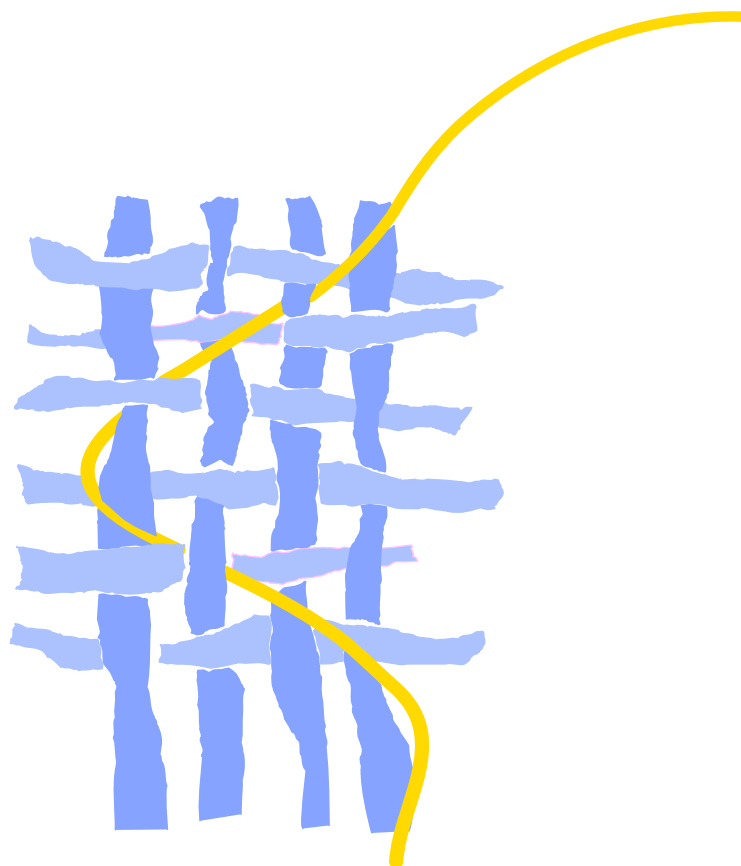


# **THE EUROPEAN OMBUDSMAN**



**ANNUAL REPORT 2005**

**EN**



# THE EUROPEAN OMBUDSMAN



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P. NIKIFOROS DIAMANDOUROS

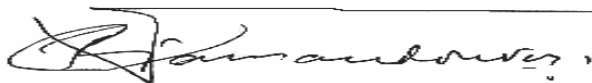
Mr Josep BORRELL FONTELLES  
President  
European Parliament  
Rue Wiertz  
1047 Brussels  
BELGIQUE

Strasbourg, 13 March 2006

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 2005.

Yours sincerely,



P. Nikiforos DIAMANDOUROS



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# **INTRODUCTION**



The institution of the European Ombudsman celebrated its tenth anniversary in 2005. This important milestone gave us an opportunity to reflect on the achievements of the first ten years and to chart the optimal course of action for the future in co-operation with our key interlocutors. The range of events we organised provided us with rich insights into what was working well and what more could be done in terms of our relations with European Union (EU) institutions and bodies, the ombudsman community, and complainants and citizens more generally. But before going into depth on the various ideas that surfaced, let me first devote some thoughts to the work of the institution over the past ten years.

Since September 1995, the European Ombudsman has handled over 20 000 complaints and helped countless more citizens by answering their requests for information. Upon leaving office, my predecessor, the first European Ombudsman, Mr Jacob SÖDERMAN, could cite, as a major achievement, the degree to which the various EU institutions and bodies were willing to work with him to resolve citizens' complaints. From the abolition of age limits in recruitment to improvements in the area of late payment, and from greater access to documents to growing respect for the EU Charter of Fundamental Rights, the institutions and bodies demonstrated that they were keen to co-operate with the Ombudsman in improving service to citizens. For these accomplishments and, indeed, for many others, we, as citizens of the Union, are forever indebted to Jacob SÖDERMAN.

Beyond working to improve the Union's administration, the institution of the European Ombudsman has made great efforts to develop relations with national, regional and local ombudsmen throughout the Union with a view to ensuring that rights for citizens and residents under EU law, including fundamental rights, become a reality. This co-operation takes place, for the most part, under the aegis of the European Network of Ombudsmen, which has been built up over the past decade into an invaluable mechanism for dealing promptly and effectively with citizens' complaints. The year 2005 gave us the opportunity to take stock of the achievements of the Network since it was established in Strasbourg in 1996 and to determine how to move forward together.

The Ombudsman has worked tirelessly since September 1995 to reach out to citizens to raise awareness of their rights and in particular their right to complain and to seek redress. The success of these initiatives can be seen in the fact that over 300 complaints are now submitted to the Ombudsman every month, with the year 2005 seeing the highest ever number of complaints received.

### **The Ombudsman's relations with EU institutions and bodies**

It would of course be much better if citizens never needed to contact the European Ombudsman and if their complaints were resolved at the earliest possible stage by the administration implicated in the complaint. Citizens do not mind who solves their problem. Often they are simply looking for an explanation, a reason, an apology or advice, and the administration itself is best situated to provide this.

If citizens do feel the need to complain, they want the problem resolved as rapidly and effectively as possible. To my mind, a settlement proposed by the administration is

quicker and ultimately more satisfying all round, since it credits the institution with solving the problem, increases its legitimacy in the eyes of the complainant and ensures a win-win outcome for all concerned. Put otherwise, the way in which the public administration reacts to complaints is a key measure of how citizen-focused it is. This is a key message that I aimed to communicate during the various events we organised with the EU institutions and bodies during our anniversary year.

Each EU institution and body can play its part in improving relations with citizens. Whether it be tackling contractual problems, providing access to documents, or explaining why a candidate has not been selected, we can all learn about how to deliver better services from complaints. The final outcome of this process 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.

Complaints are often symptoms of more serious, complex or systemic issues or problems. One of the Ombudsman's functions is to identify these and to promote ways of tackling them. As such, the Ombudsman, in addition to serving as an external mechanism of control, also constitutes a valuable resource to managers, a resource capable of helping the administration to better its performance by directing attention to areas for improvement.

An invaluable instrument in this context is the European Code of Good Administrative Behaviour. Approved by the European Parliament in 2001, the Code explains to citizens what they have the right to expect from the European administration. It equally serves as a useful guide for civil servants, encouraging the highest standards of administration. A new edition of the Code was published in 24 languages in 2005. Over 100 000 copies were distributed throughout Europe and beyond. In response, national administrations and local authorities, schools and universities, training centres and public libraries, along with individual citizens, asked for copies for further distribution. This truly is a European success story. The Code has been adapted for national, regional and local administrations from Portugal to Italy, from Wallonia to Greece, and from Romania to Croatia. In light of the fact that the European Code has been taken on board by such a range of administrations throughout Europe, I continue to hope that it can be adopted by all EU institutions and bodies, perhaps in the form of an inter-institutional agreement. The contacts I had in this regard in 2005 with the European Commission President, Mr José Manuel BARROSO, and Vice-Presidents Ms Margot WALLSTRÖM and Mr Siim KALLAS, have been extremely positive and I very much hope that we can make rapid progress in moving this project closer to realisation. This would offer a clear sign of our joint determination to work together for citizens in the years to come.

A move that I found greatly encouraging in 2005 was the Communication adopted by the Commission introducing a new internal procedure for responding to the Ombudsman's inquiries. This Communication foresees individual Commissioners taking strong political ownership of each case, while maintaining the valuable role of the Secretariat-General. I very much welcome this new procedure which, I understand, aims to enhance the consistency and quality of the Commission's replies, as well as to ensure prompt follow-up of the Ombudsman's recommendations and remarks. As the institution that

gives rise to around 70% of the Ombudsman's inquiries, it is vital that the Commission take a leading role in dealing with maladministration and in promoting a service culture with respect to citizens. This Annual Report contains many examples of cases in which the Commission did indeed react promptly and constructively to resolve problems that I brought to its attention.

### **Co-operation within the European Network of Ombudsmen**

Since the early years, the European Ombudsman has co-operated closely with his colleagues at the national, regional and local levels through the European Network of Ombudsmen. The central purpose of the Network remains as valid and important today as it was at the outset: that is, to make citizens' and residents' rights under EU law a living reality.

The implementation of EU law is largely the responsibility of administrations in the Member States. In practice, therefore, respect for rights under EU law depends largely on the quality of their everyday work and on the extent to which supervisory bodies, including ombudsmen, succeed in promoting high quality administration and providing effective remedies when needed. This is becoming even more important in light of the fact that co-operation among the various Member States' administrations and the EU institutions continues to grow in scope and intensity. In order to protect rights and provide effective remedies, co-operation among administrations needs to be matched by co-operation among ombudsmen.

With this in mind, in 2005 I explored the possibility of further securing and promoting the role of ombudsmen in the evolving European legal and political culture. To do this, I argued that the Network needs to make the added value that citizens derive from co-operation more visible, both to citizens themselves and to policy-makers at all levels in the Union. As regards the latter, there is still much work to be done. We have yet to make a convincing case that diversity should not prevent ombudsmen from being taken fully into account in the many new European policy developments that the Member States' authorities and the EU institutions and bodies continue to produce.

As a contribution to establishing a clearer public identity for our co-operation, I announced that my office plans to invest resources to further develop our use of the internet to communicate both with the public and amongst ourselves. We plan to integrate a "Who can help me?" interactive guide into the European Ombudsman's website to help direct citizens to the appropriate ombudsman, be it at the European, national, or regional level. We will equally work towards developing, within the Network over the next two years, a statement that explains to citizens what they can expect if they turn to an ombudsman in the Network. We could consider adopting the statement at the sixth seminar of national ombudsmen, which will take place in Strasbourg in 2007. While I am fully aware of just how carefully such a statement would need to be drafted, I am persuaded that our shared common understanding of what an ombudsman should be and do is strong enough to make drafting it a realistic objective within the time-frame I have proposed. Such a statement would be valuable not only to citizens who may need the services of an ombudsman outside their own Member State

but would also provide a key point of reference in ombudsmen's relations with policy-makers, both collectively and individually. The very process of drafting will surely also promote and deepen our possibilities for mutual learning and thus be valuable in itself. Such an exercise can thus only strengthen the co-operation that has been developed to date.

### **The Ombudsman's relations with citizens and potential complainants**

The European Ombudsman's efforts to work closely with the EU institutions and bodies and with ombudsmen throughout the Union have one overriding objective, namely ensuring an optimal service to citizens. With a view to best serving citizens in the Union, we organised in 2005, as part of our tenth anniversary celebrations, events for the media, NGOs, interest groups, regional and local representation offices, and citizens in general. We felt it would be worthwhile to explore a number of themes likely to help us, in the years to come, to raise awareness about the right to complain to the Ombudsman with a view to improving the performance of the EU administration for the benefit of all.

It was acknowledged that there is much room for improvement in terms of getting the right information out to the right people. The European Ombudsman has two immediate challenges in terms of raising awareness: many people do not know what an Ombudsman is and many people do not know what the EU does. Any information material that we produce must address these two issues in a clear and straightforward way. The Ombudsman must improve his internet presence. We must target potential complainants better. EU institutions should systematically inform people they are in contact with about their right to complain.

The Ombudsman equally needs to get the message across that complaining is very straightforward. Relatively speaking, the Ombudsman offers a fast service and one that is free and flexible. For those who fear negative repercussions from the institutions if they complain, I will continue to make clear that any attempt to disadvantage, or threaten to disadvantage, a person for exercising the right to complain to the Ombudsman would itself be maladministration. EU institutions and bodies should take the necessary steps to ensure that their officials are aware of this and act accordingly.

### **Conclusion**

These are testing times for the European Union. Citizens in France and the Netherlands voted not to ratify the Constitution for Europe, voter turnout at European elections continues to decline, and the Union is still struggling to address the perception that it is a remote bureaucracy built by a political elite. A recent Eurobarometer revealed that only 38% of the public feels that "my voice counts in the EU".

The European Ombudsman was established to help bring the Union closer to citizens and to give the EU administration a "human face". A fundamental aspect of the institution is that the Ombudsman is a physical person, who communicates personally with individual citizens writing to him, reviews their case, and seeks to have their complaint resolved. Each one of these "micro-communications" helps to humanise the EU administration and

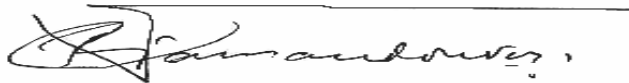
to bring it closer to the citizen. The Ombudsman is a key part of the structure for building trust between citizens and the institutions. He can help promote a constructive dialogue between the two sides.

As one complainant wrote, "For me, this case has finally ended and I hope that a new page can now open as far as my activities are concerned as they are intimately linked to Europe. I would like to thank you for your helpful mediation. Your institution offers a very important recourse enabling citizens to resolve, in a friendly manner, sensitive problems they may face with the European institutions."

The Ombudsman cannot work alone. Ensuring a top-class administration is a task that must be tackled in tandem with the EU institutions and bodies. Delivering on promises, providing proper redress mechanisms, learning from mistakes, working openly and allowing for public scrutiny — these are the all important means to building trust among citizens. Equally, the Ombudsman must work concertedly and systematically with his national, regional and local colleagues to ensure that citizens' rights are fully respected throughout the Union. Finally, he must continue to reach out to citizens and potential complainants so that they become aware of the service he provides.

As European Ombudsman, I will endeavour to build on the achievements of the first decade with a view to truly fulfilling my institutional mandate of bringing the Union closer to citizens and giving the EU administration a "human face".

Strasbourg, 14 February 2006



P. Nikiforos DIAMANDOUROS





# **1 EXECUTIVE SUMMARY**



The eleventh Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2005. It is the third 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 five annexes. It starts with a personal introduction by the Ombudsman, in which he reviews the year's main activities and achievements and outlines ideas for the years ahead. 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 2005.

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 2005.

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 2005. 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. Annex E describes the procedure for electing the European Ombudsman and gives an account of the re-election of Mr DIAMANDOUROS in January 2005.

## **SYNOPSIS**

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

The office of European Ombudsman was established by the Maastricht Treaty as part of the citizenship of the European Union. The Ombudsman investigates complaints about maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. With the approval of the European Parliament, the Ombudsman has defined "maladministration" in a way that requires respect for human rights, for the rule of law and for principles of good administration.

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

### **Complaints and inquiries in 2005**

During 2005, the Ombudsman received 3 920 complaints, an increase of 5% compared to 2004<sup>1</sup>. A record 59% of all complaints received by the Ombudsman in 2005 were sent electronically, either by e-mail or using the complaint form on the Ombudsman's website. Complaints were sent directly by individual citizens in 3 705 cases, while 215 came from associations or companies.

In over 75% 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 338 new inquiries were opened during the year on the basis of complaints (including one joint inquiry dealing with 389 individual complaints). The Ombudsman also began five inquiries on his own initiative.

In 2005, the European Ombudsman dealt with a total of 627 inquiries, 284 of which were carried over from 2004.

As in previous years, most of the inquiries concerned the European Commission (68% of the total). Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 73 inquiries concerning the European Communities Personnel Selection Office (EPSO), 58 concerning the European Parliament and 14 concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (188 cases), unfairness or abuse of power (132 cases), discrimination (103 cases), unsatisfactory procedures (78 cases), avoidable delay (73 cases), negligence (44 cases), failure to ensure fulfilment of obligations, that is failure by the European

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<sup>1</sup> It should be noted that 335 of these complaints were on the same subject and were treated in a single joint inquiry (see summary of case 3452/2004/JMA and others in the sub-section entitled "no maladministration").

Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (37 cases), and legal error (29 cases).

A total of 3 269 individual requests for information were received by e-mail, compared to around 3 200 in 2004 and 2 000 in 2003.

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

In 2005, the Ombudsman closed 312 inquiries, of which 302 were inquiries into complaints and ten were own-initiative inquiries. The findings were as follows:

#### *No maladministration*

In 114 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 explained the reasoning behind its decision not to pursue an inquiry against the Spanish authorities concerning alleged discrimination based on sexual orientation. The specific problems encountered by the complainants — a Spanish national and an Argentine national — fell outside the scope of Community law, it said. In line with the Commission's suggestion to seek redress at the national level, the complainants lodged a complaint with the Spanish Ombudsman. (1687/2003/JMA)
- Following a complaint from the European Citizen Action Service (ECAS), the Ombudsman found that the Commission's minimum standards for consultation of interested parties on the future of the structural funds were sufficiently clear and that, in the case in question, the Commission had complied with them. He did not, however, exclude the possibility that the minimum standards could be expressed more clearly or that a more cross-sectoral and holistic approach to consultation could be appropriate in some cases and informed ECAS of the possibility of making such suggestions to the Commission. (948/2004/OV)
- The Ombudsman's inquiry into the free lending of books from public libraries helped clarify both the reasons for the Commission's decision to start infringement proceedings against Spain and the possibilities to correctly implement the relevant Community Directive without undermining this free lending. The Ombudsman was acting on the basis of 389 complaints which alleged that the Commission's decision to pursue this case against Spain undermined the existence of public libraries as a basic public service and went against the fundamental rights of citizens to have access to culture. The inquiry was closed when the Ombudsman was informed that the Commission had referred the matter to the European Court of Justice. (3452/2004/JMA and others)

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 suggested that the Commission review its internal rules on telephone logs in the framework of calls for tender. This followed his inquiry into the propriety of a telephone conversation that had taken place between the Commission services and the complainant's rival bidder. The Ombudsman found no evidence of impropriety but noted that it would have been easier for the Commission to deal with the complainant's concerns if it had been able to produce a written record of the telephone conversation in question. (1808/2004/JMA)
- Following an inquiry into complaints that the Commission and the Council failed to ensure a sufficient number of parking spaces for people with disabilities near their main buildings in Brussels, the Ombudsman welcomed their requests to the Belgian authorities to ensure additional parking places and asked to be kept informed of the results. He invited the Council, in addition, to reconsider its policy of limiting access to its own parking spaces for disabled people on grounds of security and, in this regard, suggested it follow the example of the Commission. (2415/2003/JMA and 237/2004/JMA)
- With a view to improving the efficiency and transparency of its relationship with citizens, the Ombudsman stated that the Commission could clarify its procedures for dealing with complaints concerning the use of EU financial assistance. This followed his inquiry into the Commission's handling of a complaint concerning the reduction of a grant by the regional authorities of Madrid. As a result of the Ombudsman's inquiry, the Commission agreed to provide information to the complainant, acknowledging and apologising for its delay in informing him about its handling of his case. (274/2004/JMA)
- The European Personnel Selection Office (EPSO) agreed to include in future notices of competition clarification that (i) an invitation to attend the pre-selection tests does not imply that the candidate's eligibility has been fully checked and (ii) the written tests of candidates who are subsequently found to be ineligible will not be marked. This followed a further remark made by the Ombudsman in light of an inquiry into a complaint from a Hungarian citizen who had applied to take part in an open competition for assistant translators. The Ombudsman felt that including this information would help to avoid misunderstandings and to improve relations with candidates. (839/2004/MHZ)

#### *Cases settled by the institution and friendly solutions*

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

During 2005, 89 cases were settled by the institution or body itself following a complaint to the Ombudsman. Among them were the following:

- The Commission settled a late payment case with a German science journalist, explained the reasons for the delay and agreed to pay interest. It confirmed that it had, in the meantime, taken measures to accelerate payments to experts. The complainant subsequently pointed out that he had been paid within only 30 days for his latest contract. (1266/2005/MF)
- The Council assisted the Ombudsman in settling a case concerning the termination of the contract of a civilian IT expert in the European Union Police Mission (EUPM) in Sarajevo with the result that the EUPM agreed to pay the complainant the salary due to the normal end of his contract. As regards the complainant's claim that the Council should clear him of all allegations against him, the Ombudsman stated that the complainant was entitled to regard the Ombudsman's finding in his earlier case as clearing his name, as the Ombudsman had confirmed in that case that the complainant's rights of defence had not been respected. (471/2004/OV)
- The Commission released two letters it had sent to the United Kingdom authorities in the framework of an infringement procedure, as well as the United Kingdom's response and apologised for the undue delay in handling the application for these documents. Following further inquiries, the Commission also agreed to give the complainants access to three CD-ROMs containing the information the United Kingdom authorities had sent to the Commission to support their case. The infringement procedure concerned the United Kingdom authorities' alleged failure to follow Community law regarding a large landfill site near the complainants' homes. (3381/2004/TN)

