

THE EUROPEAN
OMBUDSMAN

ANNUAL REPORT **2004**

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P. NIKIFOROS DIAMANDOUROS

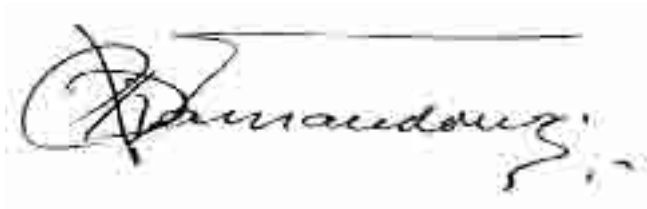
Mr Josep BORRELL FONTELLES
President
European Parliament
Rue Wiertz
B-1047 Brussels

Strasbourg, 8 March 2005

Mr President,

In accordance with Article 195 (1) of the Treaty establishing the European Community and Article 3 (8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my Report for the year 2004.

Yours sincerely,



P. Nikiforos Diamandouros

INTRODUCTION 17

INTRODUCTION

1 EXECUTIVE SUMMARY 23

EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES 35

COMPLAINTS
AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY 53

DECISIONS FOLLOWING
AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION
INSTITUTIONS AND BODIES 108

RELATIONS WITH
EUROPEAN UNION
INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND
SIMILAR BODIES 113

RELATIONS WITH
OMBUDSMEN
AND SIMILAR BODIES

6 COMMUNICATIONS 127

COMMUNICATIONS

7 ANNEXES 161

ANNEXES



	INTRODUCTION	17
1	EXECUTIVE SUMMARY	23
2	COMPLAINTS AND INQUIRIES	35
	2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK	35
	2.2 THE MANDATE OF THE EUROPEAN OMBUDSMAN	36
	2.2.1 Unauthorised complaints	36
	2.2.2 Community institutions and bodies	36
	2.2.3 "Maladministration"	37
	2.3 ADMISSIBILITY AND GROUNDS FOR INQUIRIES	38
	2.4 ANALYSIS OF COMPLAINTS EXAMINED IN 2004	39
	2.5 TRANSFERS AND ADVICE	40
	2.6 THE OMBUDSMAN'S PROCEDURES	41
	2.6.1 Starting an inquiry	42
	2.6.2 Fair procedure	42
	2.6.3 Inspection of the files and hearing of witnesses	42
	2.6.4 Open procedure	43
	2.7 THE OUTCOMES OF INQUIRIES	43
	2.7.1 No maladministration	43
	2.7.2 Cases settled by the institution and friendly solutions	44
	2.7.3 Critical remarks, draft recommendations and special reports	44
	2.8 DECISIONS CLOSING CASES IN 2004	45
	2.8.1 Access to documents and data protection	45
	2.8.2 The Commission as "Guardian of the Treaty"	47
	2.8.3 Contracts and grants	48
	2.8.4 Recruitment and staff issues	49
	2.8.5 The Commission's responses to the Ombudsman's inquiries	49



3	DECISIONS FOLLOWING AN INQUIRY	53
3.1	CASES WHERE NO MALADMINISTRATION WAS FOUND	53
3.1.1	The European Parliament	53
	EUROPEAN PARLIAMENT'S RULES ON TRAINEESHIPS	53
	PENSION SCHEME FOR MEMBERS OF THE EUROPEAN PARLIAMENT	54
3.1.2	The Council of the European Union	55
	APPOINTMENT OF BOARD MEMBERS FOR THE EUROPEAN FOOD SAFETY AUTHORITY	55
	ACCESS TO LEGAL SERVICE OPINIONS	56
3.1.3	The European Commission	57
	EXCLUSION FROM AN INFORMATION SOCIETY PROJECT	57
	TRANSPOSITION OF INSURANCE DIRECTIVES INTO GREEK LEGISLATION	58
	PORTUGUESE LEGISLATION ON BULLFIGHTING	59
	ACCESS TO A DRAFT STATEMENT OF THE EUROPEAN ECONOMIC AREA JOINT COMMITTEE	59
	ACCESS TO WORLD TRADE ORGANISATION NEGOTIATION DOCUMENTS	60
	ACCESS TO A FOOD AND VETERINARY REPORT ON ROMANIA	61
	ACCESS TO A EUROPEAN SOCIAL FUND MISSION REPORT	62
	LEONARDO DA VINCI PROGRAMME	63
	SELECTION PROCEDURE FOR A EUROPEAID PROJECT	64
	ALLEGED IMPROPER HANDLING OF INFRINGEMENT COMPLAINTS	64
	ACCESS TO AN ASSESSMENT OF GERMANY'S BUDGETARY SITUATION	65
3.1.4	The European Personnel Selection Office	66
	ALLEGED LACK OF REASONED EXPLANATION IN A SELECTION PROCEDURE	66
3.2	CASES SETTLED BY THE INSTITUTION	67
3.2.1	The European Parliament	67
	SELECTION BOARD DECISION ON AN APPLICATION	67
3.2.2	The European Commission	67
	FAILURE TO PAY FOR SERVICES	67
	FAILURE TO PAY A GRANT	68
	ACCESS TO DOCUMENTS CONCERNING A RAILWAY PLAN	68
	LATE PAYMENT FOR SERVICES	69
3.2.3	The European Anti-Fraud Office	70
	ACCESS TO DOCUMENTS CONCERNING A NUCLEAR SAFETY CASE	70
3.3	FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN	71
	ACCESS TO DOCUMENTS CONCERNING TRADE NEGOTIATIONS	71
	ACCESS TO DRIVING TEST RESULTS	72
3.4	CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN	73
3.4.1	The European Parliament	73
	THE IMPLEMENTATION OF RULES ON SMOKING	73
3.4.2	The Council of the European Union	74
	ACCESS TO PERSONAL FILES IN AN EARLY RETIREMENT CASE	74



3.4.3 The European Commission	75
LESS FAVOURABLE CLASSIFICATION AS A RESULT OF A DELAY IN RECRUITMENT	75
LACK OF JUSTIFICATION FOR SUSPENSION OF PAYMENTS	75
REFUSAL TO REIMBURSE SECRETARIAL COSTS.....	76
FAILURE TO REGISTER ARTICLE 226 COMPLAINTS	77
HANDLING OF A COMPLAINT CONCERNING STATE AID	78
FAILURE TO ENSURE THAT LANGUAGE TEACHERS WERE DECLARED AS WORKING FULL-TIME.....	79
UNFAIR TREATMENT OF AN ENVIRONMENTAL ORGANISATION	80
ACCESS TO THE PROFESSION OF LAWYER IN ITALY.....	81
INSUFFICIENT INFORMATION ON POTENTIAL FUNDING FOR A RIDING CENTRE.....	82
TIMETABLE FOR DRAWING UP STAFF REPORTS	83
INFRINGEMENT OF THE PRINCIPLE OF NON-DISCRIMINATION IN RECRUITMENT	83
NON-RENEWAL OF AN EXPERT CONTRACT.....	84
UNJUSTIFIED REFUSAL OF ACCESS TO AN NGO'S FILE.....	85
FAILURE TO REPLY TO A LETTER FROM AN UNSUCCESSFUL GRANT APPLICANT	86
DELAY IN DEALING WITH AN INFRINGEMENT COMPLAINT	87
3.4.4 The European Parliament and the European Commission	88
UNJUSTIFIED TERMINATION OF TRANSLATION CONTRACTS.....	88
3.4.5 The European Personnel Selection Office	89
ALLEGED UNFAIRNESS AND LACK OF TRANSPARENCY IN A SELECTION PROCEDURE.....	89
INADEQUATE JUSTIFICATION FOR LANGUAGE POLICY IN AN OPEN COMPETITION.....	89
3.4.6 Europol	91
FAILURE TO RESPECT STAFF REGULATIONS IN THE RECRUITMENT OF AN ADMINISTRATIVE ASSISTANT.....	91
3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION	92
3.5.1 The European Commission	92
SHORT TIMETABLE LED TO ERRORS IN A RESEARCH PROPOSAL	92
UNDUE DELAY IN THE HANDLING OF AN INFRINGEMENT CASE.....	93
3.5.2 The European Commission and the European Anti-Fraud Office	94
ALLEGATIONS OF FRAUD IN THE "BLUE DRAGON" CASE.....	94
3.6 CASES CLOSED FOR OTHER REASONS	95
3.6.1 The Council of the European Union	95
CHILD'S LACK OF ENTITLEMENT TO EU HEALTH INSURANCE COVER	95
3.6.2 The European Commission	97
REFUSAL TO PAY INVOICES SUBMITTED UNDER A TACIS SERVICE CONTRACT	97
GRANT CLASSIFICATION FOR A DWARF DONKEY	98
3.6.3 The European Personnel Selection Office	99
ALLEGED LACK OF REPLY FROM THE APPOINTING AUTHORITY	99
3.6.4 The Committee of the Regions	100
MEAL PRICES FOR TRAINEES.....	100
3.6.5 The European University Institute	100
AGE LIMITS IN RECRUITMENT	100



3.7	CASE CLOSED AFTER A SPECIAL REPORT	101
	CLASSIFICATION OF PRESS OFFICER POSTS IN THE COMMISSION'S DELEGATIONS IN THIRD COUNTRIES.....	101
3.8	OWN-INITIATIVE INQUIRIES BY THE OMBUDSMAN	102
	LACK OF A COMPLAINT PROCEDURE FOR SECONDED NATIONAL EXPERTS.....	102
	THE QUALITY OF ADMINISTRATION IN THE EUROPEAN SCHOOLS.....	103
4	RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES	107
4.1	THE EUROPEAN PARLIAMENT	108
4.2	THE EUROPEAN COMMISSION	109
4.3	OTHER INSTITUTIONS AND BODIES	109
5	RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES	113
5.1	THE EUROPEAN NETWORK OF OMBUDSMEN	113
5.2	OTHER OMBUDSMAN SEMINARS AND CONFERENCES	116
5.3	OTHER EVENTS WITH OMBUDSMEN AND THEIR STAFF	121
6	COMMUNICATIONS	127
6.1	HIGHLIGHTS OF THE YEAR	127
6.2	INFORMATION VISITS	130
6.3	OTHER CONFERENCES AND MEETINGS	143
6.4	MEDIA RELATIONS	151
6.5	PUBLICATIONS	157
6.6	ONLINE COMMUNICATIONS	158
7	ANNEXES	161
A	STATISTICS	163
B	THE OMBUDSMAN'S BUDGET	172
C	PERSONNEL	174
D	INDICES OF DECISIONS	180

INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



INTRODUCTION

The year 2004 was a rich year as far as the rights of European citizens are concerned. These rights became a reality for an additional 75 million people whose countries joined the European Union on 1 May. One of the first opportunities to exercise these rights came in early June with the European Parliament elections. And of course, mid-June saw the adoption of the Treaty establishing a Constitution for Europe, including the Charter of Fundamental Rights. The process of ratification of the Constitution in all 25 Member States will surely generate lively debate and discussion about what it means to be a citizen of the Union.

From the perspective of the European Ombudsman, 2004 marked the end of the institution's second mandate. From a two person team in Strasbourg in September 1995, has grown an institution that is respected by the EU institutions and bodies and trusted by citizens who are turning to it in ever greater numbers. The past year saw an unprecedented rise of over 50% in complaints received – a clear sign of increasing awareness of the right to complain to the Ombudsman about maladministration.

For me personally, 2004 was ultimately to determine whether I could live up to the promises I had made upon taking up the post of European Ombudsman. As my mandate coincided with the latter part of the 1999-2004 legislative term, I was keen to deliver on the priorities that I outlined on 1 April 2003. These were to enhance the effectiveness of the Ombudsman's Office, to promote the rule of law, good administration and respect for human rights, and to reach out to citizens all over Europe. The enlargement of the Union was the central theme of all three priorities, while my guiding philosophy in addressing them has been to be both "reactive", i.e., responding to complainants, and "proactive", that is, reaching out to the ombudsman's various constituencies through a variety of initiatives designed to maximise service to users.

Delivering on my promises

An ombudsman's office must strive to ensure that all citizens who turn to it receive help or advice, in a timely and appropriate way. With this in mind, we worked hard in 2004 to build up the institution into one that was ready to serve the citizens of 25 Member States in the 21 Treaty languages. By 1 May, we were in a position to do this. We recruited the necessary legal and administrative staff and ensured that our new complaints-database was fully operational. This enabled us to respond to the unprecedented increase in demand for our services.

And we got results! In 2004, the Ombudsman was able to help the complainant in nearly 70% of cases by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem. But more than that! Following inquiries by the Ombudsman, the institutions settled bills and paid interest, released documents and provided explanations, remedied injustices and apologised for mistakes. In short, the EU institutions and bodies were keen to demonstrate their willingness to work with the Ombudsman for the benefit of citizens. This attitude is key to building confidence in the service the Ombudsman provides. Citizens will not turn to me with their problems unless they trust that their complaint will make a difference. In 2004, we continued to prove that it does.

My second priority involved building on relations with ombudsmen throughout Europe to promote the rule of law, good administration and respect for human rights. With this in mind, I stepped up my information tour and, having visited all ten accession countries by 1 May, went on to Romania, the Netherlands, Portugal and France before the year-end. These visits proved their worth. Each one included meetings with citizens and potential complainants to explain the role of the ombudsman, exchanges of views with public officials to underline the importance of non-judicial remedies and discussions with my ombudsman counterparts to determine how best to defend and promote



citizens' rights. To further promote the ombudsman concept, I travelled to Turkey and to Serbia and Montenegro to advise on the establishment of the institution there. All in all, throughout my information tour and other visits, I gave over 30 lectures and presentations and held over 150 meetings with ombudsmen, public officials and other interlocutors.

The information visits were also key to helping deliver on my third priority. Public lectures, meetings and media interviews offered multiple opportunities to inform citizens of their rights and of how best to use them. We continued to intensify our efforts to target information to potential users of the Ombudsman's services by addressing non-governmental organisations, chambers of commerce, law and public administration departments in the academic world and other interest groups at seminars, meetings and conferences. Our range of publications in up to 25 languages was distributed widely and made available electronically to help raise awareness of the Ombudsman throughout Europe.

I would like to think that the European Parliament's decision to re-elect me on 11 January this year constitutes an endorsement of these activities. More generally, I regard the strong support for my candidacy by virtually all the political groups as tangible evidence of the esteem in which Parliament has come to hold this institution. Such broad-ranging, cross-party support is critical as the institution heads into its second decade.

A new look Annual Report

Parliament supervises the Ombudsman's work largely on the basis of the Annual Report that I submit each year. The Annual Report is the Ombudsman's most important publication. By providing an overview of my complaint-handling activities in a given year, it enhances Parliament's ability to call the Union's institutions and bodies to account. By highlighting problematic areas within the administration, it equally serves as a valuable resource for self-regulation for the EU institutions and bodies. But beyond this, the Ombudsman's Report is of interest to a wide range of groups and individuals at multiple levels — fellow ombudsmen, politicians, public officials, professionals, academics, interest groups, non-governmental organisations, journalists and citizens alike at the European, national, regional and local levels.

With a view to best responding to the diverse expectations of these various constituencies, we have reconceptualised the Annual Report and launched a range of associated publications. In terms of the Annual Report itself, full decisions have been replaced with summaries that draw attention to the key points. A thematic analysis highlights the most important findings of law and fact in four major areas of work. The chapters covering communications and relations with other bodies have been revised to highlight the benefit of these activities and to illustrate this with details of the events that took place. The result is, we believe, a more user-friendly document that adds real value. Those familiar with the Ombudsman's work can acquaint themselves instantly with the most important developments, while those whose first encounter with the Ombudsman is via the Annual Report should be able to quickly and easily understand what this role involves. Complementing our wish to make the Ombudsman's work more accessible is our commitment to make best use of public money and to respect the environment. By greatly reducing the length of the Report, we hope to have acted in the best interests of the citizen. A constant concern for the Ombudsman!

It was with this very concern in mind that we launched the *Executive Summary & Statistics* publication in 2004. This Summary provides a concise overview of the Ombudsman's activities in a given year. To fully complement the range of material offered, and most notably in response to those who want to study the Ombudsman's work in greater depth, this year sees the launch of a more comprehensive electronic publication that contains the full decisions, in English, French and German, in the cases that are included in chapter 3 of the Annual Report. It will be made available in the second half of 2005 as a single electronic document on the Ombudsman's website, while a hard copy or CD-ROM may be requested from the Ombudsman's office. And of course, decisions closing cases continue to be published on the Ombudsman's website in English and in the language of the complainant if different. With this full range of material, we hope to best respond to the diverse needs of our audience.



The years ahead

There is no denying that we are at a critical juncture in the development of a citizens' Europe. The Constitution, which I hope will be endorsed by citizens and Parliaments in the 25 Member States, represents a major step forward in a great number of areas. As an Observer at the European Convention which produced the draft Constitution, I fought hard to ensure that citizens' interests be put at the heart of the debate. The right to complain to the Ombudsman indeed features prominently in the text. Beyond that, I believe that a legally binding bill of rights constitutes one of the most significant advances for citizens.

Achieving the potential contained in the Charter requires proactive intervention to make citizens aware of the new possibilities opened for them and to encourage and assist public authorities at all levels of the Union to make the rights and aspirations of the Charter the touchstone for their actions. It particularly behoves the Ombudsman to raise awareness about the Charter as the debate on the Constitution is stepped up throughout the Union. I have already signalled to my interlocutors in the EU institutions and in the Member States my willingness and commitment to perform this task. I see this as an integral part of three challenges facing the Ombudsman in the coming years.

The first challenge is to ensure that citizens' rights under EU law are respected at every level in the Union.

For this to happen, citizens must be aware of their rights. As European Ombudsman, I will continue working to improve the quality of information to citizens and potential complainants about their rights. The sustained increase in complaints and requests for information received by the Ombudsman indicates that we are moving in the right direction, but much more remains to be done.

Equally important in this respect is that public administrations at the European, national, regional and local levels take full account of citizens' rights in their everyday work. The implementation of EU law is, after all, largely the responsibility of administrations in the Member States. When these public administrations fail to take full account of these rights, national and regional ombudsmen have a key role to play, increasingly so as the Charter is made legally binding. I intend to further intensify my co-operation with my counterparts in the Member States by examining the possibility of joint inquiries, as well as exploring the feasibility of a single telephone number across the Union for people wishing to contact the network of ombudsmen. This could be especially useful for citizens who are exercising the right to move and reside freely in the Union.

When the Constitution is ratified, I would also like to explore with Parliament how to make sure that citizens' complaints about violations of Charter rights can be looked into as rapidly and effectively as possible, and possibly be brought before the Court of Justice, if an important issue of principle cannot be resolved in any other way.

The second challenge is to ensure that, in everything they do, the EU institutions and bodies conform to the highest standards of administration.

The increasing readiness of the EU institutions and bodies to work with me in resolving citizens' complaints is a constant source of encouragement. All the more so, as the way in which they react to complaints is a key measure of how citizen-focused they are. The more willing the institution is to settle complaints or to accept friendly solutions proposed by the Ombudsman, the better it is for all concerned. For this reason, I intend to carry out an extensive analysis of all the friendly solutions achieved by the Ombudsman since the establishment of the institution, looking for common characteristics that might help to identify more complaints that could bring about this kind of 'win-win' outcome.

This forms part of my efforts to advance the role of the Ombudsman as a resource capable of contributing to the improvement of the quality of services offered by the Union's administration. The EU institutions and bodies can learn from complaints about how to deliver better services. The result is that all those who may at some stage have contact with the institutions – not just those who complain – benefit from the Ombudsman's work, while the institutions should find themselves with fewer complaints in the future. I also intend to launch more inquiries on my own initiative in order to identify problems and encourage best practice. The positive outcomes of my



own-initiative inquiries into good administration in the European Schools and the establishment a dispute resolution procedure for seconded national experts help illustrate what can be achieved in this regard. It was equally with an eye to promoting the highest standards of administration that I made a number of further remarks to the institutions and bodies in 2004. This occurred where, even though no maladministration was found, I felt that there was an opportunity for the institutions to improve their administration in the future, whether on access to documents, recruitment practices or tender procedures.

There were a few cases in 2004 in which the institution's response to the Ombudsman's inquiries could have been better. I issued my first special report to Parliament after the Commission failed to provide a convincing explanation for differences in the grading of press officers in its delegations in third countries and rejected a draft recommendation to reconsider the relevant rules. This followed a complaint alleging discrimination on the grounds of nationality. I hope that in reviewing the Ombudsman's work in 2004, Parliament will take account of the very positive co-operation that the Commission and the other institutions have shown in the vast majority of cases and encourage them to extend it to all cases in the future. In this way, we can work together to promote the highest standards of administration.

The third challenge is to guarantee that the Ombudsman institution serves the citizen in the most efficient and effective way possible.

The European Ombudsman is the guardian of good administration. In this regard, a key instrument at his disposal is the European Code of Good Administrative Behaviour. As called upon by the European Parliament when it approved the text in 2001, the Ombudsman uses the Code in examining whether there is maladministration.

The Code equally serves as a useful guide and a resource for civil servants. I am happy to note that the impact of the Code has not been limited to the Union's institutions and bodies and that it has been taken on board by a number of Member States and candidate countries. In an effort to further raise awareness, I saw to it that the Code was translated into all the official and candidate country languages in 2004. A new version will be published in the course of 2005, so that citizens all over Europe can become familiar with the rights it contains.

Notwithstanding the positive influence the Code has had, I continue to believe that a law on good administration, applying to all EU institutions and bodies, holds many advantages. Its adoption would underline, for both citizens and officials, the importance of the principles laid down in the Code. It would help eliminate the confusion currently arising from the parallel existence of different codes of good administrative behaviour for most institutions and bodies. Finally, and most importantly, it would go some way towards making the citizens' fundamental right to good administration, as laid down in Article 41 of the Charter (Article II-101 of the Constitution), a reality. I will therefore continue in my efforts to encourage the European Commission to propose, as rapidly as possible, a law to promote good administration by the Union institutions and bodies.

Conclusion

I would like to summarise my vision for the next five years of the European Ombudsman institution. My ambition is for all EU citizens to have the means to be aware of their rights and to know how to ensure that their EU rights are fully respected. This goal can only be realised through close co-operation, both with EU institutions, especially the European Parliament, and with national and regional ombudsmen in the Member States. I am further reassured in the knowledge that I can rely on the enthusiasm and dedication of my staff. Mindful of the heavy responsibilities that Parliament's recent, broad endorsement places upon me, I look forward to making that ambition a reality, as the institution moves into its second decade, by continuing to serve citizens of the EU diligently, dynamically, effectively and, most importantly, fairly and impartially.

P. Nikiforos DIAMANDOUROS



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION
INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND
SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



1 EXECUTIVE SUMMARY

The tenth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2004. It is the second Annual Report to be presented by Mr P. Nikiforos DIAMANDOUROS, who began work as European Ombudsman on 1 April 2003.

STRUCTURE OF THE REPORT

The Report consists of six chapters and four annexes. It starts with a personal introduction by the Ombudsman, in which he reviews the year's main activities and achievements and outlines his future priorities. This Executive Summary constitutes chapter 1.

Chapter 2 describes the Ombudsman's procedures for handling complaints and conducting inquiries. It highlights important new developments and gives an overview of the complaints dealt with during the year, including a thematic analysis of the results of cases closed after an inquiry. This analysis covers the most significant findings of law and fact contained in the Ombudsman's decisions in 2004.

Chapter 3 consists of a selection of summaries of those decisions, illustrating the range of subjects and institutions involved in complaints and own-initiative inquiries. It includes summaries of all the decisions mentioned in the thematic analysis of chapter 2. Summaries of decisions on complaints are organised first by the type of finding or outcome and then by the institution or body concerned. Summaries of decisions following own-initiative inquiries are covered at the end of the chapter.

Chapter 4 concerns relations with other institutions and bodies of the European Union. It begins by outlining the value of the Ombudsman's constructive working relations with the institutions and bodies, before listing the various meetings and events that took place in this regard in 2004.

Chapter 5 deals with the European Ombudsman's relations with the community of national, regional and local ombudsmen in Europe and beyond. The activities of the European network of ombudsmen are described in detail, while the Ombudsman's participation in seminars, conferences and meetings is also covered.

Chapter 6 provides an overview of the Ombudsman's communications activities. The chapter is divided into six sections, covering the year's highlights, the Ombudsman's information visits, conferences and meetings involving the Ombudsman and his staff, media relations, publications and online communications.

Annex A contains statistics on the work of the European Ombudsman in 2004. Annexes B and C give details of the Ombudsman's budget and personnel respectively. Annex D indexes the decisions contained in chapter 3 by case number, by subject matter and by the type of maladministration alleged.

SYNOPSIS

The mission of the European Ombudsman

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



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

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

The right to complain to the Ombudsman is included in the Treaty establishing a Constitution for Europe, which is currently in the process of ratification by the EU Member States.

Complaints and inquiries in 2004

The total number of complaints received in 2004 was 3 726. This represents an increase of 53% compared to 2003. Of this 53% overall increase, 51% is accounted for by complaints from the 10 new Member States that joined the Union on 1 May 2004. The remaining 49% represents an increase in complaints sent from the 15 old Member States and from elsewhere in the world, reflecting greater awareness of the European Ombudsman in the EU and beyond.

For the first time ever, more than half of the complaints were sent to the Ombudsman electronically, either by e-mail or using the complaint form on the Ombudsman’s website. Complaints were sent directly by individual citizens in 3 536 cases, while 190 complaints came from associations or companies.

In nearly 70% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem. A total of 351 new inquiries were opened during the year, including eight inquiries on the Ombudsman’s own initiative.

Most of the complaints that led to an inquiry were against the European Commission, with 375 cases accounting for 69% of all inquiries opened. As the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens’ complaints. There were 58 complaints against the European Communities Personnel Selection Office (EPSO), 48 against the European Parliament and 22 against the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (127 cases), discrimination (106 cases), avoidable delay (67 cases), unsatisfactory procedures (52 cases), unfairness or abuse of power (38 cases), failure to ensure fulfilment of obligations, that is failure by the Commission to carry out its role as “Guardian of the Treaty” vis-à-vis the Member States (37 cases), negligence (33 cases), and legal error (26 cases).

The year 2004 also saw the largest ever increase in requests for information to the Ombudsman. Over 3 200 individual requests were received by e-mail, compared to around 2 000 in both 2003 and 2002.

The results of the Ombudsman’s inquiries

In 2004, the Ombudsman closed 251 inquiries. Of these, 247 were inquiries into complaints and four were own-initiative inquiries. The findings were as follows:

No maladministration

In 113 cases, the Ombudsman’s inquiry revealed no maladministration. This is not necessarily a negative outcome for the complainant, who at least receives the benefit of a full explanation from the institution or body concerned of what it has done, or receives an apology. For example:

- The European Commission acted rapidly and constructively to correct a mistake which had led it to reject a pre-proposal from a German consultant for missing the submission deadline. The pre-proposal was selected and, after the Ombudsman’s intervention, the complainant was



granted the same number of days as other promoters to prepare his full proposal. (221/2004/GG)

- The Commission provided a useful explanation of the relevant legal framework in response to allegations from a Greek insurance company that it had failed to ensure the correct transposition of certain directives into Greek national legislation. The company chairman wrote to the Ombudsman to thank him for his inquiry, which had drawn his attention to the possibilities open to him to take further action on the matters of substance. (841/2003/(FA)OV)

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

- The Ombudsman confirmed that, on the basis of the exceptions provided for in its rules on access to documents, the Commission was right to refuse access to certain documents about World Trade Organisation (WTO) negotiations. The documents had been requested by the environmental organisation "Friends of the Earth". Given the expectations of many citizens for greater openness in this important policy area, however, he encouraged the Commission to consider additional means that might render these negotiations more transparent for citizens, and thus facilitate public access to the exchanges among the parties. (1286/2003/JMA)
- Following a complaint to the Ombudsman, the European Parliament explained to a Spanish citizen why his application for a traineeship had been rejected. With a view to promoting higher standards of administration, the Ombudsman remarked that Parliament could consider providing more specific information on the criteria by which traineeship applications are assessed. He also suggested that Parliament consider revising its rules to make clear that the list of names of persons who accept the offer of a traineeship will be a public document. (821/2003/JMA)
- The founder of a German animal rights organisation was refused access to parts of a mission report drawn up by the Commission's Food and Veterinary Office. While the Ombudsman agreed with the Commission's decision to refuse access, he remarked that it would be useful to record non-confidential information separately from confidential information, as far as practically possible. This could simplify the granting of partial access, he said. The Commission subsequently confirmed that its rules on access to documents had led to a clearer separation of confidential and non-confidential documents. (1304/2003/PB)

Cases settled by the institution and friendly solutions

Whenever possible, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against. The co-operation of the Community institutions and bodies is essential for success in achieving such outcomes, which help enhance relations between the institutions and citizens and can avoid the need for expensive and time-consuming litigation.

During 2004, 65 cases were settled by the institution or body itself following a complaint to the Ombudsman. Among them were the following:

- The Commission paid invoices totalling EUR 17 437 to a small German company, which turned to the Ombudsman after it had sent the institution seven reminders. The Commission explained that the delay was due to technical changes to budgetary procedures and gave reassurances that the establishment of a financial unit meant that matters had now been reviewed. After the Ombudsman pointed out that small and medium-sized companies are particularly vulnerable to the effects of delays in payment, the Commission also agreed to pay interest. (435/2004/GG)
- Shortly after the Ombudsman opened an inquiry, the Parliament admitted an Italian policeman to a recruitment procedure in the field of general security. The candidate had twice contacted the Parliament to contest its decision to reject his application, pointing out that his experience of almost five years should satisfy the relevant criteria. He complained to the Ombudsman after the Parliament failed to reply. (1600/2003/ADB)



When the Ombudsman finds maladministration, he always tries to achieve a friendly solution if possible. In some cases, a friendly solution can be achieved if the institution or body concerned offers compensation to the complainant. Any such offer is made *ex gratia*: that is, without admission of legal liability and without creating a precedent.

During 2004, 12 friendly solutions were proposed. Five cases were closed when a friendly solution was achieved (including 2 cases where the proposal was made in 2003). At the end of 2004, 11 proposals were still under consideration. Among the friendly solutions achieved in 2004 were:

- A case in which the Commission gave a complainant access to the results he had obtained in a road test. The complainant had applied for an auxiliary post as a driver at the Commission and unsuccessfully asked for the disclosure of his results after he was informed that he had failed the test. The Ombudsman found that the Commission had not submitted any reasons as to why the complainant should not be given access to his own results. (1320/2003/ELB)
- A case in which the Commission supplied Corporate Observatory Europe, a European research and campaign group, with a list of documents concerning World Trade Organisation (WTO) negotiations on investment. The complainant, whose request for documents had been rather general, thus received the information needed to make a more precise request. (415/2003/TN)

Critical remarks, draft recommendations and special reports

When a friendly solution is not possible, the Ombudsman may close the case with a critical remark or make a draft recommendation.

A critical remark is normally made if it is no longer possible for the institution concerned to eliminate the instance of maladministration, the maladministration appears to have no general implications and no follow-up action by the Ombudsman seems necessary. A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help avoid maladministration in the future. In 2004, the Ombudsman made 36 critical remarks. For example:

- The Ombudsman criticised the Parliament's failure to take adequate measures to promote effective compliance with its rules on smoking on its premises. This followed a complaint from a Danish official working in the Parliament. The Ombudsman pointed out that, in view of the possible adverse health effects of exposure to smoke, Parliament should pay particular attention to this issue as it also raised potential issues of legal liability. (260/2003/OV)
- The Ombudsman deplored the attitude displayed by the Commission in a case concerning the recruitment of a Swedish citizen. The Commission refused to consider reviewing the complainant's classification, which the Ombudsman had found to be unfair. The fact that the Commission did not comment on an alleged internal misunderstanding concerning the availability of a post was not in conformity with its obligations under EU law, he added. (1435/2002/GG)
- The Ombudsman criticised the European Personnel Selection Office (EPSO) for failing to properly justify its decision to draft correspondence to candidates in an open competition only in English, French or German. The complainant alleged that this decision violated the principle of equality of official languages and working languages contained in the relevant rules. Given that this was an "actio popularis" complaint, the Ombudsman stated that it was not appropriate to look for a friendly solution. (2216/2003/MHZ)

It is important for the institutions and bodies to follow-up critical remarks from the Ombudsman, taking action to resolve outstanding problems and avoid maladministration in the future. During 2004, the Commission informed the Ombudsman of its follow-up on 11 critical remarks, including:

- Apologising and pursuing the case in question after the Ombudsman criticised it for not giving a convincing explanation as to why it had taken no action for almost two years. This followed two complaints concerning state aids granted by the Portuguese Government which, according to the complainant, the Commission had failed to deal with properly. (2185/2002/IP)



- Expressing regret that a complainant's expectations had not been addressed in writing in an adequate and unambiguous way and confirming that its principles of good administration had since been outlined more clearly. The Ombudsman had criticised the Commission for refusing to reimburse costs estimated at EUR 170 000 for secretarial services provided by a Dutch institute. (1986/2002/OV)

In cases where maladministration is particularly serious, or has general implications, or if it is still possible for the institution concerned to eliminate the maladministration, the Ombudsman normally makes a draft recommendation. The institution or body concerned must respond to the Ombudsman with a detailed opinion within three months.

During 2004, 17 draft recommendations were made. In addition, five draft recommendations from 2003 led to decisions in 2004. Seven cases were closed during the year when a draft recommendation was accepted by the institution. One case led to a special report to the European Parliament. Five cases were closed for other reasons. At the end of 2004, nine draft recommendations were still under consideration. The following were among those that were accepted in 2004:

- The European Anti-Fraud Office (OLAF) provided a detailed explanation in response to the Ombudsman's call that it review its inquiry into the so-called "Blue Dragon" case. The Ombudsman's investigation had revealed a number of points that gave rise to concern about the adequacy of OLAF's inquiry into allegations made by the directors of the Blue Dragon company. In view of the information OLAF provided about an on-going investigation being carried out by the Commission, the Ombudsman found it reasonable for OLAF not to re-open its own inquiry. (1769/2002/(IJH)ELB)
- The Commission granted compensation of EUR 21 000, on a purely ex gratia basis, to a small UK company after the Ombudsman found that it had given the company insufficient time to prepare a proposal in the framework of a research and development contract. This ultimately led to the proposal being deemed ineligible due to an error it contained. The Commission stressed that it was anxious not to harm small and medium-sized enterprises and acknowledged that exceptional circumstances had made it difficult for the complainant to execute the contract correctly. (1878/2002/GG)
- OLAF gave three documents to a complainant and explained that the other documents she had requested did not exist, after the Ombudsman intervened. The complainant, an official who had been working for the Institute for Transuranium Elements (ITU) in Karlsruhe, requested the documents as part of the inquiry into her allegations of severe irregularities in the work of the ITU. (220/2004/GG)

If a Community institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament. This constitutes the Ombudsman's ultimate weapon and is the last substantive step he takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgement of the Parliament. There was one special report made in 2004:

- The Ombudsman submitted a special report to Parliament after the Commission failed to provide a coherent and convincing explanation for differences in the grading of press officers in its delegations in third countries and rejected a draft recommendation to reconsider its rules on the classification of these posts. A Pakistani national, who worked as Press and Information Officer at the Commission's delegation in Islamabad, alleged that by being classified in a lower group, he had been discriminated against on the basis of his nationality. (OI/2/2003/GG)

Own-initiative inquiries

The Ombudsman makes use of his power of own initiative in two main instances. Firstly, he may use it to investigate a possible case of maladministration when a complaint has been submitted by a non-authorised person (i.e. when the complainant is not a citizen or resident of the Union or a legal person with a registered office in a Member State). Eight such own-initiative inquiries



were opened in 2004, including six on the basis of complaints made before 1 May by citizens of the countries that joined the Union on that date. Four of these inquiries were closed during the year. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. Two such own-initiative inquiries were closed with positive results during the year, namely:

- The Commission took action to improve the administration of the European Schools, seeking to identify and tackle the most serious operational weaknesses. The Ombudsman welcomed its response to his inquiry into good administration in the Schools and, in particular, its commitment to co-operation with parents. He further encouraged it to seek to ensure that the Schools themselves acknowledge, as part of their core mission, the need to empower parents and win their trust. The Ombudsman opened this inquiry following a series of complaints expressing a sense of frustration and disempowerment on the part of parents whose children attended the Schools. (OI/5/2003/IJH)
- The Commission agreed to introduce an internal complaints procedure for seconded national experts, following an own-initiative inquiry. After the Ombudsman highlighted that the Commission had not given a definite timetable for action, the Commission indicated that the complaints procedure could be adopted by March 2005. Seconded national experts are national or international civil servants, or persons employed in the private sector, who are working temporarily for European institutions. The Ombudsman opened the inquiry after he was alerted to the fact that these experts may not have access to an internal complaints procedure. (OI/1/2003/ELB)

Further analysis

These, and other cases, are reviewed from the following thematic perspectives in the final section of chapter 2 of the Annual Report: access to documents and data protection, the Commission as “Guardian of the Treaty”, contracts and grants, and recruitment and staff issues. Since almost 70% of the Ombudsman’s inquiries concern the Commission, the section concludes with an evaluation of the Commission’s relations with the Ombudsman and with complainants, as reflected in the decisions of 2004 and in the Commission’s responses during that year to further remarks and critical remarks. The Ombudsman draws Parliament’s attention to a number of cases where the Commission could have responded more positively and states that he would welcome initiatives by Parliament designed to encourage the Commission to extend to all future cases the good co-operation that it exhibited in the vast majority of cases in 2004.

Chapter 3 of the Report contains summaries of 59 out of the total of 251 decisions closing cases in 2004. The summaries reflect the range of subjects and institutions covered by the Ombudsman’s inquiries and the different types of finding. The relevant cases have been chosen because they contain new findings of law, new material concerning the competence or procedures of the Ombudsman, or findings of fact that are of general importance or interest.

All the Ombudsman’s decisions following inquiry, with the exception of a few confidential cases which cannot be satisfactorily anonymised, are published on the Ombudsman’s website (<http://www.euro-ombudsman.eu.int>) in English and in the language of the complainant if different.

Relations with European Union institutions and bodies

Constructive working relations with the European Union institutions and bodies are essential for the Ombudsman to achieve positive results for citizens. This co-operation takes the form of regular meetings and joint events, during which the Ombudsman and his interlocutors gain a greater understanding of each other’s work, explore how best to defend and promote citizens’ rights and identify areas in which they can work together in the future.

The Ombudsman met with Members and officials of the institutions and bodies on more than 30 occasions in 2004. These events included presentations of the Ombudsman’s work, during which he offered guidance on how best to respond to complaints and how to improve procedures. This



activity, another instance of the Ombudsman's proactive dimension, forms part of the institution's dual role, as both a mechanism of external control and a resource to help improve the quality of administration. Initiatives were explored with a view to enhancing interinstitutional co-operation, most notably with regard to ensuring that everyone who might have reason to complain to the Ombudsman receives information about how to do so. Further meetings took place to discuss the Ombudsman's priorities and the resources necessary to achieve these priorities, with a particular focus on the budget for the institution.

The Ombudsman reports annually to the European Parliament and keeps Members regularly informed of his activities by providing them with copies of his publications throughout the year. Eight publications were made available to MEPs in 2004. There is a fruitful working relationship between the Ombudsman and Parliament's Committee on Petitions, including mutual transfer of cases when appropriate, so as to offer the most effective service to European citizens. The Ombudsman also advises complainants who are seeking a change in European law or policy of the possibility to address a petition to the Parliament. The DE ROSSA Report on the Ombudsman's *Annual Report 2003* included a proposal for the Committee to become a full member of the European network of ombudsmen. The Ombudsman welcomed this proposal and made arrangements for its rapid implementation.

Relations with ombudsmen and similar bodies

Working closely with his counterparts at the national, regional and local levels is a key priority for the European Ombudsman. This helps ensure that citizens' complaints are dealt with promptly and effectively. It is equally vital for tracking important developments in the world of ombudsmen, exchanging information about EU law and sharing best practice.

Network

The European network of ombudsmen, which has steadily developed into a powerful collaboration tool, is of prime importance to the European Ombudsman. The network now comprises almost 90 offices in 29 countries, covering the national and regional levels within the Union and the national level in the applicant countries for EU membership, Norway and Iceland. There is an effective mechanism for co-operation on case handling. This is particularly important given that many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. In many cases an ombudsman in the State concerned can provide an effective remedy. When possible, the European Ombudsman transfers cases directly to national and regional ombudsmen, or gives suitable advice to the complainant. During 2004, the Ombudsman advised 906 complainants to turn to a national or regional ombudsman and transferred 54 complaints directly to the competent ombudsman. The ombudsmen in the network are also well placed to help inform citizens about their rights under EU law and about how to exercise and defend those rights.

If requested to do so, the European Ombudsman also assists national and regional ombudsmen with their inquiries by replying to queries about EU law, or by channelling the query to an appropriate EU institution or body for response. In 2004, queries were received from the Regional Ombudsman of Veneto (Italy), the Irish Ombudsman and the Ombudsman of Cyprus.

The network is equally active in terms of sharing of experiences and best practice. This occurs via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Preparations for the fifth Seminar of national ombudsmen in the EU Member States and Candidate Countries began in earnest in 2004, with the European Ombudsman and his Dutch counterpart, Mr Roel FERNHOUT, meeting three times with a view to ensuring that this Seminar, to take place in The Hague in September 2005, is a great success. The *European Ombudsmen - Newsletter* continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2004. The two issues, published in April and October, covered topics such as the new Constitution for Europe and its implications for ombudsmen, problems encountered by those who want to make use of their right to freedom of movement, and obstacles faced by people with disabilities. In terms of the Ombudsman's electronic discussion forum, the document and discussion fora really took off during the year, enabling offices to share information through the posting of



questions and answers. Several major discussions were initiated, on issues as diverse as television coverage of ombudsmen to the rights of ombudsmen to visit prisons, with most national offices contributing to one or many of these discussions. And the Ombudsman's electronic news service - *Ombudsman Daily News* - was published every working day, including articles, press releases and announcements from offices in every country covered by the network.

Co-operation within the network was further intensified in 2004, as a result of the Ombudsman's information visits to the Member States and applicant countries. Ombudsmen throughout Europe gave invaluable assistance in organising these visits, which systematically provided for in-depth meetings between the ombudsmen to explore new ways of working together for the benefit of citizens. By the end of 2004, the Ombudsman had visited all 25 Member States since taking office in April 2003.

Meetings

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European network of ombudsmen. As an active member of an array of ombudsman organisations, he participated in conferences and seminars in Europe and beyond, including the eighth International Ombudsman Institute (IOI) World Conference in Quebec City, Canada. He was keen to attend events organised by national and regional ombudsmen or to ensure that his Office was represented at such events. In the context of his work to promote the rule of law, respect for human rights and good administration, the Ombudsman attended a number of events in 2004, notably in Turkey and Serbia and Montenegro, aimed at establishing new ombudsman institutions. Also in this regard, the Ombudsman continued to make the *European Ombudsmen - Newsletter*, the electronic discussion forum and the daily news service available to the broader membership of the European Region of the IOI.

Communications activities

The overriding goal of the Ombudsman's efforts to work constructively with EU institutions and bodies and with his fellow ombudsmen is to ensure the best possible service to citizens. Key to achieving this goal is raising awareness among citizens about their rights and, in particular, their right to complain to the Ombudsman. Much was done in this regard during the year.

The Ombudsman stepped up his information visits to the Member States, accession and applicant countries in 2004. During each of these visits, he met citizens, potential complainants, administrators, members of the judiciary and senior political representatives. The visits proved an excellent means of improving citizens' awareness about their rights. Moreover, they helped raise the profile of the Ombudsman's work among key members of the judicial, legislative and executive branches at the national and regional levels and enriched the valuable collaboration the Ombudsman enjoys with his counterparts in the Member States and applicant countries. The support of the ombudsman offices in the countries concerned, as well as the European Parliament Offices and European Commission Representations and Delegations, made a critical contribution to the success of these visits.

In addition to the events that took place during the information visits, the Ombudsman and his staff addressed over 70 conferences, meetings and groups throughout Europe during the year, to discuss issues such as the EU's efforts to communicate with citizens, the Constitution for Europe and the rights of people with disabilities. These meetings helped raise awareness of the Ombudsman's work among potential complainants and interested citizens alike.

Media activities were stepped up in 2004, with press releases issued every 11 days on average. The Ombudsman gave over 40 interviews to journalists from the print, broadcast and electronic media in Strasbourg, Brussels and during his information visits further afield. He also presented his work and responded to questions during press conferences, briefings, meetings and working lunches.

Material about the work of the Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament in May. The Brussels Open Day on 1 May was used to launch *The European Ombudsman - At a glance* leaflet in 24 languages, while his



complaint form and brochure was made available in all Treaty languages shortly after enlargement. For the first time, the Ombudsman's Annual Report was made available in 20 languages, while a user-friendly *Executive Summary & Statistics* publication made the Report more widely accessible.

These publications were all made available on the Ombudsman's website, along with decisions, press releases, statistics and details of his communications activities, which were posted on a regular basis. The website (<http://www.euro-ombudsman.eu.int>) was transformed from a linguistic point of view during the year, with the site's homepages and navigation pages, previously in 11 languages, made available in 10 new languages - the nine languages of the new EU Member States and Irish.

10th anniversary preparations

With an eye to the 10th anniversary of the institution in 2005, the Ombudsman organised a workshop in Strasbourg, bringing together individuals who had played an important role in its founding. The "Founders' Workshop" gave rise to lively discussions, allowing valuable information to be derived about the origins, establishment and early development of the institution. A publication commemorating the 10th anniversary, inspired by the findings of the "Founders' Workshop", is expected to be produced in 2005.

Internal developments

During the first four months of 2004, the Ombudsman built on the work that had been carried out in recent years to prepare the Office for enlargement. Strenuous efforts ensured that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages as from 1 May.

The number of posts in the Ombudsman's establishment plan rose from 31 in 2003 to 38 in 2004, as foreseen in the multi-annual budget plan adopted by Parliament in 2002. This plan provided for a phased introduction of new posts connected to enlargement in 2003-5. An increase to 51 posts is foreseen in the 2005 budget adopted by the budgetary authorities in December 2004.

