of the reasons in point 3 of the Commission's Communication on relations with the complainant in respect of infringements of Community law[39], on which the Commission can rely if it decides not to register a letter as a complaint.

The Commission took note of the Ombudsman's criticism in this case and noted that, following the introduction of the *Complaints Handling- Accueil des Plaignants* (CHAP) registration system, infringement complaints are now dealt with separately from other correspondence. All complaints are registered and complainants receive an acknowledgement of receipt and are kept informed of all steps in the procedure.

The Ombudsman notes that the Commission continues to consider that it was not obliged to register the correspondence from the complainant, without making reference to the reasons listed in point 3 of its Communication. Further, its assurance that all complaints will be registered in the CHAP database does not address the question of what constitutes a complaint for registration purposes.

The Ombudsman's own-initiative inquiry OI 2/2011/OV (see case 132/2010/(KRK)OV below) deals with the implementation of the

[38] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.
[39] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.

Commission's Communication under EU Pilot/CHAP and will take these issues into account.

Case 1202/2009/GG

Case **1202/2009/GG** concerned the Commission's handling of a request for access to documents under Regulation 1049/2001 on public access to documents[40]. The following critical remark was made:

"Article 7(1) of Regulation 1049/2001 provides that an acknowledgment of receipt is to be sent to the applicant in case of a request for access to documents. According to Article 8(1) of Regulation 1049/2001, confirmatory applications are to be dealt with within 15 working days after registration. In the present case, the Commission failed to acknowledge receipt of the complainant's request for access of 16 September 2008 and failed to deal with his confirmatory application of 20 November 2008 within the period laid down by Regulation 1049/2001. This constitutes two instances of maladministration."

In its reply, the Commission stated that it had already admitted that it failed to deal with the confirmatory application within the relevant deadline and expressed its regrets for the delay. No particular organisational measures needed to be taken, however, as a system was already in place and was adequately organised to handle requests for access to documents in general within the time-limits. The complainant's case was a particular one, given that the request for access was received after the Commission had informed the complainant of its decision to suspend correspondence with him because of the repetitive nature of his letters. The Commission, therefore, did not immediately realise that this was a new request. The complainant had sent regular correspondence to the Commission, sometimes on a daily or weekly basis, with frequent requests for access to documents. The handling of these requests entailed a heavy administrative burden.

The Ombudsman notes that the critical remark in this case was made on the grounds that (i) the Commission did not apologise for the delay that occurred as regards the handling of the complainant's confirmatory application and (ii) did not apologize or at least express regrets in so far as its failure to send an acknowledgment of receipt was concerned. The Commission's comments do not address these points. The Commission instead refers to the fact that the complainant has frequently addressed himself to it and that dealing with his letters and requests was cumbersome. However, these aspects of the case were already taken into account in the Ombudsman's decision.

The Ombudsman regrets that the Commission's response fails to acknowledge the beneficial effects that an apology can have on its relations with citizens.

The Ombudsman also notes the Commission's statement that the system in place is adequately organised to handle requests for access to documents in general within the time-limits established by Regulation 1049/2001. The

[40] 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.

Ombudsman understands this statement to imply that the Commission regards the said time-limits as realistic and achievable.

Case 1207/2009/GG

Case **1207/2009/GG** led to a critical remark almost identical to that quoted above in case 1202/2009/GG[41].

In its response, the Commission considered that the complainant's three letters of 20 November 2008 did not constitute a confirmatory application, given that what the complainant asked for in his letter of 18 September 2008 was not the same as what he requested in his three letters of 20 November 2008. The Commission nevertheless admitted that some delay had occurred in responding to the complainant. It referred to the same organisational measures quoted above and to the same issues regarding regular correspondence from this complainant.

The Ombudsman notes that the Commission has failed to address the critical remark to the extent that it concerns its failure to send an acknowledgment of receipt. As regards the delay in answering the confirmatory application, the critical remark was made on the grounds that the Commission did not apologise but only expressed regrets.