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 2005, 22 friendly solutions were proposed. Seven cases were closed in 2005 after a friendly solution had been achieved (including one case where the proposal was made in 2004). At the end of 2005, 18 proposals for friendly solutions were still under consideration, including two cases in which the Ombudsman asked the Commission to re-examine its earlier rejections of proposals that were made in 2004. Among the friendly solutions achieved in 2005 were the following:

- The Commission agreed to pay compensation of EUR 596 to a complainant whose case was not handled properly and in a timely fashion. It acknowledged that due to several misunderstandings and administrative errors, the complainant had not been paid in due time. It added that a number of elements identified by the Ombudsman as well as the exceptional circumstances of the case had led it to propose the amount of EUR 596 as compensation to the complainant. This sum corresponded to the interest accrued on the outstanding payment. (1772/2004/GG)

- Following the Ombudsman's inquiry into Parliament's information campaign in Finland for the European elections held in June 2004, the institution promised that its information office in Helsinki would ensure that even greater care was taken in future in the use of languages. The Swedish Assembly of Finland had complained that posters used as part of the information campaign had been published only in the Finnish language. Parliament acknowledged the shortcomings of the campaign, as well as the fact that the proportion of the Finnish population that speaks Swedish is not relevant to the status of that language as an official language of the EU or to its status under the Finnish Constitution. (1737/2004/TN)
- The Commission agreed to pay a Portuguese citizen EUR 1 000 in a spirit of conciliation after it acknowledged that it could have taken adequate measures to inform her about the impossibility of her starting to work before the date she actually took up her position. The complainant alleged unfairness by the Commission because it had taken the decision that she could not work as a call-centre operator only after she had started her job. She also contested the rules invoked by the Commission which led it to deem her ineligible to work as an operator. The Commission did not share the Ombudsman's view as to possible maladministration on its part as regards the application of the rules in question to the complainant's case. (1336/2003/IP)

#### *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 2005, the Ombudsman made 29 critical remarks. For example:

- The Ombudsman criticised the Council for failing to deal with a request for public access to documents properly and carefully. This followed an inquiry which revealed that, contrary to the Council's initial response to the complainant concerning the number of relevant documents, many additional documents in fact existed. As a result of the Ombudsman's investigation, the complainant was given access to the additional documents. As the Council had introduced new internal rules in this area, the Ombudsman stated that he trusted that problems of the sort identified in the present case would no longer occur in the future. (1875/2005/GG)
- The Ombudsman criticised the Commission in a case of late payment to a small German company which was a sub-contractor in the Galilei project. This inquiry revealed a more general problem, namely that the relevant contractual framework neither required nor encouraged the main contractor to claim interest on behalf of sub-contractors if there was late payment by the Commission. The Ombudsman



therefore suggested that the Commission consider altering its standard contracts so that payment of interest in such cases would become automatic. The Commission confirmed that it would strive to take the interests of small and medium-sized enterprises into account in future standard contracts, to the extent that this is compatible with the Community's financial interests and the legislative provisions in force. (530/2004/GG)

- The Ombudsman criticised OLAF in respect of its handling of information that a German official had submitted to it about suspected illegalities at a Community body. The complainant alleged lack of information from OLAF regarding the period that could reasonably be deemed necessary for it to investigate his complaint. The Ombudsman found that the rules required OLAF to provide the whistle-blower with information as to the period of time within which it expected to conclude its investigation. (140/2004/PB)

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 2005, the Commission informed the Ombudsman of its follow-up on 18 critical remarks, including:

- A case in which the Ombudsman criticised the Commission for failing to provide an adequate explanation for the length of an investigation, which had taken just under three years. The Commission, which had referred to general factors, such as a heavy workload, that may cause delays, informed the Ombudsman that it would endeavour to give a more precise explanation should a similar case arise in the future. (2229/2003/MHZ)
- A case in which the Ombudsman criticised the response of the Commission's Representation in Copenhagen to a complainant's request for information about the processing of data relating to him. The Commission expressed its regret that its Representation had breached the Community's data protection rules and stated that it would remind the Representation that the data protection rules must always be respected. (224/2004/PB)

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 2005, 20 draft recommendations were made. In addition, eight draft recommendations from 2004 led to decisions in 2005. Nine cases were closed during the year when a draft recommendation was accepted by the institution. Three cases led to a special report to the European Parliament. Six cases were closed for other reasons. At the end of 2005, 11 draft recommendations were still under consideration, including one made in 2004. The following were among those that were accepted in 2005:

- The Commission agreed to pay compensation of EUR 56 000 to a French journalist. This was the biggest compensation payment ever resulting from a complaint to the Ombudsman. It followed his finding that the Commission had failed to respect the complainant's reasonable expectations. The Commission had cancelled its financial contribution to the complainant's project. (2111/2002/MF)
- The Commission abolished the age limit of 30 years as one of the selection criteria in its in-service traineeship programme. This followed a complaint concerning the rules governing the programme. The Ombudsman noted that several other Community institutions and bodies apply an age limit in their traineeship programmes. He therefore announced that he would launch an own-initiative inquiry into these programmes. (2107/2002/(BB)PB)
- The Commission agreed to give public access to a letter that the Portuguese Minister of Finance had sent it concerning the Portuguese excessive deficit procedure. The Commission had refused a Member of the European Parliament access to the letter on the grounds that its disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of Portugal. The Ombudsman approached the Portuguese authorities who informed him that, in the country's current budgetary situation, the letter did not contain elements which could affect Portugal's economic and financial policy. (116/2005/MHZ)

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 judgment of the Parliament. Three special reports were made in 2005:

- The Ombudsman submitted a special report to Parliament after the Council failed to give valid reasons for refusing to meet in public whenever it is acting in its legislative capacity. The Ombudsman's inquiry into this matter followed a complaint from German MEP, Mr Elmar BROK, and a representative of the youth group of the CDU (Christian Democratic Union), in which they alleged that the Council's Rules of Procedure are not in conformity with the Treaty on European Union according to which the Council and the other Community institutions and bodies must take decisions as openly as possible. The Ombudsman recommended that the Council should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity. (2395/2003/GG)
- The Ombudsman sent a special report to the European Parliament concerning statements that the European Anti-Fraud Office (OLAF) made in the context of an inquiry he carried out. The inquiry concerned allegations of bribery, made by OLAF, that were likely to be understood as directed against a particular journalist. The journalist then submitted a further complaint to the Ombudsman, alleging that the information provided by OLAF during that inquiry was liable "to mislead the European Ombudsman and to manipulate the inquiry". In his special report, the

Ombudsman recommended that OLAF acknowledge that it had made incorrect and misleading statements in its submissions during the Ombudsman's inquiry. The Ombudsman considered that the case raised an important issue of principle, affecting the trust of citizens in the EU institutions and bodies. (2485/2004/GG)

- The Ombudsman sent a special report to the European Parliament after he found unjustified discrimination in the differing financial treatment of EU staff who have children with special educational needs. He had made a draft recommendation that the Commission should take the necessary steps to ensure that parents of children with special educational needs who are excluded from the European Schools because of their degree of disability should not be required to contribute to the educational costs of their children. While the Commission's response expressed its willingness in principle to review the current policy, subject to budgetary constraints which could be tackled in the budget process, the Ombudsman concluded that this did not amount to an unequivocal acceptance of the draft recommendation. (1391/2002/JMA and others)

### **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-authorized person (i.e., when the complainant is not a citizen or resident of the Union or a legal person with a registered office in a Member State). Three such own-initiative inquiries were opened in 2005. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. He did this on two occasions in 2005, including in the following instance:

- The Ombudsman launched an own-initiative inquiry into the issue of granting candidates access to the evaluation criteria established by selection boards. This followed three cases he dealt with in 2005 concerning the information available to candidates in recruitment competitions. EPSO's responses in these cases gave detailed additional information that would help the complainants concerned to understand their marks. As the cases raised important factual and legal issues of a more general nature, the Ombudsman decided to open an own-initiative inquiry. (OI/5/2005/PB)

### **Further analysis**

These and other cases are reviewed from the following thematic perspectives in the final section of chapter 2 of the Annual Report: openness and data protection; the Commission as "guardian of the Treaty"; tenders, contracts and grants; and personnel matters, including recruitment.

Chapter 3 of the Report contains summaries of 65 out of the total of 312 decisions closing cases in 2005. The summaries reflect the range of subjects and institutions covered by the Ombudsman's inquiries and the different types of finding.

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

### **Relations with EU institutions and bodies**

Constructive working relations with EU 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 used the occasion of the tenth anniversary of the institution to build on the constructive relations that were developed during the first decade. On 17 November 2005, he held a formal dinner for the Presidents and Secretaries-General of EU institutions, along with the Heads of the Union's bodies and agencies. Over 45 people attended the dinner, representing EU institutions, bodies and agencies from all over the Union. The aim of the event was to highlight the Ombudsman's determination jointly to work with all EU institutions, bodies and agencies in the coming years to improve the quality of the EU administration. In light of the fact that the Commission accounts for around 70% of the inquiries carried out by the Ombudsman, the Commission President, Mr José Manuel BARROSO, was invited to deliver the keynote address. During his address, the Commission President outlined the benefits of the new internal procedure adopted by the Commission for responding to the Ombudsman's inquiries. The Ombudsman used the occasion to outline his role not only as an external mechanism of control but also as a valuable resource to managers — a resource capable of helping administrations to better their performance by directing attention to areas for improvement.

The Ombudsman reiterated this message during a range of other meetings he held with Members of the institutions and bodies and their officials in 2005. These events included presentations of his work, during which he offered guidance on how best to respond to complaints and how to improve procedures. Of particular salience in this regard was the meeting with the College of Commissioners on 25 May. In addition, during the meetings that took place in 2005, initiatives were explored with a view to enhancing interinstitutional co-operation and to exchanging information and best practice with key interlocutors. Further meetings saw discussion of the Ombudsman's priorities and the resources necessary to achieve these priorities, with a particular focus on the institution's budget for 2006.

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. Nine publications were made available to MEPs in 2005. 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 possible 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. Relations between the Ombudsman and the Committee on Petitions went from strength to strength in 2005, with the MAVROMMATIS Report on the Ombudsman's activities for 2004 highlighting the importance of these constructive working relations. At a meeting of the Committee on Petitions on 12 October 2005, the Ombudsman, in accordance with Rule 195(3) of Parliament's Rules of Procedure, undertook to appear before the Committee at his own request, whenever he presents a special report to Parliament.

### **Relations with ombudsmen and similar bodies**

The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This co-operation is equally vital for tracking important developments in the world of ombudsmen, exchanging information about EU law and sharing best practice. For the most part, this co-operation takes place under the aegis of the European Network of Ombudsmen, although the European Ombudsman equally participates in conferences, seminars and meetings outside of the Network.

#### *The European Network of Ombudsmen*

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 30 countries, covering the national and regional levels within the Union, as well as 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 country 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 2005, the Ombudsman advised 945 complainants to turn to a national or regional ombudsman and transferred 91 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.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or channels the query, if appropriate, to another EU institution or body for response. In 2005, four queries were received (two from national and two from regional ombudsmen) and three were closed (including two brought forward from 2004).

The Network is equally active in terms of sharing experiences and best practice. This occurs via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service.

National ombudsmen seminars are held every two years, organised jointly by the European Ombudsman and a national counterpart. The fifth seminar, organised by the Dutch National Ombudsman, Mr Roel FERNHOUT, and the European Ombudsman, took place in The Hague, the Netherlands, from 11 to 13 September 2005. The seminar included a gala dinner to mark the tenth anniversary of the European Ombudsman institution, which gave Mr DIAMANDOUROS an opportunity to thank his colleagues for their invaluable support during the institution's first decade.

This was the first seminar to include ombudsmen from the candidate countries and the first after the Union's biggest ever enlargement. All 25 EU Member States were represented at the meeting, as were Croatia, Romania, Iceland and Norway. The theme of the seminar — "The role of ombudsman institutions and similar bodies in the application of EU law" — was seen as highly relevant for ombudsmen throughout the enlarged Union. As supervisory bodies, ombudsmen have a critical role to play in ensuring the full and correct application of EU law in the Member States. The discussions in The Hague focused on how best ombudsmen can work together to properly play their part. Important conclusions were drawn regarding future co-operation between members of the Network and progress on these initiatives will be reviewed at the next seminar of national ombudsmen that will take place in Strasbourg in 2007.

The *European Ombudsmen — Newsletter* continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2005. The two issues, published in April and October, covered topics such as the future Fundamental Rights Agency of the EU, access to documents and data protection, discrimination and obstacles to free movement, prison-related problems in a number of Member States, healthcare provision, and problems faced by immigrants. The Ombudsman's electronic document and discussion fora continued to develop 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 the free lending of books by public libraries to making ombudsmen's decisions public on the Internet. 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.

Information visits to ombudsmen in the Member States and applicant countries have also 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.

### *Meetings*

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsmanship, discussing interinstitutional relations and exchanging best practice, he attended a number of events organised by national and regional ombudsmen and met with a wide range of ombudsmen and representatives of ombudsman institutions from within the EU and further afield.

## Communications activities

Ever keen to raise awareness among citizens about their right to complain, the Ombudsman used the occasion of the tenth anniversary of the institution to organise or host a number of events aimed at increasing knowledge about his role. On 28 October, the *Institut des hautes études européennes* of Strasbourg's *Université Robert Schuman* organised a colloquium entitled *Le Médiateur européen: bilan et perspectives* ("The European Ombudsman — assessment and perspectives"). Over 80 academics, students, lawyers, EU staff and other participants attended the event, which was opened by the Senator and Mayor of Strasbourg, Ms Fabienne KELLER. On 6 December, the Ombudsman held two events in Brussels under the heading "The European Ombudsman: 10 years, 20 000 complaints — too many? too few?" Organised in association with the European Journalism Centre, the events took the form of a press seminar and public workshop aimed at the media, NGOs, interest groups, regional and local representations, and citizens interested in the Ombudsman's work. The discussions during these events raised key issues for the Ombudsman to reflect on as the institution embarks on its second decade.

The Ombudsman continued his information visits to the Member States in 2005 with a visit to the United Kingdom in November. During this visit, the Ombudsman met citizens, potential complainants, administrators, members of the judiciary and senior political representatives. This visit proved an excellent means of improving citizens' awareness about their rights, raising the profile of the Ombudsman's work among key members of the judicial, legislative and executive branches and enriching the valuable collaboration the Ombudsman enjoys with his ombudsman counterparts in the United Kingdom.

The Ombudsman and his staff continued their efforts to present the work of the institution during conferences, seminars and meetings in 2005, with around 120 such presentations taking place during the year. These meetings helped raise awareness of the Ombudsman's work among potential complainants and interested citizens alike.

Media activities continued apace, with 17 press releases distributed to journalists all over Europe. The Ombudsman gave over 50 interviews to journalists from the print, broadcast and electronic media in Strasbourg, Brussels and further afield. He also presented his work and responded to questions during press conferences and meetings.

Material about the work of the Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament. The Brussels Open Day on 30 April was used to launch *The European Ombudsman's tenth anniversary postcard* in 24 languages. The Ombudsman also produced a commemorative volume to mark the tenth anniversary. Entitled *The European Ombudsman: Origins, Establishment, Evolution*, this publication was produced in both hardback and softback editions and was launched in The Hague as part of the Fifth seminar of national ombudsmen. A new-look version of *The European Code of Good Administrative Behaviour* was also published in 24 languages in 2005. Over 100 000 copies of the Code were distributed to ombudsmen, MEPs, heads of EU institutions and bodies,

Commission Representations and Parliament Offices in the Member States, the EU relays and networks, public administrations at the national and regional levels in the Member States, and citizens and organisations that have shown a particular interest in the work of the EU institutions. Great interest was shown in this publication, with requests for many thousands of additional copies being received by the end of the year.

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. A new section of the website devoted entirely to the tenth anniversary of the institution was created in 2005. This contained the *Commemorative Volume*, as well as several documents relating to the tenth anniversary events. Another new section of the site was created containing historical documents connected to the establishment of the Ombudsman institution.

From 1 January to 31 December 2005, the homepages of the Ombudsman's website were visited 304 300 times. The English-language version of the site was the most consulted with 71 166 visits, followed by the French, Italian, Spanish, German and Polish versions. In terms of the geographical origin of visits, the greatest number of visitors came from Belgium (27 517 visits), followed by Italy, Spain, France, Germany and Poland.

### **Internal developments**

The Ombudsman continued his efforts in 2005 to ensure that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages.

The Ombudsman's Administration and Finance Department was overhauled in 2005, with its division into four sectors — the Administration Sector, the Finance Sector, the Complaints-Handling Sector and the Communications Sector. The aim of this restructuring was to allow for greater specialisation within the individual sectors, with co-ordination ensured by the Head of the Department. Within the Legal Department, procedures for case-management and quality control were strengthened, to ensure consistent monitoring and reliable handling of larger numbers of complaints by a larger team of Legal Officers.

The number of posts in the Ombudsman's establishment plan rose from 38 in 2004 to 51 in 2005, 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 2003-05. An increase to 57 posts is foreseen in the 2006 budget adopted by the budgetary authorities in December 2005. This increase is mainly due to the next enlargement of the European Union (Bulgaria and Romania) and to the implementation of the decision to achieve full autonomy from Parliament's services with regard to the Ombudsman's staff management. One of the priorities of this tenth year of the institution was in fact to revisit the existing co-operation agreements with Parliament, with an eye to adapting them to the new realities. A new agreement was scheduled to be signed in early 2006 with the aim of maintaining intensive co-operation with the Parliament in all the domains where substantial economies of scale and budgetary savings are possible.



The Ombudsman presented the budget for the year 2006 according to a new budget structure (nomenclatures). The aim of this new structure is to increase transparency and to facilitate enhanced control by the budget authority, by allowing for better oversight of expenditure of similar nature, which in the structure used to date was spread over several titles or chapters. Total appropriations for 2006 are EUR 7 682 538 (compared to EUR 7 312 614 in 2005).



## **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 Parliament<sup>1</sup>) 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.

## **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.

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

### 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. Three such own-initiative inquiries were opened in 2005.

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.

#### **Examples of complaints that were not against Community institutions or bodies**

##### *COMPLAINT AGAINST A DECISION OF THE EUROPEAN COUNCIL*

A Cypriot citizen complained against the European Council's decision to begin accession negotiations with Turkey. The complainant argued that the decision violates basic EU principles, such as liberty, democracy and respect for human rights and fundamental freedoms and claimed that the results of the European Council should be declared void.

Unlike the Council of the European Union, the European Council is not an institution of the European Community. According to Article 4 of the Treaty on European Union, the European Council "shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof".

*Case 221/2005/TN*

### *ALLEGED ABUSIVE TREATMENT BY CUSTOMS OFFICERS*

A citizen of the Union was transporting merchandise from Santander, Spain, to Rome, Italy. He complained about being stopped and searched by customs officers on the highway near Nice. The complainant alleged that he was treated abusively, that his merchandise was left open on the pavement, and that the customs officers refused to give any explanation for their actions.

The complaint did not concern actions of a Community institution or body and was therefore outside the European Ombudsman's mandate.

The European Ombudsman transferred the case to the French Ombudsman, who is competent to deal with complaints against the French customs authorities.

*Case 3484/2005/JMA*

### **2.2.3 "Maladministration"**

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

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

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

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

The Charter of Fundamental Rights, proclaimed in December 2000, includes the right to good administration as a fundamental right of Union citizenship (Article 41).

<sup>2</sup> See the judgment of the Court of First Instance of 28 October 2004 in joined cases T-219/02 and T-337/02, *Herrera v Commission*, para. 101 and the Order of the President of the Court of First Instance of 15 October 2004 in Case T-193/04 R *Hans-Martin Tillack v Commission*, para. 60.