The Ombudsman's new complaints database became fully operational during the year and enabled the Office to successfully face the challenge that came with an unprecedented increase in the number of complaints and the expansion in the range of languages covered. Coupled with an improved deployment of human resources and a continued upgrading of the information technology infrastructure in the Office, these initiatives allowed for an enhanced service to citizens in 2004.



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



2 COMPLAINTS AND INQUIRIES

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

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

The Ombudsman also has the possibility to conduct inquiries on his own initiative, and thus to take a proactive role in combating maladministration.

2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is governed by Article 195 of the EC Treaty, the Statute of the Ombudsman (which is a decision of the European Parliament¹) and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute.

The implementing provisions deal with the internal operation of the Ombudsman's office. However, to make them understandable by and useful to citizens, they also include certain material relating to other institutions and bodies that is already contained in the Statute. The current implementing provisions came into effect on 1 January 2003. They are available in all official languages on the Ombudsman's website (<http://www.euro-ombudsman.eu.int>) and in hard copy from the Ombudsman's office.

The European Ombudsman and the Constitution for Europe

The Treaty establishing a Constitution for Europe was signed in Rome on 29 October 2004 by Heads of State or government and Ministers of Foreign Affairs of the Member States. It is currently in the process of ratification by the Member States.

The right to complain to the Ombudsman appears in Part I of the Constitution, in the title on citizenship and fundamental rights (Article I-10), as well as in the Charter of Fundamental Rights (Article II-103). The title on the democratic life of the Union in Part I of the Constitution provides for election of the Ombudsman by the European Parliament and for the Ombudsman's independence (Article I-49). Article III-335, which corresponds to Article 195 of the existing EC Treaty, includes provision for the Statute to become a European law of the European Parliament.

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



2.2 THE MANDATE OF THE EUROPEAN OMBUDSMAN

Article 195 of the EC Treaty empowers the Ombudsman to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. A complaint is therefore outside the mandate if:

- 1 the complainant is not a person entitled to make a complaint;
- 2 the complaint is not against a Community institution or body;
- 3 the complaint is against the Court of Justice or the Court of First Instance acting in their judicial role; or
- 4 the complaint does not concern a possible instance of maladministration.

There is further discussion below of items 1, 2 and 4.

2.2.1 Unauthorised complaints

Although the right to complain to the European Ombudsman is limited to citizens, residents and legal persons with a registered office in a Member State, the Ombudsman also has the power to open inquiries on his own initiative. Using the own initiative power, the Ombudsman may investigate a possible case of maladministration raised by a complaint, even if the complainant is not an authorised person. Eight such own-initiative inquiries were opened in 2004, including six complaints made before 1 May 2004 by citizens of the States that joined the Union on that date.

The Ombudsman approaches the question of whether to use the own initiative power in this way on a case-by-case basis. No complaint has yet been rejected solely because the complainant is not an authorised person.

2.2.2 Community institutions and bodies

The Ombudsman's mandate covers the Community institutions and bodies. The institutions are listed in Article 7 of the Treaty, but there is no definition or authoritative list of Community bodies. The term includes bodies established by the Treaties, such as the Economic and Social Committee and the European Central Bank, as well as agencies set up by legislation, such as the European Environment Agency and the European Monitoring Centre on Racism and Xenophobia.

In response to a complaint made in the year 2000, the Ombudsman invited the European University Institute (EUI) to comment on whether it could be considered a Community body for the purposes of the Ombudsman's mandate. The EUI confined its opinion to the substance of the complaint, so it was unnecessary for the Ombudsman to decide on his competence in the matter². During 2004, the EUI's opinion on a subsequent complaint argued that the EUI does not fall within the Ombudsman's mandate. After thorough analysis, the Ombudsman considered the EUI's view to be correct and therefore closed the inquiry (Case 2225/2003/(ADB)PB, summarised in chapter 3).

The future Constitution for Europe will broaden the European Ombudsman's mandate to include all the Union institutions, bodies, offices and agencies.

² Case 659/2000, Annual Report 2000, page 99.



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

COMPLAINT AGAINST THE POLISH OMBUDSMAN

A Polish citizen complained that the Polish Commissioner for Civil Rights Protection does not allow complaints to be submitted in electronic form. The complaint was outside the European Ombudsman's mandate because the Polish Commissioner for Civil Rights Protection is not a Community institution or body. Furthermore, the European Ombudsman is not the hierarchical superior of national ombudsmen.

At a meeting between the European Ombudsman and the Polish Commissioner for Civil Rights Protection on 9 February 2004, the Commissioner had informed the European Ombudsman that dissatisfied complainants could address themselves to the Polish Parliament, to which the Commissioner presents his annual report.

The European Ombudsman advised the complainant accordingly.

Case 3617/2004/MHZ

2.2.3 “Maladministration”

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

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

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

The Charter of Fundamental Rights, proclaimed in December 2000, includes the right to good administration as a fundamental right of Union citizenship (Article 41). In the Ombudsman's view, maladministration and good administration are two sides of the same coin.

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



Examples of complaints that did not concern possible maladministration

STATUS OF THE CATALAN LANGUAGE IN THE CONSTITUTION FOR EUROPE

A group of complainants addressed an open letter to the European Ombudsman in the newspaper *E/Triangle*, published in Barcelona. They alleged discrimination because the Constitution for Europe does not recognise Catalan as an official language. They put forward a number of considerations regarding the importance of the Catalan language and the significant number of people who use it in Europe.

Since the complaint concerned a proposal for amendment of the Treaties, the Ombudsman considered that it did not relate to possible maladministration and was therefore outside the mandate. The Ombudsman transferred the complaint to the European Parliament to be dealt with as a petition.

Case 2881/2004/JMA

REFUSAL OF INFORMATION BY THE EUROPEAN CENTRAL BANK

In April 2004, a complaint was made to the Ombudsman against the refusal of the European Central Bank (ECB) to provide information as to whether it has intervened in the markets to soften the fall in value of the US Dollar and the rise of the Euro.

The Ombudsman considered the complaint inadmissible because the complainant's precise allegation could not be identified. It was not clear whether the essence of the complaint was (i) that the ECB had failed to explain why it refuses to provide the complainant with the information, so that he was unable to understand the reasons for the ECB's refusal, or (ii) that he had understood the ECB's reasons and considered them to be wrong. The Ombudsman explained to the complainant that, in the former case, he could begin an inquiry, but that, in the latter case, the complaint would in substance contest the policies of the ECB as regards market operations in the fulfilment of the basic tasks of the European System of Central Banks and would not, therefore, concern a possible instance of maladministration.

In October 2004, the complainant made clear that his allegation was that the ECB had failed to explain its reasons, so that he was unable to understand why it refused to provide the requested information. Since the clarified allegation concerned a possible instance of maladministration, the Ombudsman opened an inquiry into the matter.

Cases 1106/2004/TN and 3054/2004/TN

2.3 ADMISSIBILITY AND GROUNDS FOR INQUIRIES

A complaint that is within the mandate of the Ombudsman must meet further criteria of admissibility before the Ombudsman can open an inquiry. The criteria as set out by the Statute are that:

- 1 the author and the object of the complaint must be identified (Article 2.3 of the Statute)
- 2 the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Article 1.3)



- 3 the complaint must be made within two years of the date on which the facts on which it is based came to the attention of the complainant (Article 2.4)
- 4 the complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Article 2.4)
- 5 in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Article 2.8).

An example of a complaint that was not preceded by appropriate administrative approaches

ALLEGED IRREGULAR PRACTICES AT AN AGENCY

A complainant alleged irregular practices at an EU agency. The complainant works for the agency concerned.

The Ombudsman considered that the appropriate administrative approaches for the complainant to take would be the steps foreseen by Articles 22a and 22b of the Staff Regulations, which came into effect on 1 May 2004. These provisions deal with the disclosure of information about possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials. Amongst other things, they require the official concerned to inform his or her superiors, or the European Anti-Fraud Office (OLAF).

As the complainant had already contacted OLAF, the Ombudsman advised that, in accordance with Article 22b, paragraph 1 (b), OLAF should be allowed time to examine the issues raised and that the complainant could contact OLAF for information about the period of time set by the Office to take appropriate action.

(Confidential case)

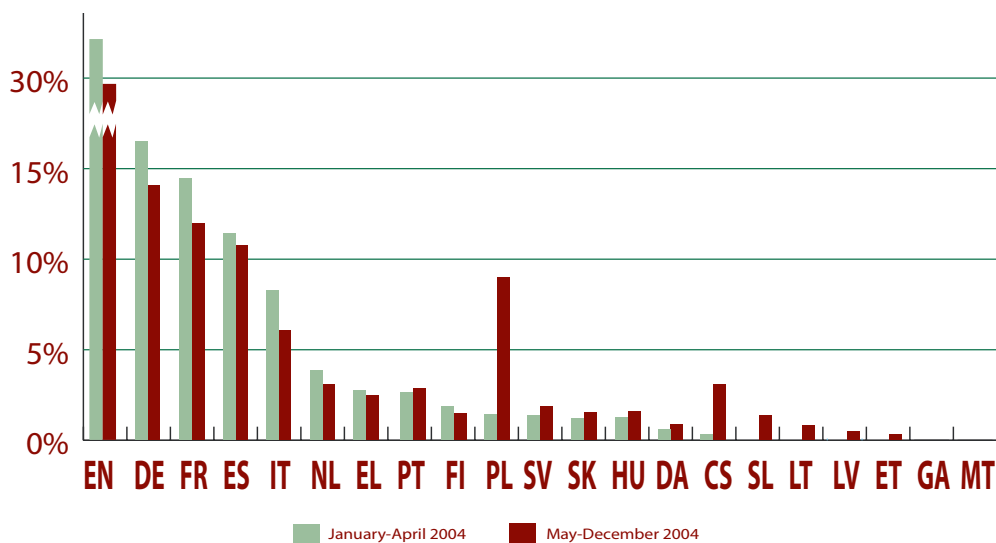
Article 195 of the EC Treaty provides for the Ombudsman to “conduct inquiries for which he finds grounds”. In some cases, there may not be sufficient grounds for the Ombudsman to begin an inquiry, even though the complaint is admissible. For example, if a complaint has already been dealt with as a petition by the Committee on Petitions of the European Parliament, the Ombudsman normally considers that there are no grounds for an inquiry, unless new evidence is presented.

2.4 ANALYSIS OF COMPLAINTS EXAMINED IN 2004

During 2004, the Ombudsman received 3 726 new complaints, an increase of 53% compared to 2003. Of this 53% overall increase, 51% (657 complaints) is accounted for by complaints from the 10 new Member States that joined the Union on 1 May 2004. The remaining 49% represents an increase in complaints sent from the 15 old Member States and from elsewhere in the world. A total of 310 complaints and four own initiatives were brought forward from 2003.



The following table shows the linguistic impact of enlargement, comparing the breakdown of complaints by language before and after 1 May 2004.



Complaints were sent directly by individual citizens in 3 536 cases and 190 came from associations or companies. The Ombudsman also began eight own-initiative inquiries.

During 2004, the process of examining complaints to see if they are within the mandate, meet the criteria of admissibility and provide grounds to open an inquiry was completed in 95% of cases. Of all the complaints examined, 25% were within the mandate of the Ombudsman. Of these, 490 met the criteria of admissibility, but 147 did not provide grounds for an inquiry. Inquiries were therefore begun in 343 cases.

Most of the complaints that led to an inquiry were against the Commission (69%). As the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 58 complaints against the European Communities Personnel Selection Office (EPSO), 48 against the European Parliament and 22 against the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (127 cases), discrimination (106 cases), avoidable delay (67 cases), unsatisfactory procedures (52 cases), unfairness or abuse of power (38 cases), failure to ensure fulfilment of obligations, that is failure by the European Commission to carry out its role as "Guardian of the Treaty" vis-à-vis the Member States (37 cases), negligence (33 cases), and legal error (26 cases).

2.5 TRANSFERS AND ADVICE

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

During 2004, 71 complaints were transferred. Of these, 54 were transferred to a national or regional ombudsman, 13 to the European Parliament to be dealt with as petitions and four to the European Commission.



Advice was given in 2 117 cases. In 906 of these, the complainant was advised to turn to a national or regional ombudsman and 179 complainants were advised to petition the European Parliament. In 359 cases, the advice was to contact the European Commission. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches had not been made. In 613 cases, the complainant was advised to contact other bodies, mostly specialised ombudsmen or complaints-handling bodies in a Member State.

Examples of cases transferred to another institution or body

ALLEGED FAILURE BY THE DUTCH POLICE

A national of another Member State resident in the Netherlands alleged that the Dutch police had failed to investigate properly the sexual abuse of her four year-old child.

After contacting the complainant to obtain her consent to a transfer, the European Ombudsman transferred the case to the Dutch Ombudsman.

(Confidential case)

TRAVEL BY THIRD-COUNTRY RESIDENTS

A complaint was made against the United Kingdom security office at passport control in Calais. The complainants' parents, Tanzanian citizens legally resident in Belgium, were denied entry to the United Kingdom because they did not have a visa. The complainants complained about their treatment by the security office and the fact that Tanzanian citizens, resident in Belgium and in possession of Belgian identity cards, were denied free travel within the EU.

They claimed that they should receive an official apology, that Belgian residents who are non-European citizens should be allowed to travel within the EU without hindrance and that an EU body should be established to facilitate travel within the EU for people in possession of a Member State's identity card.

As regards the complaint against the security office, the European Ombudsman advised the complainants to use the complaints procedure of the relevant UK government department and to turn to the UK Parliamentary Ombudsman if the complaints procedure did not give them satisfaction.

As regards the complainant's general claims concerning travel within the EU, the European Ombudsman transferred the complaint to the European Parliament to be dealt with as a petition.

Case 3300/2004/AU

2.6 THE OMBUDSMAN'S PROCEDURES

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

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



2.6.1 Starting an inquiry

The first step in an inquiry is to forward the complaint to the institution or body concerned and request it to send an opinion to the Ombudsman, normally within three calendar months.

In May 2004, the Ombudsman asked the European Parliament, Council and Commission to accept a shorter time limit of two months for complaints against refusal of access to documents. The Ombudsman pointed out that it is important for citizens to enjoy access as rapidly as possible and that the two-stage application procedure under Regulation 1049/2001³ gives the institutions the opportunity thoroughly to examine the legal and factual issues before a complaint is made. The European Parliament and the Commission, but not the Council, accepted the proposal. The Council undertook, however, to continue doing its utmost to reply within the shortest time possible.

2.6.2 Fair procedure

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

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

Neither the Treaty nor the Statute provides for appeal or other remedies against the Ombudsman's decisions concerning the handling or outcome of a complaint. However, like all other Community institutions and bodies, the Ombudsman is subject to actions for damages based on Article 288 of the EC Treaty. During 2004, the Court of Justice established that it is possible in principle to bring an action for damages against the Ombudsman based on the latter's alleged mishandling of a complaint. On the merits of the case, the Court confirmed the decision of the Court of First Instance that the Ombudsman had not committed any breach of his duties (Case C-234/02 P, *European Ombudsman v Frank Lamberts*, Judgement of the Court of 23 March 2004).

2.6.3 Inspection of the files and hearing of witnesses

Article 3.2 of the Statute of the Ombudsman requires the Community institutions and bodies to supply the Ombudsman with any information that he requests of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of secrecy.

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

Article 3.2 of the Statute also requires officials and other servants of the Community institutions and bodies to testify at the request of the Ombudsman. They speak on behalf of and in accordance with instructions from their administrations and continue to be bound by their duty of professional secrecy.

³ 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 145/43.



During 2004, the Ombudsman's power to inspect the institution's files was used in two cases. The power to hear witnesses was not used in 2004.

2.6.4 Open procedure

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

Article 13 of the implementing provisions provides for the complainant to have access to the Ombudsman's file on his or her complaint. Article 14 provides for public access to documents held by the Ombudsman, subject to the same conditions and limits as those laid down by Regulation 1049/2001. However, where the Ombudsman inspects the file of the institution or body concerned, or takes evidence from a witness, neither the complainant nor the public may have access to any confidential documents or confidential information obtained as a result of the inspection or hearing (Articles 13.3 and 14.2). The purpose of this exclusion is to facilitate the exercise by the Ombudsman of his powers of investigation.

At a meeting with Ms Loyola De PALACIO, Vice-President of the European Commission, on 31 March 2004, the Ombudsman explained that his inquiries cannot take into account documents supplied by a Community institution or body to contest an allegation of maladministration, unless the complainant has the opportunity to see and thus to make observations on those documents. If an institution or body possesses confidential documents that it considers support its position, it should submit a non-confidential summary of the relevant points in its opinion. If the Ombudsman considers it useful to do so, he may inspect the confidential documents in order to verify the completeness and accuracy of the non-confidential summary.

2.7 THE OUTCOMES OF INQUIRIES

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

In 2004, the Ombudsman closed 251 inquiries. Of these, 247 were inquiries into complaints and four were own initiative inquiries.

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

2.7.1 No maladministration

In 2004, 113 cases were closed with a finding of no maladministration. This is not necessarily a negative outcome for the complainant, who at least receives the benefit of a full explanation from the institution or body concerned of what it has done. Furthermore, even if the Ombudsman does not find maladministration, he may identify an opportunity for the institution or body to improve the quality of its administration in the future. In such cases, the Ombudsman makes a further remark.



2.7.2 Cases settled by the institution and friendly solutions

Whenever possible, the Ombudsman tries to achieve a positive-sum outcome that satisfies both the complainant and the institution complained against. The co-operation of the Community institutions and bodies is essential for success in achieving such outcomes, which help enhance relations between the institutions and citizens and can avoid the need for expensive and time-consuming litigation.

During 2004, 65 cases were settled by the institution or body itself following a complaint to the Ombudsman. Of this number, 46 were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence (see section 2.9 of the 1998 Annual Report for details of the procedure used in such cases).

If an inquiry leads to a finding of maladministration, the Ombudsman always tries to achieve a friendly solution if possible. During 2004, 12 friendly solutions were proposed. Five cases were closed when a friendly solution was achieved (including 2 cases where the proposal was made in 2003). At the end of 2004, 11 proposals for friendly solutions were still under consideration.

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

2.7.3 Critical remarks, draft recommendations and special reports

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

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

A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help avoid maladministration in the future. In 2004, the Ombudsman made 36 critical remarks.

In response to a suggestion from the European Parliament, the Ombudsman informed the institutions and bodies of his intention periodically to request information about any follow-up given to critical remarks. During 2004, the Commission responded to 11 critical remarks. The responses are discussed in the next section (2.8) of this chapter.

In cases where follow-up action by the Ombudsman does appear necessary (that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications), the Ombudsman normally makes a draft recommendation to the institution or body concerned. In accordance with Article 3 (6) of the Statute of the Ombudsman, the institution or body must send a detailed opinion within three months. During 2004, 17 draft recommendations were made. In addition, five draft recommendations from 2003 led to decisions in 2004. Seven cases were closed during the year when a draft recommendation was accepted by the institution. One case led to a special report to the European Parliament. Five cases were closed for other reasons. At the end of 2004, nine draft recommendations were still under consideration.

If a Community institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament. The special report may include



recommendations. A special report to the European Parliament is the last substantive step which the Ombudsman takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgment of the Parliament. The Ombudsman naturally provides whatever information and assistance may be required by Parliament in dealing with the special report. One special report was made in 2004 (case OI/2/2003: see further in the next section and chapter 3).

2.8 DECISIONS CLOSING CASES IN 2004

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

Chapter 3 contains summaries of 59 out of the total of 251 decisions closing cases in 2004. The summaries reflect the range of subjects and institutions covered by the Ombudsman's inquiries and the different types of finding. They are indexed by case reference; general subject matter in terms of the field of Community competence involved; and the type of maladministration alleged by the complainant.

The rest of this section of chapter 2 analyses the most significant findings of law and fact contained in the Ombudsman's decisions in 2004. It is organised in terms of a horizontal classification of the subject matter. It concludes with an evaluation of the Commission's relations with the Ombudsman and with complainants, as reflected in the decisions of 2004 and in the Commission's responses during the year to further remarks and critical remarks.

2.8.1 Access to documents and data protection

The Regulation on public access to documents⁴ gives applicants a choice of remedy: they may challenge a refusal of access either in court proceedings under Article 230 EC, or by way of complaint to the Ombudsman.

During 2004, the Ombudsman made decisions on 11 such complaints, of which nine were against the Commission and one each against OLAF and the Council. Eight of these complaints were submitted by NGOs, one was from an industry association and two were from individuals. Three of the complaints were settled by the institution: in one case by replying to an application (2183/2003/TN) and in the other two cases by providing access to the documents concerned (220/2004/GG; 520/2004/TN). One case led to a friendly solution in which the Commission supplied the complainant (whose application for access was rather general) with a list of documents concerning negotiations in the World Trade Organisation (WTO). The complainant thus received the information needed to make a more precise application (415/2003/TN).

In six cases, the Ombudsman found no maladministration because the institution concerned was entitled to refuse access on the basis of exceptions contained in the Regulation. Four of these cases concerned Article 4 (1) of the Regulation. In cases 900/2003/TN, 1286/2003/JMA and 1304/2003/PB, the Ombudsman held that the Commission was entitled to invoke the third indent of Article 4 (1) (a) (international relations) and, in case 1044/2004/GG, the fourth indent (the financial, monetary or economic policy of the Community or a Member State). In the first of these cases, the Ombudsman pointed out that Article 4 (1) does not provide for the possibility of an overriding public interest in

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, 2001 OJ L 145/43.



disclosure and that it is therefore particularly important for the institutions to explain their reasons clearly when invoking this provision.

The Ombudsman made two decisions involving Article 4 (2) of the Regulation. Case 2371/2003/GG concerned an application for access to an opinion drawn up by the Council's legal service. The Ombudsman made a draft recommendation to the Council, but closed the case with a finding of no maladministration after the Court of First Instance rendered a judgement which arrived at the conclusion that the Council is entitled to refuse access to opinions of its legal service⁵. In case 1481/2003/OV, the Ombudsman took the view that the Commission was entitled to invoke Article 4 (2) third indent (the purpose of inspections, investigations and audits) to protect certain parts of a report and that there was no overriding public interest in disclosure of those parts.

Two of the above cases also gave rise to further remarks. In case 1286/2003/JMA, the Ombudsman encouraged the Commission to consider how to make negotiations in the framework of the WTO more open and transparent. In case 1304/2003/PB, the Ombudsman accepted that the Commission was entitled to refuse access to parts of a mission report by its Food and Veterinary Office. The Ombudsman suggested that in future it would be useful to record non-confidential information separately from confidential information as far as practically possible, so as to simplify the granting of partial access. The Commission subsequently provided more information to the Ombudsman on the practice of the Food and Veterinary Office in this regard.

A critical remark was made in case 1874/2003/GG, in which the Commission invoked both Article 4 (1) (b) of the Regulation (privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data) and Article 4 (3) (which is intended to allow the institutions a "space to think") to justify refusing access to e-mail exchanges between the Commission services and members of staff of two bodies involved in the management of a contract on behalf of the Commission. The Ombudsman took the view that the mere fact that a document contains opinions for internal use cannot be sufficient to establish that disclosure would cause serious harm, because Article 4 (3) envisages that such documents should be accessible in principle. The decision also pointed out that the Commission's reasoning was inconsistent, since it could only invoke Article 4 (3) on the basis that the e-mail exchanges with staff of the two bodies were equivalent to internal messages and the Commission had not argued that access to e-mail messages written by its own staff should be refused in order to protect their names.

Data protection issues also arose in two other cases. In case 821/2003/JMA, the complainant contested, as a general issue of principle, the European Parliament's refusal to provide a list of persons selected for traineeships. Parliament invoked considerations of data protection to justify its refusal. The Ombudsman expressed the view that Parliament could decide that the names of those who are offered and accept a traineeship with the European Parliament should be made public and inform applicants for traineeships accordingly. However, Parliament's existing rules about traineeships contain no such provision. The Ombudsman therefore suggested that Parliament consider revising these rules to make clear that the list of names of persons who accept the offer of a traineeship will be a public document.

In case 2046/2003/GG, the Council refused to allow its Joint Committee, which consists of representatives of the Appointing Authority and the Staff Committee, to see the personal files of persons whose applications for early retirement had been accepted. The Ombudsman pointed out that although disclosure of personal data may only take place in conformity with the provisions of Regulation 45/2001⁶, any obstacle to such disclosure had been created by the Council itself, which had failed to inform applicants that their personal data could be submitted to the Joint Committee. A critical remark was therefore made concerning the failure properly to consult the Joint Committee on the early retirement applications.

⁵ Case T-84/03, *Turco v Council*, Judgement of 23 November 2004.

⁶ Regulation (EC) 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L8/1.



2.8.2 The Commission as “Guardian of the Treaty”

The rule of law is one of the founding principles of the European Union and one of the most important duties of the Commission is to be the “Guardian of the Treaty”⁷. The Commission may act on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions. Article 226 of the Treaty creates a general procedure under which the Commission may investigate and refer to the Court of Justice possible infringements of Community law by Member States. Different procedures exist in relation to specific fields such as state aids and competition law.

Chapter 3 contains summaries of nine decisions that illustrate how the Ombudsman deals with complaints against the “Guardian of the Treaty.” The principal issues dealt with are allegations of failure to register complaints, undue delay and failure to investigate properly.

In two cases (2007/2002/ADB and 701/2003/IP), the Ombudsman made critical remarks concerning failure to register complaints. The Commission responded to the latter decision by promising clearer replies to future correspondence alleging infringement of competition law by Member States and to give reasons if the correspondence is not registered as a complaint. In case 1769/2002/ELB, the Commission accepted a draft recommendation that it should register a letter as a complaint and deal with it in accordance with the procedures in the Commission’s Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law⁸.

In two cases (2333/2003/GG and 2185/2002/IP), the Ombudsman made critical remarks concerning undue delay in handling complaints. A draft recommendation was made in case 1963/2002/IP, in which the Commission had not provided a satisfactory explanation as to why it was unable to take a decision on the case after nearly seven and a half years. The Commission responded by promising to adopt a final decision in March 2004.

Three cases in which the complainant alleged failure to investigate properly led to findings of no maladministration (841/2003/OV, 849/2003/JMA and 480/2004/TN). In case 841/2003/OV there had, in substance, been a misunderstanding as to the scope of the Commission’s investigation and the complainant thanked the Ombudsman for clarifying the situation. In case 480/2004/TN, the Ombudsman made a further remark to encourage the Commission in future to explain its reasons for closing Article 226 complaints in as understandable and straightforward a way as possible. In case 849/2003/JMA, the Ombudsman found that the Commission had given the complainant a reasonable justification for its substantive decision. The Commission also apologised to the complainant for having failed to give him the opportunity to submit comments on its reasons for deciding that there was no infringement.

The decision on case 480/2004/TN dealt with an issue of general importance in the Article 226 procedure. One of the complainant’s allegations in the complaint to the Commission was that a Member State had failed properly to implement the Acquired Rights Directive because of a decision by a national court. The Ombudsman considered that the Commission had reasonable grounds for its decision not to pursue infringement proceedings, in view of the fundamental principle of the independence of the judiciary: if one turns to a national court alleging that national authorities do not comply with Community law, then the appropriate remedy against an unsatisfactory judgement is to use the available procedures for appeal to a higher court.

⁷ Article 211 EC requires the Commission to “ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied.” The Constitution for Europe confirms the importance of this role in Article I-26.

⁸ OJ 2002 C 244/5.



2.8.3 Contracts and grants

Community institutions and bodies use contracts both to obtain the goods and services needed to perform their functions and as an instrument to govern grants and subsidies under a variety of programmes.

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

Chapter 3 contains summaries of nine decisions that illustrate the Ombudsman's work with complaints related to contracts and grants. The principal issues that arose were pre-contractual procedures, unfairness in dealing with suspicions about companies, and late payment.

As regards pre-contractual procedures, the Ombudsman found in case 1878/2002/GG that the Commission had given a small company insufficient time to prepare a proposal for a research and development award. The Commission accepted a draft recommendation to pay compensation on an *ex gratia* basis. In case 1986/2002/OV, however, the Commission rejected a draft recommendation to make a reasonable offer to the complainant, to whom it had failed to make clear that a contract would not be awarded. In case 221/2004/GG, the Commission misinterpreted a postmark and so mistakenly rejected a proposal for having been submitted after the deadline. Following the complaint to the Ombudsman, the Commission acted rapidly and constructively to correct the mistake.

Two cases led to critical remarks concerning unfairness in handling suspicions about companies or organisations. In 278/2003/JMA, the Ombudsman set out as a general principle that in taking measures to protect the Community's financial interests the Commission should seek to strike a fair balance between the interests of private persons and the general public interest. The decision also points out that it is difficult to envisage how the Commission could do this unless it communicates to an applicant for a grant any doubts that it may have as to the applicant's legal standing and is then prepared to listen and respond to information provided by the applicant. The Ombudsman advised the Commission that it could be useful to issue guidance to its services on the matter. In case 953/2003/OV, the European Parliament and the Commission terminated their contracts with a company, applying a provision that required them to notify to the company in writing a failure to fulfil obligations under the contract. The Ombudsman considered that mere reference to the "results of an OLAF investigation" without further information, did not constitute adequate notification.

Three complaints about late payment were settled. In case 435/2004/GG, the Commission paid the invoices due to the company concerned. In a further remark, the Ombudsman invited the Commission to consider also paying interest, which it did. The other two cases involved late payment to third parties by the Commission's contractors. In case 2124/2003/ADB, the Commission informed the Ombudsman that it did not understand why the contractor had not made the payment. Shortly afterwards the complainant received full payment. Case 1949/2003/TN involved non-payment by *CESD-Communautaire* for work carried out by the complainant on the instructions of Eurostat. The Commission paid the amounts involved to *CESD-Communautaire*, which in turn paid the complainant.

One case (1889/2002/GG) did not have a satisfactory outcome. A company received financial assistance from the Commission for two projects. The Commission decided to recover money for one project and the company contested the recovery order before the Court of First Instance. The Commission then suspended payments for the other project, arguing that a contractual provision allowed it to do so. After a thorough examination, which included inspecting the Commission file and taking the testimony of the Commission's head of unit, the Ombudsman concluded that the Commission had not put forward a coherent and reasonable account of its position. The Commission rejected both an attempt to achieve a friendly solution and a draft recommendation. The Ombudsman closed the case with a critical remark.



2.8.4 Recruitment and staff issues

Chapter 3 contains summaries of 15 decisions on complaints concerning recruitment to, and work relationships with, the EU institutions and bodies. The European Parliament settled one case (1600/2003/ADB) and in another there was a friendly solution with the Commission (1320/2003/ELB). In case 1196/2003/ELB, the complainant achieved her aim of clarifying the situation so that she could consider what remedy to seek.

Five decisions dealt with issues of general importance.

In case 1571/2003/OV, the Ombudsman found no legal basis in the Europol Staff Regulations to justify the employment of some temporary staff under conditions applicable to local staff. The Ombudsman made a critical remark drawing Europol's attention to the need to review its practice. Europol responded positively.

The decision in case 260/2003/OV criticised the European Parliament's failure to take adequate measures to promote effective compliance with its rules on smoking on its premises. The Ombudsman pointed out that, in view of the possible adverse health effects of exposure to smoke, Parliament should pay particular attention to the need to promote effective compliance since the exposure of staff to smoke in the workplace raised potential issues of legal liability.

In case 2216/2003/MHZ, the complainant contested a decision by the European Personnel Selection Office to draft its correspondence to candidates in a competition only in English, French or German. The Ombudsman criticised EPSO for failing to explain the underlying justifications of its decision, so as to enable those justifications to be reviewed.

An own-initiative inquiry (OI/1/2003/ELB) led the Commission to agree to establish, by March 2005, a complaints procedure for seconded national experts.

Another own-initiative inquiry (OI/2/2003/GG) led the Ombudsman to conclude that the Commission had not provided a coherent and convincing explanation for the low grading of many press officers in its external delegations. Since the Commission rejected a draft recommendation to reconsider its rules concerning the classification of such posts, the Ombudsman made a special report to the European Parliament in December 2004.

2.8.5 The Commission's responses to the Ombudsman's inquiries

The co-operation of the EU institutions and bodies is essential to enable the Ombudsman to provide prompt and effective redress to individuals and to ensure systemic improvements to raise the quality of administration.

The Commission's co-operation is particularly important because almost 70% of the Ombudsman's inquiries concern the Commission. The Commission's response to the Ombudsman's suggestions and recommendations was on the whole positive during the year 2004. Examples of good co-operation by the Commission as regards systemic improvements include agreement to establish a complaints procedure for seconded national experts (OI/1/2003/ELB, section 2.8.4) and a positive response to the Ombudsman's suggestions for improving administration of the European Schools (OI/5/2003).

The Commission also followed up a further remark in case 1876/2002/OV by informing the Ombudsman that a newly introduced electronic document management system will ensure a more efficient management of all supporting documentation related to a case, and will thus allow the Commission to better assist the Ombudsman in dealing with citizens' complaints in as timely and efficient a manner as possible.

On the other hand, the Commission did not respond positively to the further remark in case 253/2003/ELB. The Ombudsman took the view that it was appropriate for the Commission to regulate the employment of family members in the framework of projects such as TACIS, but suggested that



the aims of such regulation could be better achieved in future, whilst also ensuring fairness and transparency, by adopting and adequately publicising the rules and principles that were applied. The Commission's response indicated that it prefers to examine the employment of family members of a contractor on a case by case basis.

As regards redress to individuals, many of the cases highlighted in 2.8.1 – 2.8.3 demonstrate the Commission's willingness to settle cases, to apologise for mistakes and to take corrective action, including paying compensation on an *ex gratia* basis.

In two of the highlighted cases, however, the Commission rejected the Ombudsman's proposals for friendly solutions and subsequent draft recommendations.

A third such case is 1435/2002/GG. The Ombudsman drew the Commission's attention on several occasions to the complainant's allegation that there had been an internal misunderstanding at its Directorate-General (DG) Information Society concerning the availability of a post. In spite of this, the Commission failed to comment on this point. In the decision closing the case with a critical remark, the Ombudsman expressed the view that the Commission's approach was not in conformity with the obligations that EU law imposes on Community institutions as regards their relations with both the Ombudsman and complainants.

With an eye both to maximising the quality of service provided to citizens and residents of the European Union by its institutions and bodies and, therefore, to fulfilling his mission, the Ombudsman would welcome initiatives by Parliament designed to encourage the Commission to extend to all future cases the good co-operation that it exhibited in the vast majority of cases in 2004.



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION
INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND
SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



3 DECISIONS FOLLOWING AN INQUIRY

The full decision in each of the cases included in this chapter can be found via the "Decisions index" on the European Ombudsman's website (<http://www.euro-ombudsman.eu.int/decision/en/default.htm>). The relevant decision can be accessed using the case number that is given under the title of each case summary in this section. Full decisions are included on the website in English and in the language of the complainant if different. A printout of the full decision, as it appears on the website, may be requested from the European Ombudsman's office.

In the second half of 2005, the full decisions in the cases included in this section will be made available as a single electronic document on the Ombudsman's website in English, French and German. This will be accessible via the "Annual reports" section of the website (<http://www.euro-ombudsman.eu.int/report/en/default.htm>). Again, a hard copy or CD-ROM of this document may be requested from the European Ombudsman's office.

3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND



3.1.1 The European Parliament

EUROPEAN PARLIAMENT'S RULES ON TRAINEESHIPS

Summary of decision on complaint 821/2003/JMA against the European Parliament

A Spanish citizen complained to the Ombudsman after his application for a traineeship at the European Parliament was rejected. He alleged that (i) the decision of the European Parliament to reject his application for a traineeship was not sufficiently reasoned; (ii) the procedure for the selection of trainees by the European Parliament is ambiguous and does not provide possibilities for appeal; and (iii) Parliament's refusal, for reasons of data protection, to grant access to the list of selected trainees is misplaced in the context of a public competition.

As regards the selection procedure, Parliament noted that, in accordance with the criteria set out in Article 6 (3) of the Rules applicable to the European Parliament's Traineeships and Study Visits of 18 December 2002, its services reviewed all applications on the basis of merit, current needs and availability. In selecting candidates, each Directorate-General seeks to match the tasks to be performed with the particular skills of the applicants, so that the trainees selected may gain the most useful experience.

Parliament also recalled that the provisions of the Rules applicable to the European Parliament's Traineeships and Study Visits address all aspects of the selection of trainees, including the possibility of appeals. The general conditions governing admission are clearly spelled out in Article 5 of the



Rules, the admission procedure is described in Article 6, and the rules on disputes are included in Article 24. In Parliament's view, the procedure is clear and unambiguous.

Parliament furthermore considered that the list of selected trainees could not be made public by virtue of the exception provided in Article 4 (1)(b) of Regulation 1049/2001⁹, which provides that access to a document should be refused where disclosure would undermine the protection of privacy and the integrity of the individual.

In view of Parliament's replies to the complainant's letters and the explanations provided in the course of the inquiry, the Ombudsman concluded that there had been no maladministration. He however made the following further remarks:

In the interests of effective communication with citizens, Parliament could consider including in its Rules a specific reference to the fact that the criteria by which applications for traineeships are assessed include the current needs of the service.

The Ombudsman takes the view that it would be appropriate for the European Parliament to consider whether it should revise its Rules for Traineeships and Study Visits, so as to stipulate that the list of names of persons who accept the offer of a traineeship will be a public document. This measure would both provide information to applicants for traineeships and clarify the legal status of the list for the future.

Further note

Since the decision in this case concerned both the scope of Regulation 45/2001¹⁰ on the protection of individuals with regard to the processing of personal data and its relationship with Regulation 1049/2001 regarding public access to Parliament, Council and Commission documents, the Ombudsman forwarded a copy of it to the European Data Protection Supervisor, for information. In reply, the Data Protection Supervisor noted that the case illustrated the potential tensions between transparency and data protection. He recalled his support for the Ombudsman's pragmatic approach in dealing with such cases.

PENSION SCHEME FOR MEMBERS OF THE EUROPEAN PARLIAMENT

Summary of decision on complaint 907/2003/ELB against the European Parliament

The complainant, a French citizen, was a Member of the European Parliament (MEP) from 1984 to 1989 and was entitled to receive a retirement pension when he reached the age of 55. A six-month time limit to apply for the pension scheme was introduced in 1995. On 6 August 2002, the European Parliament informed the complainant of the new provision. On 29 September 2002, he applied to join the pension scheme. Pension rights were granted to him from October 2002 onwards.

The complainant alleged that the European Parliament had failed to provide him with appropriate information on the rules governing the pension scheme and claimed that he should be granted pension rights from November 1998, the month in which he reached the age of 55.

In its opinion, Parliament explained that the letters it sent to the known addresses of the complainant were all returned. The French National Assembly was unable to give information on the complainant's address and research on the Internet was unsuccessful. When Parliament learnt by chance of the

⁹ 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 145/43.

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8/1.



complainant's address, he was contacted and a letter, containing documents to complete, was sent to him.

The Ombudsman noted that three letters sent by the European Parliament to the complainant bore the addresses given by the complainant when he left Parliament. The Ombudsman inferred from the facts presented by the complainant and Parliament that the complainant did not inform Parliament of a change of address after he left Parliament in 1989. The Ombudsman observed that Parliament was informed of the birth of the complainant's daughter and of his marriage to an official of the European Parliament and that regular contacts were maintained for family allowances. The Ombudsman noted, however, that two distinct services in the European Parliament were respectively responsible for family allowances of officials and pension rights of MEPs. The Ombudsman did not consider that there was any reason for the service responsible for family allowances to know that information on the complainant's current address could be useful to another service of Parliament. Nor was there any evidence to show that the service dealing with pension rights of former MEPs should have had knowledge that the service responsible for family allowances was in contact with the complainant.

The Ombudsman considered that the European Parliament had taken appropriate steps to attempt to contact the complainant with information on the pension scheme and therefore concluded that there had been no maladministration in this case.



3.1.2 The Council of the European Union

APPOINTMENT OF BOARD MEMBERS FOR THE EUROPEAN FOOD SAFETY AUTHORITY

Summary of decision on complaint 2126/2003/PB against the Council of the European Union

Following food scandals in the 1990s, the European Union decided to set up the European Food Safety Authority (EFSA), which was established by Regulation 178/2002¹¹. Article 24 of the Regulation provides that EFSA shall be headed by a Management Board, composed of 14 members appointed by the Council, in consultation with the European Parliament, from a list drawn up by the Commission. The members of the Board shall be appointed in such a way as to secure the highest standards of competence, a broad range of relevant expertise and, consistent with these, the broadest possible geographic distribution within the Union. On 15 July 2002, the Council appointed the members of the Management Board.

The complaint was submitted by The European Consumers' Organisation / *Bureau Européen des Unions de Consommateurs* (BEUC), which considered that the Council had appointed an excessive number of national civil servants. It also considered that candidates had been appointed on the basis of nationality and not of competence.

The Council stated that experience in the public sector was certainly not irrelevant in managing a European independent public authority, especially given that the Authority was meant to collaborate with the Member States. Experience in public administration was expressly mentioned in Regulation 178/2002 as a relevant criterion. Furthermore, the appointed members had a very broad range of

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Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ 2002 L 31/1.



professional expertise. It was therefore the Council's opinion that the complainant had failed to demonstrate an instance of maladministration.

The Ombudsman noted that the appointment procedure in this case left a large margin of discretion to the Council, and that the Ombudsman's review of the exercise of such discretion is necessarily limited to ascertaining whether the decision is tainted by breaches of procedure or manifest errors of assessment. The Ombudsman concluded that there was no evidence of any such breaches or errors in this case.

ACCESS TO LEGAL SERVICE OPINIONS

Summary of decision on complaint 2371/2003/GG against the Council of the European Union

The Council refused public access to an opinion of its legal service, invoking the exception relating to legal advice in Article 4 (2), second indent, of Regulation 1049/2001¹². The complainant, a researcher at the University of Munich, contested the refusal. He argued that the exception was not applicable.

According to the Council, opinions of its legal service, if disclosed, could be used to mount legal challenges to acts of the Council. The resulting uncertainty regarding the lawfulness of legislative acts could have consequences harmful to the public interest. In the Council's view, the only possible interpretation of the exception was that it covered all documents containing legal advice and the complainant's academic interest in disclosure did not constitute an overriding public interest.

The Ombudsman recalled that, in a special report to the European Parliament (1542/2000/(PB)SM, 12 December 2002), he took the view that legal opinions given in the context of possible future court proceedings are analogous to a communication between a lawyer and a client. They should therefore normally be exempt from disclosure under Article 4 (2) of Regulation 1049/2001. In contrast, opinions on draft legislation should normally become available to the public when the legislative process has reached a conclusion. They should be exempt only if the institution could show that disclosure would seriously undermine its decision-making process and that there was no overriding public interest in disclosure.

As regards the present case, the Ombudsman noted that the Council had not argued that the legal opinion had been drawn up in the context of possible future court proceedings. Nor had the Council argued that the opinion was drawn up in the context of a legislative act. The Ombudsman therefore made a draft recommendation, asking the Council to review its decision to refuse access.

The Council's detailed opinion argued that the Ombudsman's draft recommendation appeared to empty the exception of all substance. According to the Council, the division of legal advice into different categories was not supported by law, was artificial and ignored the purpose of such advice.

On 23 November 2004, the Court of First Instance rendered its judgement in Case T-84/03 (*Turco v. Council*). In this judgement, the Court arrived at the conclusion that the Council was entitled to refuse access to legal opinions drawn up by its legal service (cf. in particular paragraph 62 and 74 of the judgement). In light of this judgement and after giving the complainant the opportunity to submit observations, the Ombudsman closed the case with a finding of no maladministration.

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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 145/43.



3.1.3 The European Commission

EXCLUSION FROM AN INFORMATION SOCIETY PROJECT

Summary of decision on complaint 1876/2002/OV against the European Commission

A Dutch consultant's company had been invited to join a consortium in the framework of a project under the 5th Information Society Technologies programme managed by the Commission's Directorate-General for Information Society. Having initially given a positive decision on the company's participation in the project, the Commission then requested additional financial guarantees from the company. The company fulfilled the request, but having been in possession of the company's financial data for seven and a half months, the Commission finally decided that the company could not participate in the consortium. This decision was taken one working day before the date foreseen for the signing of the contract by the Commission.

On 30 October 2002, the company lodged a complaint with the European Ombudsman, claiming that the Commission should indemnify it for an amount of EUR 96 000. The compensation claimed corresponded to loss of income, the cost of a plane ticket for a cancelled meeting, courier costs, telephone costs and time spent on the preparation of the file.

In its opinion on the complaint, the Commission argued that all major delays in the negotiations were in fact due to extensions granted by the Commission to accommodate the consortium's need to provide the required legal documents, including those of the complainant. The Commission further observed that the complainant had failed to provide the financial documentation required from contractors, such as balance sheets and profit and loss accounts for certain years, which were necessary to show that the complainant had the resources needed to carry out the project.

The Ombudsman conducted a thorough examination of the documents produced during the inquiry. He concluded that the fact that the Commission invited the complainant to supply further financial information when it had already been aware for seven and a half months of exactly what information had been supplied, constituted an unreasonable delay and was an instance of maladministration. In June 2003, the Ombudsman therefore proposed a friendly solution to the Commission. He suggested that the Commission pay an appropriate amount by way of compensation. In its second opinion, the Commission did not provide any new documentary evidence to indicate that it had contacted either the co-ordinator of the project or the complainant, during the seven and a half month period referred to by the complainant. The Ombudsman therefore wrote again to the Commission, in November 2003, to reiterate his proposal for a friendly solution.

In its opinion on the second proposal, the Commission sent new documentary evidence, namely two e-mails. It appeared from the e-mails that, during the seven and a half month period, the Commission had in fact twice contacted the co-ordinator of the project with a request for additional financial information needed to finalise the contract. In his decision of 17 June 2004, the Ombudsman considered that, given this new evidence, his earlier provisional finding of maladministration could no longer be sustained and that the case should be closed with a finding of no maladministration.

The Ombudsman made, however, a further remark, stating that he hoped that, in the future, the Commission would transmit supporting documents with its original opinion on the complaint.

Further note

By letter of 31 August 2004, the Commission informed the Ombudsman that its newly introduced electronic document management system would ensure a more efficient management of all supporting documentation relating to a case. In particular, additional functions of the electronic mail registration system would allow users to simultaneously register and file their e-mails. Consequently, the Commission would be able to satisfy the Ombudsman's request and would be better able to assist the Ombudsman in dealing with citizens' complaints on time and as efficiently as possible.