The Ombudsman also notes that the Commission repeats an argument that was made in the initial version of the opinion it submitted in the course of the Ombudsman's inquiry, i.e., that none of the three letters sent by the complainant on 20 November 2008 constituted a confirmatory application as regards the initial request of 18 September 2008. However, the Ombudsman already drew the Commission's attention to the fact that this assumption was mistaken. As a matter of fact, the complainant had addressed a fourth letter to the Commission on 20 November 2008, which constituted a confirmatory application as regards the original request for access sent on 18 September 2008. The Commission had thereupon sent a corrigendum to the Ombudsman, in which the service in charge effectively acknowledged that a mistake had occurred.

Instead of examining what lessons it could learn from the Ombudsman's critical remark with sufficient care and thoroughness, the Commission, in its follow-up, has repeated a statement that it had already admitted was incorrect. The Ombudsman has written to the Commission to draw its attention to this shortcoming and invite it to be more careful in future cases. This case constitutes a further instance in which the Commission failed constructively to engage with the Ombudsman.

[41] The only difference between the two remarks is the date of the complainant's request for access which, in this case, was 18 September 2008.

Case 1410/2009/(JMA)MHZ

The Ombudsman made a further remark in case **1410/2009/(JMA)MHZ**, proposing that, when it organises a competition for a very specialised field, the Commission should endeavour to provide candidates with an accurate forecast of real recruitment needs. He further proposed that when a list is opened for recruitment to all Commission Directorates-General (DGs), the Commission could consider assisting candidates to be pro-active in applying for vacancies by giving them access to vacancy announcements on the Commission's intranet system.

The Ombudsman forwarded a copy of the decision to the European Personnel Selection Office (EPSO) for its information.

As regards the forecast of recruitment needs, the Commission explained in its follow-up that, in line with Article 5 of Annex 3 of the Staff Regulations, the reserve list contains at least twice as many names as the number of available posts. However, the Commission is already listing the recruitment needs, is working with EPSO on reducing the duration of the selection procedure, and is developing a three-year plan to identify human resource needs on a timely basis. As regards announcing vacancies to laureates, the Commission informed the Ombudsman that such a project is underway.

The Commission's reply is satisfactory as it appears that it is already working, in cooperation with EPSO, towards the two improvements suggested by the Ombudsman.

Cases 2131/2009/RT and 2373/2009/RT

The complainants in cases **2131/2009/RT** and **2373/2009/RT** are two mobile operators active on the EU market. They alleged that the Commission provided inaccurate and misleading information in the 14th Progress Report on the single European electronic communications market 2008. The Ombudsman found the explanation provided by the Commission in the course of his inquiry to be reasonable. However, as regards the information published by the Commission in the individual country fact sheets, which accompanied the publication of the Progress Report, the Ombudsman took the view that the Commission failed to inform readers that the chart entitled "*Typical consumer price for average mobile usage in 2007 and 2008*", which was included on the very first page of each country fact sheet, was based on the data of the two main mobile operators only. He considered that such information could be misleading and made a critical remark in that respect.

In its response to the Ombudsman's critical remark, the Commission first pointed out that, even though the chart on the first page of the fact sheet did not indicate that the average mobile price for medium usage only refers to the two main mobile operators in each country, this information was included on the second page. The Commission stated that it had taken the critical remark into account and promised to ensure clearer Progress Reports in the future and to continue to enhance its efforts to communicate information to the public in a transparent manner. In this regard, the Commission pointed out that the press package for the 15th Progress Report did not contain a similar chart on typical consumer price for average mobile usage in 2009, but instead a chart on the

average price per minute of mobile communication for 2008 compared with 2007, which includes information from all mobile operators.

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

Case 2295/2009/(TN)ELB

Case **2295/2009/(TN)ELB** concerned alleged discrimination in a staff selection procedure. The complainant, who is visually impaired, took part in tests to work as an interpreter for the European institutions. He failed the consecutive interpretation test. In his view, he was discriminated against because the Commission refused to take his disability into consideration and to allow him to take only the simultaneous interpretation test.

In his decision, the Ombudsman noted that it was for the Commission to determine what skills have to be tested in order to evaluate both consecutive and simultaneous interpreting skills. He agreed that visual impairment was not incompatible with consecutive interpretation. He acknowledged that the Commission strives to ensure that candidates with special needs are put in a situation which is as similar as possible to that of other candidates. Since the Commission was prepared to provide advice to the complainant if he takes the tests again, the Ombudsman considered that it had resolved the issue. However, in a further remark, he suggested that the Commission include a question about special needs in the online registration form concerning accreditation tests for freelance interpreters.