## **An example of a complaint that did not concern possible maladministration**

### *MISTAKE IN THE GERMAN VERSION OF A DIRECTIVE*

The complainant trained as a nurse in the former GDR and worked in this profession for more than 15 years. After losing his job in Germany, he took a post in Austria. This employment came to an end when the German authorities failed to issue a certificate requested by the Austrian employer.

According to the complainant, European legislation required him to prove that he had worked in the field during a certain period without interruption. Despite his long professional experience, he could not fulfil this requirement because he had been briefly unemployed on two occasions. He alleged that this was unfair.

According to Article 4 of Directive 77/452/EEC, "each Member State shall recognize, as being sufficient proof, the diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care awarded by those Member States (...), accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities of nurses responsible for general care *for at least three years during the five years prior to the date of issue of the certificate*".

The wording of Article 4a of Directive 77/452, which was introduced following the unification of Germany and concerns diplomas issued in the former GDR, is the same as that of Article 4. However, the German version of the provision requires that the person concerned has worked, *without interruption*, for at least three years during the five years prior to the date of issue of the certificate.

The complaint to the Ombudsman was inadmissible because it did not concern maladministration but the merits of EU legislation.

In order to give useful advice to the complainant, the Ombudsman compared the different language versions of the Directive and found that the English, French, Spanish, Portuguese, Dutch and Italian versions of the provision did not require that the employment had to be without interruption. The Ombudsman therefore considered that the German version was clearly erroneous and informed the Commission and complainant accordingly.

The Commission agreed with the Ombudsman's analysis and asked the complainant to provide a copy of his correspondence with the relevant German authorities and to authorise the Commission to contact these authorities on his behalf. The Ombudsman thanked the Commission for its rapid and helpful reaction.

*Case 2744/2005/GG*



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

On 6 September 2001, the European Parliament approved a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public. The Code takes account of the principles of European administrative law contained in the case-law of the 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.

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

A complaint from an authorised complainant about maladministration by a Community institution or body 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).

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.

**An example of a complaint in which there were  
not sufficient grounds to start an inquiry**

*COMPLAINANT ANNOUNCED INTENTION TO BEGIN LEGAL PROCEEDINGS*

The complainant, who worked for a Community body, developed a medical condition and spent prolonged periods on sick leave. The appointing authority refused the complainant's request that an Invalidity Committee be set up and rejected a subsequent appeal made under Article 90(2) of the Staff Regulations. The complainant turned to the Ombudsman at the end of September 2005.

The complaint met both the procedural and substantive requirements of admissibility and the complainant was informed accordingly. However, the complainant had stated an intention to contest the rejection of the Article 90(2) appeal before the Court of First Instance. The deadline for an action to begin expired in early December 2005.

A complaint to the Ombudsman does not affect time limits for judicial proceedings (Article 2(6) of the Statute). Furthermore, when the Ombudsman has to close a case because of legal proceedings concerning the facts which have been put forward, the outcome of any inquiries carried out up to that point is filed without further action (Article 2(7) of the Statute). In these circumstances, the Ombudsman considered that there were no grounds to open an inquiry.

The complainant was invited to renew the complaint to the Ombudsman, in the event of deciding not to begin court proceedings.

*Confidential case*

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

## **2.4 ANALYSIS OF COMPLAINTS EXAMINED IN 2005**

During 2005, the Ombudsman received 3 920 new complaints, an increase of 5% compared to 2004. However, it should be noted that 335 of the new complaints were on the same subject and were treated in a joint inquiry (see summary of case 3452/2004/JMA and others in chapter 3 below). In accordance with established practice, all complaints that give rise to an inquiry are counted in the statistics produced by the Ombudsman. To avoid distortion, however, inadmissible mass complaints sent by e-mail, which often number several thousand, are only counted separately in the statistics up to and including the eleventh complaint.

Complaints were sent directly by individual citizens in 3 705 cases and 215 came from associations or companies. The Ombudsman also began five own-initiative inquiries.

During 2005, 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 93% of cases. Of all the complaints examined, just over 30% were within the mandate of the Ombudsman. Of these, 858 met the criteria of admissibility (including 389 complaints that led to one joint inquiry) but 132 did not provide grounds for an inquiry.

A total of 338 new inquiries were opened during the year on the basis of complaints (including the one joint inquiry mentioned above). The Ombudsman also began five inquiries on his own initiative. In the analysis of these inquiries in Annex A, the 389 complaints on the same subject-matter are dealt with as a single joint inquiry.

The European Ombudsman dealt with a total of 627 inquiries in 2005, 284 of which were carried over from 2004.

As in previous years, most of the inquiries concerned the Commission (68% of the total). Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 73 inquiries concerning the European Communities Personnel Selection Office (EPSO), 58 concerning the European Parliament and 14 concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (188 cases), unfairness or abuse of power (132 cases), discrimination (103 cases), unsatisfactory procedures (78 cases), avoidable delay (73 cases), negligence (44 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), and legal error (29 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.

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

During 2005, 114 complaints were transferred. Of these, 91 were transferred to a national or regional ombudsman, twelve to the European Parliament to be dealt with as petitions, six to the European Commission, and five to SOLVIT<sup>3</sup>.

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<sup>3</sup> SOLVIT is a network set up by the European Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market.

Advice was given in 2 329 cases. In 945 of these, the complainant was advised to turn to a national or regional ombudsman and 144 complainants were advised to petition the European Parliament. In 376 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 112 cases, the advice was to contact SOLVIT. In 752 cases, the complainant was advised to contact other bodies, mostly specialised ombudsmen or complaints-handling bodies in a Member State.

### **Examples of transfers of cases**

#### *VISA REQUIREMENTS FOR NON-CITIZEN RESIDENTS*

According to the complainant, a Swedish citizen, Latvia issues special passports to its Russian-speaking inhabitants. The complainant had been informed that the Schengen agreement obliges EU Member States to require visas from Latvians holding special passports. The complainant claimed that either Latvia should issue ordinary passports to all its inhabitants or that the provision of the Schengen agreement discriminating against Russian-speaking Latvians should be abolished.

As regards the claim against Latvia, the complainant was advised to turn to the National Human Rights Office. As regards the Schengen agreement, the Ombudsman noted that the complainant said he had been unable to obtain an explanation as to which of its provisions allowed such discrimination. In order to assist the complainant to obtain information, the Ombudsman transferred the case to the Commission. The Commission explained to the complainant that Community law does not prevent Member States from exempting holders of Latvian non-citizens' passports from visa requirements. The Commission also pointed out that the legal situation was under review in order to exempt all holders of aliens' and non-citizens' passports residing in a Member State from visa requirements.

*Case 1254/2005/TN*

#### *DISCRIMINATION IN NATIONAL TAX LAW*

A German citizen working in Spain complained that the normal progressive rate of income tax in Spain only applied to foreigners once they had worked in Spain for at least 183 days. The complainant alleged discrimination since the rate that applied to him and to his German colleagues was 25 percent, whilst a tax rate of 6 percent to 9 percent applied to his Spanish colleagues.

With the complainant's permission, the Ombudsman transferred the complaint to the Commission.

The Commission replied rapidly to the complainant, stating that it was aware of the problem and had taken the view that the legislation in question could, in some cases, impair the free movement of workers. It had therefore sent a reasoned opinion to the Spanish authorities, asking them to change the relevant provisions.

It was subsequently reported that the Commission had referred the matter to the Court of Justice.

*Case 2703/2005/GG*

*ENTITLEMENT TO UNEMPLOYMENT BENEFITS*

The French organisation managing unemployment insurance payments (Assedic) agreed to pay unemployment benefits to the complainant, a French citizen, provided she attended a training course. The complainant attended training in Belgium to become a nurse. Assedic refused to pay her the unemployment benefits, because her training centre was not located in France.

After contacting the complainant to obtain her consent, the European Ombudsman transferred the case to the French Ombudsman.

The French Ombudsman subsequently informed the European Ombudsman that a solution to the complaint had been found.

*Case 1363/2004/ELB*

*NON-RECOGNITION OF MARRIAGE*

A Latvian citizen complained that the Irish authorities refused to recognise the validity of her marriage, which took place in Ireland using the Russian orthodox rites and that they were threatening to deport her husband, a citizen of Ukraine.

The European Ombudsman transferred the complaint to the Irish Ombudsman and informed the complainant accordingly.

The Irish Ombudsman subsequently informed the European Ombudsman that the Irish Civil Marriage had been performed in the meantime and that the case was being dealt with by the Irish High Court.

*Case 2622/2005/JMA*

## **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. The European Parliament and Commission agreed in 2004 to accept a shorter time limit of two months for complaints against refusal of access to documents.

During 2005, the European Commission adopted a new internal procedure to give individual Commissioners greater ownership of the Commission's handling of the Ombudsman's inquiries. Under the former system, which was adopted in 1994 and revised in 1995, only the President of the Commission was empowered to transmit communications and documents to the Ombudsman. This empowerment was sub-delegated to the Secretary-General<sup>4</sup>. Under the new system, which came into operation on 1 November 2005, the empowerment of the President is replaced by an empowerment granted to the Commissioner in charge of the matter under inquiry<sup>5</sup>. No sub-delegation is authorised, although the valuable co-ordinating role of the Secretariat-General is maintained. The Ombudsman has welcomed the new procedure, which should help ensure the consistency and quality of the Commission's responses to complaints.

### **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. It is possible in principle to bring such an action based on the Ombudsman's alleged mishandling of a complaint.

### **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.

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<sup>4</sup> Empowerment procedure No 1995/4749; PV(94)1213, 7/9/2004; PV (95)1260, 13/9/1995.

<sup>5</sup> Communication from the President in agreement with Vice-President Ms Wallström: Empowerment to adopt and transmit communications to the European Ombudsman and authorise civil servants to appear before the European Ombudsman (SEC(2005) 1227/4), 4 October 2005.

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.

During 2005, the Ombudsman's power to inspect the institution's files was used in nine cases. The power to hear witnesses was used in one case.

#### **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<sup>6</sup>. However, where the Ombudsman inspects the file of the institution or body concerned or takes evidence from a witness, neither the complainant nor the public may have access to any 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.

### **2.7 THE OUTCOMES OF INQUIRIES**

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

In 2005, the Ombudsman closed 312 inquiries, of which 302 were inquiries into complaints and ten 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.

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<sup>6</sup> Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

### **2.7.1 No maladministration**

In 2005, 114 cases (of which six own-initiatives) 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 2005, 89 cases were settled by the institution or body itself following a complaint to the Ombudsman. Of this number, 71 were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence (see section 2.9 of the *Annual Report 1998* for details of the procedure 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 2005, 22 friendly solutions were proposed, an 83% increase as compared to the previous year. Furthermore, in the spirit of good co-operation that underlies the Commission's new internal procedure, mentioned in 2.6.1 above, the Ombudsman wrote to ask for the relevant Commissioner's personal involvement in seeking satisfactory outcomes in two cases in which the Commission had not responded positively to proposals for friendly solutions made in 2004. Seven cases were closed in 2005 after a friendly solution had been achieved (including one case where the proposal was made in 2004). At the end of 2005, 18 proposals for friendly solutions were still under consideration, including the two cases mentioned above in which the Commission had not responded positively to earlier proposals for friendly solutions.

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 and draft recommendations**

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 2005, the Ombudsman made 29 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 2005, the Commission responded to 18 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 2005, 20 draft recommendations were made. In addition, eight draft recommendations from 2004 led to decisions in 2005. Nine cases were closed during the year when a draft recommendation was accepted by the institution. Three cases led to a special report to the European Parliament. Six cases were closed for other reasons. At the end of 2005, 11 draft recommendations were still under consideration, including one made in 2004.

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

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

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

A special report to the European Parliament is the last substantive step which the Ombudsman takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgment of Parliament. The Ombudsman naturally provides whatever information and assistance may be required by Parliament in dealing with a special report.

The Rules of the European Parliament make the Committee on Petitions responsible for Parliament's relations with the Ombudsman. At a meeting of the Committee on Petitions

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

Three special reports were submitted to Parliament in 2005 (cases 1391/2002/JMA, 2395/2003/GG and 2485/2004/GG).

## **2.8 DECISIONS CLOSING CASES IN 2005**

Decisions closing cases are normally published on the Ombudsman's website (<http://www.euro-ombudsman.eu.int>) in English and the language of the complainant, if different. Chapter 3 contains summaries of 65 decisions closing inquiries. The summaries reflect the range of subjects and of Community institutions and bodies covered by the total of 312 decisions in 2005 closing inquiries, as well as the different reasons for closure. 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 decisions. It is organised in terms of a horizontal classification of the main subject matter of inquiries, constructed around five main categories:

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

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

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

A high proportion (24%) of complaints allege lack of openness. Article 1 of the Treaty on European Union refers to decisions in the Union being taken "as openly as possible" and Article 255 of the EC Treaty provides for a right of access to European Parliament, Council and Commission documents. This right is governed by Regulation 1049/2001<sup>7</sup>. Many other Community institutions and bodies also adopted rules on access to documents, following own-initiative inquiries by the Ombudsman in 1996 and 1999.

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<sup>7</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

### *Access to documents and information*

Regulation 1049/2001 gives applicants a choice of remedy: they may challenge a refusal either in court proceedings under Article 230 of the EC Treaty or by complaining to the Ombudsman. During 2005, the Ombudsman made decisions on 14 complaints concerning the application of Regulation 1049/2001, of which 11 were against the Commission, two against the Council and one against the European Parliament. Two further decisions concerned the application by the European Central Bank (ECB) and the European Investment Bank (EIB) of their own rules on access to documents.

Of the total of 16 complaints made under Regulation 1049/2001 or other rules on access, eight were from individuals, six were submitted by NGOs and two were from companies. Eight of the cases will be mentioned further in this sub-section.

In case 2066/2004/TN, the Ombudsman examined the overall scheme of Regulation 1049/2001 and took the view that it would be disproportionate and impractical to require the Commission to carry out the same in-depth legal analysis when considering whether to make a legislative document available in electronic form (as required by Articles 2(4) and 12(4) of the Regulation), as it must when dealing with a confirmatory application for access to a document.

The Ombudsman invoked Article 3(3) of the Statute to seek the assistance of the relevant national authorities in dealing with two complaints against the Commission's refusal of access to certain documents originating in the Member State concerned. In case 3381/2004/TN, the documents were the response of the United Kingdom authorities to the Commission's requests for information in an Article 226 procedure. Case 116/2005/MHZ concerned a letter sent to the Commission by the Minister of Finance of Portugal in the framework of the excessive deficit procedure. The Ombudsman's intervention with the national authorities had positive results for the complainants in both cases, since the Commission changed its position and agreed to provide access to the documents concerned.

The Ombudsman considered the application of exceptions contained in Regulation 1049/2001 in five cases: 2821/2004/OV, 2229/2003/MHZ, 1368/2004/GG, and the two cases mentioned above concerning documents originating in Member States.

In case 2821/2004/OV, the Ombudsman rejected the complainant's argument that there was an overriding public interest in disclosure and found that, since the procedure to impose a fine on a Member State under Article 228 of the EC Treaty was ongoing, the Commission was entitled to refuse access to an internal document under the first subparagraph of Article 4(3) of the Regulation.

In case 2229/2003/MHZ, the Ombudsman took the view that the case-law allowed the Commission to refuse access to a letter of formal notice under Article 4(2), third indent, of Regulation 1049/2001 (the purpose of inspections, investigations and audits). However, the Ombudsman rejected the Commission's argument that disclosure seemed even more detrimental to the public interest given that the complainant intended to use the letter in proceedings before national courts.

The Ombudsman's draft recommendation in case 1368/2004/GG resulted in the complainant obtaining at least partial access to some of the documents concerned, for which the Commission had claimed exemption under Article 4(1)(b) (privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data) and Article 4(2) first indent (commercial interests of a natural or legal person) of the Regulation.

The Ombudsman also considered certain exceptions contained in the rules on access to documents of the EIB and the ECB.

In case 3442/2004/PB, the Ombudsman took the view that the EIB's rules allowed it to refuse access to information on loans, made through intermediary banks, for small and medium-sized renewable energy projects.

In case 3054/2004/TN, the complainant wanted to know whether the ECB had intervened in the foreign exchange markets to soften the fall in the dollar and the rise in value of the euro. The Ombudsman considered that the ECB had given the complainant a clear and unequivocal explanation of its reasons for refusing to answer, so that the complainant could understand why the ECB refused to divulge this category of information. Since the ECB's rules contain an exception to protect the public interest as regards monetary and exchange rate stability, the Ombudsman found no reason to pursue the complainant's claim that the ECB should provide the information in question.

#### *Other questions of openness*

The Ombudsman carried out a review of the Commission's compliance, during a specific consultation procedure, with the five minimum standards for consultation of interested parties set out in its 2002 Communication (COM(2002) 704) and found that there had been no maladministration (case 948/2004/OV).

The Ombudsman closed three cases during 2005 after making draft recommendations to the European Personnel Selection Office (EPSO) concerning the information available to candidates in recruitment competitions. EPSO's responses to the draft recommendations gave detailed additional information that would help the complainants concerned to understand their marks but also raised important factual and legal issues of a more general nature. The Ombudsman therefore decided to open an own-initiative inquiry into access to evaluation criteria established by selection boards (see summary of case 2097/2003/PB in section 3.1.3).

Case 2395/2003/GG concerned the question of whether meetings of the Council in its legislative capacity should always be public. The Ombudsman considered that the principle that decisions should be taken "as openly as possible" (Article 1(2) of the Treaty on European Union) applies to the Council. Article 207 of the EC Treaty (concerning the Council's adoption of its own rules of procedure) does not provide that the degree to which the Council's meetings in its legislative capacity are to be open to the public should be regarded as a political choice and left to the Council's discretion. New Rules of Procedure adopted by the Council in 2000 already provided for increased openness of its legislative meetings, thus making clear that steps to increase the

transparency of its legislative activity had to, and could be, taken under Community law as it presently stands. The Ombudsman therefore made a Special Report to the European Parliament. The Report recommended that the Council should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity.

### *Complaints concerning data protection and co-operation with the European Data Protection Supervisor*

In case 224/2004/PB, the Ombudsman found that a Commission Representation had failed to comply with certain requirements of Regulation 45/2001<sup>8</sup> in communicating with the complainant. The Ombudsman's decision on the case included some general comments on the Ombudsman's provision of information to, and possible consultation with, the European Data Protection Supervisor (EDPS), who is responsible for ensuring, with respect to the processing of personal data, that Community institutions and bodies respect the fundamental rights and freedoms of natural persons and in particular their right to privacy. In particular, the Ombudsman noted that he would inform the EDPS of his decisions in cases concerning data protection and that he might consider it useful to consult the EDPS in certain cases involving complex issues of legal interpretation.

The Ombudsman subsequently consulted the EDPS in two cases and informed him of three other cases in which the Ombudsman had made further inquiries which suggested that the reply of the institution or body concerned should take account of the EDPS's Background Paper No 1 of July 2005 on *Public access to documents and data protection*. All five cases were still under inquiry at the end of 2005.

In December 2005, the Assistant EDPS informed the Ombudsman of his decision on a complaint against a Community institution. The decision of the Assistant EDPS took into account the Ombudsman's Special Report in case 2485/2004/GG, which concerned the same circumstances.

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

The rule of law is a founding principle of the European Union and one of the Commission's most important duties is to be the guardian of the Treaty<sup>9</sup>. Article 226 of the EC Treaty creates a general procedure under which the Commission may investigate and refer to the Court of Justice possible infringements of Community law by Member States. The Commission may open investigations on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions addressed to Parliament under Article 194 of the EC Treaty.

Complaints that are outside the mandate of the European Ombudsman often concern alleged infringements of Community law by Member States. Many such cases can best be handled by another member of the European Network of Ombudsmen. In some cases,

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<sup>8</sup> Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

<sup>9</sup> Article 211 of the EC Treaty requires the Commission to "ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied".

however, the Ombudsman considers it appropriate to transfer the complaint to the Commission to be dealt with under the Article 226 procedure. Section 2.5 above gives examples of both approaches.

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a Communication issued by the Commission in 2002<sup>10</sup>. The Communication's requirement that all complaints be registered by the Secretariat-General of the Commission is an important guarantee of good administration in their subsequent handling. Point 3 of the Communication contains a well-defined list of circumstances in which the Secretariat-General is entitled not to register correspondence as a complaint.