TRANSPOSITION OF INSURANCE DIRECTIVES INTO GREEK LEGISLATION

Summary of decision on complaint 841/2003/(FA)OV against the European Commission

The Greek insurance company Intersalonika provided, among other services, means of transport in order to assist patients. It complained to the Commission in 2001, because its ambulances and helicopters were prohibited from transporting patients, due to the exclusive right of the Greek National Centre for Emergency Assistance (EKAB) to provide this kind of assistance. The company alleged that the Greek authorities had not correctly transposed Directives 84/641/EEC¹³ (the "Assistance Directive") and 92/49/EEC¹⁴. The Commission informed the complainant that infringement proceedings, under Article 226¹⁵ of the EC Treaty, had been launched against Greece, but that, further to the amendment of the Greek law, the infringement proceedings would be closed.

In April 2003, the complainant lodged a complaint with the European Ombudsman. It alleged that the Commission had failed to ensure the correct transposition of the insurance Directives into Greek national legislation, in particular with regard to the situation of Greek insurance companies operating in Greece, as compared to companies from other Member States. The complainant also pointed out that, in a reply of November 2001, the Commission had acknowledged that no restrictions should apply to Air Intersalonika. The Commission had stated that "it appears justified to inquire with the Greek authorities why they have not given effect to the application for an operating licence by Air Intersalonika".

In its opinion on the complaint, the Commission stated that after the infringement proceedings were dropped in March 2002, there appeared to be no further obstacles for assistance insurance companies. The Commission also pointed out that the insurance Directives foresee a minimal system allowing the Member States to adopt stricter provisions for companies that are approved by their own authorities.

In his decision, the Ombudsman concluded that in replying to the complainant's letter concerning the refusal of licences, the Commission had provided a useful explanation of the relevant legal framework. As regards the section of the reply quoted by the complainant, the Ombudsman noted that the Commission appeared to have thought that it was making a helpful remark. It had set out what the complainant could do, rather than promising what the Commission itself would do, but the complainant appeared to have misunderstood this phrase as meaning that the Commission itself would make inquiries. Although the Ombudsman considered it regrettable that the Commission had not used a more precise wording, no instance of maladministration was found.

In May 2004, the complainant sent a letter to the Ombudsman thanking him for the decision, which had enabled him to understand how the Commission had handled his case and had drawn his attention to the possibilities open to him to take further action on the matters of substance.

¹³ Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, OJ 1984 L 339/21.

¹⁴ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), OJ 1992 L 228/1.

¹⁵ Article 226 of the EC Treaty empowers the Commission to bring proceedings against a Member State in respect of infringements of Community law. Anyone may lodge a complaint (an "Article 226 complaint") with the Commission against a Member State about any state measure or administrative practice that he/she considers incompatible with Community law.



PORTUGUESE LEGISLATION ON BULLFIGHTING

Summary of decision on complaint 849/2003/JMA against the European Commission

In September 2002, a formal complaint against the Portuguese authorities was lodged with the European Commission. The complaint concerned the newly adopted Portuguese legislation, which legalised the Spanish type of bullfighting in which the bull is killed at the end of the show.

The complainant subsequently received a communication from the Directorate-General for Health and Consumer Protection, informing him of the Commission's intention to close the case on the grounds that there was no sufficient legal basis to pursue infringement proceedings against the Portuguese authorities.

In his complaint to the Ombudsman, the complainant alleged that the Commission's decision to close his complaint did not take proper account of existing European Union rules, in particular Directive 93/119/EC¹⁶ on the protection of animals at the time of slaughter or killing.

The Commission argued that it had carried out a thorough examination of the complaint. On the basis of its examination, it concluded that the complainant's allegations were not sufficiently well founded to allow the Commission to open infringement proceedings against Portugal under Article 226¹⁷ of the EC Treaty. It expressed strong doubts as to whether Protocol 33 of the Treaty, regarding the protection and welfare of animals, applies at all to bull fighting, which, as a spectacle or entertainment, falls outside the scope of the policies mentioned in the protocol. In addition, the Commission noted that Council Directive 93/119/EC does not apply to animals killed in cultural or sports events.

The Ombudsman took the view that the Commission's decision not to pursue infringement proceedings and thus to close the formal complaint submitted by the complainant, appeared to be reasonable in substance.

The Ombudsman noted, however, that the letter from the Commission to the complainant announcing its intention to close the case had not offered him any opportunity to put forward his observations. The Ombudsman recalled the Commission's Communication on relations with "Article 226 complainants"¹⁸. This provides that when the Commission intends to propose that no further action be taken on a complaint, it will give the complainant prior notice thereof in a letter. The letter will set out the grounds on which the Commission is proposing that the case be closed and will invite the complainant to submit any comments within a period of four weeks. In its opinion, the Commission regretted that it had not done so, apologised and invited the complainant to supply any further observations he wished to make.

ACCESS TO A DRAFT STATEMENT OF THE EUROPEAN ECONOMIC AREA JOINT COMMITTEE

Summary of decision on complaint 900/2003/(IJH)TN against the European Commission

The Polyelectrolyte Producers Group made a complaint concerning the Commission's refusal of a confirmatory application under Regulation 1049/2001¹⁹ for access to a draft EEA (European Economic Area) Joint Committee statement concerning the EEA agreement.

¹⁶ Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, OJ 1993 L 340/21.

¹⁷ Article 226 of the EC Treaty empowers the Commission to bring proceedings against a Member State in respect of infringements of Community law. Anyone may lodge a complaint (an "Article 226 complaint") with the Commission against a Member State about any state measure or administrative practice that he/she considers incompatible with Community law.

¹⁸ Commission 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 244/5.



The complainant made the following allegations: the Commission's legal basis for refusal, i.e. the third indent of Article 4(1)(a) of the Regulation concerning the possible undermining of the protection of the public interest as regards international relations, was inconsistent with the EFTA (European Free Trade Association) Secretariat's underlying reasoning, which was based on Article 4(3) concerning the possible undermining of the institution's decision-making process; the Commission had failed to explain how the release of the document would risk seriously undermining the negotiation process and the decision-making procedure in the EEA Agreement; it had failed to inform the complainant that it should request a copy of the document from the third-party author; it had misbalanced the interests at stake and committed an abuse of rights; the Commission was wrong in holding that the document originated from the EFTA Secretariat; assuming the author to be the EFTA Secretariat, there was a conflict of interest in deciding on the request for access since the EFTA Secretariat was involved in proceedings regarding derogations from related Community legislation; and finally, the Commission had infringed the complainant's right of defence.

The Commission provided the Ombudsman with a detailed response to all of the allegations, which the Ombudsman analysed at length. He noted that, while the EFTA Secretariat's reasons resembled the wording of Article 4(3), this did not appear to be inconsistent with the legal basis invoked by the Commission. The Ombudsman found no rule or principle obliging an institution to inform the applicant to turn to the author to request access. He found no abuse of rights, noting that, as regards Article 4(1), the Community legislator has determined that, in a case where disclosure of a document would undermine the public interest as regards international relations, the latter interest outweighs any public interest in disclosure of the document. The Ombudsman considered the Commission's explanation of the authorship to be consistent with the legal framework of the EEA Agreement. He did not find any evidence to suggest that the Commission's decision lacked impartiality and, finally, did not find any rule or principle requiring the Commission to give the complainant the opportunity to express its position on a decision to be made by the EEA Joint Committee.

The Ombudsman underlined that, as the exceptions in Article 4(1) are not subject to an overriding public interest in disclosure, it is particularly important that the institutions, when invoking this article, explain clearly the reasons why the exception applies. The Ombudsman considered that the Commission had done this.

In light of the above analysis, the Ombudsman closed the case with a finding of no maladministration.

ACCESS TO WORLD TRADE ORGANISATION NEGOTIATION DOCUMENTS

Summary of decision on complaint 1286/2003/JMA against the European Commission

In February 2003, "Friends of the Earth" (FoE), wrote to the Secretariat-General of the Commission, requesting access to a number of documents concerning the on-going World Trade Organisation (WTO) negotiations on trade in services, in accordance with the Doha Development Agenda.

In April 2003, the Commission refused access on the grounds that disclosure of the requested documents would undermine the public interest as regards international relations, as provided in Article 4 (1) (a) of Regulation 1049/2001¹⁹.

In its complaint to the Ombudsman, FoE alleged that the Commission failed (i) to demonstrate that disclosure would undermine the protection of the public interest, (ii) to justify the nature of the negotiations, and (iii) to balance the interests at stake.

¹⁹ 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 145/43.

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 145/43.



In its opinion on the complaint, the Commission considered that it had adequately handled the complainant's request for access to documents, both at the initial and at the confirmatory level. The institution believed that its services did not err in their legal interpretation of the notion of public interest as regards international relations, and properly applied it to this case.

In his decision, the Ombudsman acknowledged that the WTO customary method of negotiations had traditionally involved a confidential exchange of offers and counteroffers among the parties to the negotiation. In this context, disclosure of these documents to third parties has been excluded, since it might disrupt the process. The Ombudsman therefore considered that it could not be concluded that the Commission made an unreasonable assessment in deciding that disclosure of the documents at issue was likely to undermine the public interest in the field of international relations. The Ombudsman noted that the Community legislator has determined that, in a case where the disclosure of a document would undermine the public interest as regards international relations, the latter interest outweighs any public interest in the disclosure of the document. The Ombudsman did not, therefore, consider that the complainant's argument that the Commission failed to carry out a balancing of the interests at stake was sustainable.

Even though the Ombudsman did not find maladministration on the part of the Commission, he nevertheless made a further remark. He found that even if the limitations on public access imposed by the nature of the negotiations within the WTO framework were legally acceptable, the Commission should have regard to the expectations of many citizens for greater transparency and openness in this important policy area. This is particularly so given the recognition of the importance of transparency in the WTO's Guidelines and Procedures for the Negotiations on Trade in Services. Transparency cannot be attained by entirely excluding public access to information. The Ombudsman noted that it would therefore be advisable for the Commission to consider additional means that might render these negotiations more open and transparent for the citizens, and thus facilitate public access to the exchanges among the parties.

ACCESS TO A FOOD AND VETERINARY REPORT ON ROMANIA

Summary of decision on complaint 1304/2003/(ADB)PB against the European Commission

The complainant, the founder of a German animal rights organisation, applied for access to a mission report based on a visit to Romania by the Commission's Food and Veterinary Office. The Commission gave her access to those parts of the mission report that related to export controls, but refused access to those parts that related to Romania's accession negotiations with the EU. The Commission based its refusal on the third indent (international relations) of Article 4 (1) (a) of Regulation 1049/2001²¹.

The complainant turned to the Ombudsman, alleging that the Commission had wrongly refused to give her access to the full mission report. She argued that the mission had in fact been primarily related to "export" issues, and stated that "export" reports had always been published.

The Commission maintained its refusal to give access to those parts of the mission report that concerned accession issues. It stated that the inspection in Romania had been carried out on a voluntary basis, on the understanding that the resulting reports would not be published. Disclosure of the findings concerning Romania's progress towards meeting EU standards in food safety and animal welfare would interfere with the accession negotiations and seriously affect the Commission's relations with the Romanian authorities. It would jeopardise their willingness to accept such inspections and to co-operate with the Commission. In addition, disclosure risked being counterproductive, since it would hamper future visits by the Food and Veterinary Office in the run-up to accession.

The Ombudsman found that the Commission was entitled to rely on the exception that it had invoked in order to refuse access to certain parts of the mission report. The Ombudsman also made

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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 145/43.



a further remark. He stated that, in future, it would be useful to record, as far as practically possible, non-confidential information separately from confidential information. This would, in particular, simplify the application of the duty to give partial access to documents.

Further note

The Commission subsequently informed the Ombudsman that the implementation of Regulation 1049/2001 had in fact led to a clearer separation of confidential and non-confidential documents, particularly in those departments that receive frequent requests for access to their documents. With regard to its Food and Veterinary Office, the Commission stated that this Office usually separates reports for the two types of missions it carries out in candidate countries. Reports of export related inspections are routinely published on the Internet, whereas reports of missions in the context of enlargement remain confidential. However, where a mission carried out in the context of enlargement identifies problems related to approved export sectors, a separate report on these problems is prepared and published on the Internet.

ACCESS TO A EUROPEAN SOCIAL FUND MISSION REPORT

Summary of decision on complaint 1481/2003/OV against the European Commission

A Belgian non-profit organisation made a request to the Commission, on the basis of Regulation 1049/2001²², for access to all documents related to a control mission concerning priority 3 of the Objective 3 Programme, under the European Social Fund (ESF) in the Flemish region. The Commission refused access to the requested documents, on the basis of Article 4 (2), third indent, of the Regulation, as they concerned an inspection report about the use of EU funds paid for a project about which there was a dispute with a Member State. The confirmatory application made by the complainant was equally rejected by the Secretariat-General of the Commission, which concluded that there was no overriding public interest in the disclosure of the requested document, as the complainant's interest was a private and not a public one.

In July 2003, the complainant lodged a complaint with the European Ombudsman, claiming that the Commission should grant access to the requested document.

In its opinion on the complaint, the Commission observed that the complainant had already received the excerpts from the inspection report concerning its own project. The parts of the report not disclosed to the complainant were irrelevant as regards the project operated by the complainant, as they concerned the other audited projects and the central management by the Flemish ESF Agency. As regards the reasons for refusing full access, the Commission stated that disclosure of the report at this stage would undermine the current investigation, as it would put the provisional findings by Commission inspectors, to which the audited parties had not yet responded, into the public domain. The Commission also repeated that there was no overriding public interest in disclosure of the report. The Commission's opinion was forwarded to the complainant, who made no observations.

In his decision, the Ombudsman observed that the requested report clearly related to activities of inspections, investigations and audits, as referred to in Article 4 (2) of Regulation 1049/2001. He pointed out that, at the time when the complainant made his request for access to the mission report in March 2003, the Commission was still pursuing its financial control investigation with the Flemish ESF Agency, as foreseen in Article 38 of Regulation 1260/1999²³. The Commission would, depending on the Flemish ESF Agency's reply, decide whether or not to make financial corrections

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 145/43.

²³ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ 1999 L 161/1.



under Article 4 of Regulation 448/2001²⁴. The Commission could thus legitimately form the view that disclosure of the other parts of the mission report could undermine the protection of the purpose of its investigation. In these circumstances, the Commission was, in accordance with the case-law of the Community courts, entitled to refuse access on the basis of Article 4 (2), third indent, of Regulation 1049/2001, unless there was an overriding public interest in disclosure. The Ombudsman considered that the complainant had not sufficiently demonstrated that there would be such an interest in disclosure of the other parts of the report concerning the other projects. No instance of maladministration was therefore found.

LEONARDO DA VINCI PROGRAMME

Summary of decision on complaint 221/2004/GG against the European Commission

A German consultant replied to a call for proposals by the European Commission under the Leonardo da Vinci programme, a programme set up to promote innovation in the field of lifelong learning. However, the Commission informed him that his pre-proposal could not be selected, because he had not met the deadline for submission. The complainant objected to this decision, arguing that he had complied with the deadline since he had sent his pre-proposal by registered mail one day before the deadline. He requested that the Commission confirm that his project had been submitted in time, failing which he would turn to the courts.

On the same day, the complainant forwarded a copy of this letter to the Ombudsman, asking him to examine the matter. The Ombudsman rejected this request (complaint 33/2004/GG), because the Commission obviously had not yet had enough time to consider the case. Three weeks later, the complainant informed the Ombudsman that he wished to renew his complaint. This letter was registered as a new complaint, which the Ombudsman considered to be admissible, given that the complainant did not appear to have received a reply in the meantime.

In its opinion, the Commission admitted that a re-examination of the case had proved the complainant right. There had been three postmarks on the letter, of which the one on which the Commission had based its verdict of non-eligibility had turned out to be the stamp of a regional mail distribution centre and not the actual postmark of the post office. Therefore, the Commission had prepared an "Exception Report", under which the complainant's pre-proposal was selected for the presentation of a full proposal.

However, the complainant did not accept this approach, on the grounds that he had not been given the same number of days as other promoters of selected pre-proposals. The Commission acknowledged that this was a case of unequal treatment and prepared a new supplementary Exception Report, granting the complainant the same number of days to prepare his full proposal.

The complainant agreed to this. However, he pointed out that his disadvantage had only been removed after he had complained for the second time. Furthermore, he alleged that he had not benefited from the same amount of information as other applicants.

The Ombudsman considered that the Commission had acted rapidly and constructively in order to correct the mistake that had occurred. Concerning the Commission's alleged failure to provide the complainant with information, the Ombudsman considered that this was a new allegation, which the complainant had not yet raised with the Commission. He noted that the complainant remained free to submit a further complaint in case this lack of information should in his opinion negatively affect the Commission's decision on his full proposal. As regards the original complaint, the Ombudsman concluded that there appeared to be no maladministration.

²⁴

Commission Regulation (EC) No 448/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds, OJ 2001 L 64/13.



SELECTION PROCEDURE FOR A EUROPEAID PROJECT

Summary of decision on complaint 326/2004/IP against the European Commission

A consortium of three companies participated in a call for expression of interest launched by the European Commission in October 2003, for a EuropeAid project. The consortium was not short-listed as, according to the Commission, it had failed to provide all the documents requested in Section 2.3.3 of the Practical Guide. In his complaint to the Ombudsman, the complainant alleged that the Commission wrongly failed to include the consortium in the short-list of applicants and that the Commission failed to reply to his letter of 9 January 2004. The complainant claimed that the Commission should reconsider its decision not to put the consortium on the short-list of applicants and that it should clarify the content of the Practical Guide, in order to avoid any interpretation problems in the future.

On the basis of the information obtained in the course of the inquiry, it did not appear that the complainant had provided the Commission with all the documents required in Section 2.3.3 of the Practical Guide. The Ombudsman therefore took the view that the Commission had given a reasonable explanation as to why it had decided not to include the consortium on the short-list. As regards the alleged failure by the Commission to reply to the complainant's letter, the institution acknowledged that a delay had occurred in dealing with the letter and apologised for it. The Ombudsman considered that, in accordance with the Commission's Code of Good Administrative Behaviour²⁵, a reply to a letter addressed to the Commission should be sent within fifteen working days of the date of receipt. In the present case, the Commission failed to act in accordance with its own rules. However, since it emerged that the Commission had in the meantime replied to the complainant's letter and apologised for the delay that had occurred, the Ombudsman concluded that no further inquiries were necessary.

As regards the complainant's first claim, the Ombudsman considered that, since the Commission had given reasonable explanations of the reasons why it had decided not to include the consortium on the short-list, it no longer appeared necessary to deal with this point. As regards the complainant's second claim, the Ombudsman reached the conclusion that the content of section 2.3.3 of the Practical Guide did not appear to be unclear, and that the Commission had given a reasonable explanation of its interpretation of these rules.

ALLEGED IMPROPER HANDLING OF INFRINGEMENT COMPLAINTS

Summary of decision on complaint 480/2004/TN against the European Commission

The Lecturers' Employment Advice and Action Fellowship (LEAF) complained to the Ombudsman about maladministration by the Commission in its handling of two Article 226²⁶ complaints. LEAF argued, among other things, that the Commission had shown complete disregard for the gravity of the complaints and had failed to give force to the protection intended by the Acquired Rights Directive (77/187/EEC²⁷).

The Ombudsman noted that LEAF's Article 226 complaints to the Commission alleged that the United Kingdom had failed to properly implement the Acquired Rights Directive. The Ombudsman found that the Commission had provided clear and reasonable grounds for its decision not to pursue infringement proceedings against the United Kingdom.

²⁵ OJ 2000 L 308 pp. 26-34.

²⁶ Article 226 of the EC Treaty empowers the Commission to bring proceedings against a Member State in respect of infringements of Community law. Anyone may lodge a complaint (an "Article 226 complaint") with the Commission against a Member State about any state measure or administrative practice that he/she considers incompatible with Community law.

²⁷ Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, OJ 1977 L 61/26.



In response to the complainant's specific allegation in the complaint to the Commission concerning a decision on this issue by a national court in the United Kingdom, the Ombudsman noted the Commission's argument that the purpose of the Article 226 procedure is not to serve as an additional means of appeal or review of the judgements given by national courts. The Ombudsman understood that LEAF had chosen not to pursue the matter within national courts by using the possibility of an appeal. He therefore considered the Commission to have had reasonable grounds for its decision not to pursue infringement proceedings against the United Kingdom on the basis of this allegation.

Having analysed all of LEAF's arguments, the Ombudsman found no maladministration by the Commission in its handling of the Article 226 complaints. He acknowledged the extensive explanations provided by the Commission in this regard. Nevertheless, he found that the essential reasons for its decision to close the two Article 226 complaints could have been explained to the complainant in a more straightforward and understandable way. He therefore considered it appropriate to make the following further remark:

With a view to maintaining good relations between the Commission and the citizens, the Ombudsman suggests that the Commission should in future seek to explain the reason or reasons for decisions to close Article 226 complaints in as understandable and straightforward a way as possible.

ACCESS TO AN ASSESSMENT OF GERMANY'S BUDGETARY SITUATION

Summary of decision on complaint 1044/2004/GG against the European Commission

A researcher working at the Centre for European Policy Studies (CEPS) in Brussels requested access to a Commission document concerning the European Stability and Growth Pact. The document in question was the Commission's Recommendation for a Council Decision giving notice to Germany to take measures for the deficit reduction necessary to remedy the situation of excessive deficit. The Commission rejected the request for access to the document on the grounds that its disclosure would undermine the protection of the economic and financial policies of Germany. It also ruled out the possibility of partial access.

In his complaint to the Ombudsman, the complainant objected to this refusal, pointing out that, as an academic dealing with economic and institutional developments at the EU level, he needed to have access to all important sources. He stated that the Commission had published the contents of its Recommendation in a press release and that, if the Recommendation did not contain any additional information, he did not understand why it should not be disclosed. If the Recommendation should, however, contain other - essentially more negative - information on Germany's public finances, then the Commission was concealing information of general public interest and possibly deliberately misinforming the public.

In its opinion, the Commission submitted that all the financial and economic data it had taken into consideration in its Recommendation were already in the public domain through its press release and that the technical assessments of the stability and convergence programmes were available on the Internet. However, the Recommendation itself had not been published, in order to safeguard the confidentiality of the Commission's reasoning on this sensitive topic. The explanatory memorandum to the Recommendation contained the Commission's own assessment of Germany's budgetary situation. The Commission argued that full disclosure of the Recommendation could lead to a negative perception by the financial markets and could hamper the budgetary consolidation. It would thus adversely affect the financial and economic policy of Germany. The Commission added that no relevant macro-economic information had been concealed from the public and that the complainant's legitimate scientific interest had not been affected.

The Ombudsman noted that the very fact of recommending that Germany be given notice to take measures for deficit reduction was bound to affect its perception by the financial markets. However, he considered that the Commission's view that the disclosure of the reasoning underlying its Recommendation could still lead to a negative perception did not appear to be unreasonable. He



also noted that, since the Commission had ruled out partial access to the document and since the complainant had not raised this issue in his complaint, the issue of partial access did not need to be dealt with. On the basis of these considerations, the Ombudsman concluded that there was no maladministration on the part of the Commission.



3.1.4 The European Personnel Selection Office

ALLEGED LACK OF REASONED EXPLANATION IN A SELECTION PROCEDURE

Summary of decision on complaint 1110/2003/ELB against the European Personnel Selection Office

The complainant was excluded from competition COM/A/3/02 because her marks in a multiple-choice pre-selection test were insufficient. She contested the Selection Board's response as regards three questions. She alleged that the European Personnel Selection Office (EPSO) failed to provide her with a reasoned explanation of the correct answers to the contested questions.

According to EPSO, the Selection Board carefully and conscientiously examined the complainant's comments on the contested questions, as well as the content and the wording of the questions, before deciding to maintain them.

The Ombudsman noted that the complainant was informed of the mark that she had been awarded, that she received a copy of her own marked test and that she was informed of what the Selection Board considered to be the correct answers to the contested questions. The Ombudsman also noted that the complainant did not accept the Selection Board's view of the correct answers to the contested questions. The Ombudsman recalled, however, that communication of the marks obtained in the various tests constitutes, according to the case law²⁸, an adequate statement of the reasons on which a Selection Board's decisions are based. Moreover, the Ombudsman did not consider that the complainant had supplied evidence in the course of the inquiry that could show that the Selection Board had acted unreasonably, or otherwise acted outside the limits of its legal authority, in determining the correct answers to the contested multiple-choice questions. The Ombudsman therefore found no maladministration.

²⁸

See Case C-254/95, *Parliament v. Innamorati*, [1996] ECR I-3423.



3.2 CASES SETTLED BY THE INSTITUTION



3.2.1 The European Parliament

SELECTION BOARD DECISION ON AN APPLICATION

Summary of decision on complaint 1600/2003/ADB against the European Parliament

An Italian policeman applied to participate in open competition PE/22/D²⁹ to recruit skilled employees in the field of general security. His application was rejected because the Selection Board considered that he did not have the required three years experience in the public or private general security sector. The candidate therefore twice contacted the Parliament to point out that his almost five years experience as a policeman should satisfy the criterion set out in the notice of competition. In the absence of a reply from the Parliament, the complainant lodged a complaint with the Ombudsman against his exclusion from the open competition.

The Parliament informed the Ombudsman that shortly after he had opened his inquiry, the Selection Board had re-examined the complainant's application and decided to admit him to the following stage of the recruitment procedure.

The Ombudsman's services contacted the complainant, who declared that the case had been settled to his full satisfaction by Parliament. The Ombudsman therefore considered that Parliament had taken the necessary steps to settle the matter.



3.2.2 The European Commission

FAILURE TO PAY FOR SERVICES

Summary of decision on complaint 1949/2003/(TN)(IJH)TN against the European Commission

The complaint concerned alleged non-payment for services carried out on the instructions of the Statistical Office of the European Communities (Eurostat), which is a service of the Commission. On Eurostat's instructions, the complainant had carried out a global assessment of the statistical system in Kazakhstan. The contracts were formally concluded with the organisation *CESD-Communautaire*, but the terms of reference were laid down by, and all the reporting was made to, Eurostat. Eurostat approved the complainant's work report in August 2003, but the complainant had not yet been paid at the time of submitting his complaint in October 2003. The complainant suspected that due to problems within Eurostat, its payments to *CESD-Communautaire* had been blocked. The complainant alleged that the Commission had failed to ensure payment for the services he had provided in relation to certain contracts. The complainant claimed that he should receive the outstanding payment for his services.



In its opinion submitted in January 2004, the Commission underlined that it had no contractual relationship with the complainant. According to the Commission, *CESD-Communautaire* could at the time still submit invoices to it in the framework of the contracts concerned. The invoices submitted for the complainant by *CESD-Communautaire*, up to the date of the Commission's opinion to the Ombudsman, had been paid without delay to *CESD-Communautaire's* bank account on 29 December 2003.

In April 2004, the complainant informed the Ombudsman's services that he had received the main part of the money owed to him and that the payment of the rest was subject to certain issues being solved between him and *CESD-Communautaire*. The complainant therefore considered that his complaint regarding the Commission had been brought to a satisfactory conclusion.

The Ombudsman found that the Commission had taken the necessary steps to settle the matter and had thereby satisfied the complainant.

FAILURE TO PAY A GRANT

Summary of decision on complaint 2124/2003/ADB against the European Commission

A German national complained to the Ombudsman on behalf of IBC SOLAR AG. The latter was a party to a joint venture called CIESMA (*Centre International d'Energie Solaire Morocco-Allemand*), which was the beneficiary of a grant awarded in May 1998, by the European Commission, in the framework of the ECIP facility 4 programme. The grant amounted to EUR 75 626. CIESMA had already received EUR 37 813. The complainant alleged that, despite repeated contacts with the Commission and although all supporting documents had been sent in August 2001, the outstanding amount had still not been paid to CIESMA by November 2003.

The complainant claimed the payment of the outstanding amount.

The Commission informed the Ombudsman that the ECIP programme was a financial instrument made available and managed by the Commission in a decentralised way through a network of financial institutions. In the framework of this programme, the Commission had signed a contract with a German bank, which in turn had signed a contract with CIESMA. The bank was supposed to make the second payment foreseen by the contract with CIESMA following the verification and acceptance by the Commission of the final report for the project. In June 2003, after its acceptance of the final report, the Commission informed the bank that the payment should be made. Further contacts took place in July 2003 and October 2003. In November 2003, the bank informed the Commission that the final payment would be made. The bank made the final payment on 5 December 2003.

The complainant declared that the case had been settled to his full satisfaction. The Ombudsman therefore considered that the European Commission had taken the necessary steps to settle the matter.

ACCESS TO DOCUMENTS CONCERNING A RAILWAY PLAN

Summary of decisions on complaints 2183/2003/(TN)(IJH)TN and 520/2004/TN against the European Commission

The complaint concerned a request for access to certain documents relating to the Commission's opinion to Sweden of 24 April 2003 on the "Botniabanan" (Botnia Link) railway development plan. Following a request for access to documents made by the complainant, the matter became the subject of a complaint to the Ombudsman (complaint 2183/2003/(TN)(IJH)TN) and the Commission subsequently sent the complainant the documents which it thought he had asked for. However, the complainant was not satisfied with the documents sent to him and he therefore submitted a new complaint to the Ombudsman. The complainant alleged that the Commission had failed to provide



him with documents showing its critical evaluation of the plan and that it had failed to reply to an e-mail in which he informed it of his views regarding the matter. The complainant claimed that the Commission should give him access to the documents containing the Commission's critical evaluation of the plan.

The Commission argued that it initially felt that the complainant's e-mail should be dealt with under the Ombudsman's further investigations in complaint 2183/2003/(TN)(IJH)TN and that it had therefore sent no direct reply to the complainant. However, upon reconsideration, the Commission sent the complainant a further reply, enclosing relevant documents.

Having received the relevant documents, the complainant informed the Ombudsman's services that he considered the matter to be settled.

The Ombudsman concluded that the Commission had taken the necessary steps to settle the matter and had thereby satisfied the complainant.

LATE PAYMENT FOR SERVICES

Summary of decision on complaint 435/2004/GG against the European Commission

The complainant, the managing director of a small German company specialising in IT electronics, alleged that the Commission had failed to make any payment in respect of four invoices submitted to it in 2003, in respect of work carried out for the Commission. According to the complainant, the total amount due to his company was EUR 17 437 and seven reminders (some of which were sent by registered mail) had failed to produce any reaction from the Commission. The complainant asked for the Ombudsman's help in obtaining the payments that were due, so as to avoid the need for him to dismiss staff and further damage his company.

In its opinion, the Commission explained that due to technical changes to budgetary procedures resulting from the application of the new Financial Regulation, it had unfortunately not been possible to finalise the processing of the complainant's invoices within the 60-day period that is foreseen for this purpose. Following the reorganisation of the department and the establishment of a financial unit, matters had now been reviewed. The four invoices totalling EUR 17 437 had been paid at the end of February 2004. In the Commission's view, this meant that the complaint was no longer relevant.

On 21 June 2004, the complainant informed the Ombudsman's services that he considered the case to have been settled.

In closing the case, the Ombudsman made further remarks in which he noted that the first two of the relevant invoices had been presented to the Commission 11 and 10 months before payment was made. He stated that it should be considered that small and medium-sized companies are particularly vulnerable to the effects of delays in payment. The Ombudsman therefore invited the Commission to consider the possibility of paying interest to the complainant.

Further note

On 6 December 2004, the Commission informed the Ombudsman that it had decided to pay the complainant interest amounting to EUR 387.



3.2.3 The European Anti-Fraud Office

ACCESS TO DOCUMENTS CONCERNING A NUCLEAR SAFETY CASE

Summary of decision on complaint 220/2004/GG against the European Anti-Fraud Office

The complainant, a Commission official, had worked in the Institute for Transuranium Elements (ITU) in Karlsruhe, Germany. The ITU is part of the Joint Research Centre (JRC), a Directorate-General of the European Commission. The complainant had been responsible for dealing with transports of radioactive materials within the Nuclear Safety and Infrastructure unit of the ITU. Alleging severe irregularities in the work of the ITU, she asked the Commission to open an inquiry concerning protection against radiation and transports of radioactive materials. She made a number of allegations, including that staff handling radioactive materials had not undergone the required training and that radioactive materials had been deliberately transported illegally. The Commission passed the matter on to the European Anti-Fraud Office (OLAF), which heard the complainant and conducted inquiries.

At a later stage of the procedure, the complainant requested access to a number of documents concerning her case, held by different Commission Directorates-General and by OLAF. However, these requests were, according to the complainant, not dealt with properly. She therefore turned to the Ombudsman. The Ombudsman decided to register the complainant's allegations against OLAF as a separate complaint, given that he treats OLAF as a European institution in its own right. The Ombudsman is still investigating the complaint (101/2004/GG) against the European Commission, which also concerns the substance of the complainant's allegations regarding the ITU.

In her complaint against OLAF, the complainant alleged that OLAF had wrongly failed to grant her access to documents and that it had failed to handle her request on time. She claimed that the documents should be released, or that OLAF should explain that some of them did not exist. If this should not be possible, the Ombudsman, his staff or Members of the European Parliament should inspect the documents.

In its opinion, OLAF pointed out that it had exhaustively replied to the complainant's request. It had supplied the complainant with copies of three documents and had explained that the other documents she had requested did not exist. OLAF acknowledged, however, that it had replied three working days after the deadline for reply had expired. It explained that this had been due to the fact that the person in charge of the matter had just been appointed to another post and had had a number of unforeseen matters to deal with. OLAF accepted that it would have been better if it had informed the complainant that an extension of the deadline would be necessary. It noted that it had sent a copy of its reply to the complainant in the meantime.

Upon receipt of the copy of this reply and of OLAF's opinion, the complainant expressed the view that her complaint against OLAF had been answered to her satisfaction. She thanked the Ombudsman for this result. The Ombudsman concluded that OLAF had taken steps to settle the matter and had thereby satisfied the complainant.



3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN

ACCESS TO DOCUMENTS CONCERNING TRADE NEGOTIATIONS

Summary of decision on complaint 415/2003/(IJH)TN against the European Commission

The complainant, who complained on behalf of the Corporate Europe Observatory, made an application under Regulation 1049/2001³⁰ for access to “all documents relating to the Commission’s preparations for possible negotiations on a multilateral investment framework in the WTO”. The Commission refused access to the documents, which it defined as the “internal preparatory work on draft documents for the Doha Development Agenda process in WTO”. In reply to the complainant’s confirmatory application, which clarified that the request also covered documents from before Doha, the Commission defined the requested documents as the preparatory work for the Concept Papers that it had undertaken to produce on each of the seven issues mentioned in the Doha Ministerial Declaration. No documents existed from before the Doha Ministerial Meeting, since at that time, the WTO had no mandate as regards multilateral investment. The Commission refused access to the preparatory documents on the basis of Article 4(1)(a), arguing that the publication of the documents could prejudice the margin of manoeuvre in negotiations with third countries.

In his complaint to the Ombudsman, the complainant’s main allegation was that the Commission had defined too narrowly the documents covered by his application for access. He argued that his request covered a long list of documents, that these were not limited to documents related to the Concept Papers, and that, given that the Commission had campaigned for WTO investment talks since at least 1999, some of the requested documents were from before Doha.

The Commission maintained that the Concept Papers were the only documents covering possible negotiations on multilateral investment.

The Ombudsman found that Article 6(2) of Regulation 1049/2001 requires that, if an application for access to documents is not sufficiently precise, the institution shall ask the applicant to clarify the application and assist the applicant in doing so, for example by providing information on the use of the public registers of documents. The Ombudsman noted that the Commission had neither responded to the complainant’s list of categories of documents, nor referred him to a public register of documents. The Ombudsman considered that this could constitute an instance of maladministration. He therefore proposed a friendly solution consisting of the Commission providing the complainant with a full list of existing documents belonging to the categories listed by the complainant. The list should also include any existing documents from before the Doha Ministerial Conference.

In reply, the Commission explained that it had extended its research and analysed every document between the end of 1998 and the Doha Ministerial Conference and that it had come up with a list of 296 documents, which it hoped would meet the Ombudsman’s request.

In his observations, the complainant explained that he considered a friendly solution to have been reached and that he would make a new application for access, based on the list of documents provided by the Commission. The complainant thanked the Ombudsman for his assistance.

³⁰

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 145/43.



ACCESS TO DRIVING TEST RESULTS

Summary of decision on complaint 1320/2003/(ADB)ELB against the European Commission

The complainant applied for an auxiliary post as a driver at the European Commission and was invited to participate in a road test organised by a driving school. The complainant was informed that he had failed this test. He unsuccessfully asked for the disclosure of his results, because he was convinced that he had succeeded, taking into account his driving experience, his qualifications and information received from an employee of the driving school.

The complainant alleged that he received inconsistent replies from the Commission and that, although he was informed that he was not among the successful candidates, he was never informed about his actual results in the tests. The complainant claimed that the Commission should inform him of his results in the various tests, as well as of the number of successful candidates and their results.

In its opinion, the Commission explained that the director of the driving school had informed the Commission that the complainant and three other candidates had failed. It submitted that it did not receive the details of each evaluation, but only a general result and a statement as to whether the candidate had passed or failed each test.

In his observations, the complainant referred to discrepancies that he had found between the explanations given by the Commission in its opinion and the information that he obtained during a meeting with a responsible official. The official in question had informed the complainant that the Commission had received results for each of the five tests that constituted the road test. The Commission official had this document with him at the meeting. However, since it contained the results for all the candidates, he had refused to give the complainant a copy. The official had however orally informed him of his results.

The Ombudsman carried out an inspection of the Commission's file. The results of the inspection appeared to show that, contrary to the information provided by the Commission in its opinion, it had in fact received the details of each candidate's evaluation. The Ombudsman concluded that, although the Commission had legitimate reasons not to communicate the results of other candidates to the complainant, the Commission had not submitted any reasons as to why the complainant should not be given access to his own results.

The Ombudsman therefore proposed a friendly solution. He suggested that the Commission could reconsider the complainant's application for access to his own results obtained in the road test.

The Commission agreed to the friendly solution proposal and sent the Ombudsman the results obtained by the complainant in the various tests that constituted the road test. The complainant informed the Ombudsman's services that he considered that a friendly solution had been achieved.

Further note

The complainant subsequently sent a letter to the Ombudsman, in which he expressed the view that it would not be correct for persons working in a European institution as important as the Commission and who are guilty of faults to remain unpunished. In reply, the Ombudsman explained that the Staff Regulations lay down specific procedures for the disciplining of officials and other servants and that it is not the role of the Ombudsman to substitute for these procedures. The Ombudsman drew the complainant's concerns to the attention of the Commission as Appointing Authority.



3.4 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN



3.4.1 The European Parliament

THE IMPLEMENTATION OF RULES ON SMOKING

Summary of decision on complaint 260/2003/OV against the European Parliament

An official, who works for the European Parliament in Luxembourg, was concerned about smoking in the Parliament's buildings. According to the official, eight years after Parliament adopted internal rules on smoking in its premises (Decision of the Secretary-General of 12 July 1994), the administration was still failing to implement and enforce the rules in all its premises. She had written several letters to the administration about the matter since February 1996. However, very little action had been taken.

On 5 February 2003, the official lodged a complaint with the European Ombudsman, alleging that the Parliament's administration was failing to implement and enforce the internal rules on smoking in all its premises. To support her case, she referred to a Commission decision of 16 July 2003 on the protection of staff against the effect of tobacco smoke, adding that Parliament should follow this example³¹.

In its opinion on the complaint, Parliament insisted that its administration had taken all the necessary technical and administrative measures to ensure that the rules were applied. These measures included the posting of many "no-smoking" signs and the dispatch of numerous communications about the rules to both the staff and Members of Parliament. Parliament, however, added that "some people unfortunately do not feel bound by the rules and break them, regardless of the efforts made by the administration". It pointed out that "it is up to each individual to act responsibly and make it possible for smokers and non-smokers to live together." It further observed that it was not applying rules that were radically different from those laid down by the Commission.

In his decision, the Ombudsman pointed out that, by adopting rules on smoking in its premises and by communicating those rules to its staff and Members in various notices, Parliament had created a reasonable expectation amongst non-smokers that it would take adequate measures to promote effective compliance with the rules. The Ombudsman further considered that, in view of the possible adverse health effects of exposure to smoke, Parliament should pay particular attention to the need to promote effective compliance with its internal rules on smoking. He pointed out that the exposure of staff to smoke in the workplace raised potential issues of legal liability. While acknowledging the measures that Parliament had taken, the Ombudsman did not consider its view, that it is up to each individual to act responsibly, as an adequate response to the problems of non-compliance. He therefore made a critical remark.

Further note

On 13 July 2004, the Bureau of the European Parliament adopted a decision (PE 346.287/BUR) introducing new rules on smoking in the European Parliament premises. Article 1 of the decision, which entered into force on the first day of the 2004-2009 legislature, provides that "the objective of the Institution shall be to achieve a completely smoke-free environment within its buildings at the latest by 1 January 2007". The decision equally introduces transitional measures until 1 January 2007, such as empowering the security staff to remove from Parliament's premises any individual who refuses to comply with these rules.

³¹

The Commission's rules, which make its premises completely smoke-free, entered into force on 1 May 2004.



3.4.2 The Council of the European Union

ACCESS TO PERSONAL FILES IN AN EARLY RETIREMENT CASE

Summary of decision on complaint 2046/2003/GG against the Council of the European Union

A Council official wished to make use of measures introduced by the Council to offer its officials special early retirement (*dégagement*) in the context of the modernisation of the institution. A Council Regulation provided that the Secretariat General of the Council should select the officials to whom it wished to grant early retirement, from a list of applicants, after having consulted its Joint Committee. The Joint Committee consists of an equal number of representatives of the Appointing Authority and the Staff Committee. According to a Decision implementing the Regulation, the Council's Deputy Secretary-General was to establish a draft list of candidates, which was then to be submitted to the Joint Committee for an opinion.

In his complaint to the Ombudsman, the complainant stated that his application had been rejected, as had been his complaint to the Council. He criticised the fact that the Joint Committee had not been given access to the personal files of the applicants, which, in his view, had rendered the Joint Committee incapable of providing the Appointing Authority with a substantiated opinion. He claimed that the Decision implementing the Regulation should be repealed. As a supporting document, the complainant submitted an unsigned declaration by members of the Joint Committee. According to the declaration, members of the Joint Committee had several times asked for access to the files, subject to the applicants' consent, but such access had been categorically refused.

In its opinion, the Council argued that the Decision was entirely in conformity with the Regulation. The Joint Committee had had all the information it needed to assess the list of candidates. However, in accordance with Regulation 45/2001³², the information supplied had had to stop short of divulging personal data.

The Ombudsman accepted that the Decision was in conformity with the Council Regulation, in so far as the list of officials was only adopted *after* consultation of the Joint Committee. However, he considered that in order to be able to form and express its views in a useful way, the Joint Committee had to be in possession of all relevant information. Otherwise, the consultation would amount to a mere formality. The Ombudsman was aware that access to personal data could only be granted in conformity with Regulation 45/2001. However, any obstacle to such disclosure had been created by the Council itself, which failed to inform applicants that their personal data could be submitted to the Joint Committee.

The Ombudsman concluded that by refusing to grant the Joint Committee access to the files or by failing to ensure the possibility that such access could be granted, the Council had not given the Joint Committee the possibility to express its views in a useful way. The Council's failure properly to consult the Joint Committee thus constituted an instance of maladministration. The Ombudsman therefore made a critical remark.

³²

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L8/1.



3.4.3 The European Commission

LESS FAVOURABLE CLASSIFICATION AS A RESULT OF A DELAY IN RECRUITMENT

Summary of decision on complaint 1435/2002/GG against the European Commission

A Swedish citizen sat and passed a Commission recruitment competition for Principal Administrators. In July 1999, his name was put on a reserve list. Until the end of 1999, favourable rules for the recruitment of candidates from the then new Member States (Austria, Finland and Sweden) were applicable, particularly in so far as their classification into salary brackets was concerned.

In December 1999, the candidate received verbal offers for two posts at the Commission. He accepted a post in Luxembourg with the Directorate-General (DG) Information Society, assuming that the Commission would arrange for the necessary written offer before the end of the year. However, the post turned out to be a research post that had still to be transformed into a permanent post. The candidate put this down to an internal misunderstanding. He was informed of the problem when, according to him, it was too late to accept the other offer he had received. A written offer was finally made in May 2000, and the candidate started working for DG Information Society in September 2000. However, the Commission classified him into a lower salary bracket than he would have received had the favourable rules been applied.

In his complaint to the Ombudsman, the candidate argued that persons from the same reserve list should receive the same treatment. He considered that the Commission could have made a conditional offer of employment before the expiry of the favourable rules.

The Commission took the view that the complainant had been treated in exactly the same way as all other candidates of enlargement competitions recruited after the end of 1999. Concerning the possibility of a conditional offer, it argued that such an offer could only be made if a post was formally available, which had not been the case in this instance.

Since the Commission did not contest the complainant's account of events, the Ombudsman considered that the complainant had been led to believe that he would benefit from the preferential rules in his recruitment. He also considered that the recruitment was delayed due to an internal misunderstanding, which made it impossible for the complainant to take up another offer of employment. The Ombudsman therefore concluded that the Commission's decision on the classification of the complainant was unfair and constituted an instance of maladministration. He made a proposal for a friendly solution, inviting the Commission to consider reviewing the complainant's classification. The Commission rejected this proposal and the Ombudsman's consequent draft recommendation.

The Ombudsman deplored the attitude displayed by the Commission. The fact that the Commission did not submit any comments on the alleged internal misunderstanding was, in his view, not in conformity with the obligations that EU law imposes on Community institutions as regards their relations with both the Ombudsman and complainants. He therefore made a critical remark.

LACK OF JUSTIFICATION FOR SUSPENSION OF PAYMENTS

Summary of decision on complaint 1889/2002/GG against the European Commission

A Belgian company entered into a contract with the European Commission under the latter's programme for research, technological development and demonstration on a user-friendly information society, the so-called "IST programme". The company submitted a project (the "IST project"), and the Commission agreed to provide financial assistance of up to almost EUR 450 000. After the company had already received two payments, the Commission refused to make the third



and fourth payment. It stated that a recovery order had been issued, following a financial audit concerning a previous project the company had submitted to the Commission (the “Esprit project”). The company had lodged an appeal concerning the “Esprit project” with the Court of First Instance, and the Commission informed the company that payments for the new contract would be suspended until the ruling of the Court had been made.