In its reply, the Commission indicated that the complainant had recently contacted it to confirm that he would be interested in sitting the test again. It informed him that his application would be dealt with at the next interinstitutional screening committee for Bulgarian tests and that he would be informed of technical support available for blind or partially sighted interpreters. The Commission also asked its IT service to include a question, as suggested by the Ombudsman, in the online form. The request was accepted and is now part of the IT work plan for 2011.

The Ombudsman applauds the Commission's helpful follow-up in this case, not only as regards its decision to include a question in its online application form, as suggested by the Ombudsman, but also vis-à-vis the individual complainant in this case.

Case 2576/2009/MHZ

Case **2576/2009/MHZ** concerned the Commission's handling of an infringement complaint, in which the complainant alleged that the British authorities discriminated against him and infringed EU law by refusing to award him the UK Job Seeker's Allowance. While the Ombudsman found no maladministration, he made the following further remark:

"When the Commission informs complainants of the administrative steps it is taking to investigate their infringement complaints, it could, as far as possible, provide them

with details of its contacts with national authorities. In this way, complainants would be informed of what the Commission is doing to address their concerns, thereby avoiding the need for them to complain to the Ombudsman in order to receive such information in the course of the latter's inquiry.

The Ombudsman also welcomes the Commission's commitment to inform the complainant in a timely manner, and with transparency, of future developments in the on-going horizontal infringement procedure against the UK."

In its follow-up reply, the Commission informed the Ombudsman that it takes note of his recommendation to provide complainants with more detailed information concerning the administrative steps that form part of the investigation into their complaints and — in case a contact with national authorities is established — to inform the complainant of such contacts. The Commission also confirmed that, in accordance with its Communication on relations with the complainant in respect of infringements of Community law[42], it informs complainants of each formal step taken as part of an on-going infringement procedure. The Commission also referred to the established case-law on the confidentiality that Member States are entitled to expect from the Commission during investigations which may lead to an infringement procedure[43].

The Ombudsman notes that the Commission has not informed him of any specific steps it plans to take in order to establish more transparent contacts with complainants. This issue will be pursued in the Ombudsman's own-initiative inquiry into the Commission's handling of infringement complaints (see case 132/2010/(KRK)OV below).

Case 2659/2009/(BU)RT

Complaint **2659/2009/(BU)RT** was submitted on behalf of the Staff Committee of the European Parliament. The complainant alleged that the Commission failed to submit, in a timely manner, the report and the proposal relating to the 2008 review of the scale setting the daily subsistence allowances and hotel costs for officials' missions, pursuant to Article 13(3) of Annex VII to the Staff Regulations.

In its opinion, the Commission explained that the consultations with staff representatives concerning the 2008 review of the expenses scale were still ongoing. It indicated that, as soon as these consultations ended, it would draft a report and, if appropriate, submit a proposal to the Council.

The Ombudsman took the view that the prolonged consultations with staff representatives could not justify the Commission's failure to comply with the two-year deadline, provided for in the Staff Regulations, to draft a report and submit a proposal to the Council. He made a critical remark in this respect.

[42] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.
[43] Cf. Case T-105/95 *WWW UK v Commission* [1997] ECR II-313 and case T-191-99 *Petrie and others v Commission* [2001] ECR II-3677.

In its reply, the Commission stated that, in the course of 2011, it will submit to the Council the report foreseen under Article 13(3) and, if it considers it appropriate, a proposal. The Commission also reiterated its consistent policy to engage in a constructive dialogue with the Ombudsman.

The Ombudsman welcomes the Commission's commitment to comply with its obligation to submit the report.

Case 100/2010/GG

Case **100/2010/GG** concerned the Commission's handling of a request under Regulation 1049/2001 on public access to documents[44]. The request concerned the Commission's file on the LIEN 97-2011 contract, to which the complainant had already requested access in the past. The following critical remark was made:

"It is good administrative practice to deal with requests for public access within the time-limits foreseen by Regulation 1049/2001. In the present case, the Commission only replied to the complainant's confirmatory application on 29 April 2010, that is to say, nearly five months after the extended deadline of 1 December 2009 had expired, without being able to put forward any convincing arguments to justify the time it had taken. This constitutes an instance of maladministration."