Chapter 3 contains summaries of ten decisions that illustrate how the Ombudsman deals with complaints against the Commission in its role as guardian of the Treaty. Six of the cases will be mentioned further here.

A critical remark was made in case 2229/2003/MHZ (also mentioned in 2.8.1 above) because the Commission had offered only a general explanation for its delay in completing its investigation of an Article 226 complaint, rather than referring to factors specific to the case.

Three cases were closed because the Ombudsman considered that no further inquiries were justified.

In case 274/2004/JMA, the Commission apologised for the delay in providing information that the complainant had requested about progress in dealing with a complaint concerning the use of EU financial assistance. A further remark was made suggesting that the Commission could clarify its procedures for dealing with such cases in the future.

In case 3452/2004/JMA and others, the complainants were concerned that the Commission's use of the Article 226 procedure threatened to undermine free lending of books from public libraries in Spain. The inquiry was closed when the Ombudsman was informed that the Commission had referred the matter to the Court of Justice. However, the inquiry up to that point was successful in clarifying both the reasons for the Commission's action and, through co-operation with the European Network of Ombudsmen, the possibilities for correct implementation of the relevant Community Directive.

Case 3254/2004/ID concerned the Commission's handling of a complaint about non-recognition of professional qualifications. The complainant also took legal action against the national authorities in the national courts about the same matter. The Ombudsman closed the case, since an assessment of the merits of the complaint against the Commission would have involved examination of the same questions about the interpretation and application of national legislation that the complainant had brought

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<sup>10</sup> Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law, OJ 2002 C 244, p. 5.

before the national courts and would therefore have duplicated the latter proceedings. The complainant was invited to renew the complaint once the national legal proceedings had been completed.

The Ombudsman reviewed the Commission's legal reasoning on the merits of two Article 226 complaints.

In case 1687/2003/JMA, the complainants contested the Commission's rejection of their complaint against Spain concerning discrimination on grounds of sexual orientation. After reviewing the relevant legal framework, the Ombudsman found that the Commission's position that the specific problems encountered by the complainants fell outside the scope of Community law appeared reasonable.

In case 1273/2004/GG, the complainant alleged legal error and inconsistency by the Commission in dealing with a dispute concerning the date at which a Community Regulation governing fishing in the waters surrounding the Azores had entered into force. The Ombudsman analysed the Regulation and took the view that the Commission's interpretation was erroneous and inconsistent with a position that it had adopted earlier.

Although not an Article 226 complaint, case 933/2004/JMA concerned the Commission's role as guardian of the fundamental principles and values of the Union in relations with third countries. According to the complainant, the Commission should have invoked the "human rights clause" to suspend the 1996 co-operation agreement with Vietnam. The Ombudsman found the Commission's explanation for not suspending the agreement to be reasonable on the basis of the criteria set out in the Commission's 1995 Communication on the inclusion of a "human rights clause" in agreements with third countries.

### **2.8.3 Tenders, 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 that they provide under a variety of EU programmes<sup>11</sup>.

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

Chapter 3 contains summaries of 16 decisions that illustrate how the Ombudsman deals with complaints of this kind. Eleven of the cases will be mentioned further here.

Two decisions concerned cases in which Commission Representations in Member States had made oral commitments to provide funding to the complainants. The Commission

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<sup>11</sup> Complaints relating to employment contracts are dealt with in sub-section 2.8.4.

settled case 501/2005/IP itself by making a payment to the complainant, whilst in case 2111/2002/MF, the Ombudsman's inquiry led to a friendly solution involving a significant sum by way of compensation.

In case 732/2004/ELB, the Ombudsman took the view that the Commission appeared to have discharged its responsibility for the proper management of the European Regional Development Funds, including satisfying itself that the management and control systems adopted by Member States are appropriate and adequate to ensure that paying authorities comply with their obligation of timely payment.

The Ombudsman's inquiry into a complaint from a small enterprise (case 530/2004/GG) revealed a general problem facing sub-contractors: the contractual framework neither required nor encouraged the main contractor to claim interest on behalf of sub-contractors if there was late payment by the Commission. The Ombudsman suggested that the Commission consider altering its standard contracts so that payment of interest in such cases would become automatic. In response, the Commission said that it would try to take into account the interests of SMEs in future standard contracts, to the extent that this is compatible with the Community's financial interests and the legislative provisions in force.

Standard contractual conditions were also at issue in case 338/2004/OV, in which the complainant NGO argued that the Commission should take stronger measures to prevent job advertisements that indicate an intention to discriminate on grounds of language. The Ombudsman accepted the Commission's arguments against the inclusion, in its own contracts, of special clauses forbidding such discrimination. The Ombudsman also suggested that the Commission could transmit any evidence of linguistic discrimination by one of its contractors or beneficiaries to the responsible national authority or provide the person submitting the evidence with the contact details of that authority.

Four decisions concerned complaints about the award of grant contracts. In two cases, the complainant challenged the merits of the decision to reject an application. The Ombudsman took the view that his review of the grounds for rejection should be limited to assessing whether there was a manifest error (1365/2004/TN and 758/2004/ELB). In the latter case, the Ombudsman considered that the absence of a mechanism to appeal against the evaluation made by independent experts did not, in itself, constitute structural or systemic maladministration. In the specific circumstances of case 2411/2003/MHZ, the Ombudsman took the view that the Commission should have given better advice to an NGO by drawing its attention to a fundamental condition of eligibility for a type of grant. In case 2673/2004/PB, the Ombudsman found the Commission's explanation of its decision to exclude profit-making entities from eligibility for a particular call for proposals to be reasonable.

Two decisions concerned the Commission's compliance with tender procedures.

In 1808/2004/JMA, the complainant questioned the propriety of a telephone conversation that had taken place between the Commission services and a rival bidder. The Ombudsman found no evidence of impropriety but noted that it would have been easier for the Commission to have dealt with the complainant's concerns if it had been



able to produce a written record of the telephone conversation in question. The Ombudsman therefore suggested that the Commission review its internal rules on telephone logs in the framework of calls for tender.

Case 538/2004/TN raised a question as to whether a bidder was entitled to insist that the Commission should strictly enforce a requirement concerning the number of copies of each tender that had to be submitted. The Commission adopted the position that correct application of its *Vade Mecum* on public procurement procedures did not require it to consider as inadmissible a bid that had not been submitted in the number of copies specified in the call for tenders. The Ombudsman suggested that, to avoid the possible appearance of unfairness to bidders who do submit the correct number of copies, the Commission could re-examine the relationship between the *Vade Mecum* and calls for tenders in this regard. The Commission's response referred to the principles of proportionality, equal treatment, non-discrimination and broadest competition, laid down in Article 89 of the Financial Regulation.

#### **2.8.4 Personnel matters**

This sub-section concerns decisions on complaints about: recruitment to, and work relationships with, the EU institutions and bodies; personnel matters arising under EU-funded contracts; and traineeships with the EU institutions.

Section 2.8.1 above has already noted that three cases were closed in which draft recommendations had been made concerning the information available to candidates in recruitment competitions (see summary of case 2097/2003/PB in section 3.1.3 below). Chapter 3 contains 15 other summaries of decisions in this category. Five of the cases gave rise to friendly solutions and two others were settled by the institution. Six cases will be mentioned further here.

In case 839/2004/MHZ, the Ombudsman suggested that, to avoid misunderstandings and improve relations with candidates, EPSO could make explicit in future notices of competition (i) that an invitation to attend pre-selection tests does not imply that the candidate's eligibility has been fully checked and (ii) that the written tests of candidates who are subsequently found to be ineligible will not be marked. EPSO subsequently announced that future notices of competition would indeed mention these two points.

In case 2107/2002/PB, the Commission accepted, with effect from 1 March 2005, a draft recommendation to abolish its age limit for traineeships. The Ombudsman announced that a further own-initiative inquiry into the practices of other institutions and bodies in this regard will be launched in the future.

Two decisions dealt with the termination of employment contracts.

In case 2191/2003/TN, an expert employed by the Commission resigned after becoming subject to insults and threats in a non-EU country. At the end of his inquiry, the Ombudsman considered that the Commission appeared to have taken appropriate action to assist the complainant. However, he pointed out that it would have been conducive to

better relations between the Commission and the complainant for the Commission to have explained earlier what it had done to help the complainant, rather than giving the impression that it was mainly concerned to show that the complainant was the author of his own misfortune. The Commission subsequently apologised and promised to take note of the remark for the future.

Case 471/2004/OV was a follow-up to an earlier complaint (case 1200/2003/OV, reported in the *Annual Report 2004*) in which the Ombudsman found that the complainant's rights of defence had not been respected when the European Union Police Mission in Sarajevo (EUPM) terminated his contract early. After the Ombudsman requested the Council's assistance, the EUPM agreed to pay the complainant the salary due to the normal end of the contract. The Ombudsman also stated that the complainant was entitled to regard the finding in case 1200/2003/OV as clearing his name.

Two other decisions dealt with certain special procedures applicable to staff of the Communities.

In case 140/2004/PB, the Ombudsman analysed the former rules governing "whistle-blowing" and considered, among other things, that the rules required OLAF to provide the whistle-blower, in all cases, with information as to the period of time within which it expected to conclude its investigation.

In case 620/2004/PB, the Ombudsman considered that the right to a hearing must be respected in an administrative inquiry into an allegation of harassment made by one official against another. However, it was not necessary that all the materials relied on by the investigators be communicated to the complainant, provided that, before the inquiry report was finalised, the complainant was notified of, and given a reasonable opportunity to comment on, the investigators' preliminary factual findings and the substance of the relevant supporting evidence.

### **2.8.5 Other matters**

Chapter 3 also contains eleven summaries of decisions on complaints that fall outside the categories dealt with in the preceding sub-sections.

Three of the cases concerned the European Schools.

In case 1435/2003/MF, the Commission accepted, and took satisfactory measures to implement, a draft recommendation that it should endeavour to clarify the conditions of admission of pupils in the language sections of the European Schools.

In case 1155/2004/TN, the Commission clarified, at the Ombudsman's request, that the future reform measures mentioned during the own-initiative inquiry OI/5/2003/IJH (see the Ombudsman's *Annual Report 2004*) would include observance of the Charter of Fundamental Rights in all the European Schools.

The third case (1391/2002/JMA and others) gave rise to a Special Report to the European Parliament, following a draft recommendation that the Commission should take the necessary steps to ensure that parents of children with special educational needs

who are excluded from the European Schools because of their degree of disability should not be required to contribute to the educational costs of their children.

The question of equality of treatment for disabled persons also arose in the context of complaints that the Commission and the Council had failed to ensure a sufficient number of parking spaces for people with disabilities near the main Commission and Council buildings in Brussels (joint summary of cases 2415/2003/JMA and 237/2004/JMA). The Ombudsman welcomed the Commission's and the Council's requests to the Belgian authorities to ensure additional parking places and asked to be kept informed of the results. The Ombudsman also invited the Council to reconsider its policy of limiting access to parking spaces for disabled people on grounds of security.

Two decisions concerned the European Anti-Fraud Office (OLAF).

In case 2485/2004/GG, OLAF refused, in effect, to accept a draft recommendation that it should acknowledge it had made incorrect and misleading statements in its submissions during the Ombudsman's inquiry into an earlier case. The Ombudsman considered that the case raised an important issue of principle, affecting the trust of citizens in the EU institutions and bodies. He therefore made a Special Report to the European Parliament.

In case 3446/2004/GG, OLAF accepted and took satisfactory measures to implement a draft recommendation to review and correct information contained in a press review published on its website.

Finally, in case 1737/2004/TN, the Swedish Assembly of Finland complained that posters used in that country as part of the European Parliament's information campaign for the 2004 European elections had been published only in the Finnish language. The Ombudsman's inquiry resulted in a friendly solution, in which Parliament acknowledged the shortcomings of the campaign, as well as the fact that the proportion of the Finnish population that speaks Swedish is not relevant to the status of that language as an official language of the EU or to its status under the Finnish Constitution.



### **3 DECISIONS FOLLOWING AN INQUIRY**



Within each sub-section of this chapter, cases are presented in case number order. The case number is given under the title of each case summary. For example, in sub-section 3.1.1, case 1687/2003/JMA precedes case 2191/2003/TN, which precedes case 274/2004/JMA. The full decision in each of the cases can be found via the "Decisions index" on the Ombudsman's website (<http://www.euro-ombudsman.eu.int/decision/en/default.htm>). The relevant decision can be accessed using the case number. Full decisions are included on the website in English and in the language of the complaint, if different. A printout of the full decision, as it appears on the website, may be requested from the Ombudsman's office.

In the second half of 2006, 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 Ombudsman's website. Again, a hard copy or CD-ROM of this document may be requested from the Ombudsman's office.

### **3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND**

#### **3.1.1 The European Commission**

##### **FAILURE TO ACT ON A COMPLAINT ABOUT DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION**

##### ***Summary of decision on complaint 1687/2003/JMA against the European Commission***

The complainants, a Spanish national and an Argentine national, complained to the Commission against the decision by the Spanish authorities to refuse the Argentine national a family reunification visa, which he needed in order to be able to move to Spain with his Spanish partner. According to the complainants, the refusal was based on the fact that they are of the same gender and thus constitutes discrimination based on sexual orientation. The complainants alleged that the Commission had not handled their complaint properly, in that it had interpreted the applicable Community rules in an unduly restrictive manner. They insisted that the Community rules in force were applicable to their situation and that the Commission should have instituted proceedings against the Spanish authorities for infringement of Community law, notably Article 13 of the EC Treaty which prohibits all discrimination, including on grounds of sexual orientation, and Articles 20 and 21 of the Charter of Fundamental Rights, as well as the provisions of Directive 2000/78 on equal treatment in employment<sup>1</sup>, and Directive 2000/43 concerning discrimination based on racial or ethnic origin<sup>2</sup>.

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<sup>1</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2002 L 303, p. 16.

<sup>2</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2002 L 180, p. 22.

The Commission argued that the problem encountered by the complainants fell beyond the scope of Community law and suggested that they seek redress at the national level or before the European Court of Human Rights.

The Ombudsman noted that the principle of non-discrimination, including on grounds of sexual orientation, constitutes a fundamental principle of Community law, enshrined both in the Treaty and in the Charter of Fundamental Rights. Article 13 of the EC Treaty empowers the Council to take appropriate action to combat discrimination based on sexual orientation but only within the limits of the powers conferred upon it by the Treaty. Similarly, Articles 20 and 21 of the Charter of Fundamental Rights are addressed to Member States only when they are implementing Union law. As regards the individual directives addressing the principle of non-discrimination, the Ombudsman pointed out that, to date, only one legal instrument, Directive 2000/78, addresses discrimination based on grounds of sexual orientation but that this legal instrument only applies to matters pertaining to employment. The Ombudsman also reviewed the existing Community directives concerning the entry of a third-country national into the territory of the Union, in order to join a Union citizen or resident, namely Directive 2003/86, on the right to family reunification<sup>3</sup> and Directive 2004/38 on the right to free movement of EU citizens<sup>4</sup>. The scope of these directives, however, is limited, since they only apply, respectively, to third-country nationals who already reside lawfully in the territory of the Member States and to Union citizens who have moved to, or resided in, a Member State other than their state of origin.

The Ombudsman therefore found that the justification given by the Commission for rejecting the complaint against the Spanish authorities appeared to be reasonable and that there appeared to be no maladministration.

## **TERMINATION OF A CONTRACT**

### ***Summary of decision on complaint 2191/2003/TN (Confidential) against the European Commission***

The complaint concerned the termination of the complainant's contract with the Commission, according to which he was employed to provide assistance to a ministry in a non-EU country. The complainant argued that, following the submission of a policy paper as part of his work, he became subject to insults and threats and was therefore forced to resign. The complainant alleged that the Commission had allowed this situation to occur. He claimed that he should receive payment of his salary until the date foreseen in his original contract.

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<sup>3</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, p. 12.

<sup>4</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ 2004 L 158, p. 77.



The Commission argued that, by making the policy paper public, the complainant had breached his obligation of confidentiality and had gone beyond his contractual objectives and responsibilities. The Commission could therefore not be held responsible for the insults and threats.

The Ombudsman understood the Commission to argue that, since the complainant had breached his contractual obligations and was therefore the author of his own misfortune, it was not obliged to assist him. The Ombudsman made a provisional finding of maladministration on the basis that the Commission had failed to assist the complainant in accordance with the General Conditions governing individual experts' contracts. He also made a proposal for a friendly solution.

In reply to the proposal, the Commission recognised that it had an obligation to provide assistance to the complainant under the General Conditions governing individual experts' contracts and explained in what way it considered itself to have provided such assistance.

On the basis of the further information provided by the Commission, the Ombudsman considered that the Commission appeared to have taken appropriate action to assist the complainant. The Ombudsman therefore found no maladministration by the Commission but considered it useful to make a further remark in which he stated that it would have been conducive to better relations between the Commission and the complainant if the Commission's first opinion on the complaint had explained what the Commission had, in fact, done to help the complainant in the difficult situation in which he found himself, rather than giving the impression that the Commission was mainly concerned to show that the complainant was the author of his own misfortune.

The Commission subsequently apologised for the fact that its first opinion gave an incomplete impression of the actions taken to assist the complainant and it promised to take note of the remark for the future.

## **USE OF EU FINANCIAL ASSISTANCE**

### ***Summary of decision on complaint 274/2004/JMA against the European Commission***

The complaint concerned the Commission's failure to inform the complainant about its handling of a complaint concerning the decision of the regional authorities of Madrid to reduce the level of a grant awarded to the complainant for the organisation of training courses for employees. The grant was financed through the European Social Fund. The reduction of part of the funding was based on the fact that some participants in the training courses were not Spanish nationals. The complainant considered this to be discriminatory. The complainant alleged that, several months after having complained to the Commission, it had failed to provide him with any information on the handling of his case.

The Commission regretted that its first assessment of the case had not been forwarded to the complainant. In a second and more detailed assessment, the Commission had accepted that part of the reduction in the amount of the grant was based on the fact that

two students were not Spanish nationals. The Commission had therefore made a recommendation to the responsible Spanish authorities to repay the relevant sum to the complainant and to exclude any reference to nationality from future programmes.

The Ombudsman did not consider it necessary to pursue any further inquiries, given that the Commission had agreed to provide the information requested by the complainant and had acknowledged and apologised for its failure to contact the complainant earlier.

However, since the Commission had not mentioned any criteria setting out the procedure which its services ought to follow to deal with complaints concerning the use of EU financial assistance, the Ombudsman considered it useful to make a further remark. The Ombudsman noted that, with a view to improving the efficiency and transparency of its relationship with citizens, the Commission could consider establishing and publicising procedures for receiving and handling complaints concerning the use of EU financial assistance, analogous to those applicable in its 2002 Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law<sup>5</sup>.

## **ARTICLE 226 COMPLAINT RELATING TO FOOD LAW**

### ***Summary of decision on complaint 295/2004/JMA against the European Commission***

The complainant lodged a complaint with the Commission alleging that a number of public authorities and private enterprises were responsible for a lack of food safety in Spain. According to the complainant, the situation infringed EU legislation on this matter, in particular the provisions of Regulation 178/2002 laying down the general principles and requirements of food law<sup>6</sup>. In his complaint to the Ombudsman, the complainant alleged that the Commission's decision to close his complaint was arbitrary. He also complained about the long delay in the handling of his case, the lack of information received, and the institution's flawed legal interpretation of the applicable EU legislation.

The Commission argued that the complaint had been assessed within the normal time limit and furthermore that the information included with the complaint did not allow its services to clearly identify its object. As regards the alleged failure by the Spanish authorities to inform consumers of risks, the Commission noted that the provisions of the Regulation concerning information to consumers were not yet applicable, since Member States enjoy a transitional period until 1 January 2007.

The Ombudsman noted that the procedures to be followed by the Commission in its handling of complaints are set out in its 2002 Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect

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<sup>5</sup> OJ 2002 C 244, p. 5.

<sup>6</sup> 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, p. 1.

of infringements of Community law<sup>7</sup>. He therefore assessed whether the specific allegations made by the complainant had any foundation in the light of the provisions of that Communication.