In its complaint to the Ombudsman, the company alleged that the Commission had acted arbitrarily and unilaterally, and that it had abused its position of power. It reported that two Commission officials had explicitly stated during a meeting that the Commission would not attempt the recovery of amounts under the “Esprit project” from the payments to be made under the “IST project”.

The Commission did not dispute that the payments were suspended for reasons unrelated to the “IST contract”. However, it argued that it was entitled to do so, because it had to ensure the protection of the Community’s financial interests. It referred to a provision of the “IST contract”, which entitled it to set off sums to be reimbursed to the Community against sums “of any kind”.

The Ombudsman considers that maladministration may be found in cases involving the fulfilment of obligations arising from contracts concluded by EU institutions and bodies. However, since he also considers that questions of alleged breach of contract can only be dealt with effectively by a court, he limited his inquiry in this case to examining whether the Commission had provided him with a coherent and reasonable account of the legal basis for its actions.

After a thorough examination, which included inspecting the relevant Commission file and taking the testimony of the Commission’s Head of Unit, the Ombudsman concluded that the Commission had not put forward an entirely coherent and reasonable justification of its actions. He was not convinced that the “sums of any kind” mentioned in the relevant provision of the “IST contract” could refer to sums relating to another contract. More importantly, a set-off was excluded under the law applicable to the contract, where the claim was the subject of a serious dispute. The Ombudsman considered that this was the case in this instance, given that the complainant had consistently disputed the Commission’s claim under the “Esprit project” and had finally submitted the case to the Court of First Instance. Furthermore, the Ombudsman noted that the relevant provision in the “IST contract” only entitled the Commission, under certain circumstances, to proceed to a set-off. It did not allow it simply to withhold payments.

The Commission rejected the Ombudsman’s attempt to achieve a friendly solution and his consequent draft recommendation. Given that it was not apparent which action the European Parliament could take in order to assist the Ombudsman and the complainant in the present case, the Ombudsman decided not to present a special report to Parliament. He therefore made a critical remark regarding the Commission’s failure to explain on what basis it was entitled to suspend the payments.

REFUSAL TO REIMBURSE SECRETARIAL COSTS

Summary of decision on complaint 1986/2002/OV against the European Commission

A Dutch Institute was one of the Forums in the European Network of Urban Forums for Sustainable Development, a programme managed by the Directorate-General for Education and Culture of the Commission. Although it had been given oral assurances by the Commission that the costs it was incurring in providing the secretarial services of the Network would be reimbursed, the Commission finally rejected its claim. The Institute turned to the Ombudsman in November 2002, underlining that it had written several times to the Commission requesting it to conclude a formal contract for the secretarial assistance it was providing. The costs claimed by the Institute totalled over EUR 170 000.

The Commission argued that it always settles contractual matters in writing. It also indicated that the complainant had been informed orally that its proposal could not be taken into account. While it regretted the absence of a written reply to the complainant’s letters, it said that the complainant’s



knowledge of the Commission's normal procedures could not have allowed it to believe that the Commission had entered into commitments.

The Ombudsman concluded that the Commission's rejection of the claim for reimbursement seemed unfair and was based on unclear information. The Commission's argument concerning the complainant's presumed knowledge of its normal procedures was, according to the Ombudsman, neither legal nor convincing. Although the Commission had indicated that it always settles contractual matters in writing, it failed to provide a written reply to the complainant's letters of 4 July and 7 October 1997. The Ombudsman called on the Commission to reconsider its position, with a view to reaching a friendly solution, adding that this could involve a reasonable offer that might be less than the amount claimed. As the Commission rejected the friendly solution proposed and the Ombudsman's subsequent draft recommendation that the Commission should reimburse the institute, the Ombudsman closed the case with a critical remark.

Further note

The Commission reacted to the critical remark in a letter of 17 November 2004, stating that it regretted that the complainants' expectations were not addressed in writing within a reasonable time limit and in an adequate and unambiguous way. It also pointed out that the principles of good administration that its services should respect had since been outlined more clearly in a Code of Good Administrative Behaviour, which had been adopted by the Commission on 17 October 2000.

FAILURE TO REGISTER ARTICLE 226 COMPLAINTS

Summary of decision on complaint 2007/2002/ADB against the European Commission

The complainant, an Italian organisation that protects the rights of Italian workers, had been closely following the measures taken by Italy to comply with a judgement of the Court of Justice of the European Communities regarding social security for migrant workers³³. The complainant was concerned by the calculation of pensions paid by Italy to pensioners who spent part of their working life in Italy but lived abroad.

The complainant lodged a complaint with the Ombudsman and alleged that (i) the Commission had failed properly to deal with its complaints against Italy, (ii) that it had failed to take action against Italy and (iii) that it had given erroneous answers in the framework of a written question put to it by a Member of the European Parliament (MEP).

The Commission acknowledged that although holding replies had been sent on repeated occasions, no reply on the substance had been sent to the complainant's letters before February 2003. The Commission further stated that there could have been doubts about the necessity to register the complainant's letters as complaints. In view of the Commission Communication on relations with the complainant in respect of infringements of Community law³⁴, the Commission stated that such doubts should no longer exist. The Commission explained that interpretation of the judgement had given rise to extensive discussions within the Commission and with the Member States. It considered that its services and the complainant had different interpretations of Community law, in particular regarding the situation of those pensioners residing in a Member State other than Italy who are entitled to a pension paid by Italy. In its letter to the complainant, the Commission rejected the complainant's claim that the Commission should intervene against Italy. Finally, the Commission stated that it did not share the complainant's view that its reply to an MEP had been erroneous.

The Ombudsman found no maladministration as regards the second and third allegations of the complainant, which relied on a difference of interpretation of a judgement. As far as the failure to give

³³ Case C-132/96, *Antonio Stinco and Ciro Panfilo v. Istituto nazionale della previdenza sociale (INPS)*, [1998] ECR I-5225.

³⁴ Commission 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 244/5.



the proper follow-up to the complainant's letters was concerned, the Ombudsman noted that even before the Commission adopted the above-mentioned Communication, its normal practice was to register all complaints, without exception. The failure to do so in the complainant's case constituted an instance of maladministration. Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore addressed a critical remark to the Commission.

HANDLING OF A COMPLAINT CONCERNING STATE AID

Summary of decision on complaint 2185/2002/IP against the European Commission

The complainant made two complaints to the Commission, on 17 April 2000 and 22 May 2002, concerning state aids granted by the Portuguese Government to Portuguese food packaging companies. In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to deal properly with his complaint lodged on 17 April 2000 and to acknowledge receipt of his complaint of 22 May 2002.

As regards the first complaint, the Commission explained that its services had contacted the Portuguese authorities and asked for clarifications on the relevant issue. Following the reply by the Portuguese authorities, a dossier concerning state aid had been opened in January 2001. In July 2001, the Commission had requested further information from the Portuguese authorities. As regards the second complaint, the Commission had opened a dossier in September 2002 and had requested information from the Portuguese authorities in November 2002. However, no reply had been provided. The Commission apologised for failing to acknowledge receipt of the complainant's letter of 22 May 2002.

In July 2003, the Ombudsman wrote to the Commission. He asked it to inform him of whether it had now received a reply from the Portuguese authorities to its requests for information of July 2001 and November 2002. Were such a reply not to have been received, he asked that the Commission also explain what action it had taken or intended to take in order to obtain the requested information.

As regards the first complaint, the Commission replied that the Portuguese authorities had informed it that the Portuguese press had published information about a possible sale, by the regional government of the Azores, of its stake in the company in question. The Portuguese authorities would follow developments on this matter and keep the Commission informed.

As regards the second complaint, the Portuguese authorities had forwarded further information to the Commission in June 2003. On the basis of that information, the Commission considered it necessary to request additional information from the Portuguese authorities on 18 July 2003.

On 24 November 2003, the Ombudsman wrote a further letter to the Commission, in which he asked the institution to explain which measures it had taken to obtain the information from the Portuguese authorities. He also asked the Commission to comment on the complainant's assertion, made in his observations, that the institution should have started an infringement procedure against Portugal.

The Commission replied that it was pursuing the examination of the first complaint on the basis of the latest information transmitted by the Portuguese authorities. As regards the second complaint, the Commission had requested further information from the Portuguese authorities in July 2003. Furthermore, the institution pointed out that both dossiers were being dealt with following the procedures applicable for cases concerning state aids. The point raised by the complainant concerning the opportunity to start a procedure against Portugal under Article 226³⁵ of the EC Treaty was therefore not relevant.

³⁵

Article 226 of the EC Treaty empowers the Commission to bring proceedings against a Member State in respect of infringements of Community law. Anyone may lodge a complaint (an "Article 226 complaint") with the Commission against a Member State about any state measure or administrative practice that he/she considers incompatible with Community law.



The complainant noted that, as a consequence of the Ombudsman's intervention, the Commission's services had taken action as regards his complaint.

In his decision, the Ombudsman made a critical remark to the Commission. He took the view that the Commission had not submitted, despite a specific question to that effect by the Ombudsman, any convincing explanation as to why during almost two years, it had taken no action with regard to the Portuguese authorities' failure to provide the information requested.

Further note

By letter of 15 June 2004, the Commission reacted to the critical remark. It apologised for the delay that had occurred when dealing with the complainant's complaint and it stated that the Portuguese authorities had been asked to provide the institution with further information by the end of June 2004.

FAILURE TO ENSURE THAT LANGUAGE TEACHERS WERE DECLARED AS WORKING FULL-TIME

Summary of decision on complaint 2204/2002/MF against the European Commission

The complainant is a Portuguese language teacher who worked for the European Commission. He retired on 1 November 2003. From 1986 onwards, the complainant had a permanent contract of employment under Belgian law and used to work 20 hours a week. The Belgian Ministry of Employment and Pensions had on several occasions indicated that a twenty-hour per week contract could be considered as a full-time teaching occupation, provided that the employer confirmed this in a declaration to the competent Belgian authorities. However, the Commission made such a declaration to the Belgian authorities for only part of the period from 1986 to 2002. This had serious repercussions on the calculation of the pensions of the teachers concerned, since they would consequently receive as little as half the pensions they should have been entitled to for the years for which the declaration was not correctly made.

On 13 December 2002, the complainant lodged a complaint with the European Ombudsman. He alleged that the Commission had failed to declare the twenty-hour per week contract as a full-time teaching occupation to the Belgian authorities. He further alleged that the Commission had failed to give a definite reply to the request of the language teachers' representatives concerning the declarations to the Belgian authorities.

In its opinion on the complaint, the Commission stated that on 9 March 2000, it had sent a declaration to the Belgian Ministry of Employment, in which it had requested that the twenty-hour per week contract be considered as a full-time teaching occupation. In November 2001, the Commission and the language teachers had drafted a declaration, approved by the Commission's Legal Service, in which the Commission had declared to the Belgian Ministry of Employment that a twenty-hour per week contract was to be considered as a full-time teaching occupation. The Commission had not in the end considered it appropriate to send the declaration to the Belgian authorities, on the grounds that it might have contained false or incomplete information on the list of the number of hours worked by the teachers. On 7 March 2003, the Commission had contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. On the date that it submitted its opinion on the complaint, the Commission had still not received a reply.

In September 2003, the Ombudsman asked the Commission to explain why it considered that it had fulfilled all its obligations in this matter. He also asked it to indicate what steps it had taken to obtain a reply from the Belgian authorities to its letter of 9 March 2000 and whether it had given a follow-up to the draft joint declaration dated 2001.

The Commission stated that a meeting had been held with the Belgian authorities concerned on 30 March 2000. On 7 March 2003, the Commission had contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. A further meeting had been held on 17 July 2003,



during which a common procedure to be followed had been agreed. The Commission considered that it had fulfilled its commitments by the sending of letters dated 3 and 29 October 2003 to the Belgian authorities, in which it had enclosed all the documentation at its disposal. It had made a further declaration for the period before 1992, in a letter sent to the Belgian authorities on 11 November 2003.

The complainant recognised that during the meeting held on 17 July 2003 between the Commission and the Belgian authorities, the Commission had declared that a twenty-hour per week contract corresponded to a full-time teaching occupation, that is to say, to 660 hours per year.

In his decision, the Ombudsman considered that the Commission appeared to have followed the complainant's wishes. He considered however that, even on the assumption that the approaches described by the Commission could be regarded as sufficient in the present context, the fact remained that the Commission had not given any explanation as regards its lack of action between May 2001 and March 2003. The Ombudsman therefore made a critical remark against the Commission, stating that principles of good administration require that the Commission should deal diligently and within a reasonable period of time with requests of this nature.

Given that there had been an exchange of correspondence between the representatives of the language teachers and the Commission during the first half of 2002, the Ombudsman concluded that there was no need to pursue further inquiries into the complainant's allegation that the Commission had not provided the representatives with a definitive reply in relation to the declaration to the Belgian authorities.

Note

A similar conclusion was reached by the Ombudsman in case 2137/2002/MF.

UNFAIR TREATMENT OF AN ENVIRONMENTAL ORGANISATION

Summary of decision on complaint 278/2003/JMA (Confidential) against the European Commission

A Spanish environmental organisation had requested financial assistance under the Community action programme for the promotion of non-governmental environmental organisations. The request had been rejected by the Commission, due to a legal action against the organisation being pursued at the time before the Spanish courts. In its complaint to the Ombudsman, the organisation alleged that the Commission's decision to reject its application had not been based on the provisions of the Call for Submissions of Proposals and asked that its request for assistance be reconsidered.

The Commission argued that, when entering into a legal obligation, it must ensure, as a matter of sound financial management, the legal and financial standing of the beneficiary, as well as its overall integrity. The Commission took the view that there were sufficient grounds to assume that these general conditions were not met.

The Ombudsman noted that at the time the Commission was assessing the complainant's application, it appeared that a preliminary inquiry into an alleged forgery on the part of the organisation was being pursued by a Spanish public prosecutor. Moreover, the closing of the Commission's selection procedure had taken place before the magistrate responsible for the inquiry had cleared the organisation.

The Ombudsman finds it reasonable that the Commission should consider whether or not the legal and financial standing of potential beneficiaries and their overall integrity appear to be reliable. However, he considers that in taking measures to protect the Community's financial interests, the Commission should seek to strike a fair balance between the interests of private persons and the general public interest. In this way, potential beneficiaries of its financial assistance are treated both fairly and with due respect to the presumption of innocence. The Ombudsman is of the view that



it is difficult to envisage how the Commission can strike a fair balance, unless it communicates any doubts that it may have as to the applicant's legal standing to the applicant. It must then be prepared to listen and respond to information provided by the applicant.

In the present case, the Ombudsman noted that the institution limited itself to taking account of the formal existence of a criminal inquiry and the allegations made on that basis, without seeking to verify that information.

The Ombudsman also noted that although the Commission invited the complainant to provide evidence on the legal standing of his organisation, it did not appear to have responded to that evidence once it was made available.

The Ombudsman therefore found that the Commission had been unable to show that it had struck a fair balance between the need to pursue sound financial management of its grants, and the complainant's right to be treated both fairly and with due respect for the presumption of innocence. He concluded that the Commission did not treat the complainant fairly, in breach of Article 6 (2) of the European Code of Good Administrative Behaviour.

The Ombudsman also drew the Commission's attention to the fact that similar problems could be averted if the institution were to issue instructions to its services on how to respect a fair balance between the interests of private persons and the general public interest in such cases.

The Ombudsman further took note of the Commission's statement that its 2002 budget period was now closed, and that the complainant's request for assistance could therefore not be met. He pointed out, however, that nothing should prevent the complainant from submitting an application for funding in respect of any procedure that was still open.

ACCESS TO THE PROFESSION OF LAWYER IN ITALY

Summary of decision on complaint 701/2003/IP against the European Commission

The complainant, an Italian lawyer, complained to the Commission that the system concerning access to the profession of lawyer in Italy is contrary to the competition rules foreseen by the Treaty of the European Union. According to the complainant, after almost two years, he had only received a holding letter from the Commission. The Commission had failed to conduct an in-depth examination of his complaint. He claimed that the institution should reconsider his complaint.

The Commission argued that it did not find it necessary to send a formal rejection of the complainant's complaint, since it had already informed him that access to the profession of lawyer in Italy is regulated by law and, as a general principle, is not covered by competition rules.

The Ombudsman found that, as far as the procedural aspect of the case is concerned, by not registering the letter sent by the complainant as a complaint, the Commission had failed to comply with the procedural safeguards which the institution itself had set up to secure a proper procedure.

Further note

On 2 August 2004, the Commission sent comments on the Ombudsman's critical remark. It stressed that in certain circumstances, "correspondence shall not be investigatable as a complaint by the Commission, and shall therefore not be recorded in the central registry of complaints"³⁶. However following the critical remark, it would endeavour in future to state more clearly, in its reply to correspondence alleging infringement of Community competition law by Member States, whether

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Article 3 of the Annex to the Commission 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 244/5.



the correspondence would be registered as a complaint or not, and, if it would not be, the reasons for this.

INSUFFICIENT INFORMATION ON POTENTIAL FUNDING FOR A RIDING CENTRE

Summary of decision on complaint 753/2003/GG against the European Commission

A German citizen was worried because a riding centre for disabled and socially disadvantaged children and young people in Berlin was facing financial difficulties. According to him, these difficulties were due to reductions in state funding. He wrote to the Commission's Directorate-General for Employment and Social Affairs, asking whether the EU would be able to grant financial assistance to the riding centre and what conditions would have to be fulfilled in order to obtain such assistance.

On 21 April 2003, the complainant turned to the Ombudsman, alleging that he had not received a reply to his letter, nor to two reminders he had sent to the Commission. In May 2003 he received a reply from the Commission, but informed the Ombudsman that he considered it unsatisfactory. The Commission had advised him to contact the government of the Berlin region, because according to the Commission, any funds that could possibly be available to the riding centre were administered by the Member States. The complainant felt that this did not answer his request for information, because Member States might not always handle EU funds correctly. In September 2003, the complainant asked the Ombudsman to extend his inquiry to the Commission's failure to reply to another letter he had sent in August. On the basis of information he had in the meantime received from a German MEP, it seemed that funds could have been made available for the riding centre, but that the deadlines for applying for such funds had by now expired.

The Commission admitted that the complainant's first letter had been mislaid and regretted the delay in dealing with his further letters. It acknowledged that this was clearly a breach of its own code of conduct and stated that it would do its best to ensure that such incidents occurred as rarely as possible in future. It also acknowledged that it could be difficult to obtain information on EU funding programmes and claimed that it did its best to help with inquiries. However, it considered that it would not have been right to have given the complainant a long list of funding programmes and the precise conditions for applying for each of them, because there could be little doubt that the riding centre would not be eligible for any of them. Nevertheless, in its latest letter - sent in October 2003 - it had indicated the address of the European Information Centre in Berlin, where the complainant would be able to examine possible EU funding programmes himself.

In his decision, the Ombudsman criticised the fact that, although the Commission had expressed its regrets concerning the delays, it had not been conscious of the need to reply quickly to at least the complainant's last letter of August 2003. A critical remark was made. The Ombudsman stressed that particular care should have been taken to reply to requests for information such as the complainant's, given that 2003 was the "European Year of People with Disabilities". He did not accept the Commission's submission that it would have been wrong to supply the complainant with a long list of programmes. The parties in the inquiry had only mentioned three different programmes, but the need for clear and thorough information would have been even greater if there had indeed been a large variety of funding programmes that could have been relevant. Regardless of whether the riding centre could have successfully applied for funding under the programme mentioned by the German MEP, the Ombudsman considered that the Commission ought to have informed the complainant about the Call for proposals for this programme. The Call for proposals had been published in the Official Journal on the same day as the Commission first wrote to the complainant. The Ombudsman considered that the Commission had failed to provide the complainant with sufficient information, and therefore also made a critical remark on this aspect of the case.



TIMETABLE FOR DRAWING UP STAFF REPORTS

Summary of decision on complaint 1319/2003/ADB against the European Commission

The complainant is a Commission official who submitted fifteen letters or notes to the Commission, including a number of requests or complaints based on Article 90 of the Staff Regulations. Part of this correspondence concerned the drawing up of the complainant's staff report. According to Article 43 of the Staff Regulations, officials shall be subject to such a report at least once every two years.

In her complaint to the Ombudsman, the complainant alleged that with only a few exceptions, all her requests or complaints had not been dealt with in a satisfactory way. She also alleged that there were delays in drawing up her staff report, which according to her should have been finalised by 31 December 2001.

The Commission took the view that it had replied to all the complainant's communications within the statutory time limits and there was no evidence of systematic delay and incompetence. As regards the drawing up of the staff report, the Commission admitted that there had been a slight delay. However, according to the judgement of the Court of First Instance in case *Liao v. Council*³⁷, the Appointing Authority could not be held responsible for any further delay in drawing up a staff report which may result from the official appealing to the Joint Committee on Staff Reports. In the present case, the complainant had made use of this possibility.

The Ombudsman noted that, according to the documents at his disposal, the Commission had failed to reply to several letters and replied with significant delay to others. This constituted an instance of maladministration. Furthermore, the Ombudsman noted that the staff report had been finalised nearly seven months after the deadline foreseen in the implementing provisions. As held by the Court of First Instance in its judgement of 7 May 2003, *Lavagnoli v. Commission*³⁸, the Commission was bound by the precise timetable set in the implementing provisions. The judgement cited by the Commission, *Liao v. Council*, was only to be understood in cases where no timetable had been set. The Commission's failure to abide by the precise timetable therefore constituted an instance of maladministration.

The Ombudsman shall, when he finds that there has been maladministration, as far as possible seek a solution with the institution or body concerned to eliminate the instance of maladministration. In the present case, however, the complainant expressly excluded this possibility. The Ombudsman therefore closed the case by addressing two critical remarks to the Commission.

Further note

In reaction to the two critical remarks, the Commission informed the Ombudsman that it had taken note of his decision. In future, it would not treat its staff differently from any other citizen and would respect the timetable foreseen for the drawing up of staff reports.

INFRINGEMENT OF THE PRINCIPLE OF NON-DISCRIMINATION IN RECRUITMENT

Summary of decision on complaint 1367/2003/OV against the European Commission

A citizen with a double French/Bulgarian nationality had applied in May 2003 for a local agent post entitled "adviser for pre-accession and political reporting", which was vacant in the Commission Delegation in Sofia, Bulgaria. The complainant's application was however rejected, because of his double nationality. The Commission Delegation justified the rejection by invoking Article 37 (2)

³⁷ Case T-15/96, *Liao v. Council* [1995] ECR - SC, IA-329; II-897.

³⁸ Case T-327/01, *Luciano Lavagnoli v. Commission* [2003] ECR - SC, IA-143; II-691.



of the Vienna Convention on Diplomatic Relations of 18 April 1961. The complainant wrote to the Commission to ask for clarifications, but received no reply.

In July 2003, the complainant lodged a complaint with the European Ombudsman, alleging that there had been a lack of transparency in the recruitment procedure. He claimed that by excluding his candidature on the grounds of his double nationality and the Vienna Convention of 1961, the Commission had infringed the principle of non-discrimination.

In its opinion on the complaint, the Commission observed that the vacant post in question was for an "ALAT" (*agent local d'assistance administrative et technique*) task manager, the status of which implies the application of Article 37.2 of the Vienna Convention of 1961. "ALAT" contracts are reserved to candidates who do not have the nationality of the country where they will perform their duties and are not permanent residents in that country. In his observations, the complainant maintained that the Commission had infringed the principle of non-discrimination, including the principle of non-discrimination on the grounds of nationality.

In his decision, the Ombudsman firstly pointed out that the complainant's candidature had been rejected because of his Bulgarian nationality and not because of his French nationality. The principle of non-discrimination on the basis of nationality contained in Article 12 of the EC Treaty therefore appeared irrelevant in this case, as there was no discrimination between nationals of EU Member States. The Ombudsman however observed that none of the texts applicable to local agents mentioned the "ALAT" category, or contained provisions according to which persons with Bulgarian nationality could be excluded from local agent contracts. Furthermore, the Ombudsman did not understand how Article 37.2 of the Vienna Convention could be considered to justify the exclusion of Bulgarian nationals from eligibility for the post in question. On the contrary, it appears to foresee that administrative and technical staff may have the nationality of the host state, in this case Bulgaria. The Ombudsman concluded that the Commission had failed to provide an objective justification for its decision to reject the complainant's application because of his Bulgarian nationality, and had thus infringed the principle of non-discrimination. He also found that the vacancy notice for the post in question did not provide the candidates with all the necessary information on the recruitment procedure. Given that the post in question had been filled in the meantime, it was not appropriate for the Ombudsman to pursue a friendly solution of the matter. He therefore made two critical remarks against the Commission.

NON-RENEWAL OF AN EXPERT CONTRACT

Summary of decision on complaint 1624/2003/ELB against the European Commission

The Commission recruited the complainant to work as an expert in Niger for one year. The Commission did not renew his contract. The National Authorising Officer of the State of Niger officially requested the Commission to renew the complainant's contract. As no reply was received, the National Authorising Officer requested the automatic renewal of the contract, in accordance with Article 314 of the Lomé Convention.

The complainant alleged that the decision of the Commission not to renew his contract should have been officially communicated to him within the deadlines prescribed by the Contractual Conditions of Service Contracts financed by the European Development Fund (EDF). He also stated that the Commission should have replied to the official requests of the State of Niger. He claimed that his contract should be renewed and that he should receive compensation either for the period during which he was unemployed, or for the overall loss that he had suffered. The complainant also alleged that the real reason for the non-renewal of his contract was that the Commission wished to avoid potential criticism by the Court of Auditors concerning the use of EDF funds to support the functioning of the Commission and to make it possible for it to recruit another person.

The Commission responded that it had concluded a one-year private employment contract with the complainant on behalf of the authorities of Niger. The contract was governed by Belgian law and



reference to the Contractual Conditions for Service Contracts financed by the EDF was therefore not appropriate. Under Belgian law, the Commission had no obligation to renew the complainant's contract. The complainant's position had been defined as an interface between the Ministry and the Delegation. The complainant agreed to this arrangement. The Commission stated that the complainant's position was still vacant and that its Delegation did not need this post to recruit another person.

The Ombudsman noted the Commission's comments regarding the jurisdiction governing the contract. After examination of the applicable Belgian law, there appeared to be no provision providing for the prior informing of an employee with a fixed-term contract. The Ombudsman did not accept the complainant's argument that his employment contract, governed by Belgian law, was at the same time a service contract to which the provisions of the Lomé Convention were applicable. According to the Ombudsman, contracts for services and contracts of employment appear to be distinct and mutually exclusive legal categories.

The Ombudsman noted that the allegation that the complainant's employment with the Delegation was irregular potentially raised complex legal issues relating to the relationship between the European Development Fund and Community budgetary law. The Ombudsman considered that it would not be appropriate for him to pursue further inquiries on this matter in the framework of the present complaint. The Ombudsman, however, sought information from the Court of Auditors concerning its activity in relation to the general underlying issue of the employment of EDF experts in delegations.

UNJUSTIFIED REFUSAL OF ACCESS TO AN NGO'S FILE

Summary of decision on complaint 1874/2003/GG against the European Commission

A non-governmental organisation (NGO), working in the field of humanitarian aid, conducted a project in Kazakhstan that was co-financed by the Commission. However, after conducting a monitoring mission, the Commission decided to cancel the contract and asked the NGO to reimburse nearly EUR 38 000.

Apart from complaining about the cancellation decision (complaint 49/2004/GG, pending), the NGO also submitted a complaint concerning the Commission's refusal to grant it full access to its file. The complainant alleged that this refusal was arbitrary and an infringement of Regulation 1049/2001³⁹ on public access to documents.

The Commission argued that it had supplied the complainant with an inventory of the documents on the relevant files and that the complainant had consulted the files the Commission had decided to disclose. It argued that the disclosure of the other documents, which mainly contained opinions for internal use as part of deliberations and preliminary consultations, would seriously undermine the decision-making process of the Commission.

After inspecting the file, the Ombudsman concluded that the Commission's reasoning was inadequate. It had not explained why some documents had been disclosed while other similar documents had been withheld. Nor did it seem to have taken account of the time that had elapsed since the cancellation of the contract. The Ombudsman addressed a draft recommendation to the Commission, asking it to reconsider the complainant's application.

In its detailed opinion, the Commission submitted revised inventories and explained why it considered that none of the documents to which access had been refused (with the exception of five documents, copies of which it enclosed) could be disclosed. The Commission invoked Article 4 (3),

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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 145/43.



second sub-paragraph⁴⁰ of Regulation 1049/2001, to justify refusing to disclose documents drawn up by two bodies that the Commission had used for handling the contract. The Commission also took the view that the refusal to disclose e-mails sent by members of staff of the two bodies was justified by Article 4 (1) (b) (privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data) of the Regulation. This view was based on the consideration that disclosure would entail processing of personal data (the names of the members of staff) that would not be in accordance with Community legislation on data protection, i.e. Regulation 45/2001⁴¹.

The Ombudsman acknowledged that the Commission had carried out a substantial amount of work in response to his draft recommendation. However, he recalled that the Regulation on public access to documents aims at ensuring the widest possible access, and that any exceptions have to be interpreted strictly. He considered reasonable the Commission's view that Article 4 (3) applies to documents drawn up by the two bodies that it used for handling the contract. However, he pointed out that the serious harm that needed to be established in order to refuse access cannot be based merely on the fact that the relevant documents contain opinions for internal use, given that Article 4 (3) provides that such documents should in principle be accessible.

As regards the disclosure of names, the Ombudsman considered the Commission's position to be inconsistent, since it did not argue that e-mail messages written by its own staff should be withheld in order to protect their names. Given that the Commission itself considered e-mails from the two bodies handling the contract to be similar in nature to e-mails from its own staff, the Ombudsman failed to see how Article 4 (1) (b) of Regulation 1049/2001 could be applicable.

The Ombudsman concluded that the Commission had failed to provide valid reasons for refusing access to more than one hundred documents, which constituted an instance of maladministration. He therefore made a critical remark.

FAILURE TO REPLY TO A LETTER FROM AN UNSUCCESSFUL GRANT APPLICANT

Summary of decision on complaint 2239/2003/(AJ)TN against the European Commission

The complaint concerned an application by the Federation of European Motorcyclists Associations (FEMA) for a grant from the Commission for a project called "Initial rider training in Europe". According to FEMA, the Commission's reply to the application stated that FEMA had not been selected for a grant, because "another proposal of a similar nature" had been awarded a higher score. However, during informal contacts with Commission officials, the complainant had been led to understand that there were no other applications concerning motorcycles and their riders. FEMA wrote to the Commission asking for clarifications, but received no reply. In its complaint to the Ombudsman, FEMA therefore alleged that the Commission had failed to reply to its request to be informed about the Commission's decision not to fund its proposal and about the successful candidate.

In its opinion, the Commission argued that FEMA had been sufficiently informed about all relevant aspects of the grant procedure, within the framework of FEMA's regular informal contacts with the Commission. The Commission, therefore, did not deem it necessary to make a formal reply in writing.

⁴⁰ "Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."

⁴¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8/1.



In its observations, FEMA acknowledged that it had been in regular contact with Commission officials, but argued that these officials did not themselves have direct access to information regarding FEMA's application. According to FEMA, the officials had to make inquiries on FEMA's behalf, which sometimes led to inadequate and misleading information, despite the fact that these officials always did their best to help.

The Ombudsman concluded that, even taking into account the informal contacts between the Commission and the complainant, it was clear from the content and structure of FEMA's letter that it required a written answer. If the Commission considered that the requested information had already been communicated to FEMA informally, this fact could have been mentioned in its written reply. The Commission's failure to reply to FEMA's letter in accordance with its own Code of Good Administrative Behaviour was an instance of maladministration. The Ombudsman therefore closed the case with a critical remark.

Further note

Following the Ombudsman's critical remark, the Commission wrote to the Ombudsman, recognising that it had not replied to FEMA in writing and that it had not fully respected its own Code of Good Administrative Behaviour. The Commission apologised for its omission in this regard.

DELAY IN DEALING WITH AN INFRINGEMENT COMPLAINT

Summary of decision on complaint 2333/2003/GG against the European Commission

In November 2001, a German doctor requested that the European Commission open infringement proceedings against Germany. He argued that Germany was infringing a Council Directive on the organisation of working time, in so far as the activity of doctors in hospitals was concerned. The Court of Justice had held that time spent on call by doctors in primary health care teams must be regarded as working time. However, according to the interpretation of the German authorities, the on-call service of doctors was not covered by the Directive's concept of "working time".

In his complaint to the Ombudsman, lodged in December 2003, the complainant stated that he had so far only received acknowledgements of receipt and notices that further inquiries were being made, but no substantive answer. He alleged that the Commission had failed to deal with his complaint within a reasonable period of time.

The Commission argued that the delays in treating the complaint were due to the technical and legal complexity of the matter. It had registered the complainant's letter as a formal complaint in April 2002. In February 2003, it had written to the German authorities, which had replied in March 2003. The Commission had decided in March 2003 to order a study concerning the effects of the judgement of the Court of Justice. It pointed out that it wished to await the outcome of this study before deciding on how to proceed. It explained that the Court's interpretation went against the interpretation put forward by the Commission and the Member States. Furthermore, a new German law to bring national legislation into line with the Directive, as interpreted by the Court, had entered into force in January 2004. The compatibility of this law with Community law was in the process of being examined. When this examination was finalised, the Commission would inform the complainant about the result of his complaint.

The Ombudsman pointed to a Commission Communication on relations with the complainant in respect of infringements of Community law⁴², which sets the general rule that the Commission should strive to arrive at a decision within one year. Although this Communication was made after

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Commission 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 244/5.



the complainant had lodged his complaint, the Ombudsman considered that it provided a useful yardstick.

The Ombudsman was not convinced that the delay was justified by the technical and legal complexity of the matter. The Commission itself had pointed out that the Court's judgement went against its interpretation of the Directive. It thus appeared to have accepted that the legal position was already clarified. In any event, the purported legal and technical complexity of the matter did not explain why nearly 15 months had elapsed before the Commission took any steps to clarify the matter. The Ombudsman concluded that the Commission had failed to deal with the complainant's infringement complaint within a reasonable period of time. He therefore made a critical remark.



3.4.4 The European Parliament and the European Commission

UNJUSTIFIED TERMINATION OF TRANSLATION CONTRACTS

Summary of decision on complaint 953/2003/(FA)OV against the European Parliament and the European Commission

A Greek translation firm, consisting of two separate companies, had concluded several translation contracts with the Parliament and the Commission. However, in June and July 2002, both institutions informed the firm that its contracts had been terminated or suspended with immediate effect, because an investigation by the European Anti-Fraud Office (OLAF) had shown that the translation company had employed three officials of a European institution for carrying out translation work. The complainant stated that he was unaware of this.

In May 2003, the firm lodged a complaint with the Ombudsman, alleging that both institutions' decisions to suspend and terminate the contracts were unlawful and improper. The complainant pointed out that the Parliament and the Commission had not referred to any articles of the contract as a legal basis for their decisions. Against the same background, the complainant also made other allegations concerning the non-renewal of one of its contracts by the Parliament and its exclusion from a call for tenders organised by the Parliament.

In their opinions on the complaint, both institutions stated that the complainant's company was the subject of a fraud investigation by OLAF, which had also contacted the Greek judicial authorities. Both institutions had been informed of this by the Translation Centre for the Bodies of the European Union. Parliament pointed out that OLAF had urged it not to divulge the real reasons behind its decisions to the complainant, so that the inquiry would not be revealed.

In his decision, the Ombudsman observed that the rules concerning the termination of the contracts in question required the institutions to notify the complainant in writing of a failure to fulfil obligations under the contract. He considered that the mere reference made by the institutions to the "results of an OLAF investigation", without providing further information, did not constitute such a notification. The Ombudsman thus concluded that the Parliament and the Commission had not provided a coherent and reasonable account of the legal basis for their decisions to terminate the contracts with the translation firm. He therefore made critical remarks against both institutions.

As the complaint concerned a contractual dispute, the Ombudsman informed the complainant that the contracts concerned foresee the possibility of starting legal proceedings in respect of the disputes.



3.4.5 The European Personnel Selection Office

ALLEGED UNFAIRNESS AND LACK OF TRANSPARENCY IN A SELECTION PROCEDURE

Summary of decision on complaint 378/2003/MF against the European Personnel Selection Office

The complainant participated in a selection procedure following a call for expression of interest launched by the European Personnel Selection Office (EPSO) in 2002, to establish a database available to all European Union institutions for the recruitment of non-permanent posts, in view of the enlargement of the Union.

EPSO rejected the complainant's application on the grounds that he had indicated that his knowledge of one of the nine languages of the accession states was "very good", whereas the call for expression of interest required a "thorough" knowledge of one of these languages.

In his complaint to the Ombudsman, the complainant alleged that the pre-selection procedure had been unfair, because it had been based on a subjective appraisal by candidates themselves of their own language skills. He considered there was a risk that good candidates with a realistic appraisal of their skills could be unsuccessful, while others passed the pre-selection tests on the basis of their own unrealistic appraisal. The complainant also alleged that the selection procedure had not been transparent. He claimed that his application should have been taken into consideration and his name put on the list made available to the Directorates-General of the Commission.

In its opinion on the complaint, EPSO referred to the "Guide for candidates" published on its website, which mentioned that it was for the candidates to choose the languages they wished to indicate their knowledge of and to specify the level of their knowledge. EPSO also pointed out that candidates were asked to have a thorough knowledge of at least one of the languages of the ten accession states and a good knowledge of English, French or German. The validation jury had interpreted the expression "thorough knowledge" as equivalent to that of main or mother tongue or "excellent" knowledge. In his application, the candidate had indicated that French was his mother tongue and that his knowledge of Slovenian was "very good". He therefore failed to satisfy the filtering criteria established by the validation jury.

In his decision, the Ombudsman found no maladministration by EPSO as regards the alleged unfairness of the pre-selection procedure due to the subjective appraisal by the candidates themselves of their own language skills. He considered that the call for expression of interest clearly requested candidates to select their mother tongue/principal languages and then to indicate the level of knowledge of other language(s), which implied an appraisal by the candidates themselves of their own language skills. However, even though the Ombudsman considered that the decision of the validation jury not to include the complainant's application in the relevant database appeared to have been taken in accordance with its established filtering criteria, he concluded that EPSO had failed sufficiently to clarify the linguistic requirements it expected candidates to meet. He therefore repeated the critical remark that he had already addressed to EPSO in complaint 411/2003/GG.

INADEQUATE JUSTIFICATION FOR LANGUAGE POLICY IN AN OPEN COMPETITION

Summary of decision on complaint 2216/2003/(BB)MHZ against the European Personnel Selection Office

The Ombudsman received a complaint against the European Personnel Selection Office's decision to draft its correspondence to candidates in an open competition in only English, French and German.



The complainant was not himself a candidate in the competition. EPSO remarked on this in its opinion to the Ombudsman, who referred to the fact that neither Article 195 of the EC Treaty, nor the Statute of the Ombudsman, requires a complainant to be personally affected by the alleged maladministration.

The complainant alleged that EPSO's decision violated the principle of equality of official languages and working languages contained in Council Regulation 1/1958⁴³, as well as the principle that every person may write to the Community institutions in one of the Treaty languages and have an answer in the same language (Article 21 EC, Article 41 of the Charter of Fundamental Rights of the European Union). He pointed out that candidates were not required to have knowledge of any of these three languages as a condition for participation in this particular competition.

In reply, EPSO argued that (i) the European institutions need to adopt "*linguas francas*" to ensure effective communication and work within reasonable time limits, (ii) given the situation of candidates as potential officials of the European institutions, the institutions are not necessarily required, according to the case law, to answer a request or complaint from a potential official in the language of the person concerned, and (iii) the case-law of the Court of Justice recognises that limiting the use of languages to those which are most widely known in the Union is appropriate and proportional.

The Ombudsman took the view that principles of good administration require that decisions which affect the rights or interests of individuals shall have a basis in law and that their content shall comply with the law (Article 4 of the European Code of Good Administrative Behaviour). He concluded that EPSO's explanation of its decision was inadequate, because it did not include its underlying justifications, so as to enable those justifications to be reviewed. As regards EPSO's first argument, he was not persuaded that it had any relevance to the justification of the contested decision, since candidates could be eligible to take part the competition without knowledge of any of the three languages concerned. Regarding the second argument, he pointed out that EPSO did not explain the underlying justification of the contested decision, but merely gave a reason why it considered that candidates were not entitled to object to that decision. Thirdly, the Ombudsman pointed out that in the case in question, the Court had found that the provisions of the relevant Council Regulation were sufficient to indicate the underlying justifications and to enable those justifications to be reviewed. As already mentioned, the Ombudsman did not consider that EPSO had provided a clear indication of the underlying justifications of the contested decision in the present case.

Given that this was an "*actio popularis*" complaint, the Ombudsman stated that it was not appropriate to pursue a friendly settlement of the matter. He therefore closed the case with a critical remark. In light of this finding, he did not consider it necessary to take a position on the complainant's arguments concerning Council Regulation 1/1958, Article 21 EC and Article 41 of the Charter. He noted, however, that EPSO is not a Community institution and that the three provisions mentioned do not therefore appear to apply directly to it. He also noted that the Court of Justice has indicated that the references in the Treaty to the use of languages in the Union cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen, in all circumstances, to obtain a version of anything that might affect his interests drawn up in his own language.

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EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, OJ 1958 B 17/385.



3.4.6 Europol

FAILURE TO RESPECT STAFF REGULATIONS IN THE RECRUITMENT OF AN ADMINISTRATIVE ASSISTANT

Summary of decision on complaint 1571/2003/OV against Europol

The complainant worked for Europol as an administrative assistant from 1 May 2001 to 1 April 2003. After having been recruited, she found out that she had been recruited as a local staff member and not as a Europol staff member, as prescribed by Europol's Staff Regulations. The complainant, finding herself to be employed under less advantageous conditions, wrote to the Director of Europol asking for rectification and compensation, but this request, as well as a later appeal, was rejected.

In August 2003, the complainant lodged a complaint with the Ombudsman, alleging that Europol had failed to respect its Staff Regulations (Articles 1, 2 and 3, plus Appendix 1) by recruiting her, in the position of administrative assistant, as a local staff member and not as a Europol staff member. The complainant also claimed compensation.

In its opinion on the complaint, Europol stated that, given the inflexibility of the recruitment system, it had had to resort to employing temporary staff under conditions applicable to local staff, in those situations where the establishment plan did not foresee Europol posts and the workload was such that temporary assistance was required. Even if it is true that this policy entailed employing personnel as members of local staff in positions other than those formally described in Appendix 1 of the Europol Staff Regulations, Europol was free to do so as long as it stayed within the limits of its personnel budget. Europol also contested that the complainant had suffered any financial damage. It pointed out that the only alternative for Europol would have been not to employ the complainant at all.

In his decision, the Ombudsman pointed out that Appendix 1 to the Europol Staff Regulations clearly mentioned that a post of administrative assistant "shall be" a Europol post. Furthermore, the Ombudsman did not find any legal basis in the Europol Staff Regulations that could justify Europol's practice of employing temporary staff under conditions applicable to local staff in the situation where the Establishment plan did not foresee Europol posts. The Ombudsman concluded that Europol had failed to respect its Staff Regulations by recruiting the complainant as an administrative assistant under a local staff contract. He therefore made a critical remark. With regard to the claim for compensation, the Ombudsman however considered that the complainant had not shown that she had suffered any loss as a result of the maladministration, because Europol's argument that the only alternative to employing her as a local staff member would have been not to employ her at all did not seem unreasonable. The Ombudsman considered that the critical remark was sufficient to draw Europol's attention to the need to review its practice with regard to the recruitment of its staff.

Further note

By letter of 10 January 2005, Europol reacted to the critical remark. Europol's Acting Director considered the critical remark to be helpful for Europol, and thanked the Ombudsman for his inquiry. He stated that the relevant units had already been instructed to review Europol's practice with regard to the recruitment of its staff.



3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION



3.5.1 The European Commission

SHORT TIMETABLE LED TO ERRORS IN A RESEARCH PROPOSAL

Summary of decision on complaint 1878/2002/GG against the European Commission

The complainant, a small company from the UK, entered into an Exploratory Award contract with the Commission, aimed at preparing a CRAFT proposal within the framework of the specific research and technological development programme “Competitive and Sustainable Growth”. A pre-screening check as to the eligibility of proposals was made available for those that were received by the Commission by 7 February 2002. The complainant’s proposal was submitted on 12 February 2002, shortly after it had received its contract signed by the Commission on 4 February 2002. The latter ultimately rejected the complainant’s proposal as ineligible.

The complainant turned to the Ombudsman, alleging that what it considered to be a “ridiculously short timetable” had created conditions in which errors could be made. According to the complainant, it had only a few days to prepare its proposal and submit it for the pre-eligibility check offered by the Commission. The complainant stated that it had done all in its power to prepare for the contract, at its own risk and expense in time and money. It added that its proposal had failed on one criterion, which had not been properly explained to it by the UK’s national contact point for such proposals, Beta Technology Ltd.

The Commission argued that there had been sufficient time for the firm to prepare a good proposal. In addition, it outlined the range of tools and services that had been made available for the company to perform an eligibility check of its proposal.

The Ombudsman found that the Commission had failed to grant the company a reasonable amount of time in order to submit its proposal for the pre-eligibility check. This ultimately led to the company’s proposal being deemed ineligible due to an error it contained. The Ombudsman therefore issued a draft recommendation, calling on the Commission to consider compensating the company, to the extent that it had suffered a loss as a result of maladministration by the Commission.

In its detailed opinion on the draft recommendation, the Commission acknowledged that exceptional circumstances had made it difficult for the complainant to perform the contract correctly. It stressed that it was anxious not to harm small and medium-sized enterprises. It considered that, in the light of the facts presented by the Ombudsman, and without necessarily agreeing with his conclusions, the exceptional nature of the case justified the granting of compensation, on a purely *ex gratia* basis, for part of the expenses incurred.

In its observations, the complainant informed the Ombudsman that an agreement had been reached over compensation amounting to EUR 21 000. The complainant thanked the Ombudsman for his help and concern.