In its follow-up response, the Commission stated that it did not rely on the preparatory work for the decision taken on the previous request for access, but carried out a full and fresh analysis. The file in question contained mainly exchanges of e-mails between the Commission's delegation in Kazakhstan, the technical assistance bureau involved, and the Commission's offices in Brussels. A number of these e-mails had been archived more than once. The Commission therefore first organised the file in a more logical order, avoiding double entries. Furthermore, some of the e-mails did not exclusively concern the LIEN 97-2011 contract and some contained exchanges of a purely private nature. The Commission made a much more detailed analysis of all these documents with a view to granting the complainant the widest possible access. This analysis took considerable time.

The Commission announced that it had also taken measures to accelerate the handling of applications for access. It was streamlining the procedures for handling such requests and improving the quality control of the replies. However, exceptionally complicated applications may lead to exceptional delays. The present case was quite exceptional. Given the past and ongoing proceedings relating to the applicant's successive requests for access to the relevant file, the Commission undertook a very careful and in-depth analysis, which required intensive coordination with the services concerned.

The Ombudsman notes that the handling of the first request also gave rise to a complaint (1874/2003/GG). In his inquiry into that complaint, the Ombudsman found that the relevant file comprised four sub-files and that the Commission had established a list of the documents on this file. Even

[44] 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.

though this list was incomplete, it is difficult to see why the Commission needed to re-arrange the file before being able to deal with the new request for access. The Commission's comments thus raise some doubts as regards its file-keeping and weaken the strength of its argument.

Case 132/2010/(KRK)OV

In case **132/2010/(KRK)OV** the Ombudsman did not accept the arguments put forward by the Commission for not registering an infringement complaint, in accordance with its Communication on relations with the complainant in respect of infringements of Community law[45]. As he had already made a draft recommendation to the Commission on this issue in case 2403/2008/OV[46], he closed the case with a critical remark, as follows:

"*Point 3 of the Communication provides that correspondence from citizens has to be registered as an infringement complaint unless one of the exceptions set out in this provision applies. By deciding not to register the complainant's complaint as an infringement complaint, even though no such exceptions applied, the Commission failed to abide by point 3 of the Communication. This failure constitutes an instance of maladministration*"**.**

In its reply, the Commission noted that its decision not to register the complaint reflected the fact that, after an assessment of the information provided, it was clear that there was no infringement of EU law. It recalled, on a general note, that since September 2009, as a result of the adoption of the new *Complaints Handling - Accueil des Plaignants* (CHAP) registration system, all complaints and inquiries raised with the Commission in connection with the application of EU law are to be registered separately from other incoming correspondence. Every complaint received by the Commission is to be registered accordingly. The complainant receives an acknowledgement of receipt with a description of the procedure and the handling guarantees which are in force. The Commission keeps all complainants informed of the main steps taken in the file.

The Ombudsman notes that, in the first part of its reply, the Commission merely reiterates the reasoning which the Ombudsman already rejected in his decision. As regards the more general comment made by the Commission concerning the CHAP procedure, the implications of the new procedure for the Communication remain unclear.

In light of the follow-up to the critical remark in this case, the Ombudsman has opened an own-initiative inquiry into the matter (OI/2/2011/OV). The Ombudsman asked the Commission whether, in view of the above developments, it has the intention (i) to proceed to a revision of the Communication and (ii) if so, to consult the Ombudsman in this context. The inquiry is on-going.

[45] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.
[46] The draft recommendation called on the Commission to "*take the necessary measures to ensure that it will comply with the Communication when dealing with cases in the future*".

Case 379/2010/MHZ

Case **379/2010/MHZ** also concerned problems linked to the registration of infringement complaints. Specifically, the complainant sent two letters to the Commission complaining that Poland had not implemented properly certain provisions of the Investor Compensation Schemes Directive (ICSD). He submitted as proof a relevant judgment by a Polish court ('the judgment'). The Commission did not register this complaint as such because (i) it had already dealt with the complainant's earlier complaint concerning the ICSD (but relating to a different provision) and (ii) in its view, the complainant did not submit any new elements in his correspondence of July 2009. Nevertheless, the Commission informed the complainant of its view that Poland had properly implemented the relevant provision of the ICSD.