As regards the time taken to handle the case, the Ombudsman noted that the complainant had submitted his complaint to the Commission in January 2003 and that, having completed its inquiry, the Commission informed him in November 2003 of its proposal to close the case. Accordingly, the Ombudsman concluded that the Commission had completed its examination of the complaint within the one-year rule set out in its own Communication.

The Ombudsman also concluded that the complainant had, through several communications, been informed in writing of all the steps taken by the Commission in relation to his complaint, in accordance with the criteria set out in the Communication.

Finally, the Ombudsman concluded that the Commission's reliance on Article 4(3) of Regulation 178/2002, which requires that "*[e]xisting food law principles and procedures shall be adapted as soon as possible and by 1 January 2007 at the latest [...]*" appeared to be reasonable.

The Ombudsman therefore took the view that the Commission acted within its legal authority when it decided to close the case after having considered that, on the basis of the information contained in the complaint, there were no grounds to initiate infringement proceedings against Spain.

## **ALLEGEDLY DISCRIMINATORY JOB ADVERTISEMENTS**

### ***Summary of decision on complaint 338/2004/OV against the European Commission***

The European Esperanto Union made a complaint against the Commission concerning alleged linguistic discrimination by European organisations that are financed by the Commission and by companies that have contracts with the Commission. The Ombudsman had already dealt with an earlier complaint from the World Esperanto Association (case 659/2002/IP) concerning the same matter.

In the present complaint, the European Esperanto Union pointed out that various organisations and companies continued to publish job announcements requiring "English mother tongue" or an "English native speaker" and that the Commission had not taken legal action. The complainant claimed, among other things, that the Commission should take steps, including the withholding of financing, against organisations and companies that publish discriminatory job advertisements.

The Commission gave an overview of the latest measures it had taken since case 659/2002/IP, such as various internal notes drawing its services' attention to the issue. The Commission also referred to the relevant articles in the Financial Regulation and to Directive 2004/18 on the co-ordination of procedures for the awarding of public

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<sup>7</sup> OJ 2002 C 244, p. 5.

contracts, with regard to exclusion from procurement procedures because of conviction for an offence concerning professional conduct.

In reply to the Ombudsman's further inquiries, the Commission pointed out that professional misconduct may arise from many different situations and argued that it is not possible to mention each of those situations specifically in the procurement documents or call for proposals. In reply to the Ombudsman's question concerning the possible insertion into its contracts of a clause requiring non-discrimination, the Commission argued that the multiplication of special clauses to cover very specific situations outside the scope of the contract would complicate the content and structure of the contracts and could have negative effects on competition. The Commission also underlined that the national jurisdictions remain the sole instances competent individually to evaluate alleged cases of linguistic discrimination.

The Ombudsman considered that the arguments put forward by the Commission against the inclusion of special contractual clauses did not appear to be unreasonable. He also considered it reasonable, in view of the principle of subsidiarity, for the Commission to take the view that alleged cases of linguistic discrimination should be evaluated at national level. No maladministration by the Commission was therefore found. The Ombudsman however made a further remark that the Commission could, if it receives evidence of linguistic discrimination by one of its contractors or beneficiaries, transmit that information to the relevant national authority with responsibility for dealing with the matter or provide the person submitting the evidence with the contact details of that authority.

## **MANAGEMENT OF EUROPEAN REGIONAL DEVELOPMENT FUNDS**

### ***Summary of decision on complaint 732/2004/ELB against the European Commission***

The complainant, who was the director of a Centre that was selected to receive a grant financed by the European Regional Development Fund (ERDF), alleged that the Commission had failed to ensure the proper management of ERDF funds. He claimed that the Commission should contact the Italian authorities responsible for managing these funds in Italy, in order to request payment of the expenses incurred by the complainant, oblige those authorities to comply with the contract and to pay interest for late payment, and, possibly, sanction Italy for its poor management of the funds.

According to the Commission, Member States are responsible for the management of Structural Funds programmes and for designating the managing and the paying authorities. Within its powers of control and follow-up, the Commission ensured compliance with the principle of timely payment of contributions, provided for in Article 32, paragraph 1, fifth indent, of Regulation 1260/1999 laying down general provisions on the Structural Funds<sup>8</sup>. The Commission had requested information from the Italian authorities, from which it concluded that the complainant was responsible for some delays, as his bank data were incomplete. In April 2004, the paying authority informed

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<sup>8</sup> Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ 1999 L 161, p. 1.

the Commission that the beneficiary had been paid. The Commission wrote to the managing authority to request information on the financial arrangements of the programme and to request that this issue be put on the agenda of the next meeting of the monitoring committee. The monitoring committee decided to analyse the appropriateness of the financial arrangements chosen by the paying authority and to take measures to reduce the deadlines. The Commission was not in a position to impose sanctions or take measures against the paying authority.

The Ombudsman considered that, although the paying authorities designated by the Member States are responsible for the timely payment of ERDF funds, the Commission's responsibility for the proper management of ERDF funds includes satisfying itself that the management and control systems communicated to it by Member States are appropriate and adequate to ensure that paying authorities comply with their obligation of timely payment.

As regards the complainant's allegation that the Commission had failed to ensure the proper management of ERDF funds, the Ombudsman took the view that the Commission appeared to have taken appropriate and adequate steps to discharge its responsibilities for the proper management of ERDF funds. He therefore found no maladministration.

As regards the complainant's claims, the Ombudsman took the view that the Commission appeared to have taken appropriate action to ensure payment to the complainant. He pointed out that the responsibility for paying interest would fall on the Italian paying authority. Finally, the Ombudsman considered that the Commission's explanations as regards its lack of power to impose sanctions on Italy appeared reasonable.

## **EVALUATION OF A PROJECT PROPOSAL (1)**

### ***Summary of decision on complaint 758/2004/ELB against the European Commission***

The complainant's proposal to the Commission for an indirect RTD (Research, Technological development and Demonstration) project was rejected. The complainant alleged that the independent experts who decided that her proposal for the development of intraocular lenses was irrelevant to the Strategic Objective concerned had made an error. She also alleged that the procedure was unfair, since it was not possible to challenge the decision taken by the experts or to submit a second proposal. Finally, she alleged that the information available to her during the procedure was inadequate and unclear and that information arrived too late for her to consider making a new submission.

According to the Commission, a proposal must be evaluated in the context of the Strategic Objective concerned, its focal points and the overall objectives of the Work Programme. The unanimous opinion of the three independent experts was that the proposal was clearly not relevant. The Commission had reviewed this opinion and concluded that it was justified. To ensure fair and equal treatment, there is no contact between the Commission and applicants on their proposal until after completion of the evaluation. However, once the evaluation has been completed, the Commission is ready to provide, at an applicant's request, explanations additional to those contained in the

Evaluation Summary Report. As regards a new submission, the Commission argued that, based on the information it had supplied about the strengths and weaknesses of the complainant's proposal, the complainant could judge the suitability of making a submission under the next call.

The Ombudsman considered that to answer the question of whether the complainant's proposal fell within the scope of the relevant Strategic Objective required the application of expert scientific and technical knowledge and that the scope of his substantive review should therefore be limited to assessing whether the Commission's decision to confirm the evaluation results appeared manifestly unreasonable. The Ombudsman took the view that the Commission's decision was not manifestly unreasonable.

The Ombudsman also took the view that the role of the experts as defined in the relevant published Guidelines is to provide scientific and technical advice to assist the Commission to make the most effective decisions to promote the Community's objectives and that the experts' independence is conducive to both the effectiveness and the fairness of the process. In these circumstances, he did not consider that the absence of an appeal mechanism against the experts' evaluation could, in itself, constitute structural or systemic maladministration. Finally, the Ombudsman considered it to be clear that the complainant could not have re-submitted a revised proposal under the same call for proposals because of the expiry of the deadline for submissions and that the complainant had not shown that the Commission had failed to provide her with timely information with a view to a new submission for the following call.

## **HANDLING OF AN ARTICLE 226 COMPLAINT**

### ***Summary of decision on complaint 1298/2004/PB against the European Commission***

The complainant had submitted a complaint to the Commission concerning alleged breaches by the United Kingdom of Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>9</sup>.

In her complaint to the Ombudsman, she alleged that she had received an unsatisfactory explanation for the Commission's failure to reply to a letter that she had sent on 29 May 2003. She also alleged that the Commission had failed to reply to her questions as to (i) why the Commission withdrew a planned infringement proceeding against the United Kingdom in 1978, (ii) why the Commission allowed (as she saw it) the United Kingdom to infringe Community law, and (iii) how she herself could obtain a judgment by the European Court of Justice.

Finally, she alleged that the Commission had failed to provide her with information as to an established procedure in the United Kingdom enabling a citizen to obtain compensation for loss and/or damage caused by infringement of Community law.

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<sup>9</sup> First Council Directive 73/239/EEC of 24 July 1973 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 1973 L 228, p. 3.

Following his examination of the relevant correspondence, the Ombudsman found that the Commission appeared generally to have made efforts to act diligently in its handling of communications from the complainant and that it had apologised to the complainant and taken corrective measures in relation to the one delay that did occur. The Ombudsman furthermore considered that the Commission's explanation for the delay appeared credible.

The Ombudsman also noted that the Commission had explained to the complainant (i) that the Commission's services had been satisfied with the United Kingdom's undertaking to adopt the required legislation, (ii) that it had not considered that it had allowed the United Kingdom to infringe Community law, and (iii) that the national courts would be competent to rule on the past conformity of national legislation with Community law. The Ombudsman considered that these replies from the Commission were adequate replies.

The Ombudsman considered that it was reasonable for the Commission, in its communications with private individuals relating to concrete cases, to limit its information on issues of compensation claims against Member States to the rights established in the case-law of the Court of Justice. The Commission could not, in the Ombudsman's view, be obliged to provide legal advice regarding national rules of procedure.

The Ombudsman therefore found no maladministration.

## **EVALUATION OF A PROJECT PROPOSAL (2)**

### ***Summary of decision on complaint 1365/2004/TN against the European Commission***

The complaint concerned the Commission's evaluation of a project proposal submitted under the Sixth Research Framework Programme. A consortium of European companies had applied for funding for an offshore wind power project off the Irish coast. The complainant alleged that the Commission had made a manifest error of evaluation of the consortium's project proposal by stating that the consortium lacked a specialised foundation designer. According to the complainant, the proposal stated that the complainant's Danish partner was a specialist and, in all likelihood, the world leader in the relevant field. The complainant claimed, among other things, that the Commission should correct the factual errors made in its evaluation of the project proposal.

The Commission argued that the experts evaluating the offshore wind project proposal considered that the limited information provided about the Danish partner was not convincing.

In his decision, the Ombudsman recalled that his task was not to re-evaluate the project proposal in question but to investigate whether there had been a manifest error of evaluation by the Commission. The Ombudsman found that the project proposal's rather brief information on the Danish partner contained no reference to the company being a specialist or world leader in the relevant field. The Ombudsman took the view that, even assuming that the complainant was correct as regards the Danish partner's standing, the

complainant had not demonstrated that the Commission or its experts who carried out the evaluation of the proposal should have been aware of the partner's standing regardless of the information provided in the proposal. The Ombudsman did not, therefore, consider that the Commission had committed a manifest error of evaluation in concluding, on the basis of the information contained in the proposal, that the consortium lacked a specialised foundation designer.

As regards the complainant's claim that the factual error should be corrected, the Ombudsman pointed out that he understood the Commission to argue that the project proposal lacked information about the Danish partner and not that the Commission contested the complainant's statement that the partner was a specialist or a world leader in the relevant field. In view thereof and of the finding that the Commission had not committed a manifest error of evaluation, the Ombudsman found no grounds to pursue the claim in question.

## **APPLICATION OF THE HUMAN RIGHTS CLAUSE IN THE CO-OPERATION AGREEMENT WITH VIETNAM**

### ***Summary of decision on complaint 933/2004/JMA against the European Commission***

Article 1 (the "human rights clause") of the 1996 co-operation agreement between the European Community and Vietnam provides that co-operation between the parties has to be based on respect for human rights and democratic principles, which should become an essential aspect of the agreement. The complainant alleged that, in the face of serious violations of human rights by the authorities of Vietnam, the Commission failed to use its powers to suspend the co-operation agreement.

The Commission took the view that the improvement of the human rights situation in Vietnam could be achieved through a combination of dialogue and co-operation. It argued that there had been no material breach of the agreement that should lead to its suspension. According to the Commission, such a response should only be used as a last resort, and in full consultation with Member States and the European Parliament.

The Ombudsman noted that, on the basis of the "human-rights clause", respect for fundamental human rights constitutes an essential element of the agreement and thus a breach of that clause could lead to the agreement's suspension. He pointed out that this clause is binding on the Commission and that acts or omissions of the Commission in relation thereto could constitute instances of maladministration.

The Ombudsman considered, however, that the agreement did not specify the Commission's obligations as regards the circumstances in which that provision should be invoked in order to suspend the co-operation agreement. Moreover, neither the EC Treaty nor the Vienna Convention on the Law of the Treaties provide any further guidance on this matter. The Ombudsman noted that the Commission had set out some principles for the operation of the human rights clause in its 1995 Communication on the



inclusion of respect for democratic principles and human rights in agreements between the Community and third countries.

The Ombudsman noted that the Commission had taken the view that the suspension of the agreement would deprive the EU of the possibility of using EU-funded co-operation programmes to support the reform process in Vietnam and that it had therefore decided to pursue dialogue with the Vietnamese authorities by means of different bodies set up under the co-operation agreement. The Ombudsman considered that the Commission's reasoning for its decision not to trigger the suspension of the co-operation agreement, but instead to make use of measures that it considered to be more proportionate, in accordance with the criteria set out in its 1995 Communication, appeared to be reasonable. The Ombudsman therefore found no maladministration by the Commission.

### **CONSULTATION ON THE FUTURE OF THE STRUCTURAL FUNDS**

#### ***Summary of decision on complaint 948/2004/OV against the European Commission***

An NGO complained that the Commission had failed to consult NGOs on the future of the Structural Funds. In support of the allegation, the complainant referred to the Commission's Communication entitled "Towards a reinforced culture of consultation and dialogue — General principles and minimum standards for consultation of interested parties by the Commission" (COM(2002) 704 final of the 11 December 2002), which sets out five minimum standards for the consultation process. The complainant questioned whether the minimum standards are sufficiently clear and also suggested that the Commission should adopt a more cross-sectoral and holistic approach to consultation, particularly when its proposals have an impact on a wide range of interests.

The Commission argued that it had launched a broad consultation process with all interested parties and described in detail the actions that it had taken. It observed, however, that it would welcome more input from NGOs, which would require them to mobilise more effectively in the future.

The Ombudsman considered that the minimum standards are sufficiently clear to make it possible for him to evaluate whether or not the Commission has complied with them. In the present case, the Ombudsman carried out a detailed review and considered that the Commission had complied with the five announced minimum standards. No maladministration was therefore found. The Ombudsman did not, however, exclude the possibility either that the minimum standards could be expressed more clearly or that a more cross-sectoral and holistic approach to consultation could be appropriate in some cases. The Ombudsman pointed out that the complainant has the possibility to make suggestions in this regard to the Commission and that it would be good administration for the Commission to give serious consideration to any such suggestions.

**THE EUROPEAN EMERGENCY CALL NUMBER 112*****Summary of decision on complaint 1096/2004/TN against the European Commission***

The complaint was made by an association which alleged failures by the Commission in relation to the implementation of the European emergency call number 112. The association alleged that the Commission had failed to take further action regarding the civil protection component of 112, as consistently promised in its work programmes. It also alleged that the Commission had failed to supply updated and relevant information concerning 112 on its website.

The Commission argued that the responsible service had co-financed a number of projects relevant to 112 within the framework of the Community Action Programme in the field of civil protection and that it co-ordinates and co-operates with other Commission services in the context of 112. It also explained that although there had been delays in updating the website in the past, this was no longer the case.

The Ombudsman recalled the importance of empowering citizens and informing them of their rights and stated that he therefore understood the association's aspirations in this regard. However, the Ombudsman pointed out that, in implementing its work programmes, the Commission enjoys a degree of discretion, for the exercise of which it is accountable to Parliament through the budgetary procedure. The Ombudsman took into account that the Universal Service Directive recognises that citizens have an important interest as regards 112 but that the Directive makes Member States responsible for the provision of adequate information about 112. The Ombudsman found no evidence that, in implementing the work programmes concerned, the Commission had acted outside the scope of its discretionary powers or breached any rule or principle that is binding upon it.

The Ombudsman also noted that the 112 website stated that it had been updated on 21 September 2004, which appeared to be substantially correct. The links to obsolete legislation clearly referred to how 112 had been established and the website also contained an updated link to current legislation. The Ombudsman further noted that DG Environment had published lists of grants awarded in 2003 on its website and that the deadline for publishing such lists for 2004, as set out in Regulation 2342/2002 laying down detailed rules for the implementation of the Financial Regulation, had not yet expired.

On the basis of the above, the Ombudsman found no maladministration by the Commission.

**PHASING OUT OF LANGUAGE SECTIONS IN A EUROPEAN SCHOOL*****Summary of decision on complaint 1155/2004/TN against the European Commission***

The complaint concerned the Commission's actions in relation to the phasing out of two language sections in the European School at Culham in the United Kingdom. The complainants argued that the Board of Governors' decision in this regard had not been taken in conformity with its rules of procedure and that the procedure for making a decision on the closure of a school or a language section had not been followed. Since the Commission had proposed and voted in favour of the phasing out of the two language sections, the complainants alleged that it had failed to promote good administration in the European Schools, especially as regards the transparency and reasoning of decisions, as required by the Charter of Fundamental Rights of the European Union.

The Commission argued that the applicable rules and procedures had been followed. The Commission also appeared to argue that the Charter of Fundamental Rights does not apply to the European Schools but that fundamental rights in relation to decisions of the Board of Governors are protected by national laws and international agreements.

The Ombudsman recalled that the European Schools are not a Community institution or body and are therefore not within his mandate. The Ombudsman has consistently taken the view, however, that the Commission has a certain responsibility for the European Schools' operation, including a general responsibility to promote good administration in these schools. Nevertheless, the Ombudsman did not consider that his inquiry into the Commission's actions in relation to the Board of Governors' decision to phase out the two language sections in question had revealed any instance of maladministration by the Commission.

The Ombudsman recalled, however, that during the course of earlier inquiries, the Commission had acknowledged the applicability of the Charter of Fundamental Rights to the European Schools. The Ombudsman therefore made a further remark in which he stated that the Commission's acknowledgement of the Charter's binding force on the European Schools constitutes an important part of the Commission's responsibility for promoting good administration in the schools. He asked the Commission to clarify its stance on this matter by informing him of the status of the reform measures referred to during his own-initiative inquiry OI/5/2003/IJH (see the Ombudsman's *Annual Report 2004*). In response to the further remark, the Commission communicated to the Ombudsman the status of the reform measures referred to during the own-initiative inquiry, including the implementation of the rights in the Charter of Fundamental Rights.

**ALLEGED IMPROPER CONTACTS DURING A TENDER PROCEDURE*****Summary of decision on complaint 1808/2004/JMA against the European Commission***

The complainant alleged that the Commission had acted improperly in the handling of a call for tenders for the second stage of an R&D programme. The initiative in question,

which had been largely funded by the Commission, was divided into three stages. Stage one had been awarded to one of the complainant's competitors, consortium Z. In December 2003, the complainant submitted a bid for stage two. Although admitted to the selection procedure and apparently the only bidder, since consortium Z did not submit its proposal on time, the complainant's bid was excluded following a negative assessment by the evaluators. The complainant took the view that it had been discriminated against and that the Commission's services had sought to favour consortium Z. In support of his allegation, the complainant referred to a telephone conversation between a representative of consortium Z and the responsible Commission services, which took place soon after the deadline for the submission of bids had expired, once it was clear that consortium Z's bid had not been submitted on time.

In response, the Commission argued that the complainant's proposal was evaluated by independent evaluators, in accordance with official procedures. As regards the telephone call made by a representative of the complainant's competitor, the Commission took the view that it was only a request for information, during the course of which no substantive issues were discussed. Given the nature of the issues discussed, the Commission's services were of the view that no telephone log appeared to have been necessary.