UNDUE DELAY IN THE HANDLING OF AN INFRINGEMENT CASE

Summary of decision on complaint 1963/2002/IP against the European Commission

In 1995, Mr K., the owner of an Austrian truck rental company, concluded an agreement for the purchase of 99 lorries with Mr B., an Italian truck dealer. However, Mr B. informed Mr K. that he could not supply the lorries as agreed, as the importer for the Italian territory had refused to deliver them, because the lorries were for an Austrian client who had his registered office outside the contractual zone of the importer company in Italy. In Mr K.'s view, the real reason for the refusal was the fact that at the moment when the agreement was concluded, the price of the lorries was 25-30% lower in Italy than in Austria. In 1996, Mr K. complained to the Commission, asking it to investigate whether the behaviour of the importer company had been in breach of principles of competition law.

The complainant, who complained on behalf of Mr K., alleged undue delay and negligence by the Commission in the handling of the case he had lodged in 1996.

The Commission explained that the approach chosen in the relevant case had been in accordance with principles sanctioned by the Court of First Instance, according to which the institution is entitled to apply different degrees of priority to the cases submitted to it, based on the degree of Community interest involved. The Commission had adopted all necessary measures to investigate the matter and had concluded that the case was not among the priority cases.

On 5 September 2003, the Ombudsman addressed a draft recommendation to the Commission, in which he recommended that the institution finalise the assessment of the case concerned by 30 November 2003 at the latest. He considered that it is good administrative behaviour to take decisions within a reasonable period of time. The Ombudsman further considered that the Commission had not provided a satisfactory explanation as to why it was unable to take a decision on the case, even after nearly seven and a half years had elapsed. He also noted that the last communication from the Commission about Mr K.'s case was on 8 March 2001, and that the Commission had given no reason for its silence during the two subsequent years. Without prejudice to the Commission's discretionary power in the handling of complaints submitted to it, the Ombudsman took the view that seven and a half years could not be considered a reasonable time to deal with a case.

In its detailed opinion, the Commission stated that it had come to the conclusion that there was not sufficient evidence to establish an infringement of EU competition rules and that the case did not present sufficient Community interest to warrant further investigation. Following the draft recommendation of the Ombudsman, the Commission followed the normal procedure concerning the rejection of complaints. It sent a letter to Mr K. giving him an explanation of its position on the case. Subject to any comments by Mr K., the Commission intended to adopt a final decision on the complaint in March 2004 at the latest.

Although the Commission had not adopted a final decision on the case by the date indicated in his draft recommendation, the Ombudsman did not have any reasons to assume that the Commission would not act in accordance with its commitments. The Ombudsman took the view that the substantive aspect of the draft recommendation had been respected by the institution and he therefore closed the case.



3.5.2 The European Commission and the European Anti-Fraud Office

ALLEGATIONS OF FRAUD IN THE "BLUE DRAGON" CASE

Summary of decisions on complaint 1769/2002/(IJH)ELB against the European Commission and the European Anti-Fraud Office

In October 2002, the directors of a company called "Blue Dragon 2000" complained against the Commission and the European Anti-Fraud Office (OLAF).

According to the complainants, they were victims of fraud involving Community subsidies under the LEADER II programme. The administration of this programme involved both the regional authorities of Catalonia and a private sector "Local Action Group". In autumn 2000, the complainants informed OLAF and the regional authorities of their suspicions and had contact with OLAF investigators. Later, the complainants learnt that the OLAF investigators dealing with their case had been transferred to other duties. They also received the report of an inspection carried out by the regional authorities of Catalonia, which recommended that Community funding for the Blue Dragon project be recovered. The complainants lodged a complaint with the European Commission against Spain, but the Commission's reply showed that their complaint had been treated as ordinary correspondence.

The complaint to the Ombudsman alleged that the Commission and OLAF failed to deal properly with the allegations of fraud and that the system of distribution of LEADER II funds through private sector bodies, as well as inadequate controls by the Commission, facilitated the fraud. The complainants claimed public exoneration, restitution of what had been stolen from them and compensation.

The complaint also contained wide-ranging allegations of collusion. The Ombudsman informed the complainants that his mandate is limited to the Community institutions and bodies and that he could therefore deal only with their allegations against the Commission and OLAF.

The complainants originally asked for confidentiality, but in April 2003, they informed the Ombudsman that they no longer wished the complaint to be confidential.

The inquiry concerning the Commission

The Commission had considered it unnecessary to register the complainants' letter as a complaint because of the nature of the problems and because the financial interests of the Communities had been protected.

The Ombudsman took the view that the Commission should have registered the letter as a complaint. He made a draft recommendation to the Commission to re-examine the complainants' letter and deal with it in accordance with the Commission's Communication to the Parliament and the Ombudsman on relations with the complainant in respect of infringements of Community law⁴⁴.

The Commission accepted the draft recommendation and the Ombudsman therefore closed the case as regards the Commission in March 2004.

The Ombudsman pointed out that the complainants could submit a new complaint to the Ombudsman in future if they consider that the Commission's investigation proves unsatisfactory.

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Commission 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 244/5.



The inquiry concerning OLAF

OLAF explained that it had opened an inquiry in February 2001. A planned on-the-spot inspection by OLAF was suspended after the Spanish Ministry of Agriculture indicated that the regional authorities were planning to check all the activities of the Local Action Group. OLAF received the reports of the Spanish authorities in July 2001, considered that there was no reason to question their findings and therefore decided not to carry out an additional inspection. OLAF's Management Board approved the final case report in December 2002. According to this report, the findings of the Spanish authorities did not enable them to confirm the allegations of irregularities by the Local Action Group, but irregularities were found in the Blue Dragon project. The report recommended that the case be closed with a financial follow-up to recover the funds allocated to the Blue Dragon project.

The Ombudsman took the view that principles of good administration require administrative investigations by OLAF to be carried out carefully, impartially and objectively. Examination of the evidence revealed a number of points of concern about the adequacy of OLAF's inquiry, including an apparent difference between the Director-General's signature on the decision to open the inquiry and his signature on other documents. (OLAF had not previously been asked about this issue). The Ombudsman detailed these points in a draft recommendation made in February 2004 that OLAF should consider re-opening its inquiry, or conducting a new inquiry.

OLAF responded to all the points detailed in the draft recommendation and concluded that there were no grounds to re-open its inquiry or to open a new inquiry. In evaluating OLAF's detailed opinion, the Ombudsman took into account that the Commission's investigations into the complainants' allegations of an infringement of Community law by Spain were on-going. He considered that at the present stage of the Commission's investigations, OLAF's conclusion that there was no ground to re-open its own inquiry, or to open a new inquiry, appeared reasonable.

The Ombudsman therefore closed the case as regards OLAF in July 2004.

In the closing decision, the Ombudsman noted that the Commission had presented a proposal to amend the Regulation governing OLAF's investigations. The legislator therefore had the opportunity to consider possible changes in the way OLAF carries out its internal and external investigations and its co-operation with the authorities of the Member States. The Ombudsman also commented on OLAF's explanation that, at a certain point in time, the Director-General of OLAF adapted his signature in order to make it more legible. The Ombudsman pointed out that it would have been in accordance with the principles of good administration for OLAF to have established an official document attesting to this change, when it took place.

3.6 CASES CLOSED FOR OTHER REASONS



3.6.1 The Council of the European Union

CHILD'S LACK OF ENTITLEMENT TO EU HEALTH INSURANCE COVER

Summary of decision on complaint 2210/2003/MHZ against the Council of the European Union

In November 2001, the complainant received a personalised note, numbered SN 3736/01, from the Head of the Health Insurance Office. The note informed her that as of 31 December 2001, her child



would be covered by the Belgian social security system and that the Joint Sickness Insurance Scheme would only provide cover on a complementary basis.

On 14 December 2001, the complainant, together with two other Council officials, wrote a joint letter to the Deputy Director-General for Personnel and Administration, in which she commented on the discriminatory nature of the note and contested its legal force. The Deputy Director's reply did not address the complainant's request for an advisory opinion from the Council's Legal Service, but instead advised her to contact the Head of the Health Insurance Office. The complainant therefore contacted the Staff Committee, which unsuccessfully attempted to arrange a meeting between the complainant and the Deputy Director-General. Given that the complainant did not consider herself bound by note SN 3736/01, she continued to submit applications for reimbursement of her child's medical expenses. On 28 March 2003, the complainant's application for reimbursement was refused for the first time.

On 7 November 2003, the complainant lodged a complaint with the Ombudsman. Given that the two other above-mentioned Council officials submitted complaints on the same date concerning the same matter, the three complaints were treated jointly. In her complaint to the Ombudsman, the complainant stated that note SN 3736/01 was in conflict with the Staff Regulations, discriminatory and not legally binding. She claimed that her child should be entitled to the same primary medical cover as the children of other EU staff members.

In its opinion on the complaint, the Council explained its handling of the matter. It stated that the complainant had not formally contested the decision contained in note SN 3736/01. Nor did she contest, within the statutory period, the decisions refusing reimbursement taken by the Health Insurance Office.

The Council referred to Article 72 (1) of the Staff Regulations and Article 6 of the Rules on Sickness Insurance for Officials of the European Communities, according to which officials' children's medical expenses may only be reimbursed if the official has not received or cannot claim any reimbursement from any other sickness insurance scheme. Annexed to its opinion, the Council submitted a copy of a statement from the Belgian National Sickness Invalidity Insurance Institute. The statement explained that Belgian health insurance is compulsory for a child whose parent is covered by this insurance, even if the other parent is an EU official.

Finally, the Council questioned the admissibility of the complaint to the Ombudsman, given that the complainant had not lodged an internal administrative complaint with the appointing authority under Article 90 (2) of the Staff Regulations. The complainant's approaches to the Deputy Director-General and to the Staff Committee could not be considered as equivalent to an administrative complaint.

The complainant responded to the Council's opinion and stated that the letter sent to the Deputy Director-General on 14 December 2001 should be considered a request for information and not a complaint.

The Ombudsman therefore re-evaluated the admissibility of the complaint. Although, when opening the inquiry, the Ombudsman had given the complainant the benefit of the doubt and concluded that the letter to the Deputy Director-General did constitute a complaint, this was no longer possible following the complainant's observations in this regard. The Ombudsman therefore concluded that the complaint was in fact inadmissible, as the complainant had not exhausted the possibilities offered by Article 90(2) of the Staff Regulations. The Ombudsman therefore considered the case to have been dropped by the complainant and did not continue his inquiries into the complainant's allegations and claims.



3.6.2 The European Commission

REFUSAL TO PAY INVOICES SUBMITTED UNDER A TACIS SERVICE CONTRACT

Summary of decision on complaint 253/2003/ELB (Confidential) against the European Commission

The complainant was the chairman and managing director of a company that was awarded a TACIS service contract. At the end of the contract, the complainant submitted the remaining invoices to the Commission, but the Commission refused to pay. These invoices concerned fees and per diem allowances for an interpreter, expenses for use of a personal vehicle, extra expenses in the training and study tours budget, extra backstopping⁴⁵ days, and delays in the approval of individual training requests.

The complainant alleged that the Commission was not entitled to refuse to pay the invoices, because the expenses concerned were eligible under the TACIS contract. He claimed that the Commission should pay the remaining invoices, as well as interest for late payment.

The Commission stated that there were no legal grounds to pay the amount claimed by the complainant. It considered that the employment of the interpreter could not be justified, as the interpreter was the Team Leader's wife. It rejected the payment for the vehicle use, because the invoice submitted involved expenses for use of a personal vehicle, whereas prior approval had been given for the hire of a vehicle. In any case, the rate per kilometre in the complainant's invoice did not correspond, as he claimed, to the official rate established by the French tax authorities. It did not agree to pay the extra sums included in the training and study tours budget, as the contractor had exceeded the approved amounts without requesting that a modified budget be authorised. On the question of individual training requests, the Commission did not consider that there had been unreasonable delays.

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman wrote to the Commission to propose a friendly solution. The Ombudsman suggested that the Commission could consider reviewing its decision not to reimburse the invoices submitted by the complainant, together with appropriate interest.

In reply to the friendly solution proposal, the Commission confirmed that it had not adopted a rule forbidding members of the families of Western TACIS project staff from being recruited for the same project, nor had it published information about its practice in this regard. The Ombudsman took the view that it was appropriate for the Commission to regulate the employment of family members in the framework of projects such as TACIS, but pointed out that the aims of such regulation could be better achieved in future, whilst also ensuring fairness and transparency, by adopting, and adequately publicising, the rules and principles that were applied.

As regards the payment of expenses for use of a personal vehicle, the Commission agreed to reimburse this cost, provided that it was based on the official rate per kilometre as established by the French Tax Authorities. The complainant disagreed with the Commission's proposal. The Ombudsman concluded that no friendly solution could be achieved on this aspect of the complaint.

As regards the length of time taken to approve individual training requests, the Ombudsman considered that the Commission had provided him with a coherent account of the legal basis for its actions, and why it believed that its view of the contractual position was justified. He also considered

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That is, time spent by the Project Director in the European Union rather than in the beneficiary countries.



that the Commission had been justified in its refusal to pay the sums in the training and study tours budget that had exceeded the approved ceilings.

Further note

On 18 November 2004, the Commission sent comments on the further remark. It explained that the practical guide to contract procedures financed from the general budget of the European Communities in the context of co-operation with third countries, which has been in force since May 2003, does not explicitly regulate the employment of family members of a contractor. Only officials or agents of the public administration of the beneficiary State are excluded. Article 94 of the Financial Regulation regulates eventual conflicts of interest during the procurement process. A similar provision is included in the above-mentioned guide. Conflicts of interest can also arise when the contract is subcontracted. The Commission considered that the employment of family members of a contractor should be examined on a case by case basis and in accordance with the Financial Regulation and the practical guide.

GRANT CLASSIFICATION FOR A DWARF DONKEY

Summary of decisions on complaints 1219/2003/GG and 760/2004/GG against the European Commission

A Council Regulation for the promotion of environmentally friendly agricultural production methods provided for an aid scheme to promote the extensification of farming. Farmers could obtain a grant if their "Livestock Units" (LSU) per hectare did not exceed the figure 1.4. "Equidae over six months old" counted as 1.0 LSU, ewes and goats as 0.15 LSU.

A German farmer in the Karlsruhe area possessed four horses and a dwarf donkey on his three hectares of land. The farmer considered that the donkey had about the size of a ewe. He therefore calculated a total of 4.15 LSU and thus an LSU per hectare slightly below 1.4. The competent authority in the area considered that an LSU of 0.16 was appropriate for the dwarf donkey, which meant that the threshold was still respected.

However, when the Commission became aware of the matter during a sample check, it concluded that the donkey belonged to the "Equidae", for which an LSU of 1.0 had to be calculated. The grant of 240 DM (EUR 120) was therefore claimed back. Furthermore, the Commission took the view that the error was a "random" error, which reproduced itself proportionally in all the transactions out of which the sample was taken. It therefore decided (taking into account other small errors that would not otherwise have resulted in a deduction) to exclude expenses incurred by Germany amounting to EUR 927 401 from Community financing.

In her complaint to the Ombudsman (1219/2003/GG), the President of the *Regierungspräsidium Karlsruhe* took the view that this decision was unfair and disproportionate.

In its opinion, the Commission referred to a hearing, during which the German authorities had admitted that, contrary to their initial declarations, the error had not been an isolated one, but that some similar cases had been detected. In the Commission's view, this confirmed the "random" nature of the error.

Due to a misunderstanding, the complainant decided to drop the case. However, when this misunderstanding had been clarified, the case was taken up again by the Ombudsman and registered as a new complaint (760/2004/GG). The Ombudsman considered that the Commission's decision appeared at first sight to be difficult to reconcile with common sense. However, he also noted that the Court of Justice had consistently held that the Commission, in order to prove an infringement of the rules on the common organisation of the agricultural markets, is only required to provide evidence of a serious and reasonable doubt on its part. Furthermore, the German authorities had accepted that the error had not been an isolated one. The Ombudsman therefore concluded that the Commission's approach did not constitute an instance of maladministration.



However, he added that the problem could have been avoided if the relevant regulation had taken into account the possibility that grant applicants possess dwarf donkeys. He expressed his confidence that the Commission would bear this in mind in future proposals for legislation in this field.



3.6.3 The European Personnel Selection Office

ALLEGED LACK OF REPLY FROM THE APPOINTING AUTHORITY

Summary of decision on complaint 1196/2003/ELB against the European Personnel Selection Office

The complainant applied for competition COM/C/1/02, which aimed at constituting a reserve list of French-speaking typists (C4/C5). Her application was rejected because her professional experience was insufficient. She sent a first request for clarification. The Selection Board confirmed its decision to exclude her from the competition. She sent a second request for clarification and was invited to the tests that were taking place the following day. The complainant took the tests, but obtained insufficient results and was excluded from the competition. She therefore made a complaint based on Article 90 (2) of the Staff Regulations.

In her complaint to the Ombudsman, the complainant alleged that the Appointing Authority did not answer some of the questions mentioned in her complaint based on Article 90 (2) of the Staff Regulations.

The Commission sent an opinion on the complaint, which the Ombudsman understood to represent the joint views of the European Personnel Selection Office (EPSO) and the Commission. The Commission and EPSO explained that they had replied to all the complainant's requests for clarification/reconsideration. The complainant also received a reply to her complaint under Article 90 (2) of the Staff Regulations.

The Ombudsman noted that the reply to the complainant's complaint under Article 90 (2) was very detailed. The Ombudsman also noted that, in the framework of his own inquiry, the Commission and EPSO provided additional explanations to the complainant about the documents to be attached to the application form, her late invitation to the tests, the content of the test, the appeals and the Selection Board's proceedings. As regards the fact that the complainant's initial application and first request for clarification were rejected, whereas her second request was accepted, the Ombudsman pointed out that the explanation given to the complainant by the Commission and EPSO in their opinion on the complaint appeared to differ from that given by the Appointing Authority in its reply to the complaint under Article 90 (2) of the Staff Regulations. In particular, the Ombudsman considered that it could be inferred from the explanation given by the Commission and EPSO in their opinion that the Selection Board finally allowed the complainant to take part in the written tests on the basis of the documentary evidence attached to her original application to the competition.

The Ombudsman recalled that the complainant wished to have clarifications and indicated that, on the basis of these clarifications, she would consider whether to take the matter to court or to lodge a new complaint with the Ombudsman. The Ombudsman considered that the issues raised by the complainant in her original complaint had been sufficiently clarified and that no further inquiries were therefore necessary.



3.6.4 The Committee of the Regions

MEAL PRICES FOR TRAINEES

Summary of decision on complaint 32/2004/GG against the Committee of the Regions

A trainee working for the Committee of the Regions felt discriminated against because the Committee's trainees were not offered any reductions on the prices of meals in the Committee's canteen in Brussels. Trainees working for the Commission, the Council, the Parliament and the Economic and Social Committee on the other hand, could buy at least one meal a day at a reduced price (normally 50% of the full price).

In his complaint to the Ombudsman, the complainant submitted that with a salary of less than EUR 740 a month, trainees were unable to afford a luncheon every day that cost at least EUR 4.50. He claimed that trainees working for the Committee of the Regions should be treated in the same way as trainees working for other Community institutions and bodies.

In its opinion, the Committee of the Regions submitted that its canteen was run by a private company. The contract with this company did not provide for preferential tariffs. Therefore, contractual and legal obligations made it impossible for the Committee to force the operator of the canteen to apply differentiated tariffs. However, the operator had confirmed in writing that it would offer favourable prices to trainees as soon as the Committee's move to a new building in Brussels had taken place. The Committee would in any event try to insert a clause allowing for reduced prices for trainees when a new contract was negotiated in the future. Furthermore, the Secretary-General of the Committee had decided to increase the remuneration for trainees from EUR 735 to EUR 1 000 a month.

In his decision, the Ombudsman stated that he did not find the Committee's arguments convincing. Even though the existing contract might not allow the Committee to oblige the private operator of its canteen to offer reduced meal prices, there was nothing to indicate that the Committee could not make such a proposal to the operator. Furthermore, the Ombudsman considered that the Committee's position was difficult to reconcile with the fact that the existing contract would remain applicable after the Committee's move to a new building, but that the company had nevertheless confirmed that it would offer favourable prices after the move. The Ombudsman also noted that the present contract had been concluded after the issue of reduced meal prices for trainees had first been raised. He therefore considered that the arguments submitted by the Committee did not allow him to ascertain whether the complainant's allegations were well founded.

However, the Ombudsman noted that the financial situation of trainees had substantially improved after the increase in remuneration. The additional amount appeared to be more than sufficient to allow trainees to afford daily meals at the normal price. In these circumstances, the Ombudsman considered that there were no grounds to continue his inquiry.



3.6.5 The European University Institute

AGE LIMITS IN RECRUITMENT

Summary of decision on complaint 2225/2003/(ADB)PB against the European University Institute

The complainant's application for a vacancy at the European University Institute (EUI) had been rejected because she did not comply with the age limit established for the post concerned. The



complainant alleged that she was discriminated against on the grounds of age. She claimed that age-discrimination in recruitment procedures should be abolished.

The Ombudsman's mandate is limited to "Community institutions and bodies", a term which is defined neither by the Treaty, nor by the Ombudsman's Statute. In a previous inquiry (659/2000/GG), the Ombudsman considered that it was not excluded that the EUI could be considered to be a Community body for the purposes of the Ombudsman's mandate. In that inquiry, the EUI did not submit an opinion on the issue. In the present inquiry, the EUI informed the Ombudsman that it had arrived at the conclusion that it did not fall within his competence. It referred, in particular, to the fact that the EUI was established by a "classical" international convention and not on the basis of the Community Treaties.

Regarding the complainant's allegation of discrimination, the EUI noted that its use of an age limit in this case related to an overlap of "labour law and pension rights". A proposal would therefore be made to the EUI's High Council, to separate these two aspects in the EUI's regulations. In the meantime, the EUI had given instruction not to include any age limit in the notices of competition for the category in question.

After a careful examination of the EUI's opinion and the relevant legal texts, the Ombudsman arrived at the conclusion that the EUI's view that it is not a "Community body" within the meaning of the Ombudsman's mandate appeared reasonable. However, given that the term "Community bodies", as referred to in the above Treaty provision, is not precisely defined in Community law, the Ombudsman considered that future legal developments could make it relevant to revisit the issue of whether the EUI could be considered a "Community body" within the Ombudsman's competence.

In the light of the above finding, the Ombudsman did not consider that he was competent to review the allegation made by the complainant. The Ombudsman nevertheless welcomed the EUI's decision to propose to its High Council the adoption of measures that allow issues relating to pension rights to be addressed through other means than the use of age limits in recruitment, and that, in the meantime, instruction had been given not to include any age limit in the notices of competition for the category in question.

3.7 CASE CLOSED AFTER A SPECIAL REPORT

CLASSIFICATION OF PRESS OFFICER POSTS IN THE COMMISSION'S DELEGATIONS IN THIRD COUNTRIES

Summary of decision on own-initiative inquiry OI/2/2003/GG (Confidential)

On 6 October 2003, the Ombudsman received a complaint from Mr B., the Press and Information Officer at the European Commission's Delegation in Islamabad. In his complaint, Mr B. alleged that his grading had violated the Commission's rules and that he had been discriminated against on the basis of his nationality.

The Treaty establishing the European Community provides for the Ombudsman to receive complaints from "any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union."

Given that Mr B. did not appear to fall into any of these categories, the Ombudsman informed him, on 21 October 2003, that he had no power to deal with his complaint.

However, given the seriousness of the issues raised by Mr B., the Ombudsman considered that these issues should be examined. He therefore decided to open an own-initiative inquiry into the matter.



In its opinion, the Commission pointed out that press and information officer posts were created in its Delegations in third countries in either Group II or Group I, depending on the functions to be performed and in accordance with the “Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries” that had been published in its Administrative Notices on 22 June 1990. The majority (two-thirds) of the posts were indeed in Group I, but more than half of those press and information officers were placed under the direct responsibility of the Head of Delegation. The Commission submitted that Pakistan was not the only major country where the press officer post had a Group II status. The claim of discrimination on the basis of nationality could therefore not be accepted in the Commission’s view.

The Ombudsman noted that Annex I of the “Framework Rules” lists press officer posts as examples of “administrative, advisory and supervisory posts” that belong to Group I. In the light of this provision, the Ombudsman took the view that it was for the Commission to show on what legal basis, and applying what criteria, it should nevertheless be entitled to grade some press officers (and Mr B. in particular) in Group II.

The Ombudsman noted, however, that the Commission had been unable to clarify this legal basis and these criteria, notwithstanding several requests for information to that effect made by the Ombudsman.

In these circumstances, the Ombudsman considered that the Commission had been unable to provide a coherent and convincing explanation for the fact that it graded the post of Mr B. (and of other press officers) in Group II, although its “Framework Rules” mention press officers as examples of “administrative, advisory and supervisory posts” that belong to Group I. The Ombudsman took the view that this was an instance of maladministration.

As regards Mr B.’s allegation that he had also been the subject of discrimination on the basis of his nationality, the Ombudsman considered that the evidence in his possession did not allow him to conclude that this allegation was justified.

On 19 July 2004, the Ombudsman addressed a draft recommendation to the Commission, inviting it to reconsider its rules concerning the classification of press officer posts in its delegations in third countries in general, and the classification of the post of Mr B. in particular.

Given that the Ombudsman considered that the Commission’s reply to this draft recommendation was not satisfactory, he submitted a special report to the Parliament in which he re-stated his draft recommendation as a recommendation to the Commission.

3.8 OWN-INITIATIVE INQUIRIES BY THE OMBUDSMAN

LACK OF A COMPLAINT PROCEDURE FOR SECONDED NATIONAL EXPERTS

Summary of decision on own-initiative inquiry OI/1/2003/ELB concerning the European Commission

Seconded national experts are national or international civil servants, or persons employed in the private sector, who are working temporarily for the European institutions. According to the rules adopted by the Commission applicable to seconded national experts, they shall remain in the service of their employer throughout the period of secondment and shall continue to be paid by that



employer. Nevertheless, they receive allowances from the Commission to cover their expatriation expenses.

The Ombudsman was not aware that any internal procedure, notably Article 90 of the Staff Regulations, existed for the resolution of possible disputes between seconded national experts and the Commission. He therefore requested that the Commission inform him of whether it received complaints from seconded national experts concerning matters related to their secondment, and of how any such complaints were dealt with. He also asked the Commission whether it would be willing to introduce, in the rules applicable to seconded national experts, a suitable provision for the resolution of possible disputes.

The Commission confirmed that Article 90 of the Staff Regulations is not applicable to seconded national experts, because the Staff Regulations are not applicable to them and the allowances they receive are not based on the Staff Regulations. According to the Commission, its services had followed informal ways of settling possible disputes and answering inquiries, in order to avoid potential disputes being amplified and aggravated. The Commission acknowledged that, as regards the scope, steps and channels for dispute settlement, the legal situation was not fully clear, particularly since the applicable Commission decision did not provide for a complaints procedure. The Commission stated that it was prepared to introduce, in the context of the next substantial revision of the above-mentioned rules, a suitable provision for the resolution of possible disputes.

The Ombudsman welcomed the Commission's positive response, but noted that it had not established a definite timetable for action. Recalling that failure to act within a reasonable time is a form of maladministration, the Ombudsman addressed a draft recommendation to the Commission, which stated that it should adopt a complaints procedure for the resolution of possible disputes between seconded national experts and the Commission.

The Commission informed the Ombudsman that it accepted his draft recommendation and indicated that a complaints procedure for seconded national experts could be adopted by March 2005.

On the basis of his inquiries, the Ombudsman concluded that the Commission had accepted the Ombudsman's draft recommendation and that the measures taken by the Commission to implement it were satisfactory, since the Commission had now adopted a reasonable timetable for action.

THE QUALITY OF ADMINISTRATION IN THE EUROPEAN SCHOOLS

Summary of decision on own-initiative inquiry OI/5/2003/IJH concerning the European Commission

The European Schools were established in 1957 to educate the children of staff of the EU Institutions. They are not directly within the Ombudsman's mandate, but the Commission is represented in their Board of Governors and provides a large part of their funding. When the Ombudsman receives complaints about the Schools, he therefore asks the Commission for an opinion. Many such complaints, including a mass complaint in 2002 (845/2002/IJH) which resulted in a draft recommendation to the Commission, have expressed a sense of frustration and disempowerment on the part of parents.

In December 2003, the Ombudsman began an own-initiative inquiry into the Commission's plans to promote the Schools' good administration. The inquiry pointed to the need to help the Schools to ensure improved and maintained levels of trust among the constituencies whose interests they should serve (children, parents, the institutions and citizens generally), as well as increased efficiency in the future.

The Commission's reply agreed on the need for action, recognised the importance of co-operation with parents, and announced a forthcoming Communication to highlight the need for improved governance and transparency. The Commission explained that it had already requested the Schools to take immediate action, including as regards Article 42 of the Charter of Fundamental Rights on



access to documents. The Commission pointed out, however, that it has limited influence on the Board of Governors, which is slow to take any decision and reluctant to undertake reforms.

The Ombudsman took the view that the Commission had tried to identify and tackle the most serious operational weaknesses that had given rise to complaints. Furthermore, its proposals for the forthcoming Communication represented a significant opportunity to enhance the quality of the Schools' administration. The Ombudsman concluded that the Commission fully recognises its general responsibility to promote good administration by the Schools, in accordance with the same values, principles and standards that apply to the Community institutions and bodies. He therefore closed the inquiry with a finding of no maladministration by the Commission.

The Ombudsman also suggested that the Commission should inform the Board of Governors about the European Code of Good Administrative Behaviour and encourage its application by the Schools, and seek to ensure that the Schools themselves acknowledge the need to empower and win the trust of parents as part of their core mission.

Finally, the Ombudsman expressed his willingness to help review future progress in raising the quality of administration of the European Schools and enhancing their transparency and efficiency.

Further note

On 15 September 2004, the Commission responded positively to the Ombudsman's suggestions. It also enclosed a copy of its Communication to the Council and Parliament on options for developing the European Schools system (COM (2004) 519 final).



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION
INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND
SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

The year 2004 saw an increasingly proactive approach towards co-operation on the part of both the European Ombudsman and the European Union institutions and bodies. In addition to fulfilling their respective institutional obligations, the Ombudsman and his interlocutors sought every opportunity to work together for the benefit of citizens. This chapter contains an overview of the meetings and events held with Members and officials of the EU institutions and bodies during 2004. It starts by highlighting the value of the Ombudsman's constructive working relations with the institutions and bodies. These relations are vital in ensuring the highest standards of administration, raising awareness among citizens of their right to complain and enabling the Office of the Ombudsman to work effectively. The Ombudsman's special relationship with the European Parliament, which elects him and to which he reports annually, is given particular attention.

The value of co-operation - a win-win outcome

Ensuring the highest standards of administration: The Ombudsman uses the opportunities offered by meetings with Members and officials to explain the thinking behind his work, how best to respond to complaints that he brings to their attention and how to improve procedures. This helps him fulfil his dual role, as both a mechanism of external control and a resource to help improve the quality of administration. The Ombudsman equally recognises the importance of keeping his own staff abreast of developments within the EU institutions and bodies. Speakers from a number of institutions were therefore invited to address the Ombudsman's staff in 2004.

Informing citizens of their rights: The Ombudsman enjoys valuable support from the institutions in his efforts to reach out to citizens. Events held in 2004 served to explore future areas for joint action, including initiatives to target potential complainants, ensure a wide distribution of the Ombudsman's publications and raise awareness of his work via the Internet.

Enabling the Office of the Ombudsman to work effectively: The Ombudsman sees interinstitutional co-operation as key to making the most judicious use of the resources granted to his Office. This is particularly the case on a number of budgetary and administrative matters, where the Ombudsman co-operates most notably with Parliament (see Annex B). This helps to avoid duplication of staff in the Ombudsman's office and, where possible, to ensure economies of scale. To make certain that the institution itself is granted the resources commensurate to the tasks it is called upon to perform, the Ombudsman works closely with the EU budgetary authority, meeting with the relevant institutional representatives to explain and defend the institution's priorities. An extensive range of meetings was held in this regard in 2004.

The Ombudsman and Parliament - a special relationship

The Ombudsman is elected by, and reports to, the European Parliament. He enjoys a fruitful working relationship with Parliament's Committee on Petitions, which is responsible for relations with the Ombudsman, and, among others, drafts the report on his Annual Report. Parliament's annual plenary debate on the Ombudsman's activities marks a high point on the Ombudsman's calendar, providing the occasion for an extensive exchange of views on his past work and future initiatives.

The Ombudsman's relationship with the Committee on Petitions was further enhanced in 2004, with a confirmation by the Ombudsman that he would be in favour of the Committee becoming



a full member of the European network of ombudsmen and similar bodies. This followed a recommendation in the DE ROSSA Report on the Ombudsman's *Annual Report 2003* and should further improve the service provided to European citizens.

Beyond the Annual Report, the Ombudsman makes his whole range of publications available to Members of the European Parliament with a view to giving them a complete overview of his activities. Eight publications, in up to 25 languages, were distributed to MEPs in 2004. These publications are covered in section 6.5 of this Report.

The Ombudsman held a number of meetings and events with Members and officials of the EU institutions and bodies in 2004⁴⁶, which are set out in sections 4.1 to 4.3.

4.1 THE EUROPEAN PARLIAMENT

13 January: Meeting with Mr Joan COLOM I NAVAL MEP, Vice-President of the European Parliament.

2 February: Presentation to the staff of the Legal Service of the European Parliament. This presentation was hosted by the Parliament's Jurisconsult, Mr Gregorio GARZON CLARIANA.

11 February: Meeting with Mr Julian PRIESTLEY, Secretary-General of the European Parliament.

11 March: Meeting with Mr Malcolm HARBOUR MEP.

30 March: Meeting with Mr Wilfried KUCKELKORN MEP, Budget rapporteur.

26 April: Presentation of the Ombudsman's *Annual Report 2003* to the Committee on Petitions of the European Parliament.

4 May: Meeting with Mr Roy PERRY MEP.

4 May: Presentation of the Ombudsman's *Annual Report 2003* to the Group of the European People's Party (Christian Democrats) and European Democrats in the European Parliament.

7 May: Meeting with Mr Pat COX, President of the European Parliament.

7 June: Presentation to the senior administrative staff of the European Parliament. Over 35 senior staff members attended this meeting, which was chaired by Mr Julian PRIESTLEY.

20 July: Meetings with Mr Esko SEPPÄNEN MEP and Mr Jan MULDER MEP, to discuss the Ombudsman's Budget 2005.

21 July: Meetings with Ms Kathalijne Maria BUITENWEG MEP, Mr Reiner BÖGE MEP; Mr Den DOVER MEP, Mr Herbert BÖSCH MEP, Mr Antonis SAMARAS MEP and Ms Anne Elisabet JENSEN MEP, to discuss the Ombudsman's Budget 2005.

22 July: Meetings with Mr Ralf WALTER MEP, Mr Kyösti Tapio VIRRANKOSKI MEP and Mr Markus FERBER MEP, to discuss the Ombudsman's Budget 2005.

2 September: Presentation of the Ombudsman's priorities for the Budget 2005 at a meeting of the Committee on Budgets of the European Parliament.

13 September: Meeting with Ms Anne Elisabet JENSEN MEP, Budget Rapporteur.

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The meetings and events took place in Brussels, Luxembourg and Strasbourg.



14 September: Meeting with Ms Bárbara DÜRKHOP DÜRKHOP MEP and Ms Neena GILL MEP to discuss the Ombudsman's Budget 2005.

14 September: Presentation of the Ombudsman's work to the Estonian MEPs Mr Toomas ILVES, Ms Marianne MIKKO, and Ms Siiri OVIIR.

14 September: Dinner, hosted by the European Ombudsman, in honour of the new Bureau and Co-ordinators of the Committee on Petitions. Mr Marcin LIBICKI MEP, Chair of the Committee, Ms Marie PANAYOTOPOULOS-CASSIOTOU MEP, Vice-Chair of the Committee, Mr Proinsias DE ROSSA MEP, Ms Alexandra DOBOLYI MEP, and Mr David HAMMERSTEIN MINTZ MEP attended the dinner.

27 October: Meeting with Sir Robert ATKINS MEP.

16 November: Presentation to the Heads of the European Parliament's Information Offices in the Member States. Over 30 representatives of the Offices attended this meeting, which was chaired by Ms Francesca RATTI, Director-General of Information in the Parliament.

18 November: Presentation of the Ombudsman's *Annual Report 2003* to the plenary of the European Parliament (see Section 6.1).

4.2 THE EUROPEAN COMMISSION

20 January: Presentation to the Heads of the European Commission's Representations in the Member States. This meeting was chaired by Mr Jorge de OLIVEIRA E SOUSA, Director-General of DG Press and Communication in the Commission.

10 February: Meeting with the Director-General of the Legal Service of the European Commission, Mr Michel PETITE. At this meeting, the Ombudsman and the Director-General agreed to include information on each other's activities in their staff training programmes.

30 March: Presentation by Mr Michel PETITE, Director-General of the Legal Service of the European Commission, to the legal staff of the Ombudsman.

31 March: Meeting with Ms Loyola DE PALACIO, Vice-President of the European Commission.

13 July: Presentation by Mr DIAMANDOUROS to the Commission's Legal Service, in a talk entitled "The dual role of the Ombudsman".

4.3 OTHER INSTITUTIONS AND BODIES

11 February: Meeting in Strasbourg with Mr Dick ROCHE, Irish Minister of State for European Affairs and President in Office of the Council.

23 February: Meeting with Mr Erik HALSKOV, (acting) Director-General of the European Personnel Selection Office (EPSO).

8 March: Meeting with Mr Franz-Hermann BRÜNER, Director-General of the European Anti-Fraud Office (OLAF).



10 March: Meeting with the European Data Protection Supervisor, Mr Peter HUSTINX, and his Deputy, Mr Joaquín BAYO DELGADO.

16 June: Working lunch with Members of the European Court of Auditors, chaired by the President of the Court, Mr Juan Manuel FABRA VALLES.

26 November: Presentation by the President of the European Court of Justice, Mr Vassilios SKOURIS, to the staff of the European Ombudsman. Mr SKOURIS' lecture concerned the protection of fundamental rights in the EU when the future Constitution for Europe comes into force.



Mr Vassilios Skouris, President of the European Court of Justice,
addresses the staff of the European Ombudsman.
Strasbourg, France, 26 November 2004.



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES



5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

Working closely with his counterparts at the national, regional and local levels is a key priority for the European Ombudsman. It helps ensure that citizens' complaints are dealt with promptly and effectively, and thus constitutes a central aspect of the Ombudsman's reactive role. This co-operation is equally vital for the European Ombudsman in his proactive mode, as it enables the monitoring of important developments in the world of ombudsmen, the exchange of information about European Union law and the sharing of best practice.

This chapter gives an overview of the range of activities in 2004 that the Ombudsman was involved in, to further develop his working relations with ombudsmen in Europe and beyond. Given its importance to the Office's daily work of dealing with citizens' complaints, the chapter begins with a description of the European network of ombudsmen and a review of the developments that took place within the network during the year.

5.1 THE EUROPEAN NETWORK OF OMBUDSMEN

The European network of ombudsmen grew out of the initiative taken by the first European Ombudsman, Mr Jacob SÖDERMAN, to invite ombudsmen and similar bodies in the EU to a seminar in Strasbourg in September 1996. The participants agreed to establish a continuing process of co-operation to promote a free flow of information about Community law and its implementation and to make possible the transfer of complaints to the body best able to deal with them.

The network currently consists of almost 90 offices in 29 European countries. Within the Union, it covers the ombudsmen and similar bodies at the European, national and regional levels, while at the national level, it also includes Norway, Iceland and the applicant countries for EU membership. Each of the national ombudsmen and similar bodies in the EU Member States, as well as in Norway and Iceland has appointed a liaison officer to act as a point of contact for other members of the network.

The network has steadily developed into a powerful collaboration tool for ombudsmen and their staff, and serves as an effective mechanism for co-operation on case handling. Experiences and best practice are shared via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. These activities will be described in this section, along with an overview of co-operation on case handling in 2004.

The Ombudsman's information visits to the Member States and applicant countries have proved highly effective in terms of developing the network, and constitute an excellent means of raising awareness of the range of communications tools it makes available. Section 5.1 therefore ends with a look at the Ombudsman's information visits in 2004.

National ombudsman seminars

National ombudsman seminars are held every two years, organised jointly by the European Ombudsman and a national counterpart. The next Seminar of the National Ombudsmen of EU Member States and Candidate Countries will take place in The Hague from 10 to 14 September 2005



and will focus on “The role of ombudsman institutions and similar bodies in the implementation of EU law”. It will be the fifth Seminar of national ombudsmen and will coincide with the tenth anniversary of the European Ombudsman institution. Moreover, it will be the first Seminar since the enlargement of the EU and will thus be the first occasion on which the ombudsmen from all 25 Member States meet together to discuss matters of common interest. All of these aspects will add a special dimension to the theme of the 2005 Seminar.

Preparations for the Seminar began in earnest in 2004, with three meetings between the European Ombudsman and his Dutch counterpart, Mr Roel FERNHOUT. Both the ombudsmen and members of their staff met in Brussels on 20 January, in Strasbourg on 21 June and in The Hague on 15 October.

The General Rapporteur for the Seminar, Mr Rick LAWSON of Leiden University, attended the second of these meetings, during which participants discussed the draft seminar questionnaire. The aim of the questionnaire is to obtain an insight into the types of “EU cases” that ombudsmen encounter in their daily work, to discover the frequency and importance of these cases and to identify best practice. It was distributed to all participating ombudsman offices from the EU, Norway and Iceland in October 2004. Offices were requested to respond by 31 December. The information obtained through the questionnaire will be used as the basis for the production of a General Report, which will be presented and discussed during the Seminar.

Preparations for the Seminar will continue in 2005, with a view to making this fifth meeting a great success.

Co-operation on case-handling

National and regional ombudsmen in the Member States are competent to deal with many of the complaints that are outside the mandate of the European Ombudsman because they are not against a Community institution or body. During 2004, the European Ombudsman advised 906 complainants to turn to a national or regional ombudsman and transferred 54 complaints directly to the competent ombudsman. Examples of these complaints are given in section 2.5 of this Report.

If requested to do so, the European Ombudsman also assists national and regional ombudsmen with their inquiries by replying to queries about EU law, or by channelling the query to an appropriate Union institution or body for response. In 2004, queries were received from the Regional Ombudsman of Veneto (Italy), the Irish Ombudsman and the Ombudsman of Cyprus.

European Ombudsmen - Newsletter

The *European Ombudsmen - Newsletter* covers the work of the members of the European network of ombudsmen and the broader membership of the European Region of the International Ombudsman Institute (IOI). Produced in English, French, German, Italian and Spanish, it is addressed to over 400 offices at the European, national, regional and local levels. The Newsletter is published twice a year - in April and October.

The Newsletter contains contributions from ombudsman offices across Europe. These form the basis of the sections on news, EU law, the work of ombudsmen and similar bodies, seminars and meetings, and announcements. The European Ombudsman is responsible for publishing the Newsletter and uses the editorial to draw attention to issues of relevance to the network and to analyse their importance. Section 2 – entitled “IOI Communications” – is written by the Regional Vice-President for Europe of the IOI and is designed to inform members of IOI-Europe of recent developments, upcoming events and other initiatives of interest.

The Newsletter has proved itself to be an extremely valuable forum for exchanging information about EU law and best practice. In 2004, issues covered included the new Constitution for Europe and its implications for ombudsmen, problems faced by those who want to make use of their right to



freedom of movement, prison-related problems in a number of Member States, the rights of children and of the elderly, and obstacles faced by people with disabilities.

Electronic communications tools

In November 2000, the Ombudsman launched an Internet discussion forum and website for ombudsmen and their staff in Europe. Almost 90 offices in 29 European countries currently have individualised login names and passwords to access the discussion forum. In addition, those members of IOI-Europe who are not members of the European network of ombudsmen have access to the discussion forum via a generic login name and password. The discussion forum offers possibilities for daily information sharing and co-operation between offices.

The most popular part of the discussion forum is the *Ombudsman Daily News* service, which is published every working day and contains news from ombudsman offices. National and regional ombudsman offices throughout Europe contribute to and consult the *Daily News*.

In 2004, the discussion forum really took off, enabling offices to share information through the posting of questions and answers. Several major discussions, covering issues as diverse as television coverage of ombudsmen to the rights of ombudsmen to visit prisons, were initiated in 2004, with most national offices contributing to one or many of these discussions.

The discussion forum's contents include an authoritative list of national and regional ombudsmen in the EU Member States, Norway, Iceland and the applicant countries for EU membership. The list is updated whenever the contact details for an ombudsman office change and is thus an indispensable resource for ombudsmen throughout Europe.

Information visits

The purpose of the Ombudsman's information visits is twofold: to raise awareness among citizens of their right to complain to the Ombudsman, and to further intensify co-operation between the European Ombudsman and his counterparts within the overall context of the European network of ombudsmen.

The public awareness-raising aspect of the information visits will be covered in section 6.2 of this Report, but it is important to mention in this regard the invaluable support the Ombudsman receives from his counterparts throughout Europe. The Ombudsman relies heavily on his colleagues in the Member States and applicant countries throughout his information visits. Their contacts on the ground enable him to reach out to citizens, administrators and state officials and thus to maximise the effectiveness of these trips.

With a view to further developing working relations within the European network of ombudsmen, the European Ombudsman's visits systematically provide for in-depth meetings with ombudsmen and their staff. These meetings are of great value in terms of mutual learning. They offer the opportunity to encourage more active participation in the network and to explore new ways of working together for the benefit of citizens. These efforts bore fruit in 2004, with many offices manifesting greater interest in the range of instruments made available through the network after the visits.