Since the European Parliament had already dealt with the Commission's view on the implementation of the relevant law by Poland, the Ombudsman abstained from commenting on it. However, he found that, pursuant to the Commission's Communication on relations with the complainant in respect of infringements of Community law[47], it should have registered the complainant's new complaint as such because the judgment constituted a new element. He made a critical remark in this regard.

In its response, the Commission basically reiterated the content of the opinion it had provided in the course of the Ombudsman's inquiry.

The Commission's response in this case, and in cases 1009/2009/KM and 132/2010/(KRK)OV above, confuses the issue of what is an infringement complaint and what is a *justified* infringement complaint. The Ombudsman expects the CHAP registration system to distinguish clearly between these two aspects and to register all complaints as such, even if subsequent analysis shows the complaint not to be justified. This issue should be clarified during the Ombudsman's own-initiative inquiry (OI/2/011/OV) into the Commission's handling of infringement complaints.

Case 465/2010/FOR

Case **465/2010/FOR** concerned a request made to a Commission Delegation under Regulation 1049/2001 on public access to documents[48]. After conducting an inquiry, the Ombudsman concluded that part of the complainant's request for access was not sufficiently clear to allow the Commission to process it. As regards the remainder of the documents requested, the Ombudsman noted that the request had been sufficiently clarified. However, he also noted that a request cannot be deemed to have been refused unless a confirmatory application for the documents has been made pursuant to Article 8 of Regulation 1049/2001. He noted that there was no information in the file indicating that the complainant had made a confirmatory application for the documents. The Ombudsman thus closed his inquiry into the complainant's

[47] Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law COM/2002/0141 final, OJ 2002 C 244 p. 5.
[48] 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.

allegation that the Commission wrongly refused to grant it public access to the documents in question. He made a further remark, however, as regards the need for the Commission to inform the applicant of its view that a request for public access to documents is not sufficiently precise and to assist the applicant in clarifying his or her request.

In its reply, the Commission pointed out that it appreciates and agrees with the further remark. It proposes to carry out training with staff in Delegations in order to help them process requests for access properly and to inform them of the Ombudsman's decisions. The Commission also stated that it had informed the Delegation in question of the need to assist the applicant in this case.

The Ombudsman welcomes the Commission's positive response in this case.

3. The European Personnel Selection Office (EPSO)

Case 1387/2009/ELB

In a further remark in case **1387/2009/ELB**, the Ombudsman suggested that, in future, the European Personnel Selection Office (EPSO) could calculate better and more carefully the number of candidates invited to submit a full application in the context of open competitions. This would reduce the risk of admitting either too many or too few candidates to the written exams and then having to change the rules of an ongoing competition. Specifically, he suggested that EPSO could include a statement in the Notice of Competition to explain that it may take into account developing situations affecting a competition to make changes which are not substantive in nature. This followed a complaint from an individual who took part in a competition organised by EPSO and who considered that EPSO had acted unfairly.

EPSO informed the Ombudsman that, since the publication of the competition in question, it has modified the procedure relating to the organisation of open competitions in accordance with its development programme. Nowadays, open competitions contain two different phases: the admission tests and the assessment centre. Notices of Competition specify the number of successful candidates. However, they no longer specify the number of selected candidates after the admission tests and the number invited to submit their full application. As regards the invitation to the assessment centre, they only indicate that the number of candidates invited to the assessment centre is approximately X (usually three) times the number of successful candidates. Before the admission phase, EPSO publishes on its website the number of candidates invited to the assessment centre. This proportion seems to be reasonable in light of past experience and allows selection boards to assess a sufficient number of candidates. This new procedure enables EPSO better to calculate the number of candidates who will be invited to the assessment centre without being obliged to publish a *corrigendum* in the Official Journal.

The Ombudsman welcomes the fact that EPSO has acted in line with his suggestion.

Case 1592/2009/ELB

In case **1592/2009/ELB**, the complainant took part in a competition organised by EPSO to recruit conference operators. Given that the Selection Board did not consider his diploma relevant for the post of conference operator, he was excluded from the competition. The complainant alleged that this decision was wrong.