The Ombudsman noted that, as recognised by the Community courts, the Commission enjoys a broad discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender. The Ombudsman pointed out that, in reply to the complainant's request, the Commission had offered a detailed explanation of the reasons why the complainant's bid was not accepted. It had also provided a copy of the evaluation summary report, which contained the evaluators' reasoned assessment of the complainant's proposal. Having reviewed the contents of this summary report, the Ombudsman considered that it provided an adequate statement for the position taken by the institution which was along the lines of the criteria laid down in the Work Programme.

The Ombudsman noted that some of the factual aspects of the case had caused the complainant to question the propriety of the Commission's actions. Having carefully reviewed all the available information, the Ombudsman found no evidence of any impropriety. The Ombudsman pointed out, however, that it would have been easier for the Commission to have dealt with the complainant's concerns in this regard, if it had been able to produce a written record of the telephone conversation in question. The Ombudsman therefore addressed a further remark to the Commission, in which he suggested that the Commission might wish to review its rules on telephone logs in the framework of calls for tender, with a view to avoiding similar problems from arising in the future.

### **ON-LINE AVAILABILITY OF DOCUMENTS**

#### ***Summary of decision on complaint 2066/2004/TN against the European Commission***

The complainant alleged, among other things, that the Commission had failed to make available online, in accordance with Article 2(4) of Regulation 1049/2001 on public

access to Parliament, Council and Commission documents<sup>10</sup>, documents relating to the consultation paper on the application of the e-money Directive to mobile operators. According to the complainant, the consultation paper concerned legislative matters, as it could potentially lead to the amending of the e-money Directive.

The Commission argued, referring to Article 4(3) of Regulation 1049/2001, that to disclose Commission working documents and written contributions prepared in a preliminary phase by Member States and industry would, at the stage in question, be misleading and could prejudice the neutrality of future discussions with Member States, trigger disproportionate or inappropriate reactions from the public, and negatively influence any future debate and legislative initiative.

In his decision, the Ombudsman took the view that, in the overall scheme of Regulation 1049/2001, the right of citizens to apply for access to a document that has not been made public and to contest an eventual refusal of a confirmatory application provides the primary mechanism to guarantee the widest possible access to documents. The Ombudsman therefore considered that it would be disproportionate and impractical to require the Commission to carry out the same in-depth legal analysis when considering whether to make a legislative document available online, as it must when dealing with a confirmatory application for public access to a document.

The Ombudsman noted that the Commission appeared genuinely to have considered whether to make the documents in question accessible online. Furthermore, the complainant had exercised the right to apply for access and had had the opportunity to make a confirmatory application. In these circumstances, the Ombudsman considered that no further inquiries into the complainant's allegation were justified.

## **ACCESS TO A MISSION REPORT IN THE FRAMEWORK OF AN ARTICLE 228 PROCEDURE**

### ***Summary of decision on complaint 2821/2004/OV against the European Commission***

The complainant, an association for the protection of sea turtles, applied to the Commission's DG Environment for access to a report of a mission by the Commission services to the Greek island of Zakynthos, which had investigated the situation regarding the protection of sea turtles. The mission had been carried out in the framework of the Commission's initiation of a procedure against Greece under Article 228 of the EC Treaty for failure to take all the necessary measures to comply with a judgment of the Court of Justice. Following a confirmatory application, partial access to the report was given, excluding those parts containing technical or legal assessments or opinions related to the ongoing proceedings.

In the complaint to the Ombudsman, the association demanded unrestricted access to the report. The Commission justified its refusal to disclose certain parts of the report on the basis of Articles 4(2), third indent and 4(3), first subparagraph, of Regulation 1049/2001

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

on public access to Parliament, Council and Commission documents<sup>11</sup> and argued that the public interest in disclosure of these parts did not outweigh the risk of affecting the ongoing investigation and the discussions with the Greek authorities.

Taking into account that the inspection report in question was a document drawn up for internal use by the Commission and that it related to an ongoing procedure under Article 228 of the EC Treaty, the Ombudsman considered that the Commission could reasonably take the view that it was entitled to refuse access on the basis of Articles 4(2) and 4(3) first subparagraph of Regulation 1049/2001, subject to the question of a possible overriding public interest in disclosure.

The Ombudsman then examined in detail the arguments that the complainant had put forward to demonstrate an overriding public interest in disclosure, considering that one of the arguments was relevant only to Article 4(2) and the other only to Article 4(3) first subparagraph of Regulation 1049/2001. The Ombudsman did not find the complainant's argument relating to Article 4(3) convincing and therefore found that the Commission was entitled to rely on that exception. As regards the argument relating to Article 4(2), the Ombudsman considered that its evaluation would necessitate an inspection by the Ombudsman of the document in question. However, given his conclusion that the Commission could rely on Article 4(3), first subparagraph, the Ombudsman decided not to delay a decision on the case in order to inspect the document. The Ombudsman thus found no maladministration by the Commission.

## **REPLACEMENT OF PROJECT DIRECTOR IN HONDURAS**

### ***Summary of decision on complaint 3110/2004/GG against the European Commission***

The complainant, who worked for a German consultancy firm, had been the director of an EU-funded project for repairing and improving the infrastructure of towns in Central America that had been hit by hurricane "Mitch". At the request of the Commission's Delegation in Managua, he was replaced by another person.

In his complaint to the Ombudsman, the complainant alleged, among other things, that the preparation of the project had been deficient and that there had been unnecessary delays. He also alleged that the Commission had acted in a discriminatory way, by only examining the problem of the use of service cars in his project. The private use of service cars had always been tolerated in other projects. Furthermore, the complainant alleged that the Commission's request that he be replaced was unjustified and unfounded.

According to the Commission, the delays from which the project had suffered had been caused both by the complainant's excessive zeal for perfection and by his failure to respect the Commission's tender procedure and instructions on several occasions. Moreover, the complainant's performance had not been up to the expected standard. The Delegation had observed that the tense relationship between the complainant and his subordinate had had serious adverse implications for the functioning of the project.

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<sup>11</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

Concerning the use of service cars for private purposes, the Commission pointed out that the relevant rules clearly stated that the vehicles were only to be used for work purposes. Despite repeated instructions by the Delegation, this had not been respected in the present case.

After a careful review of the evidence, the Ombudsman considered that the complainant had not established any of his allegations and therefore found no maladministration.

As regards the complainant's allegation of discrimination, the Ombudsman took the view, on the basis of the case-law of the Community courts, that the fact that other persons may illegally have used service cars for private purposes without being stopped by the Commission did not prevent the Commission from acting as it did towards the complainant. However, in a further remark, the Ombudsman added that he would find it most useful, and in keeping with principles of good administration, if the Commission could consider re-examining this issue in so far as the other contracts in the same programme were concerned.

#### *Note*

The Commission subsequently reacted to the Ombudsman's further remark by stating that there were clear rules that stipulated that service cars are to be used exclusively for work purposes. These rules also foresee that a strict control on the use of vehicles is effected by the administration by means of an updated logbook.

The Commission further informed the Ombudsman that following his observation and, in the interests of fairness, it had decided to carry out additional verifications on five projects being implemented in Honduras.

### **3.1.2 The European Commission and the Council of the European Union**

#### **ALLEGED LACK OF PARKING SPACES FOR DISABLED PEOPLE NEAR COMMISSION AND COUNCIL BUILDINGS**

##### ***Summary of decisions on complaint 2415/2003/JMA against the Commission and complaint 237/2004/JMA against the Council of the EU***

The complainant alleged that the Commission and the Council had failed to take the necessary steps to ensure a sufficient number of parking spaces for people with disabilities near the main Commission and Council buildings in Brussels.

The Commission explained that all its buildings in Brussels have at least two parking spaces reserved for disabled people. Spaces for disabled visitors can be made available upon request. Parking spaces reserved for disabled people in the streets near its buildings in Brussels are the exclusive responsibility of the Belgian authorities. Since only four of the 60 Commission buildings in Brussels have parking spaces for disabled people, the institution had asked the local authorities to take additional measures.

The Ombudsman welcomed the Commission's request to the Belgian authorities to ensure additional parking places for disabled people near its buildings in Brussels and invited the Commission to keep him informed of the results of this initiative. The Ombudsman noted that the Commission, in its 2000 Communication on a barrier-free Europe for people with disabilities, had agreed to develop and support a comprehensive and integrated strategy to tackle social, architectural and design barriers that unnecessarily restrict access for people with disabilities. The Ombudsman noted, however, that the Commission had not yet adopted the necessary follow-up measures. In view of the information available, the Ombudsman did not consider it justified to pursue further inquiries. He recalled that, in the framework of his ongoing own-initiative inquiry OI/3/2003, he was reviewing the more general issue of the Commission's integration of persons with disabilities and that accessibility to the Commission's premises by disabled people travelling by car should constitute an element of that inquiry.

The Council explained that all its buildings in Brussels have a number of parking spaces reserved for its disabled staff although, for security reasons, those parking facilities cannot be made available to the public. The institution explained that its services had contacted the competent Belgian authorities and asked them to establish a number of additional parking spaces near all its buildings in Brussels to be reserved for disabled people.

The Ombudsman welcomed the Council's request to the Belgian authorities to ensure additional parking places for disabled people near its buildings in Brussels and invited the Council to keep him informed of the results of this initiative. In view of the information provided by the Council, the Ombudsman did not consider it justified to pursue further inquiries.

The Ombudsman also addressed a further remark to the Council, in which he queried its policy of limiting access to parking spaces for disabled people on grounds of security. The Ombudsman pointed out that other EU institutions, such as the Commission, have put in place a different policy, without apparently creating risks to security. The Ombudsman therefore invited the Council to reconsider its position, with a view to allowing reserved parking spaces on its premises to be used by all persons with disabilities who have legitimate reasons to enter the Council's premises.

### **3.1.3 The European Personnel Selection Office (EPSO)**

#### **CANDIDATES' ACCESS TO EVALUATION CRITERIA**

##### ***Summary of decision on complaint 2097/2003/(ADB)PB against the European Personnel Selection Office (EPSO)***

The complainant participated in a competition held to establish a reserve list of German-speaking typists. Having failed to obtain the pass mark, the complainant requested more information on the evaluation of her test. In her complaint to the Ombudsman, she alleged that EPSO had failed to inform her about the criteria used to mark the test. She



stated that she wanted access so as to be able to improve her performance in future recruitment competitions.

EPSO argued that the evaluation criteria were covered by the secrecy referred to in Article 6 of Annex III of the Staff Regulations and that, according to established case-law, the duty to give reasons for recruitment decisions was satisfied by communicating the marks to the applicant.

The Ombudsman examined the relevant case-law and noted that allowing access to evaluation criteria appeared to be consistent with the European Union's policy and legislation on transparency and public access to documents, which has developed significantly since the case-law referred to by EPSO. The Ombudsman therefore considered that EPSO had failed to give adequate reasons for refusing access. The Ombudsman made a draft recommendation, according to which EPSO should reconsider its refusal to give the complainant access to the evaluation criteria and give access unless valid grounds prevented their disclosure.

In its detailed opinion on the draft recommendation, EPSO stated that the evaluation criteria laid down by the Selection Board could be separated from the various instructions, recommendations and opinions that are given to the individual evaluators. However, in order to allow the complainant in this case to better understand the marks that she had been given, EPSO enclosed a copy of the complainant's examination paper containing the evaluators' handwritten notes. In a separate note, EPSO also made detailed remarks on those corrections, explaining the test requirements. It also pointed out that the assessment of the mistakes appearing on the examination paper was contained in the evaluation sheet, a copy of which had already been sent to the complainant.

The Ombudsman took the view that the much more detailed information provided by EPSO in this case should normally help a candidate better to understand the marks that he or she had been given and that there were therefore no grounds for continuing his inquiry in this specific case. The Ombudsman noted, however, that EPSO's opinion raised important factual and legal issues of a more general nature. He therefore decided to launch an own-initiative inquiry into the issue of granting candidates access to the evaluation criteria established by selection boards.

#### *Note*

The Ombudsman also closed, on the same basis, his inquiries into two similar cases in which draft recommendations had been made to EPSO: 413/2004/PB and 2028/2003/PB.

The own-initiative inquiry announced by the Ombudsman was opened on 10 October 2005 (OI/5/05/PB). The results of the inquiry will be published on the Ombudsman's website.

**ADMISSION TO SELECTION TESTS*****Summary of decision on complaint 839/2004/MHZ against the European Personnel Selection Office (EPSO)***

A Hungarian citizen applied to take part in an open competition for assistant translators organised by EPSO. He stated in his application form that he would obtain the required diploma a few months after the registration date. When he was invited to attend the pre-selection tests, he believed that EPSO had accepted his application. He successfully passed the pre-selection tests and was admitted to the written tests. However, a few months later EPSO informed him that he had been excluded from the selection because he did not have the required diploma on the application date. For that reason, his written tests were not evaluated.

The complainant alleged that it was unfair for EPSO to exclude him from the selection procedure after having accepted his application and after having allowed him to participate in the pre-selection and written tests.

At the date of the complaint, the complainant was neither a citizen of the Union nor residing in a Member State. Since he considered that the subject matter of the complaint should be examined, the Ombudsman opened an own-initiative inquiry. EPSO subsequently informed the Ombudsman that it would be willing for the case to be dealt with as a complaint, given that the complainant had become an EU citizen through the accession of Hungary to the EU.

EPSO explained that, according to the notice of competition, the Selection Board could decide whether the complainant had fulfilled the requirement in question only after it had examined the complainant's full application. Such an application was requested from candidates only after they had successfully passed the pre-selection tests. EPSO referred to the case-law of the Court of First Instance, according to which the notice of competition can determine that certain specific eligibility requirements are to be verified after the marking of the pre-selection tests.

The Ombudsman noted that the notice of competition explained that the Selection Board would check candidates' eligibility in two stages. Since EPSO appeared to have acted in accordance with the notice of competition and had taken into account the relevant case-law, the Ombudsman found no maladministration. However, the Ombudsman made a further remark suggesting that, to avoid possible misunderstandings and to improve relations with candidates, EPSO could consider explicitly stating in future notices of competition that (i) an invitation to attend the pre-selection tests does not imply that the eligibility of the candidate has been fully checked and (ii) the written tests of candidates who are subsequently found to be ineligible will not be marked.

*Note*

By letter of 14 September 2005, EPSO informed the Ombudsman that future notices of competition would mention the two points raised by the Ombudsman in his further remark.

### 3.1.4 The European Central Bank

#### INFORMATION CONCERNING A POSSIBLE INTERVENTION BY THE ECB

##### *Summary of decision on complaint 3054/2004/TN against the European Central Bank*

The complainant alleged that the ECB had failed to explain its reasons for not answering his question as to whether it had intervened in the foreign exchange markets to soften the fall of the dollar and the rise in value of the euro.

The ECB argued that it had replied to his questions to the extent possible. However, there were good reasons why the ECB did not comment on interventions. Information regarding foreign exchange interventions is market sensitive and its communication plays a crucial role in the overall policy implementation. As a result, such communication has to be handled with great care in order not to undermine the impact of the operation. The ECB, like any other central bank, reserves the right to decide whether, when and by what means information should be communicated regarding interventions.

The Ombudsman, recalling Article 1 of the Treaty on European Union, which provides that decisions should be taken as openly as possible and as closely as possible to the citizen, considered that, in principle, citizens should be provided with the information that they request concerning decisions made by Community institutions and bodies.

In those situations where it is not possible to provide the requested information, the Ombudsman considered that the institution or body refusing the request should give the citizen sufficiently specific reasons to show clearly and unequivocally the reasoning behind its refusal. The Ombudsman noted that the case-law of the Community courts consistently applies this approach in relation to the handling of requests for access to documents. In certain cases, however, the case-law shows that reasoning by reference to categories of document may be sufficient.

The Ombudsman took the view that the ECB's reasons for its refusal to disclose the requested information met the required legal standard in that they showed clearly and unequivocally the ECB's reasoning and enabled the complainant to understand why the ECB refused to divulge the requested category of information. The Ombudsman therefore found no maladministration by the ECB.

The Ombudsman noted that the ECB's decision concerning public access to documents provides for an exception to protect the public interest as regards "*monetary and exchange rate stability*". The Ombudsman therefore found no reason to pursue the complainant's claim.

## 3.2 CASES SETTLED BY THE INSTITUTION

### 3.2.1 The European Parliament

#### TRANSFER OF PENSION RIGHTS

##### *Summary of decision on complaint 127/2004/OV (Confidential) against the European Parliament*

On the basis of calculations provided by the Parliament's Pensions Service, the complainant, a Parliament official, decided to transfer her pension rights previously acquired in Germany and Italy to the Community scheme. This transfer should, in theory, have provided her with a pension of more than 70% of her final salary in grade B3. The Pensions Service informed her, however, that her pension would be just under 65%. The complainant's appeal under Article 90(2) of the Staff Regulations was rejected and the appointing authority informed her that, in fact, no Italian pension rights had been transferred.

The complainant claimed that (i) the determination of her pension rights should be revised and the pension rate should be fixed at 70% of her final B3 salary and that (ii) the surplus of her pension rights transferred from Italy (1995) and Germany (1997) should be reimbursed to her.

Parliament gave a detailed explanation of the calculation of the complainant's pension and argued that the whole amount transferred from the German pension scheme had been transformed into Community pension rights and that there existed no surplus amount to be reimbursed to the complainant. However, no pension rights had been transferred from the Italian pension scheme.

The Ombudsman made further inquiries and asked Parliament for clarifications concerning (i) the calculation of the transferred pension rights and the eventual reimbursement of the surplus and (ii) the situation concerning the transfer of the Italian pension rights. In response to the further inquiries, Parliament observed that, after noticing errors in the level of the transfers, the Pensions Service had recalculated the complainant's pension. This correction resulted in a significantly more favourable pension. Parliament explained that the errors had resulted from an incorrect analysis by the computer system.

As the complainant accepted the new calculation and Parliament's explanation concerning the non-reimbursement of the surplus amount, the Ombudsman concluded that Parliament had taken steps to settle the matter to the complainant's satisfaction. He therefore closed the case.

### 3.2.2 The Council of the European Union

#### TERMINATION OF EMPLOYMENT CONTRACT AT EU POLICE MISSION

#### *Summary of decision on complaint 471/2004/OV against the Council of the European Union*

In June 2003, the complainant made a first complaint to the Ombudsman (case 1200/2003/OV) concerning the termination of his contract as a civilian IT expert in the European Union Police Mission in Sarajevo (EUPM) as of 8 December 2002. In his decision on the case (see *Annual Report 2003*), the Ombudsman concluded that the complainant's rights of defence had not been respected. The Ombudsman suggested that the complainant address the Council directly with his claims that the Council should clear him of the allegations against him and that he should receive his salary for the month of December 2002.

As the Council rejected both claims on the ground that it was not involved in his dismissal, the complainant made a new complaint to the Ombudsman in February 2004.

The Council emphasised that its Secretariat-General had done its utmost to co-operate with the Ombudsman and had sent a copy to the EUPM of all the correspondence exchanged, in order to enable the EUPM also to co-operate with the Ombudsman. After receiving an opinion from the head of the EUPM, the Ombudsman informed the Council that his critical remark in case 1200/2003/OV implied that the EUPM was not entitled to terminate the complainant's contract early and that the complainant's claim to be paid to the end of his contract therefore appeared to be justified. The Ombudsman requested the Council's assistance to ensure that the complainant received the full salary due.

In its reply, the Council recalled that, under Article 9 of the Joint Action of March 2002 on the EUPM, payments shall be made through the authority of the Head of the EUPM. The Council therefore sent a copy of the Ombudsman's letter to the Head of the EUPM, calling his utmost attention to the Ombudsman's recommendation.

The EUPM subsequently informed the Ombudsman that, in order to bring the process initiated by the complainant to a close, it would pay the complainant a proportion of his former monthly salary to cover the period from 9 to 31 December 2002.

In his decision, the Ombudsman considered that this aspect of the case had been settled to the satisfaction of the complainant.