The Ombudsman's information visits in 2004 brought him to the following countries, listed in chronological order:

- Slovenia, from 24 to 27 January, where he met with the Human Rights Ombudsman, Mr Matjaž HANŽEK and his deputies, Mr Aleš BUTALA, Mr France JAMNIK and Mr Jernej ROVŠEK;
- Slovakia, from 18 to 19 February, where he was received by Mr Pavel KANDRÁČ, Public Defender of Rights;
- Cyprus, from 29 February to 3 March, where he met with the Commissioner for Administration, Ms Eliana NICOLAOU;



- the Czech Republic, from 21 to 24 March, where he met with the Public Defender of Rights, Mr Otakar MOTEJL;
- Latvia, from 14 to 17 April, where he visited Mr Olafs BRŪVERS, Director of the Latvian National Human Rights Office;
- Lithuania, from 17 to 21 April, where he was received by his colleagues at the Seimas Ombudsmen's Office - the Head of the Ombudsmen's Office, Mr Romas VALENTUKEVIČIUS and the Ombudsmen, Ms Elvyra BALTUTYTĖ, Ms Rimantė ŠALAŠEVIČIŪTĖ, Mr Kęstutis VIRBICKAS and Ms Zita ZAMŽICKIENĖ;
- Poland, from 28 April to 2 May, where he visited Mr Andrzej ZOLL, Commissioner for Civil Rights Protection;
- Austria, from 24 to 25 May, where he met with members of the Ombudsman Board, namely Ms Rosemarie BAUER, Chair of the Board, and Mr Peter KOSTELKA;
- Romania, from 26 to 28 May, where he was received by the People's Advocate, Mr Ioan MURARU;
- Greece, from 30 June to 2 July, where he was received by the Ombudsman, Mr Yorgos KAMINIS;
- the Netherlands, from 15 to 19 September, where he met with his national counterpart, Mr Roel FERNHOUT;
- Portugal, from 21 to 22 October, where he visited the Ombudsman, Mr Henrique NASCIMENTO RODRIGUES;
- France, from 1 to 2 December, where he was received by his national counterpart, Mr Jean-Paul DELEVOYE.

5.2 OTHER OMBUDSMAN SEMINARS AND CONFERENCES

The European Ombudsman's efforts to collaborate with his ombudsman counterparts stretch beyond the activities of the European network of ombudsmen. As an active member of an array of ombudsman organisations, he participates in conferences and seminars in Europe and beyond. He is keen to attend events organised by national and regional ombudsmen or to ensure that his Office is represented at such events. In the context of his work to promote the rule of law, respect for human rights and good administration in the Union and beyond, the Ombudsman equally attends events aimed at establishing new ombudsman institutions. This section gives an overview of the Ombudsman's participation, and that of his staff, in such events in 2004.

Public seminar on "Parliamentary control and the Office of the Parliamentary Ombudsmen" - Stockholm, Sweden

On 12 February, Mr DIAMANDOUROS participated in a public seminar in Stockholm on "Parliamentary control and the Office of the Parliamentary Ombudsmen". The seminar was organised by the Committee on the Constitution of the Swedish Riksdag to mark the retirement of Mr Claes EKLUNDH from his post as Chief Parliamentary Ombudsman of Sweden.

Mr DIAMANDOUROS delivered a speech in the session on "The role of the ombudsman in various systems - experience and prospects for the future" analysing the international development of the ombudsman institution. Following the seminar, Mr DIAMANDOUROS met informally with the four Swedish Parliamentary Ombudsmen and with Mr Mats MELIN, Mr EKLUNDH's successor as Chief Parliamentary Ombudsman.



Fifteenth anniversary conference of the Ombudsman in Schleswig-Holstein - Kiel, Germany

On 24 April, Mr Gerhard GRILL, Principal Legal Adviser, attended a conference at the Regional Parliament of Schleswig-Holstein in Kiel to mark the 15th anniversary of the institution of the ombudsman in Schleswig-Holstein. The conference was organised by the Ombudsman for Social Affairs of Schleswig-Holstein, Ms Birgit WILLE-HANDELS. Some 70 participants attended the event, which included a panel discussion with Ms WILLE-HANDELS, Mr Gerhard POPPENDIECKER, the Chairman of the Committee on Petitions of the Regional Parliament of Schleswig-Holstein, Mr Ulrich LORENZ, Deputy Secretary of State in the Ministry of the Interior of Schleswig-Holstein, and Mrs Ursula PEPPER, Mayoress of the city of Ahrensburg.

Seminar on “The role of the ombudsman in a state governed by the rule of law” - Nevşehir, Turkey

On 9 and 10 May, the Ombudsman participated in a seminar entitled “The role of the ombudsman in a state governed by the rule of law” in Nevşehir, Turkey. Co-organised by Mr Alvaro GIL-ROBLES, the Commissioner for Human Rights of the Council of Europe and Mr Mehmet ELKATMIS, Chairman of the Human Rights Monitoring Committee of the Grand National Assembly of Turkey, the seminar focused on the Turkish deliberations on the establishment of a national ombudsman.



Mr Diamandouros addresses a seminar entitled “The role of the ombudsman in a state governed by the rule of law”. Nevşehir, Turkey, 9 May 2004.

National participants at the seminar included Members and senior officials of the Grand National Assembly of Turkey (primarily Members of the Assembly’s Human Rights Monitoring Committee), members of the judiciary, representatives from local and national authorities and representatives from civil society. In addition to Mr GIL-ROBLES, the Council of Europe was represented by Ms Caroline RAVAUD, Head of the Secretariat of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. Representatives from ombudsman and similar offices included: Mr Ermir DOBJANI, Albanian People’s Advocate, Mr Pierre-Yves MONETTE, Federal Ombudsman of Belgium, Mr Safet PASIC, Human Rights Ombudsman of Bosnia and Herzegovina, Mr Morten ENGBERG, Head of Division at the Danish Ombudsman’s Office, Mr Yorgos KAMINIS, Greek Ombudsman, Mr Albert TAKACS, Hungarian General Deputy Commissioner for Civil Rights, Mr Branko NAUMOVSKI, Ombudsman of the Former Yugoslav Republic of Macedonia, Mr Roel FERNHOUT, Ombudsman of the Netherlands, Mr Matjaž



HANŽEK, Human Rights Ombudsman of Slovenia, and Mr Kjell SWANSTRÖM, Head of the Swedish Parliamentary Ombudsman's Office.

On 10 and 11 May, Mr DIAMANDOUROS proceeded to Ankara to meet with members of the Government, public officials and representatives of Turkish civil society. Among his interlocutors were Mr Abdullah GÜL, Deputy Prime Minister and Foreign Minister of Turkey, Mr Emin Murat SUNGAR, Secretary General for EU Affairs, Mr Mustafa BUMIN, President of the Turkish Constitutional Court, Mr Ender ÇETINKAYA, President of the Council of State, Mr Cemil ÇİÇEK, Minister of Justice and Mr Zafer Ali YAVAN, Ms Derya SEVINC and Mr Eray AKDAG from the Turkish Industrialists' and Businessmen's Association. Mr DIAMANDOUROS also met with Mr Hansjörg KRETSCHMER, Head of the European Commission's Delegation in Turkey.

Annual Meeting of the British and Irish Ombudsman Association - London, UK

On 28 May, the Ombudsman's Head of Legal Department, Mr Ian HARDEN, attended the Annual Meeting of the British and Irish Ombudsman Association (BIOA) in London. The theme of the Meeting was "Ombudsman services: their place in the landscape". Speakers included Mr Walter MERRICKS, Chairman of BIOA and Chief Ombudsman of the Financial Ombudsman Service, Mr Charlie MCCREEVY TD, Irish Minister of Finance and Lord EVANS, a UK Government spokesman on Constitutional Affairs and on Trade and Industry in the House of Lords. During the meeting, Lord EVANS indicated that consideration would be given in future as to whether the title "ombudsman" should be legally protected in the UK.

First Round Table of European Regional Ombudsmen - Barcelona, Spain

On 2 and 3 July 2004, the Council of Europe's Commissioner for Human Rights, Mr Alvaro GIL-ROBLES and the Regional Ombudsman of Catalonia, Mr Rafael RIBÓ (who on 1 July succeeded Mr Antón CAÑELLAS), organised the First Round Table of European Regional Ombudsmen in Barcelona. The meeting took place in the framework of the city's 2004 Forum of Cultures. Mr José MARTÍNEZ ARAGÓN, Principal Legal Adviser in the Office of the European Ombudsman, participated in the event which was formally opened by Messrs BENACH, President of the Parliament of Catalonia, GIL-ROBLES and RIBÓ. Three topics were discussed during the Round Table: (i) the respective tasks and competencies of regional and national ombudsmen; (ii) regional ombudsmen and housing rights; (iii) regional ombudsmen and the right to a healthy environment. At the end of the conference, Mr GIL-ROBLES undertook to continue this initiative and organise a similar gathering of regional ombudsmen from countries belonging to the Council of Europe every two years.

Eighth International Ombudsman Institute World Conference - Quebec City, Canada

Between 7 and 10 September, Mr DIAMANDOUROS attended the VIIIth International Ombudsman Institute (IOI) World Conference in Quebec City, Canada. The Conference was entitled "Balancing the obligations of citizenship with the recognition of individual rights and responsibilities – the role of the ombudsman" and was hosted by the Quebec Ombudsman, Ms Pauline CHAMPOUX-LESAGE. A total of 430 participants from 77 countries attended this international conference, during which a number of official IOI meetings also took place.

The main theme of the Conference was the need to seek balance between individual rights and collective security in an age of globalisation and privatisation. On 9 September, the Ombudsman delivered the keynote speech in the third plenary session, which was entitled "Can the recognition of individual rights and freedoms survive the pressure to enhance security?" The Ombudsman identified dangers that can arise in attempting to balance the needs of public security with individual rights and liberties. An enduring legal, institutional and political framework that is capable of fairly and reasonably balancing the needs of both should be possible, he said, underlining that ombudsmen can and should be active in this area in a way that maintains and strengthens the rule of law and empowers citizens.



Other keynote speakers at the Conference included Her Excellency the Right Honourable Adrienne CLARKSON, Governor General of Canada and the Honourable Justice Louis LEBEL of the Canadian Supreme Court.

In the afternoon of 9 September, the IOI regions (Africa, Asia, Australasia and Pacific, Europe, Latin America, Caribbean and North America) held their respective meetings, during which the new IOI Directors and Regional Vice-Presidents were elected. Mr Tom FRAWLEY (Northern Ireland Parliamentary Ombudsman), Mr Peter KOSTELKA (Chair of the Austrian Ombudsman Board) and Ms Riitta-Leena PAUNIO (Parliamentary Ombudsman of Finland) were elected to be Directors of the IOI-European Region. The Human Rights Ombudsman of Slovenia, Mr Matjaž HANŽEK, who still had two years left in his term as Director, was not up for re-election. Following the elections, the IOI-European Region Board members agreed that Mr KOSTELKA would be the IOI Vice-President for Europe.

In the morning of 10 September, the IOI General Meeting took place, where the outgoing IOI President and Ombudsman of Ontario, Mr Clare LEWIS, presented his Report for 2000-2004, followed by Reports from the Secretary, the Treasurer and the Regional Vice-Presidents. The new IOI Board of Directors met that afternoon.

In addition to the full, formal programme outlined above, the Conference offered numerous possibilities for networking and informal exchanges of view. On the evening of 7 September, the Quebec Ombudsman hosted a dinner, at which the European Ombudsman and his wife were among the guests of honour, along with Ms Monique GAGNON-TREMBLAY, Deputy Premier of Quebec, Minister of International Relations and Minister responsible for francophone issues. A gala dinner was held on the evening of 9 September, again offering participants the opportunity to meet colleagues from across the globe.

Conference on “The ombudsman in Southeastern Europe: Enhancing regional co-operation” - Belgrade, Serbia and Montenegro

On 28 and 29 September, the Ombudsman participated in a conference entitled “The ombudsman in Southeastern Europe: Enhancing regional co-operation” held in the Parliament of Serbia and

© Greek Ombudsman



Participants in a conference on “The ombudsman in Southeastern Europe: Enhancing regional co-operation”. Belgrade, Serbia and Montenegro, 29 September 2004.



Montenegro, Belgrade. The conference was organised jointly under the aegis of the Eunomia Project of the Council of Europe and the Greek Ombudsman, the Stability Pact for Southeastern Europe and the Ministry of Local Self-Government of Serbia and Montenegro.

Participants in the conference included Mr Zoran SAMI, President of the Parliament of Serbia and Montenegro, Mr Zoran LONCAR, Minister of Public Administration and Local Self-Government of Serbia and Montenegro, Ambassador Maurizio MASSARI, Head of the OSCE Mission to Serbia and Montenegro, Ms Elisabeth REHN, Chair of Working Table I, Stability Pact for Southeastern Europe, Mr Dragan MILKOV of the Novi Sad University, Mr Jorgen GRUNNET, Head of the Council of Europe's Belgrade Office and Mr Markus JAEGER, Deputy to the Director of the Commissioner for Human Rights of the Council of Europe. Also present were the ombudsmen of Albania, Bosnia and Herzegovina, Catalonia, the Former Yugoslav Republic of Macedonia, Greece, Kosovo, Montenegro, Republika Srpska, and the Greek Deputy Ombudsman for Children Rights.

The European Ombudsman gave a speech on "The ombudsman in Southeastern Europe: current challenges and future perspective" which was followed by a round table discussion.

Twentieth anniversary conference of the Office of the Irish Ombudsman - Dublin, Ireland

On 15 October, the Ombudsman's Head of Legal Department, Mr Ian HARDEN and his Press and Communications Officer, Ms Rosita AGNEW, attended a conference in Dublin entitled "Accountability, good governance and the ombudsman". The conference, which was held to mark the twentieth anniversary of the Office of the Irish Ombudsman, saw a participation of over 100 people, including ombudsmen, public servants and representatives of civil society. Ms Emily O'REILLY, Irish Ombudsman and Information Commissioner, made the opening and closing addresses, while a range of interesting interventions were made by Mr Dick ROCHE, Irish Minister for the Environment, Heritage and Local Government, Ms Ann ABRAHAM, UK Parliamentary Ombudsman and Health Service Ombudsman for England, Mr Tom FRAWLEY, Commissioner for Complaints and Assembly Ombudsman for Northern Ireland, Mr Eddie SULLIVAN, Secretary General for Public Service Management and Development in the Department of Finance and Mr Donncha O'CONNELL, Law Lecturer in the National University of Ireland (Galway).

Conference on "Setting up an ombudsman institution" - Istanbul, Turkey

On 10 and 11 December, Mr DIAMANDOUROS participated as a keynote speaker in the conference "Setting up an ombudsman institution" in Istanbul, Turkey. The conference was organised by the Grand National Assembly of Turkey and the Greek Ombudsman, in co-operation with Bilgi University in Istanbul. It was financed under the aegis of the Eunomia Project of the Council of Europe and the Greek Ombudsman.

The main purpose of the conference was to discuss a second draft law on the setting up of a national ombudsman in Turkey. The first draft law from 1997 had been discussed at the seminar entitled "The role of the ombudsman in a state governed by the rule of law" that took place in Nevşehir on 9 and 10 May 2004 (see earlier in this section).

The national participants included the Minister of Justice, Mr Cemil ÇİÇEK, the Dean of the Law Faculty at Bilgi University, Mr Turgut TARHANLI, the Presidents of the Council of State, Mr Ender ÇETINKAYA and Mr Selçuk HONDU, the Dean of the Law Faculty at Selçuk University, Ms Zehra ODYAKMAZ, Members and senior officials of the Grand National Assembly of Turkey, members of the judiciary and representatives from civil society.

In addition to Mr DIAMANDOUROS and his Greek national counterpart, Mr Yorgos KAMINIS, the foreign participants included Mr Jean-Paul DELEVOYE, French Ombudsman, Mr Markus JAEGER, Deputy to the Director of the Commissioner for Human Rights of the Council of Europe, Mr Allar JÖKS, Estonian Chancellor of Justice, Mr Peter KOSTELKA, Chair of the Austrian Ombudsman Board and Regional Vice-President for Europe of the International Ombudsman Institute, Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, Mr Rafael RIBÓ, Catalan Ombudsman, Mr Stephan SJOUKE from the Dutch Ombudsman's Office, Mr Pat WHELAN, Director of the Irish



Ombudsman Office, Mr Herman WUYTS, Federal Ombudsman of Belgium and Mr Andrzej ZOLL, Polish Ombudsman.

5.3 OTHER EVENTS WITH OMBUDSMEN AND THEIR STAFF

Bilateral meetings with ombudsmen

In addition to seminars and conferences attended by the Ombudsman and his staff and bilateral meetings that took place as part of the Ombudsman's information visits, 2004 saw multiple contacts with ombudsmen, from within Europe and further afield:

From 27 to 29 January, the European Ombudsman visited the Italian Regional Ombudsman of Friuli Venezia - Giulia, Ms Caterina DOLCHER, in Trieste.

On 9 February, Mr DIAMANDOUROS met in Strasbourg with Mr BAIKADAMOV, Ombudsman of Kazakhstan.



Mr Andrzej Zoll (second from left), Ombudsman of Poland, addresses the staff of the European Ombudsman. Strasbourg, France, 9 February 2004

On 9 February, Mr Andrzej ZOLL, Ombudsman of Poland, made a presentation to the staff of the European Ombudsman in Strasbourg. On 10 February, the two Ombudsmen had a bilateral meeting, followed by meetings with Mr Pat COX, President of the European Parliament and Mr Neil KINNOCK, Vice-President of the European Commission. On the same day, Mr ZOLL and Mr DIAMANDOUROS also made presentations to Polish Observers to the European Parliament and Polish trainees in the EU institutions.

On 13 February, Mr DIAMANDOUROS met in Strasbourg with Mr Yorgos KAMINIS, Greek Ombudsman and Mr Alvaro GIL-ROBLES, Commissioner for Human Rights of the Council of Europe, to discuss the Eunomia Project, which - operating under the aegis of the Council of Europe and the Greek Ombudsman - aims to help ombudsmen and other government institutions in Southeastern Europe.

On 10 March, Ms Sayora RASHIDOVA, Ombudsman of Uzbekistan, visited Mr DIAMANDOUROS in Strasbourg.

From 25 to 28 March, the European Ombudsman visited the Italian Regional Ombudsman of Liguria, Mr Antonio DI GIOVINE, in Genoa.

On 7 June, Mr DIAMANDOUROS met with the Belgian College of Federal Ombudsmen, Mr Herman WUYTS and Mr Pierre-Yves MONETTE in Brussels.

On 9 June, Mr DIAMANDOUROS met with Mr MUGICA, Ombudsman of Spain, in Madrid.

On 15 June, the newly-appointed French Ombudsman, Mr Jean-Paul DELEVOYE, visited the European Ombudsman in Strasbourg to discuss co-operation between their institutions.



Mr Jean-Paul Delevoye, French Ombudsman and Mr Diamandouros.
Strasbourg, France, 15 June 2004.

On 16 June, Mr DIAMANDOUROS travelled to Luxembourg to meet Mr Marc FISCHBACH, who had just taken office as the first Ombudsman of Luxembourg.

On 20 September, Mr DIAMANDOUROS had the opportunity to meet Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, at a lunch hosted by the Swedish Permanent Representative to the Council of Europe in Strasbourg.

On 27 September, Mr Arne FLIFLET, Ombudsman of Norway, visited Mr DIAMANDOUROS in Strasbourg.

On 29 November, Mr DIAMANDOUROS met with the first European Ombudsman, Mr Jacob SÖDERMAN, in Brussels.

Events involving staff members

A number of events took place at the level of the Ombudsman's staff, as follows:

On 26 May, Mr Olivier VERHEECKE, Principal Legal Adviser and Ms Rosita AGNEW, Press and Communications Officer, gave a presentation to a group of 11 staff members from the Office of the Legal Chancellor of Estonia, who were on a study visit to the EU institutions in Brussels. The



presentation covered the role of the European Ombudsman and the work of the European network of ombudsmen.

On 3 June, Mr Olivier VERHEECKE presented the Ombudsman's work at a conference organised by the *Association des Juristes Namurois* entitled "Mediation in the public services: an alternative dispute resolution system". Mr Frédéric BOVESSE, Walloon Ombudsman, Mr Bernard HUBEAU, Flemish Ombudsman, Ms Marianne DE BOECK, Ombudsman of the Francophone Community of Belgium and Mr Philippe VAN DE CASTEELE, Director in the Office of the Belgian Federal Ombudsmen, all participated in the round-table debate at this Conference.

On 23 June, Mr Erwin JANSSENS from the Flemish Ombudsman's service visited the Ombudsman's office in Brussels. Mr Olivier VERHEECKE explained to him the Ombudsman's procedures in relation to own-initiative inquiries, by giving information on the most important examples.

On 7 July, Mr Gerhard GRILL, Principal Legal Adviser, gave a lecture on the role and the work of the Ombudsman to a group of ten Members of the Committee on Petitions of the Regional Parliament of North Rhine-Westphalia. The group was led by Ms Barbara WISCHERMANN, President of the Committee, and was accompanied by Mr Johannes WAHLENBERG of the Regional Parliament's administration, who organised the visit.



INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

6 COMMUNICATIONS

7 ANNEXES

6 COMMUNICATIONS

6.1 HIGHLIGHTS OF THE YEAR

CELEBRATION OF ENLARGEMENT IN POLAND

The European Ombudsman was in Warsaw with his Polish counterpart, Mr Andrzej ZOLL, to mark the historic enlargement of the European Union on 1 May. Together with the President of Poland, Mr Aleksander KWASNIEWSKI and the Presidents of the Parliament's two chambers, the Ombudsmen participated in the celebrations on Pilsudski Square at midnight on 30 April. On 1 May, the day began with a meeting with the President of Poland, which was followed by an event in honour of enlargement, hosted by the President and Minister of Culture of Poland, in the Royal Castle of Warsaw.



Mr Diamandouros and Mr Aleksander Kwasniewski, President of Poland, watch the raising of the European flag on the Pilsudski Square. Warsaw, Poland, 1 May 2004.

The Ombudsman's visit to Poland marked the end of his information tour of the accession countries, which had started in Estonia in September 2003. His intensive efforts to inform citizens in the accession countries about their right, from 1 May 2004, to complain about maladministration in the EU institutions and bodies proved largely successful. By the end of 2004, complaints from the accession countries already accounted for 18% of all complaints received.

"FOUNDERS' WORKSHOP"

On 25 and 26 June, the Ombudsman organised a workshop in Strasbourg, bringing together people who had played an important role in the founding of the institution, in order to discuss its origins,



establishment and early development. The workshop was the first of a number of events designed to contribute to the celebration of the European Ombudsman's 10th anniversary in 2005.



Founders' Workshop participants. Strasbourg, France, 26 June 2004.

The purpose of the workshop was twofold: first, to record and reflect upon the circumstances leading to the creation of the European Ombudsman; and second, to help generate institutional memory capable of serving as a foundation for further initiatives designed to contribute to the knowledge of the institution, to celebrate its first decade and to identify policy options for the future. It comprised four sessions: I - Origins of the Treaty Provisions, II - The Ombudsman's Statute, III - The Establishment of the Office, IV - Closing Session.

The Founders' Workshop gave rise to lively discussions among very well prepared and knowledgeable participants. It allowed valuable information to be derived about the establishment and development of the institution, information which had hitherto gone widely unrecorded. The Ombudsman will publish a commemorative volume to mark the 10th anniversary of the institution in 2005. The discussions at the Workshop should serve as an excellent starting point for the production of this volume.

GRAND COMMANDER OF THE ORDER OF THE PHOENIX

In recognition of his work as European Ombudsman, the President of Greece, Mr Kostis STEFANOPOULOS, awarded Mr DIAMANDOUROS the decoration of Grand Commander of the Order of the Phoenix in the new year's honours for 2004. This was the highest ranked decoration of the Order of the Phoenix awarded for 2003, the other recipient being the President of the European Court of Justice, Mr Vassilios SKOURIS. Mr DIAMANDOUROS received the decoration in Strasbourg on 26 February, from the Greek Permanent Representative to the Council of Europe, Ambassador Constantine GEROKOSTOPOULOS.

The Order of the Phoenix is conferred upon Greek citizens who have excelled in the fields of public administration, science, arts and letters, commerce, industry and shipping. Grand Commander is the second highest class of the five classes of the Order.



Ambassador Constantine Gerokostopoulos,
Greek Permanent Representative to the Council of Europe,
presents Mr Diamandouros with the decoration of
Grand Commander of the Order of the Phoenix.
Strasbourg, France, 26 February 2004.

THE ANNUAL REPORT 2003

The Annual Report is the Ombudsman's most important publication. It provides an account of the Ombudsman's work during the year, detailing the results achieved for complainants and, more generally, for citizens and residents of the Union. For this reasons, it is particularly important that the Report is as widely accessible as possible. Two developments in 2004 greatly enhanced the accessibility of the Ombudsman's Report.

Firstly, the number of EU official languages increased from 11 to 20. The Report was therefore published for the first time in 20 languages, thus enabling citizens in the enlarged Union to learn about the service the Ombudsman provides. Secondly, the Report for 2003 included an Executive Summary. This offered a representative selection of cases dealt with in 2003 and provided highlights regarding the Ombudsman's relations with the citizen, the EU institutions and bodies, and the community of ombudsmen in Europe and world-wide. For wider distribution, the Executive Summary - along with statistics which were presented in an easy-to-read, concise format - was published separately.

The Ombudsman presented his Report for 2003 to the European Parliament's Committee on Petitions on 26 April. This gave him the opportunity to provide an overview of the work and results achieved during his first year in office, and to report on the objectives that he had set out when he first appeared before the Committee as European Ombudsman.

Mr Proinsias DE ROSSA MEP drafted the Committee's Report on the Ombudsman's activities for 2003. On 18 November, MEPs adopted this Report, by 530 votes in favour, with 9 against and 20 abstentions, congratulating the Ombudsman on his work and the good relations he has with the Committee on Petitions.



OPEN DAYS

Brussels

On 1 May, the European Parliament organised an Open Day to celebrate the enlargement of the Union. The Ombudsman's Office participated in the Open Day, using the occasion to launch the new *The European Ombudsman - At a glance* leaflet, which was distributed to visitors in 24 languages. Staff members answered questions from the public throughout the day and it was estimated that up to 30 000 people attended the event.



Citizens visiting the Ombudsman's stand at the Open Day in Strasbourg, France, 9 May 2004.

Strasbourg

On 9 May, the Ombudsman's Office participated in the Open Day organised by the European Parliament in Strasbourg. Material covering the Ombudsman's work, including the new *The European Ombudsman - At a glance* leaflet, was distributed to visitors in 24 languages. A competition was organised on the stand, based on a video of the Ombudsman's information tour visit to Finland. Staff members were present throughout the day to answer questions. Over 32 000 individuals visited the Parliament during the Open Day.

6.2 INFORMATION VISITS

With a view to raising awareness among citizens about their right to complain to the European Ombudsman and to further intensifying his working relations with his ombudsman counterparts, the Ombudsman stepped up his information visits to the Member States, accession and applicant countries in 2004. By 1 May, the Ombudsman had visited all ten accession countries and went on to visit a further five countries before the end of the year, in what was perhaps the most visible



aspect of his proactive work in reaching out to citizens. During each of these visits, the Ombudsman met citizens, potential complainants, administrators, members of the judiciary and senior political representatives. He was accompanied on each trip by a member of his Legal Department and one of his communications staff.

The Ombudsman's information visits aim to contribute towards a better understanding among citizens about the service that he can provide to them. In his numerous encounters with the general public in 2004, the Ombudsman illustrated his work with examples of the types of complaints he receives. But the Ombudsman's work goes beyond complaint-handling and in his many meetings, he was conscious of the need to raise awareness of this broader role. In his speeches and presentations, Mr DIAMANDOUROS outlined the importance of the institution of ombudsman in promoting the rule of law, democracy and human rights. In the run-up to the Intergovernmental Conference in June 2004, the Ombudsman worked hard in his meetings with government representatives to stress the importance of including access to non-judicial remedies in the draft Constitution for Europe. Following its adoption, the Ombudsman stressed his willingness to work with national and regional authorities to promote awareness of the Constitution and the benefits it holds for citizens. Finally, in bilateral ombudsman meetings, the participants explored ideas for future collaboration, while learning from each other's experience and sharing best practice.

The Ombudsman's counterparts in the Member States and candidate countries arranged in-depth programmes of activities and meetings for the Ombudsman during each of his visits, often accompanying him throughout the trip. The following section gives an overview of the wide range of meetings that took place, listing the key interlocutors and mentioning the numerous presentations made in universities, public libraries, European Union external offices and elsewhere. The media activities that took place as part of the information visits are covered in section 6.4 of this Report.

SLOVENIA

The Ombudsman visited Slovenia from 24 until 27 January.



Mr Matjaž Hanžek, Human Rights Ombudsman of Slovenia and Mr Diamandouros. Ljubljana, Slovenia, 26 January 2004.

His visit began with an exchange of views with the Human Rights Ombudsman, Mr Matjaž HANŽEK and his deputies, Mr Aleš BUTALA, Mr France JAMNIK and Mr Jernej ROVŠEK, followed by a presentation to the staff of the Slovene Ombudsman. Mr DIAMANDOUROS then embarked on a range of meetings that included the Slovene Prime Minister, Mr Anton ROP, the President of

Slovenia, Mr Janez DRNOVŠEK, the President of the Parliament, Mr Borut PAHOR, representatives of the Deputy Groups in the National Assembly and the Minister for European Affairs, Mr Janez POTOČNIK. The Ombudsman also met with Mr Aloz PETERLE, former Member of the Praesidium of the European Convention and Mr Mihael BREJC, substitute at the Convention. Further high level meetings included one with the President of the Constitutional Court, Ms Dragica WEDAM LUKIČ, Judges Mr Ciril RIBIČIČ, Ms Marija KRISPER KRAMBERGER and Ms Mirjam ŠKRK and General Secretary, Ms Jandranka SOUDAT. Mr DIAMANDOUROS also met the Mayor of Ljubljana, Ms Danica SIMŠIČ during his stay in the city.



Mr Diamandouros, Mr Matjaž Hanžek, second from right, Human Rights Ombudsman of Slovenia and Mr Janez Potočnik, Minister for European Affairs of Slovenia. Ljubljana, Slovenia, 26 January 2004.

With a view to reaching out to citizens and informing them of his work, the Ombudsman gave a speech entitled “The European Union: rights, remedies and the European Ombudsman” at Centre Europa, home to the European Commission’s Delegation in Ljubljana. Non-governmental organisations, associations interested in EU affairs and the press were invited to the meeting. Mr DIAMANDOUROS also gave a lecture entitled “The role of the Ombudsman in improving the quality of democracy” to some 200 students at the Faculty of Political Science of the University of Ljubljana, where he was welcomed by the Dean, Ms Anuška FERLIGOJ, and Mr Drago ZAJC. The Head of the European Parliament Information Office in Ljubljana, Mr Paolo RIZZO, organised a dinner during the Ombudsman’s visit, giving him the opportunity for an informal exchange of views with the Slovene Ombudsman, Mr HANŽEK, his deputies, Mr BUTALA and Mr ROVSEK, the Minister for European Affairs, Mr POTOČNIK, a judge from the Constitutional Court, Ms Mirjam ŠKRK and Mr KAUFMANN from the European Commission Delegation.

SLOVAKIA

On 18 and 19 February, the Ombudsman held a series of meetings, lectures and media events in Slovakia. During his visit to Bratislava, the Ombudsman held discussions with Mr Pavol HRUŠOVSKÝ, Chairman of the National Council of Slovakia, with Members of the Committee for Human Rights, Nationalities and Status of Women and with Ján FIGEL, Chairman of the Committee for Foreign Affairs of the National Council of Slovakia. The Ombudsman also met with Mr Dobroslav TRNKA, General Prosecutor of Slovakia and his Deputy, Mr Martin LAUKO, with Mr Milan KARABIN, President of the Supreme Court, and with Mr Marián VRABKO, Dean of the Faculty of Law of Comenius University.

Whilst in Bratislava, Mr DIAMANDOUROS gave a Lecture on “Democracy, rule of law, and the Ombudsman” at the Faculty of Law of the Comenius University. He also held meetings with Mr Azelio FULMINI, Head of the European Parliament Office in Slovakia and, in light of the Irish



Presidency of the EU, with Ambassador Thomas LYONS, Head of the Irish Mission to Slovakia. The Ombudsman also made a presentation to a meeting of EU Ambassadors in the premises of the Chancellery of the National Council of Slovakia.



Mr Diamandouros and Mr Pavel Kandráč, Public Defender of Rights of Slovakia. Bratislava, Slovakia, 18 February 2004.

CYPRUS

From 29 February to 3 March, the Ombudsman held a series of meetings, lectures and media events in Cyprus.

Mr DIAMANDOUROS' time in Nicosia gave him the opportunity to discuss with Mr Tassos PAPADOPOULOS, President of Cyprus, the Minister of Interior Affairs, Mr Andreas CHRISTOU, Attorney-General, Mr Solon NIKITAS, and the former Cypriot Ambassador to the European Union and Cypriot Government representative at the European Convention, Mr Mihalis ATTALIDIS. The Ombudsman also met with Mr Dimitris CHRISTOFIAS, Speaker of the House of Representatives and Leader of the Progressive Party of the Working People (AKEL), Mr Nicos ANASTASIADIS, Leader of the Democratic Rally Party (DISY), Mr Glafcos CLERIDES, former President of Cyprus and former Leader of the Democratic Rally Party (DISY). On the second day of his visit, Mr DIAMANDOUROS met with Mr Yiannakis OMIROU, Leader of the Social Democratic Movement (KISOS-EDEK), Mr George VASSILIOU, former President of Cyprus and Leader of the United Democrats Party (EDI), Mr Nicos CLEANTHOUS and Deputy Leader of the Democratic Party (DIKO). Mr DIAMANDOUROS also made use of his visit to Nicosia to meet with Mr Adriaan VAN DER MEER, Head of the European Commission Delegation in Cyprus and Mr Anthony COMFORT, Head of the European Parliament Office in Cyprus.

During his visit, Mr DIAMANDOUROS gave a lecture in the Conference Hall of the Central Bank of Cyprus, at a conference entitled "Accountability of public administration as a factor strengthening democracy - the role of the European Ombudsman". This event was organised by the Forum for the Modernisation of Society (OPEK) and the municipality of Strovolos. It included speeches by Ms Eliana NICOLAOU, Commissioner for Administration of Cyprus, Mr Andreas CHRISTOU, Minister of Interior Affairs, Mr Savvas ILIOFOTOU, Mayor of Strovolos and Mr Larkos LARKOU, President of OPEK. The lively debate with the audience that followed these interventions was coordinated by journalist Mr Pavlos PAVLOU. While in Nicosia, the Ombudsman also delivered the annual public lecture of the Faculty of Economics and Management of the University of Cyprus. The

lecture was entitled “Rule of law, democracy, and the ombudsman institution in East Central and Southeastern Europe”.



Ms Eliana Nicolaou, Commissioner for Administration of Cyprus, Mr Diamandouros and Mr Andreas Christou, Cypriot Minister of Interior Affairs.
Nicosia, Cyprus, 2 March 2004.

Finally, Mr DIAMANDOUROS gave a lecture about the role of the European Ombudsman at a meeting with Greek Cypriots and Turkish Cypriots co-organised by the Forum for the Modernisation of Society (OPEK) and the Turkish Cypriot platform of NGOs “This Country is Ours”. The lecture took place in the United Nations Cyprus Headquarters in the Ledra Palace, in the neutral zone in Nicosia.

CZECH REPUBLIC

From 21 until 24 March, the Ombudsman visited Brno and Prague in the Czech Republic.



Mr Diamandouros lectures to students at the Faculty of Law of the Masaryk University in Brno, Czech Republic, 22 March 2004.

On 22 March, following a meeting with the Czech Ombudsman, Mr Otakar MOTEJL, in Brno, Mr DIAMANDOUROS had lunch with members of the Constitutional Court and of the Supreme



Administrative Court. In the afternoon, Mr DIAMANDOUROS went to the Faculty of Law at the Masaryk University in Brno, where he gave a lecture about the role and the work of the European Ombudsman. Some 140 students attended the lecture.

On 23 March, the Ombudsman was received by Ms Zuzka RUJBRVÁ, the President of the Committee on Petitions of the Chamber of Deputies of the Czech Republic, her deputy and the head of the Committee's administration. In the afternoon, Mr DIAMANDOUROS was received by Mr Jan RUMIL, the Vice-President of the Senate of the Parliament of the Czech Republic, Ms Jaroslava MOSEKOVÁ (the senior Member of the Senate) and Members of the Senate, Ms Helena RÖGNEROVÁ and Mr Josef JÁRAB. In the early evening, Mr DIAMANDOUROS gave a public lecture on his role and work to some 40 citizens in the European Union Information Centre (EUIC) in Prague. The Ombudsman was then invited to dinner by the Deputy Minister of Justice of the Czech Republic.



Mr Otakar Motejl, Czech Ombudsman, Mr Diamandouros and Mr Pavel Vošalík, Deputy Foreign Minister of the Czech Republic. Prague, Czech Republic, 24 March 2004.

In the morning of 24 March, the Ombudsman was received by Mr Lubomír ZAORÁLEK, the Speaker of the Chamber of Deputies of the Parliament of the Czech Republic. Later that morning, Mr DIAMANDOUROS was welcomed by Mr Pavel VOŠALÍK, Deputy Foreign Minister of the Czech Republic.

LATVIA

The Ombudsman visited Riga from 14 to 17 April.

Mr DIAMANDOUROS met with his national colleague, Mr Olafs BRŪVERS, Director of the Latvian National Human Rights Office, who had assisted in organising Mr DIAMANDOUROS' visit to Latvia and who accompanied Mr DIAMANDOUROS to several of his meetings with Latvian public officials. These included Mr Nils MUIŽNIEKS, Minister for Special Assignments for Society Integration Affairs of Latvia, Ms Ina DRUVIETE, President of the Human Rights and Public Affairs Committee of the Parliament of Latvia and other Members of the Committee, Mr Rihards PĪKS, Minister for Foreign Affairs of Latvia and Mr Aivars ENDZIŅŠ, President of the Constitutional Court of Latvia. Mr DIAMANDOUROS also visited Mr Andrew RASBASH, Head of the European Commission Delegation to Latvia, during his stay in Riga.

With a view to raising awareness of the Ombudsman's work among Latvian citizens, Mr DIAMANDOUROS gave a public lecture on "Citizens' rights, means of redress and the European



Ombudsman” at the Riga Graduate School of Law, which was attended by students of the school and representatives of Latvian civil society.



Mr Diamandouros, Mr Olafs Brūvers, Director of the Latvian National Human Rights Office and Mr Aivars Zdeniņš, President of the Constitutional Court of Latvia. Riga, Latvia, 16 April 2004.

LITHUANIA

Following his visit to Latvia, the Ombudsman continued on to Vilnius where he stayed from 17 until 21 April.

Mr DIAMANDOUROS began his visit with a meeting with his national colleagues at the Seimas Ombudsmen’s Office - the Head of the Ombudsmen’s Office, Mr Romas VALENTUKEVIČIUS and the other ombudsmen, Ms Elvyra BALTUTYTĖ, Ms Rimantė ŠALAŠEVIČIŪTĖ, Mr Kęstutis VIRBICKAS and Ms Zita ZAMŽICKIENĖ. He went on to meet a wide range of senior officials, including Mr Česlovas JURŠĖNAS, acting Chairman of the Seimas, Mr Petras AUŠTREVIČIUS, Deputy to the Chancellor of the Government for EU Affairs, Mr Gediminas DALINKEVIČIUS, Chairman of the Seimas Committee on Human Rights, Mr Vytenis ANDRIUKAITIS, Deputy Chairman of the Seimas and Chairman of the Committee on European Affairs and Mr Gintaras STEPONAVIČIUS, Member of the Committee on European Affairs. The Ombudsman also had the opportunity to discuss with Ms Gražina IMBRASIENĖ, Ombudsman for the Protection of Children’s Rights and a representative of Ms Aušrinė BURNEIKIENĖ, Lithuanian Equal Opportunities Ombudsman. He further met with Mr Zenonas NAMAVIČIUS and Mr Vytautas SINKEVIČIUS, judges from the Lithuanian Constitutional Court.

During his visit, Mr DIAMANDOUROS gave a public lecture at the Martynas Mažvydas National Library of Lithuania, with the title “Building a citizen-centred Europe - the role of the European Ombudsman”. Over 50 citizens and representatives of Lithuanian civil society attended the lecture. Mr DIAMANDOUROS also gave a lecture at the Law University of Lithuania, entitled “Democracy, accountability and the institution of the Ombudsman”, which was attended by almost 200 students and researchers. This event gave the Ombudsman the occasion to meet with Mr Alvydas PUMPUTIS, Dean of the Law University of Lithuania and other representatives of the University. During his stay in Vilnius, Mr DIAMANDOUROS also met with Mr Michael GRAHAM, Head of the European Commission’s Representation to Lithuania.



Mr Česlovas Juršėnas, acting Chairman of the Seimas (Parliament) of Lithuania, Mr Romas Valentukevičius, Head of the Seimas Ombudsmen's Office of Lithuania and Mr Diamandouros. Vilnius, Lithuania, 19 April 2004.

POLAND

From 28 April to 2 May, the Ombudsman held a series of meetings, lectures and media events in Poland.

The visit began with a dinner in Krakow hosted by the Commissioner for Civil Rights Protection of Poland, Mr Andrzej ZOLL. Participants at the dinner included Ms Maria NOWAKOWSKA, Vice-President of the Jagiellonian University for Research and International Relations and Mr Fryderyk ZOLL, Assistant Professor in the Law Department of the Jagiellonian University.



Mr Diamandouros and Mr Andrzej Zoll, Ombudsman of Poland. Warsaw, Poland, 30 April 2004.

On 29 April, Mr DIAMANDOUROS had a meeting with Mr Jacek MAJCHROWSKI, Mayor of the City of Krakow. He then continued to the Jagiellonian University for Research and International Relations, where he was welcomed by the Vice-President, Ms Maria NOWAKOWSKA. Mr



DIAMANDOUROS' public lecture at the University, entitled "Rule of law, democracy and the ombudsman institution - a European perspective", was held in the Law Department and hosted by Mr Fryderyk ZOLL, Assistant Professor in the Department. Over 60 students attended the lecture.

On 30 April in Warsaw, Mr DIAMANDOUROS' first meeting of the day was with Ambassador Bruno DETHOMAS, Head of the European Commission Delegation in Poland and Mr Toon STREPPPEL, Head of the European Parliament Information Office. Mr DIAMANDOUROS then had a meeting with the Commissioner for Civil Rights Protection and with the Unit Directors and Section Heads of the Commissioner's Office. After lunch, Mr ZOLL chaired a meeting with representatives from a wide variety of NGOs. Mr DIAMANDOUROS, accompanied by the Deputy Commissioner for Civil Rights Protection, Mr Jerzy ŚWIĄTKIEWICZ, then held meetings with Mr Marek SAFJAN, President of the Constitutional Tribunal, Mr Roman HAUSER, President of the Supreme Administrative Court and Mr Longin PASTUSIAK, Speaker of the Senate.



Mr Diamandouros lectures to students at the European Forum of the College of Europe's Natolin Campus. Natolin, Poland, 30 April 2004.

Later in the evening, Mr DIAMANDOUROS gave a public lecture on "Citizens' rights, means of redress and the European Ombudsman" at the European Forum of the College of Europe's Natolin Campus. Over 60 current and former students attended the lecture, which was introduced by Mr Piotr NOWINA-KONOPKA, Vice-Rector of the College of Europe. The Ombudsman then accompanied Mr Andrzej ZOLL to the EU enlargement celebrations on the Pilsudski Square, where they met with the President of Poland, Mr Aleksander KWASNIEWSKI and the Presidents of the Parliament's two chambers.

On 1 May, the day began with a meeting with the President of Poland, Mr Aleksander KWASNIEWSKI, which was followed by a brunch in honour of enlargement, hosted by the President and Minister of Culture, in the Royal Castle of Warsaw.

AUSTRIA

On 24 and 25 May, the Ombudsman visited Austria.

On 24 May, Mr DIAMANDOUROS held a series of meetings in Vienna with Mr Heinz FISCHER, President-elect of Austria, Mr Andreas KHOL, President of the Lower House of Parliament and Mr Franz FIEDLER, President of the Court of Auditors. Mr Dieter BÖHMDORFER, Minister of Justice, hosted a lunch in honour of Mr DIAMANDOUROS.

The next day, the Ombudsman held meetings with Ms Beate WINKLER, Director of the European Monitoring Centre on Racism and Xenophobia and with Mr Michael REINPRECHT, Head of the



Information Office of the European Parliament in Austria. Mr DIAMANDOUROS' visit concluded with a public lecture on "Rule of law, democracy and the Ombudsman" at the Diplomatic Academy, Vienna, which was co-organised by the Academy and the European Commission Representation in Austria.



Mr Peter Kostelka, Chair of the Austrian Ombudsman Board, Mr Diamandouros and Mr Heinz Fischer, President-elect of Austria. Vienna, Austria, 24 May 2004.

ROMANIA

From 26 to 28 May, the Ombudsman visited Romania.



Mr Ioan Muraru, People's Advocate of Romania, Mr Diamandouros and Mr Nicolae Popa, President of the Constitutional Court of Romania. Bucharest, Romania, 28 May 2004.

Mr DIAMANDOUROS was welcomed by the Romanian People's Advocate, Mr Ioan MURARU, his Deputy, Mr Gheorghe IANCU, the institution's Secretary-General, Mr Nicolae LAPA and Ms Andreea ABRUDAN, foreign relations expert. Later in the afternoon, Mr DIAMANDOUROS visited

the European Commission Delegation in Bucharest, where he met Ms Anne de LIGNE, Head of the PHARE Section, Ms Raluca PRUNĂ and Ms Camelia SUICĂ, respectively Task Manager and Team Leader responsible for Justice and Home Affairs.

On 27 May, Mr DIAMANDOUROS visited the office of the People's Advocate, where he had a meeting with the Ombudsman and senior members of staff. A visit to the Ministry of Justice of Romania took place in the afternoon, where Mr DIAMANDOUROS met Ms Simona-Maya TEODOROIU, Secretary of State for Justice. On 28 May, Mr DIAMANDOUROS visited the Romanian Constitutional Court, where he was welcomed by the institution's Secretary-General, Ms Ruxandra SABĂREĂNU. The visit ended with a meeting with the President of the Constitutional Court, Mr Nicolae POPA.

GREECE

From 30 June to 2 July, Mr DIAMANDOUROS held a series of meetings, lectures and media events in Greece. The Greek Ombudsman, Mr Yorgos KAMINIS, accompanied him to all events.

On 30 June in the morning, Mr DIAMANDOUROS had a meeting with Mr Prokopis PAVLOPOULOS, Minister of the Interior, Public Administration and Decentralisation. He then met Mr Costas SIMITIS, former Prime Minister and Mr Nicos CONSTANTOPOULOS, Leader of the Synaspismos Party. In the afternoon, Mr DIAMANDOUROS was received by Ms Anna BENAKI-PSAROUDA, President of the Greek Parliament, and subsequently by Ms Aleka PAPANIGHA, Secretary-General of the Communist Party of Greece and Mr George KARATZAFERIS, Leader of the Popular Orthodox Rally Party (LAOS).