Although he acknowledged that the complainant's studies could be useful for a conference operator, the Ombudsman was not convinced that his studies fully corresponded to the profile of conference operator, or that he was fully trained to work as a conference operator. The Ombudsman therefore considered that EPSO had made no error of assessment in relation to the complainant's diploma. He closed his inquiry with a finding of no maladministration but, in a further remark, drew EPSO's attention to the letters informing candidates of their exclusion from a competition. He suggested that, in future, selection boards should modify the wording of letters they address to certain candidates in order to avoid any misunderstanding.

In its reply, EPSO confirmed that it would take the Ombudsman's further remark into account in the framework of future competitions.

The Ombudsman welcomes EPSO's positive reply.

Case 2831/2009/RT

In case **2831/2009/RT**, the complainant alleged that EPSO failed (i) to ensure her anonymity as regards the correction of her written tests in an open competition and (ii) to respect the principle of equal treatment between candidates. The Ombudsman considered that the complainant failed to demonstrate that the Selection Board knew her identity before the evaluation process of the written tests ended. Her anonymity was maintained and she was not treated differently from other candidates, he concluded. The Ombudsman suggested, however, that EPSO could further increase the clarity of its selection procedures and avoid mistakes like the one that occurred in the present case (see below) by using only the scanned copies of the test papers (on which a candidate's secret number appears) for the purposes of the assessment made by the markers during the evaluation process, as well as when granting candidates access to their test papers.

In its reply, EPSO reiterated that the copy of the complainant's written test bearing her application number next to the term "*secret number*" was sent to the complainant by mistake. EPSO explained that in such competitions the candidates write their answers on a paper, the first page of which contains personal details of the candidate and the beginning of the written test. If a candidate asks for a copy of the test, EPSO scans the candidate's answer on the day of the written test. EPSO further explained that the candidates know only their candidate/application numbers whereas secret numbers remain unknown to them. It is only in the evaluation procedure that tests are scanned and given a secret number. The markers always make their comments on a sheet bearing only the candidate's secret number. These sheets are then submitted to the Selection Board and it is only after deciding on the final marks that the

Selection Board forwards the marks awarded for each written test to EPSO, which subsequently matches the secret number with the candidate's identity.

EPSO informed the Ombudsman that it provides candidates, upon request, with a copy of their written test bearing their candidate number so that they can effectively verify that the test is their own. It assured the Ombudsman that it had taken internal measures to prevent errors that could cause a possible misunderstanding on the part of candidates.

The Ombudsman welcomes the fact that EPSO has provided assurances that it has taken internal measures to prevent errors that could cause a possible misunderstanding on the part of candidates.

4. The European Network and Information Security Agency (ENISA)

Case 131/2009/ELB

The complainant in case **131/2009/ELB**, a member of staff of the European Network and Information Security Agency (ENISA), requested the opening of an invalidity procedure. ENISA opened the procedure in March 2008. In his complaint, the complainant argued that ENISA unduly delayed the opening of the invalidity procedure. The Ombudsman addressed a friendly solution proposal to ENISA, considering that, contrary to principles of good administration, ENISA had unduly delayed the invalidity procedure by failing to take any action in relation to the complainant's request until January 2008. He asked ENISA to apologise. In its reply, ENISA stated that it had acted within four months, which, in its view, was reasonable. It refused to apologise to the complainant. The Ombudsman closed the case with a critical remark, considering that ENISA unduly delayed the opening of the invalidity procedure.

In its response, ENISA stated that, when a request for an invalidity procedure is made by a staff member, the Executive Director refers the request to the invalidity committee without delay. ENISA also indicated that its reply would be published on its internal website.

The Ombudsman notes that, in its reply, ENISA states that its current procedure involves referral to the invalidity committee *"without delay"*. It is not clear whether the current procedure was introduced in order to prevent delays such as that which occurred in the present case, or whether the procedure already existed, but was not correctly applied in the present case. In either case, the follow-up appears satisfactory since it indicates that appropriate measures have been put in place to prevent similar delays occurring in the future.

5. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

See case **923/2009/(BB)(TN)(BB)FOR** above under "*Star cases*".

6. The European Aviation Safety Agency (EASA)

Case 333/2009/(BEH)KM

In case **333/2009/(BEH)KM**, the European Aviation Safety Agency (EASA) published a tender comprising five different lots in relation to different IT services. It described the tender using one Common Procurement Vocabulary (CPV) code, namely *72000000- IT services: consulting, software development, internet and support*. The complainant criticised the use of this general CPV code, arguing that it prevented potential bidders who targeted particular codes from submitting a bid. He asked EASA to publish a *corrigendum*. EASA argued that the general code made the tender accessible to more bidders. In addition, the tender notice provided more detail.