As regards the complainant's claim that the Council should clear him of all allegations against him, the Ombudsman recalled that, in accordance with the principle of the rule of law, the normal position is that findings of fact made in violation of the right to be heard have no validity. The Ombudsman concluded that the complainant was therefore entitled to regard the Ombudsman's earlier finding in case 1200/2003/OV as clearing his name and that no further inquiries into this aspect of the case were justified.

### 3.2.3 The European Commission

#### UNJUSTIFIED DELAY AND FAILURE TO REPLY TO PUBLIC ACCESS REQUEST

##### *Summary of decision on complaint 1798/2004/PB against the European Commission*

The complainant alleged that there had been unjustified delays in the Commission's reply to his first application of 22 March 2004 for documents under Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>12</sup> and that the Commission had failed to reply to his application of 26 May 2004.

The Commission apologised for the delays and explained that these had been due to a heavy workload. It also stated that, as a general policy, it had been decided to give more systematic feedback to citizens in all cases where the reply, be it on grounds of complexity or because of a sudden inflow of questions, may be at risk of not being sent within the deadlines for information replies.

The complainant stated that he accepted the Commission's apologies and considered his case to be settled. The Ombudsman therefore closed the case and made a further remark in which he stated that he was confident the Commission would make the necessary efforts to respect its obligations in the future.

#### REFUSAL OF A REQUEST FOR ACCESS TO DOCUMENTS

##### *Summary of decision on complaint 3381/2004/TN against the European Commission*

The complainant, a United Kingdom residents' association, had made an Article 226 complaint to the Commission concerning the United Kingdom authorities' alleged failure to follow Community legislation as regards a large landfill site near the residents' homes. The Commission refused the complainant's request for access to the Commission's correspondence with the United Kingdom authorities regarding the matter, on the grounds that disclosure of the documents would undermine the protection of the purpose of inspections, investigations and audits (Article 4(2) of Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>13</sup>).

The Ombudsman forwarded the complaint to the Commission and at the same time wrote to the United Kingdom Permanent Representation to the EU to ask whether the United Kingdom authorities would object to the release of the documents.

In its opinion, the Commission argued that its decision not to disclose the documents at that stage of the proceedings was consistent with the relevant case-law. However, following the formal closure of the file, the Commission had decided to release its two letters addressed to the United Kingdom authorities regarding the matter. Since the

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<sup>12</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

<sup>13</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

United Kingdom authorities had confirmed that they did not object to disclosure of their replies, the two letters in question were also disclosed. The Commission apologised for the undue delay in handling the complainant's confirmatory application.

Following further inquiries, the Commission also agreed to give the complainant access to three CD-ROMs containing the information sent to the Commission by the United Kingdom authorities to support their arguments in the Article 226 procedure. Since the Commission had taken steps to settle the matter to the complainant's satisfaction, the Ombudsman closed the case.

## **REIMBURSEMENT OF TRAVEL AND ACCOMMODATION EXPENSES**

### ***Summary of decision on complaint 3485/2004/OV against the European Commission***

The complainant participated in open competition COM/A/12/01 and attended interviews in Italy on 15 and 16 January 2004. At the end of the interviews, the complainant used the official form to request reimbursement of his travel and accommodation expenses. Despite three reminders from the complainant in 2004, the Commission failed to reimburse the expenses. The Commission informed the complainant that his request for reimbursement had been registered and had been assigned for action. As the complainant had still not been reimbursed in November 2004, he complained to the Ombudsman.

The Ombudsman sent the complaint to the Commission on 15 December 2004. On 30 December, the complainant informed the Ombudsman by e-mail that the payment had been made and that the case could be closed. The Ombudsman thus concluded that the Commission had taken steps to settle the matter to the satisfaction of the complainant.

## **REIMBURSEMENT OF TRAVEL EXPENSES**

### ***Summary of decision on complaint 501/2005/IP against the European Commission***

The complainant, an Italian cultural Association, claimed that the Commission should honour a promise to reimburse it for travel expenses related to a visit to the Commission.

The Commission stated that its Representation in Italy had not made the necessary arrangements by preparing a commitment for the sum in question (EUR 5 500) in due time. As a result, the Commission had been unable to honour the oral promise to pay the expenses. However, with a view to maintaining its good reputation and since its Representation in Italy had indicated that the institution would pay the expenses, an amount of EUR 5 500 had been allocated for that purpose.

The complainant informed the Ombudsman that he considered his case to have been settled and the Ombudsman therefore closed the case.

**ALLEGED LATE PAYMENTS TO COMMISSION EVALUATORS*****Summary of decision on complaint 1266/2005/MF against the European Commission***

The complainant, a German science journalist, worked as an independent expert evaluating calls for proposals published under the Sixth Framework Programme. He alleged that the Commission had (i) failed to pay him in due time for his evaluation assignments carried out in 2004, (ii) failed to give him clarification on the calculation of payments and (iii) failed to pay interest on account of late payment. The complainant claimed that he should, by 31 March 2005 at the latest, be paid for his evaluation assignment carried out in early October 2004. He further claimed that he should be paid interest, on account of late payment, as regards the payment received in 2004 for another assignment. The complainant finally claimed that he should be given clarification on the calculation of payments since 2004.

The Commission explained the reasons for the delays in the payments and stated that payment had subsequently been made to the complainant for the assignment carried out in early October 2004. The complainant had been given details of the amounts paid for the working days, the working days outside Brussels, the daily allowances and the travel costs for each of the evaluation works that he had carried out in 2003 and 2004. The Commission also proposed to pay the complainant an amount corresponding to the interest due on account of late payment in relation to his assignment of early October 2004. In May 2005, the Commission had taken measures, which were summarised in an action plan, to accelerate payments to experts. As a result of these measures, the Commission had significantly reduced the time taken to pay experts participating in evaluation assignments.

In his observations, the complainant stated that he considered that the Commission had improved its procedures for reimbursement and that he agreed with the Commission's proposal as regards the payment of interest. He further pointed out that he had been paid within 30 days for his latest contract.

On the basis of the Commission's opinion and the complainant's observations, the Ombudsman concluded that the Commission has taken steps to settle the matter to the complainant's satisfaction. He therefore closed the case.

**3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN****3.3.1 The European Parliament****ACCESS TO THE EUROPEAN PARLIAMENT'S PREMISES*****Summary of decision on complaint 628/2004/OV against the European Parliament***

An auxiliary agent in the Commission complained that he and other auxiliary agents of the Commission are not allowed access to Parliament's premises in Brussels when there are no meetings scheduled. The complainant found this exclusion to be discriminatory,



as no such restriction is imposed on temporary agents, seconded national experts or accredited lobbyists from private companies.

Parliament stated that it grants access to officials of other EU institutions upon presentation of their badge but that this facility is not extended to all the other agents of the institutions, since to do so would substantially increase the number of potential visitors to Parliament. Parliament further pointed out that limitation of the right of access is also necessary because its premises are subject to national legislation and regulations limiting the number of persons to be admitted on safety grounds, especially with regard to fire risks. It referred in this context to a note that had been sent to the College of Quaestors.

The Ombudsman considered that Parliament had not explained why the position of all categories of Community staff should not be considered comparable for the purposes of access to its premises and that, on the contrary, Parliament had merely referred, without any distinction of staff categories, to a general need, for safety reasons, to restrict the overall numbers of those having access. He concluded that Parliament had failed to provide an objective justification for its refusal to allow Commission auxiliary agents access to its premises when there are no meetings scheduled and that this refusal constituted unjustified discrimination. The Ombudsman therefore proposed a friendly solution which would consist in Parliament putting an end to the situation in which the access of auxiliary agents of other institutions to European Parliament premises is restricted without an objective justification.

In reply, Parliament informed the Ombudsman that, following the entry into force of the new Staff Regulations, the problem raised in the complaint no longer existed. Parliament pointed out that a new regime for contractual agents is applicable in Parliament since 1 March 2005 for staff previously employed on auxiliary contracts and, since 1 January 2005, for newly-recruited staff. As a result, Parliament no longer distinguishes between different categories of staff for access purposes. Article 6 of the new rules governing access to Parliament's premises, adopted on 28 January 2005, provides for access to the European Parliament's premises for all categories of staff of other institutions.

The complainant accepted that the problem appeared to have been satisfactorily resolved and the Ombudsman therefore closed the case.

## **REIMBURSEMENT OF LEGAL COSTS**

### ***Summary of decision on complaint 1733/2004/OV against the European Parliament***

An official of the European Parliament complained to the Ombudsman in 2001 about his lack of reinstatement after a period of unpaid leave. Further to the Ombudsman's decision in this case (case 1462/2001/ME), the complainant asked Parliament in November 2002 for compensation for loss of income and pension rights. Having received no reply within the period of four months prescribed by the Staff Regulations, the complainant engaged a lawyer in March 2003, in order to initiate proceedings before the Court of First Instance. In May 2003, six weeks after the expiry of the deadline for a reply under the Staff Regulations, Parliament finally accepted the complainant's request.

The complainant informed Parliament that he was satisfied with its reply. He claimed, however, that Parliament should also reimburse his legal fees. Parliament refused, on the grounds that the complainant had consulted his lawyer during the administrative stage of the procedure.

In June 2004, the complainant complained to the Ombudsman alleging that Parliament (i) had failed to respect the deadlines foreseen in the Staff Regulations and (ii) had failed to compensate him for his legal fees.

Parliament argued that neither the Staff Regulations nor the relevant case-law oblige the institutions to reimburse costs in the administrative stage of the procedure.

The Ombudsman pointed out that Parliament itself had considered the complainant's letter of November 2002 to be a complaint in the sense of Article 90(2) of the Staff Regulations. He considered Parliament's failure to reply to that letter within four months to be an instance of maladministration and that, being confronted with an implied rejection decision, it was reasonable for the complainant to consult a lawyer to prepare an appeal to the Court. The complainant had thus incurred legal costs which could have been avoided by a timely reply from Parliament. On the basis of this reasoning, the Ombudsman considered that it was unfair for Parliament to refuse to compensate the complainant for the costs he had incurred and proposed a friendly solution asking Parliament to reconsider its refusal.

Parliament agreed with the friendly solution proposed and informed the Ombudsman that it would proceed with the reimbursement of the complainant's legal fees. The Ombudsman therefore closed the case.

## **PROVISION OF INFORMATION IN DIFFERENT LANGUAGES DURING AN ELECTION CAMPAIGN**

### ***Summary of decision on complaint 1737/2004/TN against the European Parliament***

The Swedish Assembly of Finland complained that posters used as part of Parliament's information campaign in Finland for the 2004 European Parliament elections were only published in Finnish. The complainant pointed out that Finland has two official languages, Finnish and Swedish, both of which are also official languages of the EU. It argued that Parliament's stance on the matter, including a statement that Swedish speakers only represent 5.6% of the Finnish population, was not in tune with Finland's Constitution, which provides for equality between the two languages. The complainant also argued that such equality is upheld in national elections in Finland and that there was no reason to depart from this practice in European elections. The complainant claimed that Parliament should take action to correct the alleged act of maladministration.

Parliament stated that its Information Office in Finland has a policy of working in both Finnish and Swedish when providing services to, and answering inquiries from, Finnish citizens. As regards the campaign for the 2004 European elections, some marketing projects had been prepared solely in Finnish, one being the street-level poster campaign.

This poster campaign did not, however, contain any new information that had not already been provided in Swedish by other means.

The Ombudsman was not satisfied that Parliament had responded adequately to the complainant's allegation and claim. Recalling that Article 21 of the Charter of Fundamental Rights prohibits any discrimination based on language, he took the view that the burden of proof lay with Parliament to show that its language policy in this case was appropriate and proportionate. The Ombudsman considered that Parliament's explanation was not convincing and proposed a friendly solution whereby Parliament would acknowledge the shortcomings of the campaign, as well as the fact that the proportion of the Finnish population that speaks Swedish is not relevant to the status of that language as an official language of the EU or to its status under the Finnish Constitution. Parliament accepted this friendly solution and promised to take greater care in the future, thereby satisfying the complainant.

### **3.3.2 The European Commission**

#### **TERMINATION OF EMPLOYMENT AS A "CALL CENTRE" OPERATOR**

##### ***Summary of decision on complaint 1336/2003/IP against the European Commission***

On 1 July 2003, the complainant, who had completed her in-service traineeship with the Commission on 31 March 2003, started to work on the Commission premises as a "call centre" operator at DG Personnel and Administration. On 4 July 2003, she was informed that, in accordance with point 19 of the Rules governing in-service training with the Commission of the European Communities, according to which "trainees cannot benefit from any form of contract with the Commission until one year after completing their in-service training", she could not continue her job.

The complainant alleged unfairness by the Commission because it had taken the decision that she could not work as a "call centre" operator only after she had started the job. Furthermore, she alleged that the rules invoked by the Commission should not apply to her case, since her contract was with a company and not with the Commission. The complainant claimed that the Commission should pay her the equivalent of six months salary, corresponding to the duration of the contract she had signed.

The Ombudsman considered that the fact that the Commission had taken the relevant decision concerning the complainant after she had started her job as a "call centre" operator could constitute an instance of maladministration, since the Commission had not shown that it would have been impossible to carry out the examination of the complainant's dossier before she started her job. He also considered that the application of the provision laid down in point 19 of the Rules in the complainant's case and the Commission's decision not to allow her to continue her job as a "call centre" operator could constitute an instance of maladministration.

The Ombudsman therefore took the view that it would indeed appear to be appropriate for the Commission to consider offering the complainant adequate compensation for the

material loss she seemed to have suffered on account of the Commission's behaviour and proposed a friendly solution to this effect.

The Commission agreed that it would have been possible to take adequate measures in order to inform the complainant about the impossibility for her to start her job as a "call centre" operator before 1 July 2003. Although the Commission did not share the Ombudsman's view as to possible maladministration on its part, it was willing to offer the complainant EUR 1 000 in the framework of the relevant procedure and in a spirit of conciliation.

The complainant informed the Ombudsman that she accepted the Commission's offer and the Ombudsman therefore closed the case.

## **PENSION ENTITLEMENTS**

### ***Summary of decision on complaint 2188/2003/OV against the European Commission***

The complainant was a Greek national who had worked as an auxiliary agent at the Commission from July 1965 to December 1968 and subsequently returned to Greece. In 2002, the Belgian National Pensions Office informed him that the Commission had not paid pension contributions for the years 1967 and 1968. Because of this, he encountered problems with his pension entitlements with the Greek Social Insurance Organisation (IKA). The complainant contacted the Commission, which informed him that, for the years 1967 and 1968, he had been registered under a voluntary insurance scheme with the Greek pension scheme.

In his complaint to the Ombudsman, the complainant claimed that the Commission should recognise that it was obliged to insure him under the Belgian pension scheme for the entire period that he had worked as an auxiliary agent.

The Commission observed that no contributions to the Belgian Social Security Office (ONSS) had been paid after September 1966 and that the complainant had since then been insured under a Greek voluntary insurance scheme. The Commission further pointed out that, as it no longer had the relevant payment slips, it was impossible for it to prove that it had stopped deducting a personal contribution from the complainant's salary.

The Ombudsman pointed out that principles of good administration require that records concerning pension entitlements are kept reliably over long periods of time in order to ensure that individuals can enjoy the benefits which they have earned. The Commission's failure to do so constituted an instance of maladministration. The Ombudsman proposed a friendly solution which consisted in the Commission taking the necessary measures to ensure that the complainant would receive an appropriate pension entitlement for the full period he had worked for the Commission. The Commission accepted the proposal and informed the Ombudsman that it had contacted the Belgian authorities in November 2004 in order to regularise the contributions for the entire period of the complainant's auxiliary contract. The complainant expressed his satisfaction with the outcome and the Ombudsman therefore closed the case.

**EXEMPTION FROM THE AGE LIMIT FOR A TRAINEESHIP*****Summary of decision on complaint 518/2004/MF against the European Commission***

The complainant alleged that the Commission had failed to reply to her request for an exemption from the age limit of 30 years that applied to applicants for in-service traineeships. She claimed that her application should be accepted.

The Commission stated that the Traineeships Office acknowledged that it had merely informed the complainant of the rejection of her application due to the age limit. This was due to the wrong encoding of refusal reasons into a new computerised system. However, as soon as this error became known, an additional explanatory letter was sent to the complainant, in which the reasons for refusing her request for an exemption from the age limit were explained. The reasons were the following: (i) the complainant had not given any factual, specific or justifiable reason for an exemption, (ii) the complainant only declared knowledge of one foreign European language (French), whereas applicants from EU Member States were required to have, as a minimum, a good knowledge of at least two Community languages, and (iii) the complainant only indicated one specific Directorate-General in her traineeship application.

On 29 April 2005, the Ombudsman made a proposal for a friendly solution, in which he asked the Commission to review the complainant's application for a traineeship on the basis of three considerations. Firstly, in view of his draft recommendation to the Commission in case 2107/2002/(BB)PB (see section 3.5.1 below) and the Commission's decision to abolish the age limit for traineeships, the complainant's age no longer constituted an obstacle for the admissibility of her application. Secondly, the Ombudsman considered that it emerged from the complainant's observations and the documents submitted by her that she had a good knowledge of at least two Community languages. Thirdly, the Ombudsman stated that he was not aware of any rule in the Commission decision on traineeships of 7 July 1997 pursuant to which candidates had to indicate a specific number of Directorates-General in which they wished to have their traineeship.

The Commission accepted the friendly solution and stated that it would exceptionally consider the complainant's file as automatically pre-selected for the in-service training session starting on 1 March 2006. The complainant's name would therefore be included in the list of pre-selected candidates.

The complainant informed the Ombudsman's services that she considered that a friendly solution to her complaint had been achieved. The Ombudsman therefore closed the case.

**LATE PAYMENT TO MARIE CURIE FELLOW*****Summary of decision on complaint 1772/2004/GG against the European Commission***

The complainant was awarded a Marie Curie Fellowship under the Fifth Framework Programme. The Commission and the host institution agreed on a contract with a duration of 24 months. During these 24 months, the complainant took maternity leave of nine months and asked for an extension of the deadline for the submission of her final

report. The host institution and the Commission agreed. However, due to a mistake on the part of the Commission, the amendment to the contract extended the duration of the project to 35 instead of 33 months. After the end of the project, the host institution submitted the complainant's final report and a request for a final payment amounting to EUR 13 472. Despite numerous approaches to the Commission by the complainant, this amount was paid only eleven months later.

The complainant alleged that the Commission had failed to handle her final report and her request for the final payment properly and in good time. She claimed that the Commission should pay the interest due between the legal deadline for payment and the actual date of payment.

The Commission acknowledged a series of unusual misunderstandings and mistakes. It pointed out, however, that its contract had been with the host institution, not with the complainant. It submitted, among other things, that neither the host institution nor the complainant had raised objections concerning the errors in the amendment, that during the period concerned several officials dealing with the contract had ended their employment with the Commission and that, on several occasions, there had been an absence of reaction and co-operation from the host institution.

The Ombudsman considered that, *prima facie*, none of these arguments appeared to be convincing. In particular, he noted that, since it appeared to be standard practice for the host institution to make payments only after having received the necessary funds from the Commission, the Commission's failure to release the funds was bound to affect the complainant's interests.

In the absence of a direct contractual link between the Commission and the complainant, the latter did not appear to have a claim for interest on account of late payment. The Ombudsman noted, however, that the errors made by the Commission and the slowness with which these errors had been rectified had resulted in a substantial delay in the payments by the host institution. The Ombudsman therefore proposed to the Commission that, in order to reach a friendly solution, it could consider offering the complainant reasonable financial compensation for the negative effects of its errors.

The Commission replied that a number of elements identified by the Ombudsman, as well as the exceptional circumstances of the case, had led it to propose to the complainant the amount of EUR 596.11, corresponding to the interest accrued on the outstanding payment.

The complainant expressed satisfaction with this offer and with the Ombudsman's handling of the matter. The Ombudsman therefore closed the case.

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

### **3.4.1 The European Parliament**

#### **DELAY IN PROVIDING ACCESS TO A DOCUMENT**

##### ***Summary of decision on complaint 1756/2004/MF against the European Parliament***

The complainant alleged that the Parliament had failed to give him access to the decision of the Appointing Authority, dated 19 November 2003, modifying the place of employment of one of his colleagues within the deadline foreseen in Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>14</sup>. He claimed that Parliament should give him access to the relevant document.