Mr Yorgos Kaminis, Greek Ombudsman, Mr Kostas Karamanlis, Prime Minister of Greece and Mr Diamandouros. Athens, Greece, 2 July 2004.

In the evening, Mr DIAMANDOUROS gave a public lecture in the National Research Foundation. The lecture, which was hosted by the non-governmental organisations "OPEK", "Paremvassi" and "Citizens' Movement" was entitled "The European Ombudsman as a mechanism of defending the fundamental rights of European citizens". The next day, Mr DIAMANDOUROS gave a public lecture at the Esperia Palace Hotel. The lecture, which was organised by ELIAMEP (Hellenic Foundation for European and Foreign Policy), was entitled "The European Ombudsman, European public administration and European citizens: a developing relationship".



Later that day, Mr DIAMANDOUROS met with Mr George PAPANDREOU, Leader of the Panhellenic Socialist Movement (PASOK). In the evening, he had a meeting with Mr Kostis STEFANOPOULOS, President of Greece, at the Presidential Palace.

On 2 July, Mr DIAMANDOUROS met with Mr Kostas KARAMANLIS, Prime Minister of Greece. On the same day, he also held meetings with the President of the Council of State, Mr Christos GERARIS and with the Heads of the European Parliament Representation and European Commission Representation in Athens, respectively Mr George KASIMATIS and Mr George MARKOPOULIOTIS.

THE NETHERLANDS

Mr DIAMANDOUROS visited the Netherlands (Rotterdam, The Hague, Leiden and Nijmegen) from 15 to 19 September.

In The Hague, Mr DIAMANDOUROS met with his national colleague, Mr Roel FERNHOUT, Ombudsman of the Netherlands, who accompanied him to his meetings with Mr Atzo NICOLAÏ, Minister for European Affairs of the Netherlands and Mr Pieter VAN DIJK, member of the Council of State and former judge of the European Court of Human Rights. While in The Hague, Mr DIAMANDOUROS also met Mr Lambert VAN NISTELROOIJ MEP, Mr Hans Blokland MEP, Ms Corien WORTMANN-KOOL MEP, as well as Mr Nico WEGTER, Director of the European Commission Representation in The Netherlands, Mr Sjerp VAN DER VAART, Director of the European Parliament Information Office and Ms Marion VAN EMDEN, Director of the European Movement in the Netherlands.



Mr Diamandouros and Mr Roel Fernhout, Ombudsman of the Netherlands.
The Hague, the Netherlands, 17 September 2004.

During his stay in Rotterdam, the Ombudsman gave two public lectures: one on “The dual role of the ombudsman” at the 3rd Quality Conference for Public Administrations in the EU and one on “The European Ombudsman: the guardian of good administration” at the Law Faculty of the Erasmus University. He also spoke at the Law Faculty of Leiden University on “The European Union Constitution and the role of the European Ombudsman”. While in Rotterdam, Mr DIAMANDOUROS had a meeting with the Municipal Ombudsman, Mr Migiel VAN KINDEREN.

On Sunday 19 September in Nijmegen, Mr DIAMANDOUROS and Mr FERNHOUT participated in the commemoration of the 60th anniversary of operation “Market Garden”. The commemoration included a welcome by the Mayor of Nijmegen at the town hall, a parade of allied veterans and a ceremony of laying wreaths near the war monument, in which both Mr DIAMANDOUROS and Mr FERNHOUT laid wreaths on behalf of their respective institutions.

PORTUGAL

From 21 to 22 October 2004, the Ombudsman visited Portugal.

During his two-day stay in Lisbon, the Ombudsman had occasion to meet the Prime Minister, Mr Pedro SANTANA LOPES, the Minister of Foreign Affairs, Mr António MONTEIRO and the Minister of Justice, Mr José AGUIAR BRANCO. He was also welcomed by the President of the Assembly, Mr. João MOTA AMARAL who hosted a lunch, that was attended by high-ranking parliamentary representatives covering virtually all of the political parties. The Ombudsman had an informal exchange of views with the European Commissioner for Justice and Home Affairs, Mr António VITORINO and attended a dinner hosted by the Portuguese Ombudsman, which was attended by the President of the Supreme Administrative Court, Mr Manuel Fernando DOS SANTOS SERRA, the acting President of the Constitutional Court, Mr MOURA RAMOS and the former Foreign Minister and current Member of Parliament, Mr Jaime GAMA, along with Mr Jorge MIRANDA of the University of Lisbon. During the Ombudsman’s stay, the Head of the European Parliament Office, Mr Paulo SANDE, also hosted a working lunch with Portuguese Members of the European Parliament including, from the PPE group, Ms Assunção ESTEVES, from the PSE Group, Mr Luís Manuel CAPOULAS SANTOS, Mr Fausto CORREIA, Mr António COSTA, Ms Edite ESTRELA, Mr Emanuel JARDIM FERNANDES, Ms Elisa FERREIRA, Ms Ana Maria GOMES, Ms Jamila MADEIRA and from the UEN group, Ms Ilda FIGUEIREDO and Mr Sérgio RIBEIRO.



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Mr Diamandouros, Mr Henrique Nascimento Rodrigues (second from left), Ombudsman of Portugal and members of their staff. Lisbon, Portugal, 21 October 2004.

With a view to reaching out to citizens, the Ombudsman spoke at an event organised by the Head of the Representation of the European Commission to Portugal, Ms Margarida MARQUES. The Ombudsman’s speech was entitled “Building a citizen-centred Europe: the European Ombudsman and the European Constitution”. Over 30 people attended the meeting and participated in the lively questions and answers session that covered issues such as immigration, discrimination, access to health services and good administration. The meeting was followed by a reception, during which the Ombudsman discussed his work with members of the public. On the second day of his visit, the Ombudsman spoke at the Faculty of Law of the University of Lisbon on “Fundamental rights



in the European Union and the European Ombudsman". Mr Jorge MIRANDA introduced the Ombudsman to the audience of around 50 students and faculty members.

FRANCE

From 1 to 2 December 2004, the Ombudsman visited Paris.

Following a short bilateral meeting with the French Ombudsman, Mr Jean-Paul DELEVOYE, the European Ombudsman engaged in an exchange of views with the Heads of Service in the French Ombudsman's Office, led by Mr Bernard DREYFUS, Senior Director. He then had lunch with the former French Ombudsman, Mr Bernard STASI, during which they discussed Mr STASI's current role in establishing the High Authority to Combat Discrimination and Promote Equality in France. The Ombudsman then met the Secretary of State responsible for State Reform, Mr Eric WOERTH, followed by the European Affairs Advisor to the Prime Minister, Ms Pascale ANDREANI. The second day of the Ombudsman's visit saw meetings with Mr Renaud DENOIX DE SAINT-MARC, Vice-President of the Council of State, Mr Jean-Claude COLLIARD, member of the Constitutional Council, and Ms Claudie HAIGNERE, Minister for European Affairs.

During his two-day visit to Paris, the Ombudsman addressed an audience of 35 students at the Institute of Political Studies on the topic "The European Ombudsman and European citizenship". Mr Renaud DEHOUSSE introduced the Ombudsman, while Ms Florence DELOCHE-GAUDEZ, Secretary General of the European Forum of the Political Science Faculty, chaired the event. The Ombudsman also had the opportunity during his stay to meet with Mr Jean-Guy GIRAUD, Head of the Information Office of the European Parliament in Paris and Mr Yves GAZZO, Head of the European Commission Representation.

6.3 OTHER CONFERENCES AND MEETINGS

The Ombudsman is increasingly called upon to participate in conferences and seminars throughout Europe. The issues under discussion range from the EU's efforts to communicate with citizens to the Constitution for Europe, and from the proposal for a new Fundamental Rights Agency for the Union to the possibility of a law on good administration for the EU institutions and bodies. The Ombudsman is keen to participate actively in these meetings, which help raise awareness of his work among key stakeholders. Where he cannot participate personally, the Ombudsman entrusts the representation of the institution to a relevant staff member.

The Ombudsman further raises awareness about his work and the range of issues he is called upon to deal with during meetings with political representatives, members of non-governmental organisations, interest groups, students and citizens, to name but a few. The Ombudsman's staff is equally active in this regard. The following section gives an account of the full range of such activities during 2004.

INVOLVING THE OMBUDSMAN

Informal Ministerial Conference on "Communicating Europe" - Wicklow, Ireland

From 6 to 7 April, the Ombudsman attended the Informal Ministerial Conference organised by the Irish Minister of State for European Affairs, Mr Dick ROCHE, in County Wicklow, Ireland. The Conference was entitled "Communicating Europe" and was attended by ministers and secretaries of state for European affairs from existing, acceding and candidate states, delegations from the

Western Balkans and representatives of the EU institutions. Mr DIAMANDOUROS addressed the Conference after the formal opening by Minister ROCHE and speeches by Mr Pat COX, President of the European Parliament and Mr António VITORINO, European Commissioner. He underlined the important role the Ombudsman plays in empowering citizens and informing them about their rights. In this way, the Ombudsman can help address the challenge of “Communicating Europe” to citizens in the enlarged Union, he said. Mr DIAMANDOUROS went on to highlight the need to deliver concrete results to citizens, by enabling them to enjoy their EU-related rights to the full.

International Conference on “The position of Constitutional Courts following integration into the European Union” - Bled, Slovenia

The Ombudsman participated in an international conference entitled “The position of Constitutional Courts following integration into the European Union” held in Bled, Slovenia, from 30 September to 2 October. The conference was opened by the President of the Constitutional Court of Slovenia, Ms Dragica WEDAM LUKIĆ. Introductory speeches were given by Mr Erwan FOUÉRE, Head of the European Commission Delegation to Slovenia, Mr Christos ARTEMIDES, President of the International Conference of European Constitutional Courts, Mr Didier MAUS, Judge of the Constitutional Tribunal of Andorra, Mr Luzius WILDHABER, President of the European Court of Human Rights, Mr Vassilios SKOURIS, President of the Court of Justice of the European Communities and Mr DIAMANDOUROS.



© the Position of Constitutional Courts International Conference

Mr Diamandouros addresses the International Conference on “The position of Constitutional Courts following integration into the European Union”. Bled, Slovenia, 30 September 2004.

This was followed by a presentation of experiences of the Constitutional Courts of some EU Member States, concerning the EU Legal System. Contributions were made by representatives of the Constitutional Courts of Austria, Germany and Italy.

On 1 October, representatives of the Constitutional Courts of the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia, as well as of the Supreme Courts of Cyprus and Estonia, made a presentation of constitutional amendments related to integration into the EU, the role of constitutional courts following integration into the EU, and the assessment of their readiness for new challenges. Ms Dragica WEDAM LUKIĆ gave the closing speech.

34th Asser Colloquium on European Law - The Hague, the Netherlands

On 15 October, Mr DIAMANDOUROS attended the 34th Session of the Asser Colloquium on European Law, which was entitled “The EU Constitution: The best way forward?”. Mr DIAMANDOUROS participated in Parallel Session III A on “The democratic life of the European Union” with a lecture on “The European Ombudsman and the European Constitution”. The Session was chaired by Ms Deirdre CURTIN, Professor at the Utrecht School of Governance.

Lecture at the University of Athens - Greece

On 22 December, the Ombudsman gave a lecture at the Department of Political Science and Public Administration of the University of Athens. The lecture formed part of the Department’s Postgraduate Programme in European and International Studies. The title of the Ombudsman’s lecture was “Rule of law, democracy, accountability and the institution of the Ombudsman”.

Other

On 19 January, Mr DIAMANDOUROS met in Paris with Ms Noelle LENOIR, French Minister for European Affairs, to discuss a number of administrative issues concerning the Office of the European Ombudsman.

On 28 January, the Ombudsman gave a public lecture at the Faculty of Law of the University of Udine, Italy. Mr DIAMANDOUROS was welcomed by the Rector of the University, Mr Furio HONSELL. Around 100 people attended the lecture, including Mr Maurizio MARESCA, Professor of International Law, and the Regional Ombudsman of Friuli Venezia-Giulia, Ms Caterina DOLCHER.



Mr Diamandouros with students from the Faculty of Law of the University of Udine, Italy, 28 January 2004.

On the same day, the Ombudsman met with the President of the Italian region of Friuli Venezia-Giulia, Mr Riccardo ILLY. During this meeting, the Ombudsman presented the European Code of Good Administrative Behaviour, which the President was very interested in. The President subsequently proposed that it be adopted by the regional administration of Friuli Venezia-Giulia.



Later that day, the Ombudsman presented his work to members of the Chamber of Commerce of Trieste. The Ombudsman of Trieste, Mr Alessandro ZANMARCHI, also participated in this meeting.

On 29 January, Mr DIAMANDOUROS gave a speech to students at the Faculty of Law of the University of Trieste, Italy. He was introduced by Mr Sergio BARTOLE, Director of the Department of Juridical Sciences.

On 11 February, Mr García VALLEDOR, the Minister for External Relations in the regional government of Asturias (Spain), paid a visit to the European Ombudsman in Strasbourg. He was accompanied by his Head of Cabinet, Mr Jorge PRADO, Ms Maria Luisa BERGAZ MEP, and Mr Dionisio FERNÁNDEZ, Political Advisor of the United Left Group in the European Parliament. Mr García VALLEDOR expressed the willingness of the government of Asturias to submit a legislative proposal to the regional parliament for the establishment of an ombudsman. Mr DIAMANDOUROS welcomed this initiative and offered his support and that of his staff.

On 9 March, Mr DIAMANDOUROS met several representatives from the European Parliament's Disability Support Group (EPDSG), including Ms Marie LUIJTEN, Ms Saija JARVENTAUSTA, Mr Helge POULSEN and Mr Philip SCOTT. EPDSG, which consists of a number of officials from the Parliament concerned with disability-related issues, expressed support for the work of the Ombudsman concerning the integration of disabled people. The Group's representatives welcomed the Ombudsman's own-initiative inquiry into the integration of persons with disabilities and his position on different complaints concerning the integration of disabled children by the European Schools. Mr DIAMANDOUROS gave an overview of his actions in this area and encouraged EPDSG to provide further information that could be of help to the Ombudsman in his inquiries.

On 12 March, Mr Péter BÁRÁNDY, Hungarian Minister for Justice, accompanied by Ms Judit DEMETER, Mr Lipót HOLZTZ and Mr István SOMOGYVÁRI, and by Mr Zoltán TAUBNER, Hungarian Ambassador to the Council of Europe, paid a visit to Mr DIAMANDOUROS in Strasbourg. A number of issues were discussed, including co-operation between the Hungarian Parliamentary Commissioners and the European Ombudsman in view of Hungary's accession to the EU.

On 25 March, the European Ombudsman gave a public lecture at the Faculty of Political Science of the University of Genoa, Italy. Mr DIAMANDOUROS was introduced by Mr Adriano GIOVANNELLI, Dean of the Faculty. The lecture was attended by about 70 people.

On the same day, Mr DIAMANDOUROS was the keynote speaker at a conference organised by the *Società di letture e conversazioni scientifiche* in Genoa. He was welcomed, on behalf of the Society, by its President, Mr Umberto COSTA, and Mr Gianpaolo GANDOLFO. Mr DIAMANDOUROS spoke on "Rule of law, democracy and the institution of the Ombudsman: a European perspective".

On 26 March, Mr DIAMANDOUROS met in Genoa with the President of the Council of Liguria, Mr Francesco BUZZONE, and discussed the role of the European Ombudsman.

On 27 March, Mr DIAMANDOUROS met in Lerici, Italy, with the Mayor of the Municipality of Lerici, Mr Emanuele FRESCO, to mark the inauguration of the office responsible for relations with the public.

On 14 September, Mr DIAMANDOUROS met in Strasbourg with Mr Taro NAKAYAMA, Mr Yoshito SENGOKU, Mr Yukio EDANO, Mr Okiharu YASUOKA and Mr Motohiko KONDO, Members of Parliament from Japan. The parliamentarians, Members of the Research Committee on the Constitution of Japan, were accompanied by Mr Ryuichi SHOJI, Consul-General of Japan in Strasbourg. Issues related to the constitutional framework of the European Union and the role and work of the European Ombudsman were discussed.

On 16 November, Mr DIAMANDOUROS spoke to over 100 Italian students, who were in Strasbourg as part of a two-day trip to the European Parliament. The students had won a competition organised by the Parliament, aimed at increasing awareness about the EU. The Ombudsman explained his role to the students and answered a range of questions about his work.



On 10 December, on the occasion of his participation in a Conference in Istanbul, Turkey, Mr DIAMANDOUROS paid a visit to His All Holiness BARTHOLOMEW, Archbishop of Constantinople, New Rome and Ecumenical Patriarch of the Orthodox Christian Church.

INVOLVING THE OMBUDSMAN'S STAFF

Events and meetings

On 24 February, Mr Olivier VERHEECKE, Principal Legal Adviser, met with Mr Anar CAHANGIRLI and Mr Anar KARIMOV, from the Mission of Azerbaijan to the EU, to discuss possible collaboration between the recently established Ombudsman of Azerbaijan and the European Ombudsman.

On 13 May, Mr Kostas KOURTIKAKIS, a Ph.D. student from the University of Pittsburgh, USA, visited the Brussels office of the European Ombudsman to interview the Ombudsman's Internet and Communications Officer, Mr Ben HAGARD and his Press and Communications Officer, Ms Rosita AGNEW, about the European network of ombudsmen. Mr KOURTIKAKIS then travelled to Strasbourg, where he interviewed the Ombudsman, the Head of the Legal Department, Mr Ian HARDEN, and a Legal Officer, Mr Peter BONNOR. These interviews focused on the role of the European network of ombudsmen in helping to ensure the correct implementation of EU law at the level of the Member States.

On 1 October, Mr Olivier VERHEECKE responded to questions about the Ombudsman's work from Mr Alexandros TSADIRAS, a former trainee at the Ombudsman's Office and PhD-student at the University of Oxford. On 8 October, Mr VERHEECKE met Ms Neeltje SMITSKAMP, student at the University of Amsterdam, for a similar interview.

On 5 October, Mr Ian HARDEN and Ms Rosita AGNEW travelled to Amsterdam for the Informal Ministerial Conference entitled "Communicating Europe". This meeting was a follow-up to the first meeting on this subject held in Wicklow, Ireland, in April 2004. It was convened by the Dutch Minister for European Affairs, Mr Atzo NICOLAÏ, to address the question of how to make citizens feel more involved in Europe, particularly in light of the upcoming referenda on the European Constitution. Ministers or public officials from all 25 Member States, as well as the candidate countries, attended the meeting, along with Commissioners António VITORINO and Margot WALLSTRÖM and European Parliament President Josep BORRELL. Former European Parliament President Pat COX moderated the meeting. While the Ombudsman himself could not attend the meeting, his paper, entitled "Communicating Europe - the opportunities presented by the Constitution", was circulated to all participants and to the press. The meeting was held in public.

On 23 November, Mr Olivier VERHEECKE received in the Brussels' office Mr Sinisa RODIN, Professor of Constitutional Law and European Law at the University of Zagreb, who was visiting the EU institutions in the framework of the "European Union Visitors Programme".

On 6-7 December, the Swedish Agency for Public Management organised an informal expert meeting to discuss the prospect of an administrative law for the EU and to consider the possibility of a future European Administrative Area. Over 50 people attended the meeting, including public officials and academics from all over Europe. Mr Ian HARDEN and Ms Rosita AGNEW represented the Office of the Ombudsman. During the session on the first day, entitled "Regulating good administration in the institutions of the EU: The experience so far and the potential of Article III-398", Mr HARDEN spoke about the European Code of Good Administrative Behaviour. The second day focused on "Integrating the administrations of the Member States: Can there be a roadmap for a European Administrative Area?"

On 9 December, Mr Olivier VERHEECKE received in the Brussels office Mr Lodewijk BOS, Trade Secretary at the Permanent Representation of the Netherlands to the EU, and provided him with information concerning the possibility for companies to complain to the Ombudsman.

On 15 December, Mr Olivier VERHEECKE attended the High-level Panel on "The proposed EU Human Rights Agency; an opportunity for a coherent human rights policy", which was organised



by the Brussels think tank "The Centre". The debate was chaired by Mr Walter VAN GERVEN, former Advocate General at the European Court of Justice and Professor at the Catholic University of Leuven. The speakers on the Panel were Mr Jonathan FAULL, Director-General of the European Commission's DG Justice, Freedom and Security, Mr Jorg POLAKIEWICZ from the Council of Europe and Ms Alpha CONNELLY, Chief Executive of the Irish Human Rights Commission. The various presentations were followed by a lively debate.

Group presentations

In 2004, Mr DIAMANDOUROS and members of his staff explained the role and work of the Ombudsman to:

January

- a group of students from the *Hochschule Magdenburg-Stendal*, Germany;
- a group of students from the Institut des Hautes Etudes Européennes of the Robert Schuman University of Strasbourg, France;

February

- 50 students, accompanied by Mr Willem BONEKAMP, from the University of Twente, the Netherlands;
- 10 representatives of non-governmental organisations from Latvia;
- 40 students, led by Mr Michael McKEEVER, from the Trinity School of Nottingham, UK;
- civil servants from the German Federal Academy of Public Administration. This group was accompanied by the seminar leader, Ms Christiane BÖDDING;

March

- 10 senior civil servants taking part in a seminar organised by France's *Ecole Nationale d'Administration* (ENA), Strasbourg, France;
- 7 civil servants from the Danish Parliament's EU affairs department;
- 50 students from the European Law Students' Association (ELSA), from Padova, Italy;
- members of the *Club des médiateurs du service public* in Paris. This meeting was organised by the Ombudsman of the RATP (the Paris city transport authority), Mr Cyrille DE LA FAYE;
- a group of students from the University of Southern Denmark, Odense;
- 45 students from the *Technische Universität Chemnitz*, Germany, within the framework of a trip to Strasbourg organised by the *Bildungswerk Sachsen der Deutschen Gesellschaft e.V.* The participants were accompanied by Ms Elke FEILER from the *Bildungswerk*;

April

- 45 students, accompanied by their teacher, Mr GRAF, from the *Staatliche Berufsschule Landsberg am Lech*, Bavaria, Germany;
- 50 students from the *Europa-Institut* of the University of Saarbrücken, Germany. The students were accompanied by Ms HÖRRMANN and Ms ELSNER from the *Europa-Institut*;
- 17 pupils from the regional province of Agrigento, Italy. The pupils' trip to Strasbourg was offered to the winners of a competition entitled "The European identity";



- 27 Romanian trainees attending a seminar on public administration at the *Ecole Nationale d'Administration* (ENA), Strasbourg, France;
- 50 participants at the Annual Conference of the European Information Association in Edinburgh, Scotland. The conference was entitled "A changing Europe: challenges and opportunities for the information professional";
- 50 participants at the European Seminar of the International Kolping Society. This seminar was headed by Mr Anton SALESNY;

May

- 20 students from the Eberhard Karls University in Tübingen, Germany. This visit was arranged by Mr Rudolf HRBEK;
- a group of 16 officials from various countries in Asia who were participating in a training course organised by the *Centre des Etudes Européennes de Strasbourg*. This group was accompanied by Mr Felix MÜLLER;
- 35 students from Central and Eastern Europe, within the framework of a visit organised by Ms Elke FEILER from the *Bildungswerk Sachsen der Deutschen Gesellschaft e.V.*; Ms FEILER also organised a visit of 35 representatives of trade associations and businessmen from Saxony to hear about the Ombudsman's work;
- 34 members of the Social Democratic Party from Copenhagen, Denmark;
- 30 students from the Viadrina University, Frankfurt an der Oder, Germany;
- 30 pupils of the nursing school in Herne, Germany, within the context of a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter;
- participants at the two-day event entitled "Seminar on petitions and rights of EU citizens", organised by the European Commission's DG Enlargement (TAIEX Office) for Members of Parliament of the new Member States, as well as Romania, Bulgaria and Turkey;
- 30 visitors from the Swedish Emergency Management Agency, accompanied by Ms Ing-Marie PERSSON from the Agency;
- 30 civil servants from the region of Aragon, Spain, participating in a seminar organised by the European Institute of Public Administration (EIPA);

June

- participants at the two-day seminar "Backing competitiveness with quality public administration", organised by the European Institute of Public Administration (EIPA);
- 50 students from the University of Potsdam, Germany, accompanied by Mr Eckart KLEIN;
- a group of political science students, accompanied by Assistant Professor Ms Francesca VASSALLO from the University of Southern Maine, USA;
- a group of 23 persons comprising members of the supervisory board of the *Volksbank Bühl*, Germany. The group was accompanied by Mr Klaus GRAS;
- participants at the "Seminar on petitions and rights of EU citizens", organised by the European Commission's DG Enlargement (TAIEX Office) for Members of the Bulgarian Parliament and Bulgarian experts in the Commission;
- participants at the seminar "Human rights and the European Union", organised in London by *Justice* in conjunction with Monckton Chambers and Doughty Street Chambers;



- 30 members of the Kiwanis Club from Offenburg, Germany;
- 50 pupils from Baden, Austria;

July

- 30 French lawyers at a study day entitled *Entretiens communautaires*. This event was organised by the *Délégation des Barreaux de France* in Brussels;
- 35 representatives from the Department for Schools of the Mittelfranken region, Germany;

September

- 40 students who were taking part in a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter, Germany. The students were accompanied by Mr Benjamin WITTEKIND;
- a group of visitors from the State Bureau for Letters and Calls of the People's Republic of China;
- 30 civil servants from various German ministries, in the context of a visit to Brussels organised by the *Bundesakademie für Öffentliche Verwaltung*;
- 30 secretaries working at schools in North Rhine-Westphalia, within the context of a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter;

October

- students attending the 19th Session of the European Institute of Public Affairs and Lobbying (EIPAL) in Brussels;
- 30 participants in a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter;
- 20 members of a group from the *Bildungswerk für Demokratie, soziale Politik und Öffentlichkeit*, Germany;
- a group of visitors from the Greek Info-Points;
- 25 persons working for the Christian Democratic Union in Germany, within the context of a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter;

November

- participants at a conference in Budapest entitled "Freedom of information today and tomorrow". The conference was organised by the Open Society Archive and the Hungarian Commissioner for Data Protection and Freedom of Information, Mr Attila PÉTERFALVI.
- 60 members of *Club Europe*, led by Mr Pascal MANGIN, the Mayor of Strasbourg's attaché for European and international affairs of the Mayor of Strasbourg, France;
- 120 participants at a seminar of the AKEL Party in Nicosia, Cyprus;
- 30 civil servants and journalists from Greece, invited by Ms Maria MATSOUKA MEP, Vice-Chair of the Committee on Petitions;
- 25 employees of the German Christian Democratic Union, within the framework of a seminar organised by the *Karl-Arnold-Stiftung* in Königswinter;
- a group of senior Croatian civil servants, within the context of a seminar organised by the *Ecole Nationale d'Administration (ENA)*, Strasbourg, France;



December

- researchers specialising in European administrative law, at a seminar organised by Mr Jacques ZILLER from the Law Department of the European University Institute, Florence, Italy.

6.4 MEDIA RELATIONS

The media play a vital role in reinforcing the impact of the Ombudsman's reactive and proactive work. By covering his complaint-handling and communications activities, the print, broadcast and electronic media help to inform citizens about the service that the Ombudsman provides. Equally important is the attention the media draw to cases where a certain degree of public pressure may be called for, namely in cases where the Ombudsman finds it necessary to make a critical remark, a draft recommendation or a special report to Parliament. In such instances, the media can help emphasise the importance of the case, thereby prompting the institution or body towards finding a solution for the citizen. Finally, the Ombudsman is at times called to provide an account to the media of his priorities and views, and the reasons underpinning them.

The Ombudsman's media activities range from interviews to press conferences and from written articles to press releases. These initiatives may be linked to an important event, for example, the presentation of the Annual Report to the European Parliament's Committee on Petitions, or directly to the Ombudsman's inquiries. Each contact enables the Ombudsman to respond to questions about his role, to explain his views on key issues, to highlight his priorities and to outline his aspirations.

The Ombudsman issued thirty-four press releases in 2004, meaning one every 11 days. Distributed to journalists and interested parties throughout Europe, these press releases helped raise awareness about the most notable cases dealt with during the year. These included, among others, problems in the handling of radioactive material in the Commission's Institute for Transuranium Elements in Germany, the integration of people with disabilities by the European Commission and possible shortcomings in an OLAF inquiry into allegations of fraud.

The Ombudsman gave over 40 interviews to representatives of print, broadcast and electronic media in 2004, in Strasbourg, Brussels and, during his information visits, further afield. He also presented his work and responded to questions during press conferences, briefings, meetings and lunches. This section lists the interviews given by the Ombudsman and his staff in 2004 and includes the range of media events organised during the year.

- On 8 January, the Ombudsman gave an interview to Mr Cai RIENÄCKER, a journalist from German public radio, *ARD*. Questions covered included the Ombudsman's priorities, successful cases dealt with from Germany and co-operation with national and regional ombudsmen and similar bodies.
- On 13 January, the Ombudsman was interviewed by Ms Lise LANCON for *Strasbourg Magazine*. The journalist asked general questions about the Ombudsman's work, such as the number and type of complaints dealt with and the efforts undertaken to raise awareness of the Ombudsman.
- On 14 January, an Italian journalist, Mr Paolo MAGAGNOTTI, interviewed Mr DIAMANDOUROS for a short documentary on the role of the European Ombudsman to be broadcast in Italy and further afield.
- On 15 January, the Ombudsman gave a telephone interview to Ms Tina SPILIOTI from the Cypriot weekly newspaper, *Neos Typos*. Ms SPILIOTI asked the Ombudsman about his work, particularly in the accession countries.

- On 26 January, in the framework of his information visit to Slovenia, the Ombudsman was interviewed by Slovene public television. Mr DIAMANDOUROS answered questions on the role of the European Ombudsman and his relations with the Slovene Human Rights Ombudsman, Mr Matjaž HANŽEK.
- On 27 January, the Slovene Ombudsman's Office organised a press conference to mark the end of the European Ombudsman's visit. Around 15 journalists attended and asked questions about the quality of the EU administration and the response of the administration to the Ombudsman's inquiries. They were also keen to have examples of complaints dealt with by the European Ombudsman.
- Later that day, the Ombudsman was interviewed by Ms Urška MLINARIČ from the Slovene national daily newspaper, *Večer*, Ms Barbara KUŽNIK from national radio and Ms Tanja TAŠTANOSKA from the weekly newspaper *Žurnal*.
- On 29 January, the European Ombudsman and the Regional Ombudsman of Friuli Venezia-Giulia, Ms Caterina DOLCHER, participated in a press conference organised by the Regional Council in Trieste, Italy. During the event, Mr DIAMANDOUROS responded to questions from Mr Pietro COMELLI, *Il Piccolo*, Mr Luciano SANTIN, *Messaggero Veneto*, Ms Sonia SICCO, *ANSA*, Mr Alvise SFORZA, *Antenna 3*, Mr Duccio PUGLIESE, *LUXA TV*, and Mr Pierpaolo DOBRILLA, *CENTRO TV Friuli Venezia-Giulia*.
- On 11 February, Mr Olivier VERHEECKE, Principal Legal Adviser, gave a live interview to Ms SIMONOT from Brussels Radio *BFM* about the Ombudsman's decision concerning the policy of the European Parliament with regard to smoking in its premises.
- On 19 February, in the framework of his information visit to Slovakia, the Ombudsman and Mr Pavel KANDRÁČ, Public Defender of Rights, participated in a press conference in the premises of the Chancellery of the National Council of Slovakia, which was chaired by Mr Azelio FULMINI, Head of the European Parliament Office in Slovakia.
- On 1 March, Mr DIAMANDOUROS gave a press conference at the Office of the Commissioner for Administration of Cyprus, Ms Eliana NICOLAOU. About 15 journalists attended the event.



Mr Diamandouros and Ms Eliana Nicolaou, Commissioner for Administration of Cyprus, address a press conference. Nicosia, Cyprus, 1 March 2004.

- The same day, Mr DIAMANDOUROS gave a 35-minute television interview to journalist Mr Kyriakos PIERIDES from the *Cyprus Broadcasting Corporation (CYBC)*. *CYBC* also covered the lecture which Mr DIAMANDOUROS gave on 3 March, at the meeting with Greek and Turkish Cypriots co-organised by the Forum for the Modernisation of Society (OPEK) and the Turkish



Cypriot platform of NGOs “This Country is Ours”. Both events were broadcast in a single programme dedicated to the role of the European Ombudsman.

- On 2 March, Mr DIAMANDOUROS gave an interview to various television and radio stations in the office of the Cypriot Minister of Interior Affairs, Mr Andreas CHRISTOU.
- On 9 March, Ms Cristina CARPINELLI, journalist for Italian *Radio 24*, interviewed Mr DIAMANDOUROS for a weekly programme on EU affairs.
- On 11 March, Mr Miguel ADROVER, Producer of *Europa 2004* for Spanish Public Television TVE, interviewed the Ombudsman. The purpose of the interview was to inform Spanish citizens about his role.
- On 11 March, Ms Rosita AGNEW, Press and Communications Officer, gave a telephone interview to Mr Christophe NONNENMACHER for *Strasbourg Magazine*. The journalist asked about the Ombudsman’s communications activities.
- On 24 March, the Ombudsman’s visit to the Czech Republic ended with a press conference at the European Union Information Centre (EUIC) in Prague. Around 15 people attended this event, which was followed by a number of bilateral interviews with the Ombudsman.
- On 27 March, the Ombudsman presented his work to journalists at a meeting organised by the Office of the Presidency of the Council of Liguria, Italy.
- On 31 March, Ms Luísa GODINHO, from Portuguese public television, RTP2, interviewed Mr DIAMANDOUROS as part of a series of interviews to be broadcast in the run-up to the European Parliament 2004 elections. Ms GODINHO asked Mr DIAMANDOUROS to outline the value of his work for citizens, to list the main challenges facing the Ombudsman and to explain his vision for the future of the institution.
- On 16 April, the European Ombudsman held a press conference at the Latvian National Human Rights Office in Riga. The Ombudsman’s presentation of his mandate and work was followed by a long and lively session, where over a dozen members of the press posed numerous questions on widely different issues. These included questions relating to the Ombudsman’s workload, the work with national and regional ombudsmen, inquiries relating to infringement of Community law at national level, corruption issues and language policy.
- Following the press conference, the Ombudsman was interviewed by the *Lauku Avīze* newspaper and the Russian-language *YAC* magazine.
- On 19 April, the Ombudsman was interviewed by Ms Danutė JOKUBĖNIENĖ from the Lithuanian magazine *Ekstra*.
- On 20 April, the Ombudsman was interviewed in Vilnius by Ms Austė STOŠKUTĖ for the *Euro-Integration News* magazine.
- On 21 April, the Ombudsman held a press conference in the *Seimas* (Parliament) of Lithuania. Following a brief account of his visit to Lithuania, the Ombudsman replied to questions on his caseload, the nature of the complaints, the co-operation with the Lithuanian Ombudsmen and his expectations regarding complaints from Lithuania after accession.
- Following the press conference, the Ombudsman was interviewed by Ms Jūratė NEDVECKAITĖ from the Lithuanian weekly newspaper *Laikas*.
- On 26 April, the Ombudsman held a press briefing with journalists, on the occasion of the publication of his *Annual Report 2003*. Eight journalists attended the briefing, including Ms Aine GALLAGHER, *Reuters*, Ms Johanna VESIKALLIO, *Finnish Press Agency*, Mr Tobias BUCK, *Financial Times*, Mr Brandon MITCHENER, *The Wall Street Journal Europe*, Mr Hans-Martin TILLACK, *Stern*, Mr Marcello FARAGGI, *MedialARTE*, Mr Brian BEARY, *European Report* and Mr Triadafilos STANGOS, from Greek Television ERT. Mr DIAMANDOUROS highlighted the most

important developments for the Ombudsman and for citizens in 2003 and answered questions about his Annual Report.

- Shortly before the press briefing, the Ombudsman was interviewed by Ms Charlotte HJORTH from *Europe-By-Satellite*, the EU's TV news agency. Ms HJORTH's questions focused on the value of the institution for citizens.



Mr Diamandouros addresses a press conference. Vilnius, Lithuania, 21 April 2004.

- Also on 26 April, the Ombudsman gave an interview to Mr Triadafilos STANGOS, a journalist with Greek television *ERT* and the European programme, *Eurocentrics*. The interview focused on the Ombudsman's work in 2003 and on Mr DIAMANDOUROS' priorities in office.
- Later that day, the Ombudsman gave another TV interview - this time for Estonian television. The journalist, Mr Indrek TREUFELDT, asked him what Estonian citizens could expect from his office and how they could file a complaint with him.
- On 30 April, Mr DIAMANDOUROS gave a press conference in Warsaw, which was chaired by the Commissioner for Civil Rights Protection of Poland, Mr Andrzej ZOLL. Over a dozen journalists were present, with representatives from major newspapers, magazines, television and radio. Mr DIAMANDOUROS presented his work and the reasons for his visit to Poland. Questions raised covered the types of complaints received by the European Ombudsman, the average time taken to handle a complaint, the Code of Good Administrative Behaviour and the European Ombudsman's discretion in determining what constitutes maladministration.
- The press conference was followed by interviews with Ms Małgorzata BORKOWSKA from *Trybuna* magazine and Ms Marzena KAWA from the *TVP3* television channel.
- On 6 May, the Ombudsman was interviewed by Mr Leo LINDER from *Leo Linder Filmproduktion* for an educational film for German students entitled "Users' instructions for Europe". The interview focused on the contribution the European Ombudsman makes in bringing the Union closer to citizens. Mr LINDER also filmed the Ombudsman's staff at work and profiled the case of a German citizen who had been refused residency in Luxembourg.
- On 6 May, Mr José MARTÍNEZ ARAGÓN, Principal Legal Adviser, gave a lecture on the role of the Ombudsman to a group of 20 journalists from different countries, participating in the European Weeks of Communication, organised by the Catholic University of Lyon.



- During his visit to Ankara, Turkey, on 11 and 12 May, Mr DIAMANDOUROS gave briefings to journalists from the TV station *NTV*, the national radio *TRT*, the daily newspaper *Yeni Safek* and the news agencies *Anadolu*, *Anka* and *Cihan*. Mr DIAMANDOUROS replied to questions relating to the competence of an ombudsman, the qualities required of a person to be elected ombudsman and the link between the proposal to establish an ombudsman in Turkey and Turkey's application for EU membership.
- On 27 May, a journalist from the *România Liberă* newspaper attended a presentation by Mr DIAMANDOUROS to a group of officials from the office of the Romanian People's Advocate on the role and main achievements of the European Ombudsman. At the end of Mr DIAMANDOUROS' speech, the journalist asked a number of questions regarding the scope of powers of the European Ombudsman and the rights of Romanian citizens in the EU.
- On 30 June, in the framework of his official visit to Greece, Mr DIAMANDOUROS and Mr Nicos CONSTANTOPOULOS, leader of the Synaspismos Party, gave a joint press interview.
- Later that day, Mr DIAMANDOUROS gave a press conference to a group of 15 journalists of the Foreign Press Association in Athens.
- On 1 July, Mr DIAMANDOUROS gave a press conference at the Office of the Greek Ombudsman in Athens, where he also gave an interview to Mr Ilias BENEKOS, journalist for the Greek newspaper *Imerisia*.
- Later that day, Mr DIAMANDOUROS and Mr George PAPANDREOU, leader of the Panhellenic Socialist Movement (PASOK) gave a joint press interview in the premises of the Greek Parliament.
- On 19 July, the Ombudsman was interviewed by Mr Toivo TÄNAVSUU, journalist for *Eesti Pävaleht*, an Estonian national daily newspaper. Mr TÄNAVSUU asked Mr DIAMANDOUROS about the difference the European Ombudsman can make in citizens' lives, his relations with his national counterparts and the complaints he had received until that date from Estonia.
- On 9 September, Ms Marie CAOUPETTE from the Canadian daily newspaper, *Le Soleil*, interviewed the Ombudsman in Quebec City. The interview took place after the Ombudsman's keynote speech to the VIIIth International Ombudsman Institute World Conference, where he addressed the question: "Can the recognition of individual rights and freedoms survive the pressure to enhance security?"
- On 16 September, Mr DIAMANDOUROS gave an interview, in Rotterdam, to Mr Frits BALTESEN for the Dutch newspaper *NRC Handelsblad*.
- On 14 October, the Ombudsman presented his work to 17 journalists from Finland, Sweden, Iceland and Norway. The presentation formed part of a training seminar organised by the Århus-based Nordic Centre of Journalism. During the session, the Ombudsman answered questions on his reactive role in terms of complaint-handling and his proactive role, most notably his communications activities.
- On 20 October, Ms Anja VOGEL interviewed Mr DIAMANDOUROS for the programme "*L'Europe au quotidien*" on French radio, *France Info*.
- On 21 October, the Ombudsman was interviewed by Ms Joana FERREIRA DA COSTA for the Portuguese national daily newspaper, *O Público*. The journalist was interested in the main types of complaints dealt with by the Ombudsman, the reason citizens should use the Ombudsman's services instead of going to court and the degree of influence the Ombudsman has over EU institutions. The Ombudsman illustrated his work with a number of complaints he had received from Portugal.
- Later that day, the Ombudsman was interviewed by journalists Mr Martin CABRAL and Mr Nuno ROGEIRO from the 24-hour Portuguese news network *SIC Notícias* for a programme



entitled "Society of Nations". The Ombudsman gave a lively presentation of his work, argued the importance of defending citizens' rights and underlined his support for the Constitution for Europe.

- On 22 October, the Ombudsman began the day with an interview with Mr Paulo PENA from the news magazine, *Visão*. The journalist focused on the Ombudsman's views on the sensitive question of balancing the need for public security with the protection of individual freedoms.
- That same day, the Ombudsman gave a short interview to a journalist from the Portuguese radio station *Radio Renascença*, who was particularly interested in the Ombudsman's work in the area of discrimination.
- On 16 November, the Ombudsman participated in a working lunch organised by the Press Club of Strasbourg. The keynote speaker at the event was the French Minister for European Affairs, Ms Claudie HAIGNERE. The Minister invited the Ombudsman to address the audience on his views on the Constitution for Europe. The Ombudsman focused on the importance of the Charter of Fundamental Rights and underlined that he would be working hard to promote awareness of the Charter among citizens. Around 40 people attended the lunch, including journalists, consultants and academics. Mr Daniel RIOT, European Editor of *France 3*, chaired the event.
- Also on 16 November, the Ombudsman addressed ten journalists from *Radio France* at a training seminar organised by Mr Quentin DICKINSON, Head of European Affairs for the radio station. The journalists came from all over France and were spending a week in Strasbourg to learn about the work of the European institutions. The Ombudsman explained his role and provided examples of complaints submitted by French citizens and organisations.
- On 17 November, the Ombudsman was interviewed by Mr Alex TAYLOR for a television programme entitled *Vivre en Europe*. This programme, which addresses specific European topics on a monthly basis, is broadcast on the television channel of the French National Assembly. Mr TAYLOR asked the Ombudsman to explain his work for citizens and to provide examples of French cases he had dealt with.
- On 22 November, on the occasion of the presentation to the European Parliament of the Ombudsman's Annual Report for 2003, Mr Olivier VERHEECKE gave a live interview to Mr François KIRCH from Brussels radio *BFM* in the framework of a programme entitled *12-13 Europe*.
- On 1 December, the Ombudsman had a TV interview with Ms Caroline DE CAMARET from the channel *Public Sénat* for a programme entitled "*Paroles d'Europe*". The journalist asked the Ombudsman to explain his work and to give concrete examples of cases he had dealt with. She asked about the implications of the European Constitution for the Ombudsman and for citizens more generally.
- On 2 December, Mr DIAMANDOUROS, jointly with the French Ombudsman, Mr Jean-Paul DELEVOYE, gave an interview to the editor of *Les Annonces de la Seine*, Mr Jean-René TANCREDE. The journalist asked the European Ombudsman about the achievements of his institution over the past decade, his efforts to work closely with his national counterparts and his future priorities.
- Later that day, Mr DIAMANDOUROS had a telephone interview with Ms Dominique DE COURCELLES of *Radio France Internationale*. The purpose of the interview was to explain to French citizens when, why and how they should complain to the Ombudsman.
- This interview was followed by a press conference organised jointly by the European Commission Representation and the European Parliament Information Office in Paris. After a presentation on "The European Union: citizens' rights and the ombudsman", Mr DIAMANDOUROS answered questions covering the Charter of Fundamental Rights, environmental complaints and the possibility of opening offices of the European Ombudsman in each Member State. Around 15 journalists attended the event, which was chaired by Mr Yves GAZZO, Head of the Commission Representation. The press release issued by the French Ombudsman on the occasion of the European Ombudsman's visit to Paris was distributed to the journalists present.



6.5 PUBLICATIONS

The Ombudsman is keen to reach the widest possible audience with a view to raising awareness among citizens about their rights and, in particular, their right to complain. The institution relies to a large degree on hard-copy publications to inform key stakeholders and the general public. In 2004, the following publications were produced and distributed to interested parties:

Annual Report 2003; photocopied version (11 languages)

A photocopied version of the Ombudsman's *Annual Report 2003* was made available to Members of the European Parliament's Committee on Petitions in April, to allow for the Committee to deliberate on the Ombudsman's work before the full plenary debate later in the year.

Annual Report 2003 – Executive Summary & Statistics; photocopied version (20 languages)

Also in April, a photocopied version of the new *Annual Report 2003: Executive Summary & Statistics* publication was made available to Members of the Committee on Petitions in the 11 official EU languages and the nine languages of the accession countries.

European Ombudsmen – Newsletter; Issues No. 2 and No. 3 (5 languages)

Issues No. 2 and No. 3 of the biannual newsletter of the European network of ombudsmen and the European Region of the International Ombudsman Institute were distributed, in April and October respectively, to national, regional and local ombudsmen in Europe, as well as to Members of the European Parliament's Committee on Petitions.

The European Ombudsman – At a glance leaflet (25 languages)

In an effort to improve awareness about his work among the general public, the Ombudsman produced a short leaflet explaining what he can and cannot do and giving examples of complaints he has resolved. Published in the official, accession and candidate country languages, the leaflet provides answers to questions such as "What complaints can he deal with?", "What if he cannot handle the complaint?", "What outcome can be expected?" and "Who else could help me?". With a print-run of over 650 000 copies, it was launched on 1 May and distributed widely. Later in the year, it was produced in Croatian.