The Ombudsman noted that the CPV code descriptions exist in all official languages. This allows bidders to identify the subject of a call without having to translate the tender notice. It is therefore particularly important to choose an accurate CPV code. The guidelines on using CPV codes also recommend choosing as accurate a code as possible and underline that codes can be combined.

EASA's view that only the general code should be used when no combination of specific codes covers the entirety of the tender subject was attractive at first sight, given that it was logical and easy to implement. The Ombudsman considered, however, that this approach did not sufficiently take into account the legitimate interests of potential tenderers, and that, where available, more specific codes should therefore be added. This would be more accurate and transparent than indicating only the general code. He closed the case with the following critical remark:

"Principles of good administration require the institutions and bodies of the European Union to specify the subject of a contract put out for tender by referring to the most accurate CPV code or codes available. In the present case, EASA failed to do so, since it used a general code to designate all five lots of its tender without adding more specific codes. This constitutes an instance of maladministration."

In its reply, EASA underlined that it acted in good faith in relation to the tender procedure at issue in the inquiry. However, it thanked the Ombudsman for his *"constructive remarks"* and indicated that it would take them into account in future. In particular, it would now make a *"special effort"* to identify, in addition to a general code which addresses the subject matter of the call, all the specific codes which address (even if only partially) the more detailed individual parts of a call and include them in the contract notice.

The Ombudsman welcomes EASA's positive reply in this case.

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

Case reference	Link to text (EN)	Link to text (original language)
2904/2005/(TN)(FOR)(TN)FOR	EN	-
1528/2006/(GG)(WP)VL	EN	DE
3307/2006/(PB)JMA	EN	-
355/2007/(TN)FOR	EN	-
438/2007/(TN)RT	EN	-
2115/2007/FOR	EN	-
2502/2007/RT	EN	-
2834/2007/BEH	EN	DE
3163/2007/(BEH)KM	EN	DE
3163/2007/(BEH)KM	EN	DE
485/2008/(IG)IP	EN	IT
676/2008/RT	EN	-
865/2008/OV	EN	-
1339/2008/MF	EN	-
1438/2008/DK	EN	-
1658/2008/(STM)PB	EN	-
1953/2008/MF	EN	FR
2905/2008/(WP)GG	EN	DE
2905/2008/(WP)GG	EN	DE
2905/2008/(WP)GG	EN	DE
2954/2008/MF	EN	FR
3289/2008/BEH	EN	DE
OI/2/2008/(WP)VIK	EN	-
131/2009/ELB	EN	FR
333/2009/(BEH)KM	EN	DE
923/2009/(BB)FOR	EN	-
953/2009/(JMA)MHZ	EN	ES
953/2009/(JMA)MHZ	EN	ES
1009/2009/(VL)KM	EN	DE
1202/2009/GG	EN	DE

Case reference	Link to text (EN)	Link to text (original language)
1207/2009/GG	EN	DE
2131/2009/RT and 2373/2009/RT	EN	FR
2659/2009/(BU)RT	EN	FR
100/2010/GG	EN	DE
132/2010/(KRK)OV	EN	NL
182/2010/(AR)MHZ	EN	PL
379/2010/MHZ	EN	PL

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

Complaint reference	Link to text (EN)	Link to text (original language)
3699/2006/ELB	EN	FR
671/2007/PB	EN	DE
2115/2007/FOR	EN	-
485/2008/(IG)IP	EN	IT
946/2008/(BEH)(VL)ANA	EN	-
1039/2008/FOR	EN	-
53/2009/MF	EN	FR
173/2009/(BU)RT	EN	-
219/2009/PB	EN	DA
294/2009/PB	EN	DA
760/2009/JMA	EN	-
885/2009/MF	EN	FR
1302/2009/TS	EN	-
1387/2009/ELB	EN	-
1410/2009/(JMA)MHZ	EN	-
1592/2009/ELB	EN	FR
1825/2009/IP	EN	IT
2295/2009/(TN)ELB	EN	-
2576/2009/MHZ	EN	PL
2831/2009/RT	EN	-
465/2010/FOR	EN	-

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