The European Ombudsman – Could he help you? brochure and complaint form (21 languages)

Shortly after the accession of the new Member States, *The European Ombudsman - Could he help you?* brochure and complaint form was published in the 21 Treaty languages. Outlining the Ombudsman's role and explaining who can complain and how, the brochure serves as a useful guide to those who want to use the Ombudsman's services. It was distributed in September to ombudsmen, MEPs, the institutions' representations and information offices and the European Commission's relays and networks.

Annual Report 2003; colour version (20 languages)

The 20 official EU language versions of the Ombudsman's new-look *Annual Report 2003* were distributed in October to MEPs, to the other EU institutions and bodies, to ombudsmen and to the European Commission's relays and networks. In an effort to make best use of public money and to respect the environment, the Ombudsman opted for a limited print-run of the complete *Annual Report* (10 000 copies), while making the *Executive Summary & Statistics* available to a much wider audience (24 000 copies).



Annual Report 2003 Executive Summary & Statistics; colour version (20 languages)

The 20 language versions of the *Executive Summary & Statistics*, made available in November, were distributed to recipients of the complete *Annual Report*, as well as to non-governmental organisations, consumer associations, professional organisations and universities.

6.6 ONLINE COMMUNICATIONS

E-mail communication

In April 2001, an electronically submittable version of the complaint form was added to the website in 12 languages. Following the enlargement of the European Union on 1 May 2004, the form was made available in a further nine languages. A record 55% of all complaints received by the Ombudsman in 2004 was submitted over the Internet, of which a large proportion was received through the electronic complaint form.

The year 2004 saw the largest ever increase in requests for information received in the main e-mail account of the European Ombudsman. In total, 8 010 such e-mails were received and replied to. Of these, 4 809 were mass mailings submitted by citizens as part of a number of campaigns. Issues covered by these mass mailings included euthanasia, the Israeli security fence, animal testing, baby seals and the so-called "Buttiglione affair". All the e-mails received a reply explaining the European Ombudsman's mandate and, where possible, giving information on whom to address regarding the matter raised.

Over 3 200 individual requests for information were received by e-mail in 2004, compared to around 2 000 in both 2003 and 2002. All received individual replies from an appropriate member of the Ombudsman's staff.

Website developments

In 2004, the Ombudsman's website (<http://www.euro-ombudsman.eu.int>) was transformed from a linguistic point of view. At the end of April, the site's homepages and navigation pages, previously in 11 languages, were made available in 10 new languages - the nine languages of the new EU Member States and Irish.

The same month, the Ombudsman presented his *Annual Report 2003* to the Committee on Petitions of the European Parliament. For the first time, an *Executive Summary* of the Report was produced separately. The *Annual Report* and the *Executive Summary* were added to the website in 20 languages.

In order better to inform the general public of his work, a new leaflet, entitled *The European Ombudsman - At a glance*, was published for the first time in 2004 and in 25 languages (the 21 languages of the Treaty and the four languages of the applicant countries for EU membership). In addition, the brochure entitled *The European Ombudsman - Could he help you?*, which includes a complaint form, was republished in 2004 and made available for the first time in 21 languages. Both these publications, as well as an electronic version of the complaint form, were made available on the website in all language versions.

From 1 May to 31 December 2004 (following the enlargement of the European Union), the homepages of the European Ombudsman's website received 195 228 visits. The English version was the most consulted (45 566 visits), followed by French, Italian, Spanish, German and Polish. In terms of the geographical origin of visits, the greatest number of visitors came from Italy (16 950 visits), followed by Belgium, Spain, France, Germany and Poland.



In order to ensure that the euro-ombudsman website stays at the forefront of EU websites, the Office of the Ombudsman participated throughout 2004 in the work of the Inter-Institutional Internet Editorial Committee (CEiii). The CEiii is chaired by the Directorate-General for Press and Communication of the European Commission, and brings together representatives responsible for Internet issues in the EU institutions and bodies. The Committee met on five occasions in 2004, to discuss and co-ordinate issues relating to, among others, EU enlargement, multi-lingualism, Internet domain names, copyright, inter-institutional websites, and co-operation on contracts and services.

INTRODUCTION

1 EXECUTIVE SUMMARY

2 COMPLAINTS AND INQUIRIES

3 DECISIONS FOLLOWING AN INQUIRY

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

6 COMMUNICATIONS

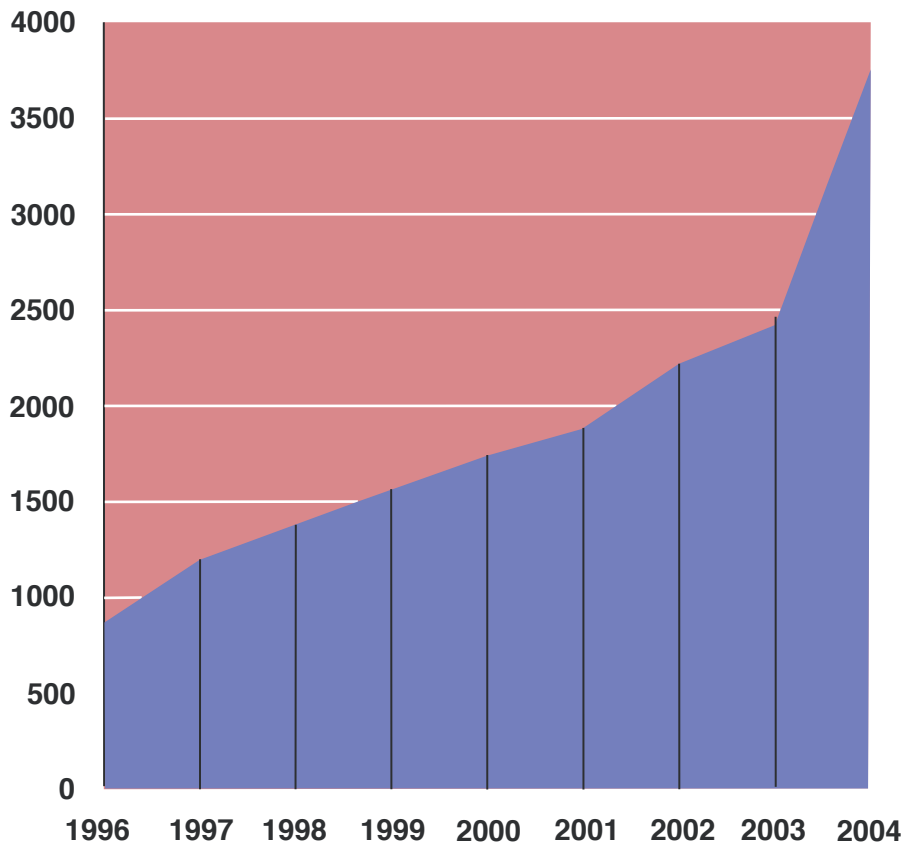
7 ANNEXES



A STATISTICS

1 CASES DEALT WITH DURING 2004

1.1	TOTAL CASELOAD IN 2004	4 048
	– inquiries not closed on 31.12.2003	183 ¹
	– complaints awaiting decision on admissibility on 31.12.2003.....	131
	– complaints received in 2004	3726
	– own initiatives of the European Ombudsman	8



Increase in Complaints 1996 - 2004

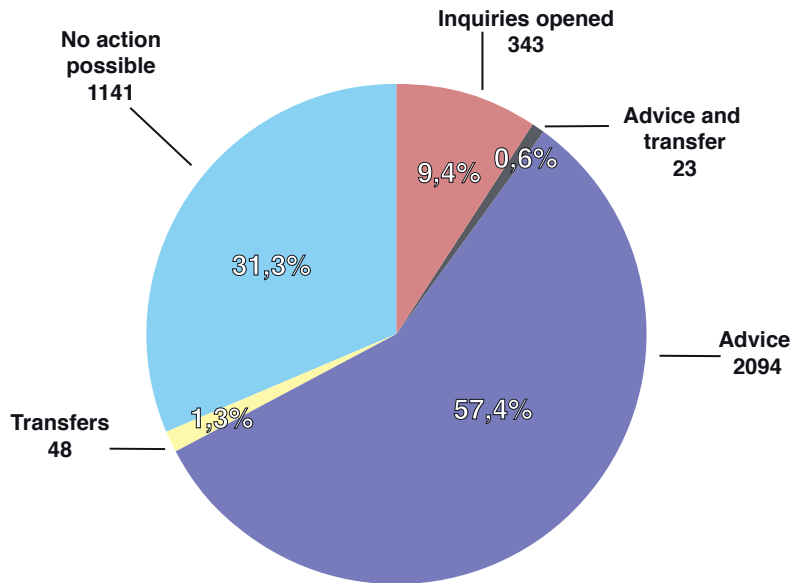
¹ Of which four own initiative inquiries of the European Ombudsman and 179 inquiries based on complaints.



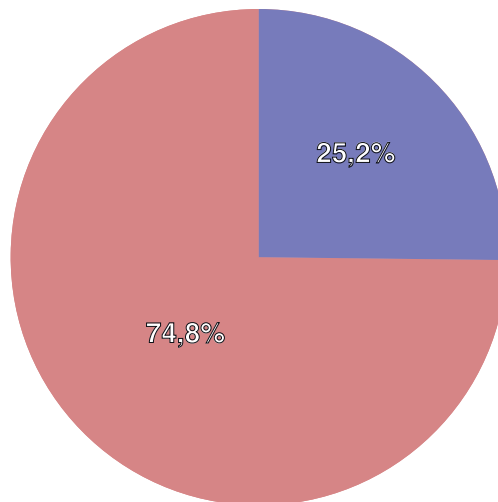
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED.....94,6%

1.3 CLASSIFICATION OF THE COMPLAINTS

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



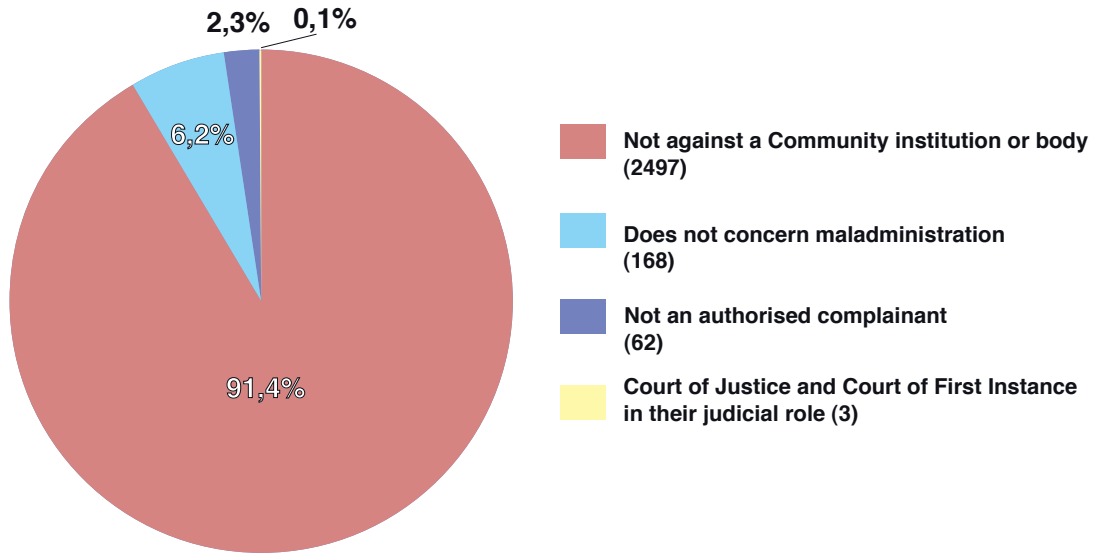
1.3.2 According to the Mandate of the European Ombudsman



■ Inside the mandate (919) ■ Outside the mandate (2730)

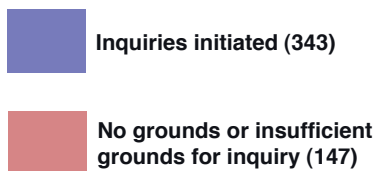
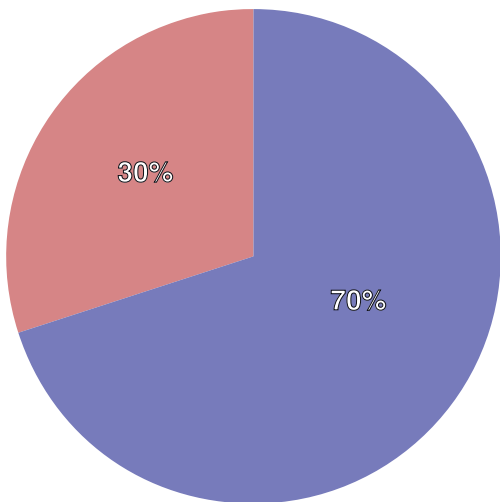


OUTSIDE THE MANDATE

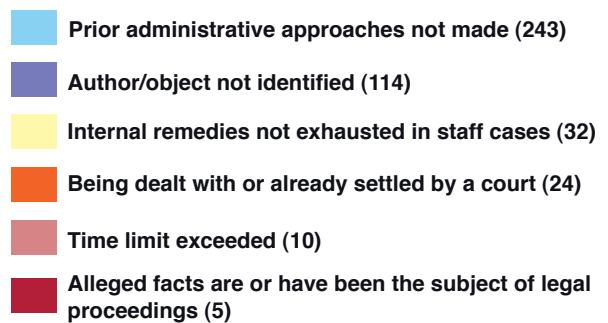
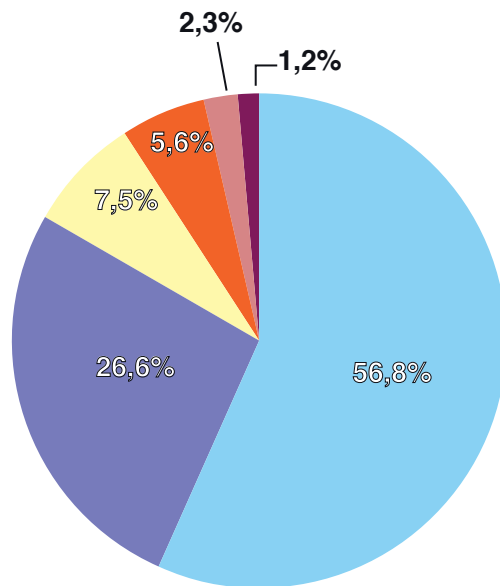


INSIDE THE MANDATE

Admissible complaints

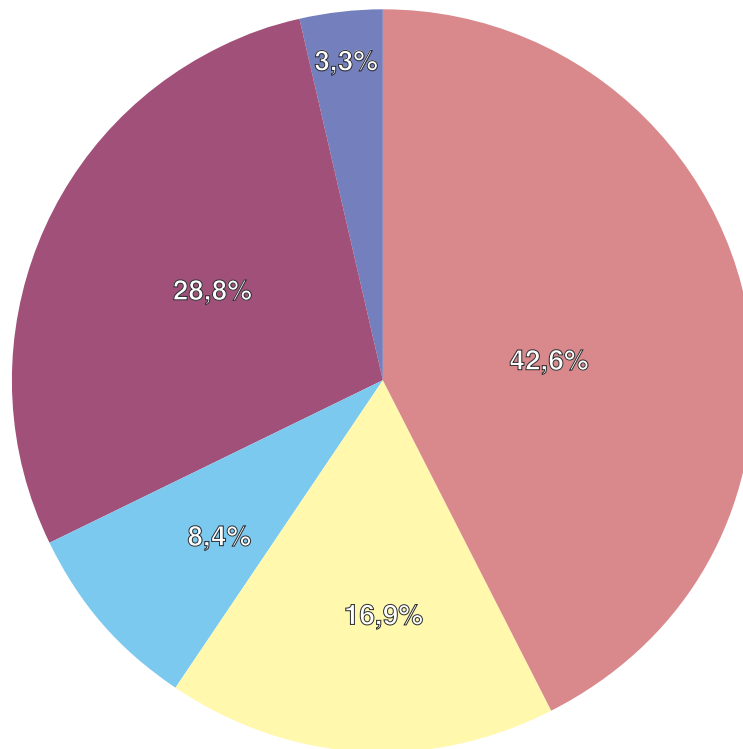



Inadmissible complaints






2 TRANSFERS AND ADVICE



 Advice to contact ombudsman or petition a regional or national parliament (906)

 Advice to contact the European Commission (359)

 Advice to petition the European Parliament (179)

 Advice to contact other bodies (613)

 Transfers (71)

To the European Parliament (13)

To the European Commission (4)

To a national or regional ombudsman (54)

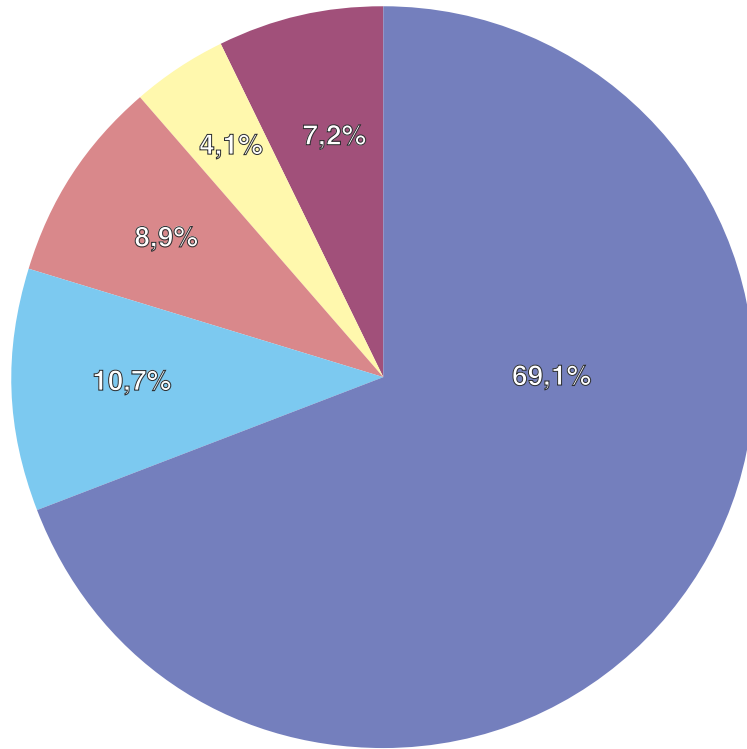


3 INQUIRIES DEALT WITH IN 2004534

In 2004, the European Ombudsman dealt with 534 inquiries, 351 inquiries initiated in 2004 (of which eight own initiatives) and 183 inquiries not closed on 31.12.2003.

3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

(In some cases, two or more institutions or bodies are concerned by the inquiry)



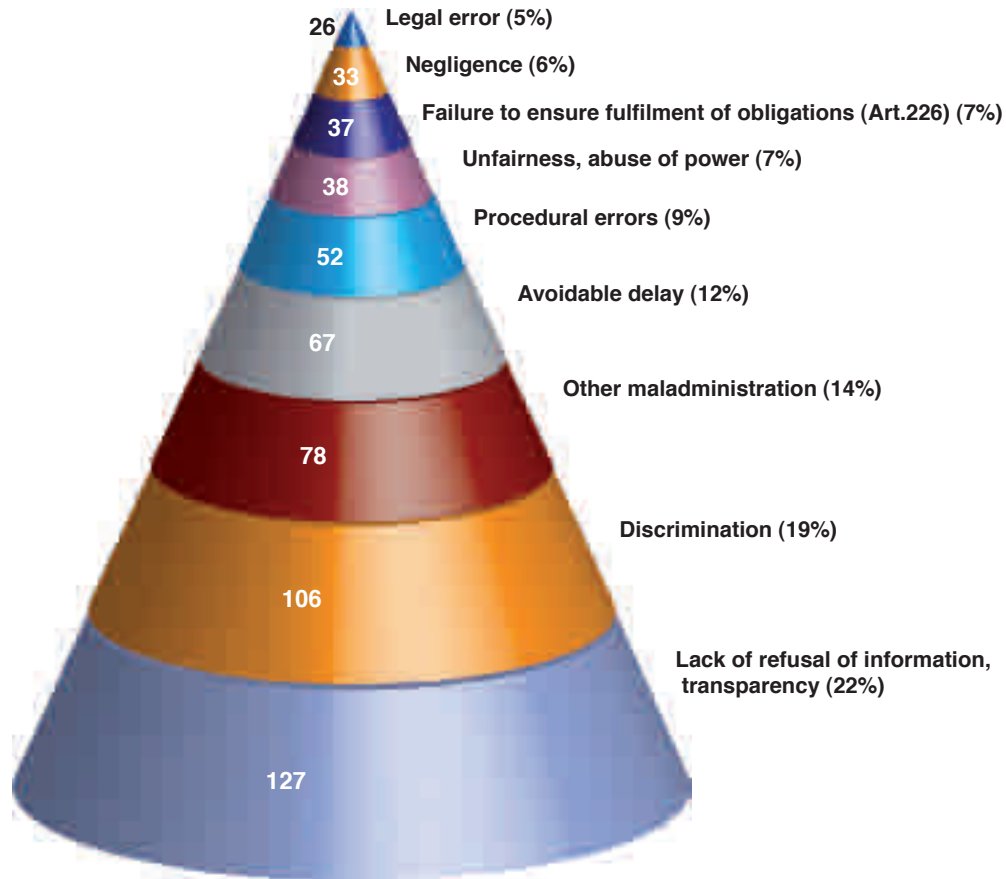
- European Commission (375)
- European Communities Personnel Selection Office (58)
- European Parliament (48)
- Council of the European Union (22)
- Others (39)

European Investment Bank	7
European Anti-Fraud Office (OLAF)	5
Committee of the Regions of the European Union	5
European Central Bank	4
Court of Justice of the European Communities	3
European Court of Auditors	3
European Economic and Social Committee	3
European Monitoring Centre on Racism and Xenophobia	2
European Food Safety Authority	1
European Union Police Mission in Bosnia Herzegovina	1
Eurojust	1
Europol	1
Publications Office of the European Communities	1
European University Institute	1
European Environment Agency	1



3.2 TYPE OF MALADMINISTRATION ALLEGED

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



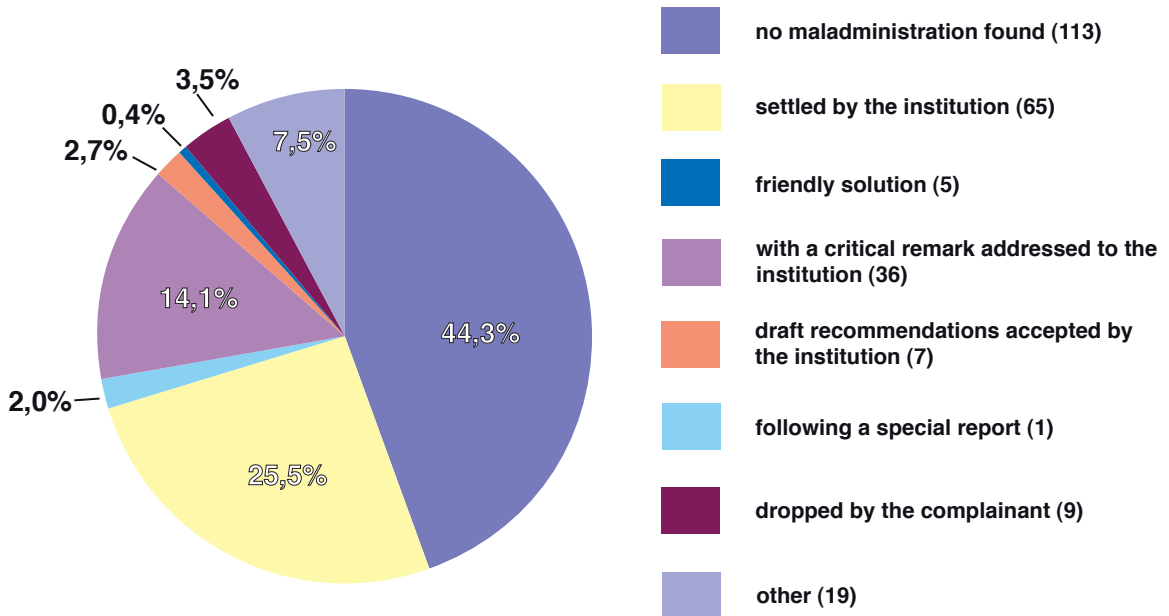
3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2004

– proposals for friendly solutions	12
– draft recommendations	17
– special reports	1



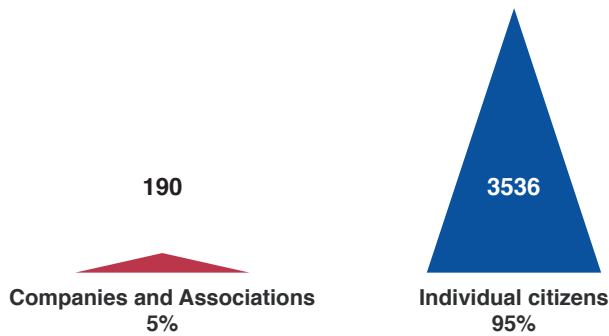
3.4 INQUIRIES CLOSED WITH REASONED DECISION 251²

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



4 ORIGIN OF COMPLAINTS REGISTERED IN 2004

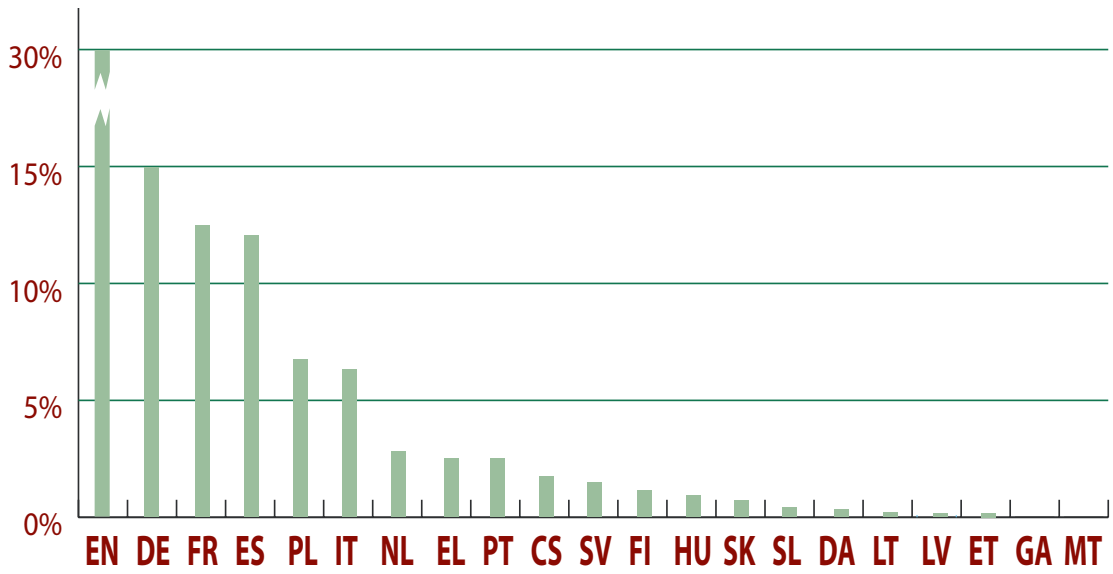
4.1 SOURCE OF COMPLAINTS



² Of which four own initiatives of the Ombudsman.




























4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS





4.3 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Rate ³
 Malta	38	1,0	0,1	11,7
 Luxembourg	40	1,1	0,1	10,9
 Cyprus	59	1,6	0,2	10,0
 Belgium	268	7,2	2,3	3,2
 Slovenia	38	1,0	0,4	2,3
 Finland	73	2,0	1,1	1,7
 Ireland	53	1,4	0,9	1,6
 Greece	129	3,5	2,4	1,4
 Spain	482	12,9	9,2	1,4
 Portugal	116	3,1	2,3	1,4
 Slovakia	52	1,4	1,2	1,2
 Czech Republic	98	2,6	2,2	1,2
 Sweden	84	2,3	2,0	1,2
 Austria	69	1,9	1,8	1,1
 Poland	285	7,6	8,3	0,9
 Denmark	32	0,9	1,2	0,7
 Germany	464	12,4	18,0	0,7
 The Netherlands	88	2,4	3,5	0,7
 Hungary	53	1,4	2,2	0,6
 Lithuania	18	0,5	0,8	0,6
 Estonia	7	0,2	0,3	0,6
 France	303	8,1	13,5	0,6
 Italy	269	7,2	12,6	0,6
 Latvia	9	0,2	0,5	0,5
 United Kingdom	195	5,2	13,0	0,4
Others	404	10,9		

3

This figure has been calculated by dividing the percentage of complaints by the percentage of population. Where it is greater than 1, this indicates that the country in question submits more complaints to the Ombudsman than might be expected given the size of its population. All percentages in the above table have been rounded to one decimal place.



B THE OMBUDSMAN'S BUDGET

An independent budget

The Statute of the European Ombudsman provided originally for the Ombudsman's budget to be annexed to section I (European Parliament) of the general budget of the European Union.

In December 1999, the Council decided that the Ombudsman's budget should be independent. Since 1 January 2000⁴, the Ombudsman's budget has been an independent section of the budget of the European Union (section VIII-A).

Structure of the budget

The Ombudsman's budget is divided into three titles. Title 1 of the budget contains salaries, allowances and other costs related to staff. This title also includes the cost of missions undertaken by the Ombudsman and his staff. Title 2 of the budget covers buildings, equipment and miscellaneous operating expenditure. Title 3 contains a single chapter, from which subscriptions to international ombudsmen organisations are paid.

Co-operation with the European Parliament

To avoid unnecessary duplication of administrative and technical staff, many of the services needed by the Ombudsman are provided by, or through, the European Parliament. Areas in which the Ombudsman relies, to a greater or lesser extent, on the assistance of the Parliament's services include:

- personnel, namely preparing contracts and decisions concerning individual rights;
- financial audit and accounting;
- translation, interpretation and printing;
- rental of office space;
- information technology, telecommunications and mail handling.

The co-operation between the European Ombudsman and the European Parliament has allowed for considerable efficiency savings to the Community budget. The co-operation with the European Parliament has in fact allowed the administrative staff of the Ombudsman not to increase substantially.

Where the services provided to the Ombudsman involve additional direct expenditure by the European Parliament a charge is made, with payment being effected through a liaison account. Provision of offices and translation services are the largest items of expenditure dealt with in this way.

The 2004 budget included a lump-sum fee to cover the costs to the European Parliament of providing services, which consist solely of staff time, such as administration of staff contracts, salaries and allowances and a range of computing services.

The co-operation between the European Parliament and the European Ombudsman was initiated by a Framework Agreement dated 22 September 1995, completed by Agreements on Administrative Co-operation and on Budgetary and Financial Co-operation, signed on 12 October 1995.

In December 1999, the Ombudsman and the President of the European Parliament signed an agreement renewing the co-operation agreements, with modifications, for the year 2000 and providing for automatic renewal thereafter.

⁴

Council Regulation 2673/1999 of 13 December 1999 OJ L 326/1.



The 2004 budget

The establishment plan of the Ombudsman showed in 2004 a total of 38 posts.

The total amount of initial appropriations available in the Ombudsman's 2004 budget was EUR 5 817 468.00. Title 1 (Expenditure relating to persons working for the Institution) amounted to EUR 4 944 500.00. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounted to EUR 869 968.00. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounted to EUR 3 000.00.

The following table indicates expenditure in 2004 in terms of committed appropriations.

Title 1	€ 4 173 642.33
Title 2	€ 892 632.78
Title 3	€ 2 644.78
Total	€ 5 068 919.89

Revenue consists primarily of deductions from the remuneration of the Ombudsman and his staff. In terms of payments received, total revenue in 2004 was EUR 530 367.85.

The 2005 budget

The 2005 budget, prepared during 2004, provides for an establishment plan of 51 posts, representing an increase of 13 from the establishment plan for 2004. This increase is mainly due to the enlargement of the European Union and to the need of the European Ombudsman's Office to dispose of an adequate knowledge of both the languages and of the legal systems of the new Member States.

Total appropriations for 2005 are EUR 7 312 614. Title 1 (Expenditure relating to persons working with the Institution) amounts to EUR 6 239 614. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounts to EUR 1 070 000. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounts to EUR 3 000.

The 2005 budget provides for total revenue of EUR 720 241.



C PERSONNEL

EUROPEAN OMBUDSMAN

P. NIKIFOROS DIAMANDOUROS

P. Nikiforos DIAMANDOUROS was born in Athens, Greece, on 25 June 1942. He was elected European Ombudsman on 15 January 2003 and took office on 1 April 2003.

From 1998 to 2003, he was the first National Ombudsman of Greece. He has also been Professor of comparative politics at the Department of Political Science and Public Administration of the University of Athens since 1993 (currently on leave). From 1995 to 1998 he served as Director and Chairman of the Greek National Centre for Social Research (EKKE).

He received his B.A. degree from Indiana University (1963) and his M.A. (1965), M.Phil. (1969) and Ph.D. (1972) degrees from Columbia University. Prior to joining the faculty of the University of Athens in 1988, he held teaching and research appointments at the State University of New York and Columbia University respectively (1973-78). From 1980 to 1983, he served as Director of Development at Athens College, Athens, Greece. From 1983 to 1988, he was Program Director for Western Europe and the Near and Middle East at the Social Science Research Council, New York. From 1988 until 1991, he was the Director of the Greek Institute for International and Strategic Studies, Athens, a policy-oriented research organisation established with joint funding from the Ford and MacArthur Foundations. In 1997, he held an appointment as Visiting Professor of political science at the Juan March Centre for Advanced Studies in the Social Sciences (Madrid).

He has served as President of the Greek Political Science Association (1992-98) and of the Modern Greek Studies Association of the United States (1985-88). In 1999 and 2000, he was appointed member of Greece's National Commission on Human Rights and the National Council for Administrative Reform respectively. In 2000, he was a participant in the Bilderberg Conference. Since 1990, he has been co-chair of the Subcommittee on Southern Europe of the Social Science Research Council, New York, whose activities are funded by a grant from the Volkswagen Foundation. He is also joint General Editor of the Series on the New Southern Europe published by the Johns Hopkins University Press and the recipient of Fulbright and National Endowment for the Humanities research grants.

He has written extensively on the politics and history of Greece, Southern Europe and Southeastern Europe and, more specifically, on democratisation, state and nation-building, and the relationship between culture and politics.



SECRETARIAT OF THE EUROPEAN OMBUDSMAN

The Secretariat of the European Ombudsman is responsible for the running of the Ombudsman's personal office. It manages the Ombudsman's agenda, co-ordinates his incoming and outgoing correspondence, advises on relations with the other EU institutions and bodies, deals with the protocol aspects of the institution's work and undertakes general secretarial duties for the Ombudsman.

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LEGAL DEPARTMENT

The Legal Department consists mainly of lawyers who analyse the complaints received by the European Ombudsman and conduct inquiries. The Head of the Legal Department advises the Ombudsman on the legal strategy and direction of the institution and manages the Department. The Assistant to the Head of the Legal Department ensures the operation of internal quality control and management information systems and co-ordinates the Department's contribution to the Annual Report.

In 2004, the Department consisted of the Head of the Legal Department, six Principal Legal Advisers, five Legal Officers, a Legal Assistant and the Assistant to the Head of the Legal Department. The Legal Department supervised ten trainees during 2004.

Ian HARDEN

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Ian HARDEN was born in Norwich, England, on 22 March 1954. He studied law at Churchill College, Cambridge, obtaining a BA with first class honours in 1975, and an LLB in 1976. After graduation, he joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a Senior Lecturer from 1990 to 1993, a Reader from 1993 to 1995, and Professor of Public Law from 1995 onwards. He joined the European Ombudsman's Office as a Principal Legal Adviser in 1996, becoming Head of Secretariat from 1997 to 1999, then Head of the Legal Department from 2000 onwards. He is the author or co-author of numerous publications on EU law and public law, including *The Contracting State* (Buckingham: Open University Press, 1992); *Flexible Integration: towards a more effective and democratic Europe* (London CEPR, 1995) and *European Economic and Monetary Union: the Institutional Framework* (Kluwer Law International, 1997). He is a member of the *Association Française des Constitutionnalistes* and the "Study of Parliament Group" in the UK.

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LEGAL OFFICERS

The Legal Officers deal with complaints, which may be submitted to the Ombudsman in any of the 21 Treaty languages of the European Union. They also propose and carry out own-initiative inquiries, reply to requests for information from citizens, provide assistance to the Ombudsman on legal matters, advise on the legal procedures, developments and traditions of their respective Member States and represent the Ombudsman at some public events.

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ADMINISTRATION AND FINANCE DEPARTMENT

The Administration and Finance Department is responsible for all the non-legal work of the Ombudsman's office. It is made up of three sectors - the Personnel, Administration and Finance Sector, the Complaints-Handling Sector and the Communications Sector. The Head of the Administration and Finance Department co-ordinates the work of the Department, manages the Department's staff, proposes and oversees the administrative and financial strategy of the institution, represents the Ombudsman in a number of interinstitutional fora, and is responsible for the planning and execution of the Ombudsman's budget.

João SANT'ANNA

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João SANT'ANNA was born in Setúbal, Portugal, on 3 May 1957. He studied law at the University of Lisbon from 1975 to 1980, and registered with the bar in Lisbon in 1981. Between 1980 and 1982, he worked as a lawyer in the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. Between 1982 and 1984, he pursued his legal studies, in the field of intellectual property rights, at the Ludwig-Maximilian University and the Max-Planck Institute in Munich. After returning to Portugal in 1984, he was appointed Head of the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. In 1986, he became a civil servant of the European Parliament, working in the Directorates-General for Information and Public Relations, for Research, for Personnel and Finance, and finally, in the Legal Service of the European Parliament. He joined the European Ombudsman's Office as Head of the Administration and Finance Department in 2000.

PERSONNEL, ADMINISTRATION AND FINANCE SECTOR

The Personnel, Administration and Finance Sector is the most diverse sector in terms of the functions it performs.

The financial responsibilities, which derive from the fact that the European Ombudsman has an independent budget, are divided between four Finance Officers, who are responsible for the budget preparation and execution.

The Information and Technology Officer is responsible, in close co-operation with the European Parliament, for all the office's information technology needs. He manages the hardware and software used by all staff, develops databases and other applications for internal use, proposes and implements purchases and decommissioning of equipment and provides user support.

Other essential tasks handled within the sector include staff and recruitment matters, incoming and outgoing correspondence, the telephone switchboard, the office infrastructure, co-ordination of document translation, the legal reference library, and the institution's archives.

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COMMUNICATIONS SECTOR

The Communications Sector is responsible for the institution's communications policy as regards the EU institutions and bodies, the community of ombudsmen and the general public. The Sector equally ensures effective communications within the Ombudsman's Office.

The Press and Communications Officer and the Internet and Communications Officer are jointly responsible for providing communications advice to the Ombudsman. They share the tasks relating to the Ombudsman's information tour to current and future EU Member States, external events, speeches, the drafting of the Annual Report (in co-operation with the Legal Department), and liaison with ombudsmen throughout Europe, while being respectively responsible for media relations and publications, and the Internet. The Assistant to the Communications Sector supports them in a wide variety of tasks, particularly as regards the Internet, publications and liaison, while also being responsible for organising the visits of groups to the Strasbourg office.

The Communications Officer acts as an important link between the Communications Sector and the Legal Department. He is responsible for internal communications issues, such as the Office's legal Intranet, the audio-visual archive and the initial training of new staff members. He also manages the main e-mail account of the institution, and is responsible for developing procedures for dealing efficiently with complaints and requests for information.

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COMPLAINTS-HANDLING SECTOR

The Complaints-Handling Sector is responsible for the registration, distribution and follow-up of complaints submitted to the European Ombudsman. The Sector ensures that all complaints are registered into a database, acknowledged, and transmitted to the Legal Department. It is responsible for managing all incoming and outgoing complaint-related correspondence, ensuring that the complaint records in the database are updated throughout the complaint procedure, monitoring compliance with deadlines, producing complaints-related statistics, and filing documents relating to complaints.

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D INDICES OF DECISIONS

1 BY CASE NUMBER

2002

1435/2002/GG	75
1769/2002/(IJH)ELB	94
1876/2002/OV	57
1878/2002/GG	92
1889/2002/GG	75
1963/2002/IP	93
1986/2002/OV	76
2007/2002/ADB.....	77
2185/2002/IP	78
2204/2002/MF	79

2003

0253/2003/ELB	97
0260/2003/OV	73
0278/2003/JMA	80
0378/2003/MF	89
0415/2003/(IJH)TN	71
0701/2003/IP	81
0753/2003/GG	82
0821/2003/JMA	53
0841/2003/(FA)OV.....	58
0849/2003/JMA	59
0900/2003/TN.....	59
0907/2003/ELB	54
0953/2003/(FA)OV.....	88
1110/2003/ELB	66
1196/2003/ELB	99
1219/2003/GG	98
1286/2003/JMA	60
1304/2003/(ADB)PB	61
1319/2003/ADB.....	83

1320/2003/(ADB)ELB.....	72
1367/2003/OV	83
1481/2003/OV	62
1571/2003/OV	91
1600/2003/ADB.....	67
1624/2003/ELB	84
1874/2003/GG	85
1949/2003/(TN)(IJH)TN	67
2046/2003/GG	74
2124/2003/ADB.....	68
2126/2003/PB	55
2183/2003/(TN)(IJH)TN	68
2210/2003/MHZ.....	95
2216/2003/MHZ.....	89
2225/2003/(ADB)PB	100
2239/2003/(AJ)TN	86
2333/2003/GG	87
2371/2003/GG	56
OI/1/2003/ELB	102
OI/2/2003/GG	101
OI/5/2003/IJH.....	103

2004

0032/2004/GG	100
0220/2004/GG	70
0221/2004/GG	63
0326/2004/IP.....	64
0435/2004/GG	69
0480/2004/TN.....	64
0520/2004/TN.....	68
0760/2004/GG	98
1044/2004/GG	65



2 BY SUBJECT MATTER

Agriculture (CAP)

1219/2003/GG	98
0760/2004/GG	98

Citizens' rights

0753/2003/GG	82
1286/2003/JMA	60
2333/2003/GG	87
2371/2003/GG	56
0220/2004/GG	70
1044/2004/GG	65

Competition policy

1963/2002/IP	93
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Consumer policy

2126/2003/PB	55
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Contracts

1878/2002/GG	92
1889/2002/GG	75
1986/2002/OV	76
0953/2003/(FA)OV	88
1874/2003/GG	85
1949/2003/(TN)(IJH)TN	67
2124/2003/ADB	68
0435/2004/GG	69

Development co-operation

0253/2003/ELB	97
1624/2003/ELB	84
2124/2003/ADB	68
0326/2004/IP	64

Education, vocational training and youth

0221/2004/GG	63
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Environment

0278/2003/JMA	80
2124/2003/ADB	68

Employment

0480/2004/TN	64
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Free movement of persons and services

0701/2003/IP	81
--------------------	----

Public health

0849/2003/JMA	59
2126/2003/PB	55

Research and technology

1876/2002/OV	57
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State aid

2185/2002/IP	78
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Staff

- Recruitment

1435/2002/GG	75
0378/2003/MF	89
0821/2003/JMA	53
1110/2003/ELB	66
1196/2003/ELB	99
1320/2003/(ADB)ELB	72
1367/2003/OV	83
1571/2003/OV	91
1600/2003/ADB	67
2216/2003/MHZ	89
2225/2003/(ADB)PB	100

- Other questions

2204/2002/MF	79
0907/2003/ELB	54
1319/2003/ADB	83
2046/2003/GG	74
2210/2003/MHZ	95
OI/1/2003/ELB	102
OI/2/2003/GG	101
0032/2004/GG	100

Transport

2239/2003/(AJ)TN	86
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3 BY TYPE OF MALADMINISTRATION ALLEGED

Avoidable delay

1963/2002/IP.....	93
2185/2002/IP.....	78
0260/2003/OV.....	73
1319/2003/ADB.....	83
1949/2003/(TN)(IJH)TN.....	67
2124/2003/ADB.....	68
2333/2003/GG.....	87
0435/2004/GG.....	69

Discrimination

0278/2003/JMA.....	80
0821/2003/JMA.....	53
1367/2003/OV.....	83
2126/2003/PB.....	55
2210/2003/MHZ.....	95
2216/2003/MHZ.....	89
OI/2/2003/GG.....	101
0326/2004/IP.....	64

Error in Article 226 procedure

2007/2002/ADB.....	77
0701/2003/IP.....	81
0841/2003/(FA)OV.....	58
0849/2003/JMA.....	59
0480/2004/TN.....	64
1044/2004/GG.....	65

Lack or refusal of information

1986/2002/OV.....	76
0415/2003/(IJH)TN.....	71
0753/2003/GG.....	82
0907/2003/ELB.....	54
1110/2003/ELB.....	66
1196/2003/ELB.....	99
1286/2003/JMA.....	60
1319/2003/ADB.....	83
1320/2003/(ADB)ELB.....	72
1367/2003/OV.....	83
1874/2003/GG.....	85
2126/2003/PB.....	55

2239/2003/(AJ)TN.....	86
2371/2003/GG.....	56

Lack of transparency

1304/2003/(ADB)PB.....	61
1481/2003/OV.....	62
0220/2004/GG.....	70

Legal error

0900/2003/(IJH)TN.....	59
1571/2003/OV.....	91

Negligence

1963/2002/IP.....	93
2185/2002/IP.....	78
2204/2002/MF.....	79
0260/2003/OV.....	73
1600/2003/ADB.....	67

Procedural errors

1769/2002/(IJH)ELB.....	94
2007/2002/ADB.....	77
2216/2003/MHZ.....	89
OI/1/2003/ELB.....	102
0326/2004/IP.....	64

Reasoning

0953/2003/(FA)OV.....	88
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Unfairness

1435/2002/GG.....	75
1876/2002/OV.....	57
1878/2002/GG.....	92
1889/2002/GG.....	75
1986/2002/OV.....	76
0378/2003/MF.....	89
0953/2003/(FA)OV.....	88
1219/2003/GG.....	98
2046/2003/GG.....	74
0032/2004/GG.....	100
0221/2004/GG.....	63

**Other maladministration**

1876/2002/OV	57
1986/2002/OV	76
0253/2003/ELB	97
0953/2003/(FA)OV	88
1624/2003/ELB	84
2183/2003/(TN)(IJH)TN	68
OI/5/2003/IJH	103



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