Parliament stated that the complainant's request for access had not been dealt with within the legal framework of Regulation 1049/2001. Given that Parliament officials benefit from privileged access to different sources of information, Parliament advised applicants not to use the procedure set out in Regulation 1049/2001 when the request for access concerned documents already made public. Following the Ombudsman's request for an opinion on the complaint, Parliament sent the requested document to the complainant. The legal uncertainty which resulted from the lack of hierarchy between the Staff Regulations, Regulation 1049/2001 and Regulation 45/2001 on data protection<sup>15</sup> explained the lack of consistency in the treatment of the complainant's request. Appropriate measures had been taken in order to enable the different Parliament services to deal rapidly with future requests for access to documents.

The Ombudsman noted that the complainant had finally obtained access to the document requested. However, he recalled that Article 7(1) of Regulation 1049/2001 requires an application for access to a document to be handled promptly. He noted that in his confirmatory application of 3 May 2004, the complainant had mentioned Regulation 1049/2001 as the legal basis for his request for access.

The Ombudsman considered that it clearly emerged from the Parliament's letter of 9 August 2004 that it intended to apply Regulation 1049/2001 to the complainant's case. He therefore took the view that Parliament should either have handled the complainant's letter of 3 May 2004 as a confirmatory application in conformity with Regulation 1049/2001 or have explained the reasons why it considered that this letter should be treated as a new request for access. The Ombudsman further noted that more than three months elapsed between the complainant's confirmatory application and the date when he was granted access to the relevant document. The Ombudsman therefore made a critical remark.

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<sup>14</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

<sup>15</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

In a further remark, the Ombudsman considered that it was not to be excluded that Parliament could deal with requests for access to documents made by officials without applying the provisions on public access laid down in Regulation 1049/2001, unless the applicant had made it clear that he wished his request to be dealt with on the basis of that Regulation. In the Ombudsman's view, it was for Parliament to resolve any problems that might arise in this context, either generally or when confronted with a request for access to documents. The Ombudsman considered that Parliament should, in any event, ensure that a rapid reply be given to the official's request for access. The Ombudsman expressed confidence in Parliament's willingness to take appropriate measures when dealing with requests for access to documents made by officials in the future.

### **FAILURE TO REPLY TO A REQUEST FOR INFORMATION**

#### ***Summary of decision on complaint 2038/2004/GG against the European Parliament***

The complainant alleged that Parliament had failed to reply to two e-mail requests for information, concerning a Parliament resolution that he had sent to Parliament's "Civis" electronic mailbox. He claimed that a reply should be sent.

Parliament explained that the "Civis" electronic mailbox was no longer set up to receive messages from members of the public and had been replaced by an internet form created for this purpose. According to Parliament, persons writing to the old e-mail address received an automatic message informing them that they should use the new form. It stated that if the complainant had used the form, he would have received a timely reply.

The complainant stressed that he had not received a standard reply to his e-mails. The Ombudsman's services sent test messages to the "Civis" mailbox but did not receive the standard reply to which Parliament had referred.

The Ombudsman asked Parliament for further information. In reply, Parliament explained that, at the time when the complainant had sent his e-mails, its electronic mail system had had serious problems due to an avalanche of spam messages. According to Parliament, the arrival of more than 300 000 e-mails in the "Civis" mailbox had had the effect of paralysing the programmed instructions in the e-mail management programme, which activated the automatic "reply" function. Parliament added that this situation had been resolved once a new e-mail programme had become operational and that the systematic sending of replies was now working perfectly. Parliament also explained that the automatic reply only functioned with e-mails received from outside the European institutions.

The Ombudsman noted that Parliament had only replied to the complainant's e-mail nearly seven months after having received the request and more than two months after the Ombudsman had informed Parliament of the complainant's case. The Ombudsman considered that this went manifestly beyond what could be considered to be a reasonable period of time for answering such requests. The Ombudsman agreed that technical problems of the kind to which Parliament had referred may cause delays for which the institution or body concerned cannot be held responsible. He also noted, however, that, even after the problem had been solved, it had taken nearly five months (and a complaint



to the Ombudsman) before the complainant's request was answered. Furthermore, the Ombudsman noted that Parliament had not informed the complainant about the technical problems nor offered any apologies. The Ombudsman therefore closed the case with a critical remark.

### **3.4.2 The Council of the European Union**

#### **ACCESS TO DOCUMENTS ON COMMON FOREIGN AND SECURITY POLICY**

##### ***Summary of decision on complaint 1875/2005/GG against the Council of the European Union***

The complainant asked the Council for access to all documents related to the negotiation and signature of an agreement between the EU Member States concerning the status of military and civilian staff carrying out conflict prevention and crisis management tasks in the framework of the Common Foreign and Security Policy of the European Union. The complainant also asked for a complete list of the sensitive documents to which the Council might decide to refuse access.

The Council granted partial access to four preparatory documents. In his confirmatory application, the complainant submitted that, in view of the Agreement's scope, the fact that the drafting process had taken over two years and the numbering of the four preparatory documents to which the Council had granted partial access, it was to be presumed that the Council held more than just those four documents. The Council replied that no further relevant documents had been identified. The gap in the numbering was due to the fact that the interim documents had been declared void and annulled during production.

The complainant argued that the Council's position that there were only four relevant documents was manifestly unreasonable. He pointed out that, following a separate request submitted under national freedom of information legislation, he had been granted access to a document that the Council had not mentioned.

The Council stated that, following intensive research, it could now confirm that indeed ten revisions of the document in question had been produced. The Council explained that the missing versions had not been loaded onto its electronic register but had been kept in the department in charge of the matter. In the absence of evidence that the documents had been electronically recorded and validated, they had been considered void. The Council apologised for this clerical error. It stressed, however, that its internal rules for the registration of documents had changed in the meantime so that documents such as the ones in question would now be registered automatically. The Council granted access or partial access to the interim documents.

The Ombudsman failed to understand why the missing documents were not identified from the start or at least following the complainant's confirmatory application. In the Ombudsman's view, the Council's statement that the revised versions had been declared void and annulled during production was misleading, since it created the incorrect

impression that the documents had never been distributed. However, the cover sheets of the documents made it clear that these documents were meant to be distributed.

The Ombudsman considered that this issue was more serious than a "clerical error". However, he understood the Council's reference to its new internal rules as meaning that problems of the sort identified in the present case would no longer occur. He therefore made a critical remark concerning this issue.

Concerning the list of sensitive documents which the complainant had asked for, the Council stated that no such documents existed. The Ombudsman noted that the Council had advanced this point for the first time only in its opinion on the present complaint. He therefore made a further remark, stating that it would be useful if, in future cases, the Council could provide such information to applicants as soon as possible.

### **3.4.3 The European Commission**

#### **LENGTH OF INFRINGEMENT PROCEDURE AND ACCESS TO DOCUMENTS**

##### ***Summary of decision on complaint 2229/2003/MHZ against the European Commission***

The complainant alleged, among other things, that the Commission had unnecessarily delayed its decision on an infringement complaint against the Spanish authorities concerning the construction of a centre for processing waste products in San Roman de la Vega. The complainant also alleged that the Commission had failed to answer his confirmatory application for access to its decision to open infringement proceedings against Spain and its letter of formal notice to the Spanish authorities.

The Commission apologised for the lack of answer to the complainant's confirmatory application and explained that it was due to an administrative error. It pointed out that the recent introduction of electronic control of its correspondence made it possible to avoid such errors in the future. The Commission argued, however, that it was entitled to refuse access to protect the purpose of inspections, investigations and audits (Article 4(2) third indent of Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>16</sup>). According to the Commission, the disclosure of the letter of formal notice seemed even more detrimental to the public interest given that the complainant intended to use it in proceedings before national courts. The Ombudsman did not accept this argument. He pointed out that proceedings in national courts are important means by which individuals can protect their rights under Community law. In this context, the Ombudsman noted that, in relation to the free movement of goods, the Community legislator had specifically provided for any party to obtain a copy of the Commission's notification to a Member State of an obstacle to the free movement of goods and that one of the effects of this provision was to facilitate action by individuals in national courts. Therefore, the Ombudsman was not persuaded that, in other circumstances, the Commission was entitled to rely on arguments that imply a negative

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<sup>16</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

view of judicial proceedings in national courts. However, he considered that, on the basis of the case-law, the Commission could reasonably take the view that a decision to refuse access to the documents was justified. No maladministration was therefore found concerning this aspect of the complaint.

As regards the length of the procedure, the Ombudsman noted that the Commission's investigation had taken just under three years. Since the Commission's opinion only referred to general factors that may cause delays, such as a heavy workload, the Ombudsman considered that it had failed to provide an adequate explanation for the length of the investigation. A critical remark was therefore made.

Subsequently, the Commission informed the Ombudsman that it would endeavour to give a more precise explanation, should a similar case arise in the future.

### **FAILURE TO PROVIDE APPROPRIATE ADVICE ON GRANTS**

#### ***Summary of decision on complaint 2411/2003/MHZ against the European Commission***

The complainant, an NGO registered in the United Kingdom, alleged, among other things, that the funding procedure under the Commission's AGIS framework programme for police and judicial co-operation in criminal matters was overly complex and difficult to understand. According to the complainant, the Commission had obliged it to undertake expensive and time-consuming activities in order to meet formal admissibility criteria, although the Commission had known from the start that the complainant would not be able to fulfil the eligibility criterion of having partner organisations involved in its project. It claimed that the Commission should compensate it for the losses it incurred in trying to meet the formal admissibility criteria.

According to the Commission, a high proportion of applications under the AGIS programme had had shortcomings as regards the requirements set out in the call. It acknowledged that the use of a single application form for two different types of grants may have contributed to these shortcomings. Because of this and because the complainant's project had appeared to meet the policy priority of improving assistance in the field of fundamental rights, the proposal had been pre-selected. When the complainant's application for an operating grant was not ready in time to meet the deadline, the Commission had proposed to the complainant that it should modify its application and apply for a project grant instead. However, since the complainant had, among other things, failed to attach a partnership declaration, the Commission had not selected his proposal.

The Ombudsman considered it regrettable that the application procedure under the AGIS programme appeared to have led to difficulties. However, he noted that the Commission had recognised these difficulties and had taken corrective action. Furthermore, he considered that the Commission had provided a reasonable explanation as to why it had advised the complainant to apply for a project grant instead of an operating grant.

However, the Ombudsman recalled that principles of good administration require an official, where necessary, to advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter. He took the view that, in the specific circumstances of the case, the Commission should have ensured that the advice it gave to the complainant was appropriate to its particular situation. The Commission's failure to draw the complainant's attention to a fundamental condition of eligibility, namely the requirement to have partner organisations, was therefore an instance of maladministration.

As regards the complainant's claim for compensation, the Ombudsman noted that the complainant had neither quantified its claim nor submitted any evidence of its losses. He therefore took the view that if the complainant wished to pursue this claim, it should first address the Commission directly in the light of the Ombudsman's finding of maladministration.

## **FAILURE TO GIVE INFORMATION REGARDING DATA PROTECTION**

### ***Summary of decision on complaint 224/2004/PB against the European Commission***

The complaint concerned the response of the Commission's Representation in Copenhagen to the complainant's request for information about the processing of data relating to him. On 10 June 2003, the Representation had telephoned the complainant in relation to a request for public access to documents. On that same day, the complainant asked the Representation to inform him about how it had obtained his telephone number. The Representation informed him, on 13 June 2003, that his telephone number had been "indicated by you in your [previous] complaint to the European Ombudsman". On 14 June 2003, the complainant asked the Representation for full information on its processing of his personal data. His request was made under the Danish legislation which implements Directive 95/46 on data protection<sup>17</sup> and which contains essentially the same requirements as those set out in Article 13 of Regulation 45/2001 on data protection<sup>18</sup>.

The Ombudsman's inquiry revealed the following facts. The Commission's Representation had failed to inform the complainant as to whether the telephone number that it had used to contact him on 10 June 2003 had actually been registered or not. It was only in its opinion to the Ombudsman that the Commission clarified that no registration of that telephone number had taken place. It further emerged that when the Representation informed the complainant on 27 August 2003 about an incorrect telephone number that had been registered under his name and that had subsequently been deleted, it had failed to give any information about when that number had been registered or when it had been deleted. Furthermore, it was clear from the

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<sup>17</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31.

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

Representation's letter to the complainant of 27 August 2003 that its earlier letter of 1 July 2003, in which it had stated that the "Commission's Representation in Denmark has not previously registered other personal data under your name", was incorrect, since this letter failed to mention the incorrect telephone number that had been registered. On the basis of these findings, the Ombudsman considered that the Representation had failed to give correct and easily understandable information in accordance with Article 13 of Regulation 45/2001. This constituted an instance of maladministration and the Ombudsman made a critical remark. The Ombudsman informed the European Data Protection Supervisor (EDPS) of the decision, which also included some general comments on the Ombudsman's intentions as regards the provision of information to, and consultation with, the EDPS in handling complaints relating to data protection.

#### *Note*

The Commission subsequently expressed its regret that Article 13 of Regulation 45/2001 had been breached in this case. It stated that the Commission's Representation in Denmark would be reminded that the data protection rules must always be respected.

### **LATE PAYMENT FOR CONTRIBUTION TO GALILEI PROJECT**

#### ***Summary of decision on complaint 530/2004/GG against the European Commission***

The complainant, a small German company, was a sub-contractor in the "Galilei Project", set up to complete the preparatory analysis for "Galileo", the European initiative for a global navigation satellite system. According to the complainant, significant delays between submission of its cost statements and payment were mostly due to the Commission and not to the intermediaries involved in the project. Furthermore, it complained that the Commission had not released a guarantee sum retained pending the final assessment of the project. As regards the complainant, the amount involved was nearly EUR 13 000. This had caused it severe financial problems. The complainant claimed that the guarantee sum should be released and that interest on account of late payment should be paid.

The Commission argued that a period of 240 days between the submission of a cost statement and the payment to a sub-contractor was normal given the structure of the project and that, by signing the contract, the complainant had accepted that 15% would be retained as a guarantee until all project deliverables had been submitted to, and approved by, the Commission.

The Ombudsman found that there had been delays concerning two cost statements. He was also not satisfied that the Commission had adequately responded to the complainant's allegation regarding the guarantee sum. In a proposal for a friendly solution, he suggested that the Commission should reconsider its refusal to release the guarantee sum and consider paying interest.

In reply, the Commission referred to the extremely complex structure of the project, which involved more than 90 contractors and sub-contractors. It offered its apologies for the delays but submitted that they could hardly be considered substantial. The

Commission also argued that the early release of a partial final payment to some of the principal contractors would not be consistent with the common responsibility of all contractors under the Galilei grant contract.

The Ombudsman noted that there was nothing to suggest that the Commission had not been aware of the complexity of the contract when it committed itself to making payments within a certain period of time. Although comparatively small, the delays constituted maladministration.

As regards the guarantee sum, the Ombudsman considered that the Commission was fully entitled — and even obliged — to take measures to protect the Community's financial interests when entering into contracts. However, he was not convinced that the Commission would have been unable to release the sum to the complainant, given that the Commission had not called into doubt the quality of the complainant's work or the costs it had declared. Given that the Commission had in the meantime released the payment, however, there were no grounds for further inquiries into this aspect of the case.

As regards the claim for interest, the Ombudsman considered that the structure of the contractual arrangement in the present case had made it very unlikely that the Commission would ever have to pay interest in cases where it failed to forward payments due to sub-contractors in time. The Ombudsman made a draft recommendation to the Commission that it should compensate the complainant.

The Commission rejected the draft recommendation on the basis that it had not required the contractors to use a particular model of sub-contracting contract and that, therefore, the complainant could have negotiated specific conditions for the payment of interest with the intermediary. The Ombudsman took the view that it did not appear very likely that a small or medium-sized company, such as the complainant, could demand changes to the conditions of a model contract. However, since this possibility could not be excluded, the Ombudsman's earlier finding concerning the payment of interest could not be maintained.

Nevertheless, the Ombudsman considered that small and medium-sized companies hardly had a realistic possibility of taking part in such projects in circumstances like these. He therefore made a further remark suggesting that the Commission could consider altering its standard contractual practice so that payment of interest to contractors in respect of amounts due to sub-contractors that have properly fulfilled their obligations would become automatic. In the Ombudsman's view, such a change would constitute a useful confirmation of the Commission's commitment to the interests of small and medium-sized companies.

#### *Note*

The Commission informed the Ombudsman that it had taken note of the critical remark and the further remark and that it will try to take into account the interests of SMEs in future standard contracts to the extent that this is compatible with the Community's financial interests and the legislative provisions in force.

**THE COMMISSION'S HANDLING OF A TENDER PROCEDURE*****Summary of decision on complaint 538/2004/TN against the European Commission***

The Commission rejected the complainant company's offer under a call for tenders. The complainant alleged, among other things, that the Commission sent confusing messages containing inconsistent reasons for rejecting the offer. The complainant further questioned why it had not received a certain letter from the Commission by fax. Finally, the complainant explained that it had received indications that, contrary to the wording of the call for tender, one of the bids accepted had been submitted only as an original, without copies.

The Commission stated that, in response to a message from the complainant, it had provided additional information on the reasons for rejecting the complainant's bid. It explained that it has no obligation to send letters by fax but that it normally does so and that, according to its internal rules (the *Vade Mecum* on public procurement procedures), it does not consider inadmissible a bid that is not submitted in three copies.

The Ombudsman found that the complainant had written to the Commission trying to rebut the latter's reasons for rejecting its bid and that, in reply, the Commission had provided further reasons for rejecting the bid, without explaining that these reasons were additional to the ones given in its first letter. Furthermore, the Commission did not appear to have acknowledged or answered the complainant's attempt to rebut the first reasons given for rejecting the bid. In the Ombudsman's view, therefore, the Commission had failed to reply as completely and accurately as possible to the complainant's letter, as required by the European Code of Good Administrative Behaviour. The Ombudsman therefore made a critical remark.

The Ombudsman also made two further remarks. The first suggested that the Commission consider formalising and clarifying its procedures with regard to the sending by fax of letters concerning the evaluation of bids. The second noted that point 10.5 of the *Vade Mecum* on public procurement procedures does not seem to correspond to the wording of the call for tender in question, which suggests that bids not submitted in one signed original and two copies will not be considered valid. In order to avoid the possible appearance of unfairness in the future, the Ombudsman suggested that the Commission re-examine the relationship between the *Vade Mecum* and calls for tenders as regards the number of copies of bids that are required to be submitted.

*Note*

In reply to the critical remark, the Commission subsequently informed the Ombudsman that, although it considered itself to have correctly applied the relevant procedural rules, it agreed that, in principle, replies to correspondence should be as complete as possible and that efforts have to be made to this effect. As regards the first further remark, the Commission noted that the rule that unsuccessful tenderers are informed by postal mail, fax, or e-mail only applies to the initial notification, whereas the urgency of further communication has to be assessed by the contracting authority on a case by case basis. As regards the second further remark, the Commission stated that the *Vade Mecum* provides general rules but that the contracting authority is entitled to lay down specific

rules on the number and form of the bids and that the tenderers' compliance with these rules has to be assessed with regard to the principles of proportionality, equal treatment, non-discrimination and broadest competition, as laid down in Article 89 of the Financial Regulation.

### **RIGHT OF DEFENCE DURING AN ADMINISTRATIVE INQUIRY**

#### ***Summary of decision on complaint 620/2004/PB against the European Commission***

A Commission official had lodged a complaint alleging harassment against the complainant, also a Commission official. The Commission set up a team of investigators to conduct an administrative inquiry into the allegation. The inquiry took place at a time when it appears that there were no written rules regarding the conducting of such an inquiry.

The team of investigators concluded in the inquiry report that there was evidence indicating harassment by the complainant. Following this report, a proposal was made for the issuance of an "admonition" to the complainant. This is a kind of warning that would, had it been issued, have formed part of the complainant's file. Moreover, it emerged from the Commission's opinion that the findings in the inquiry report would be, and were, in fact, taken into account by the relevant Director-General for his decision as to whether disciplinary proceedings should be initiated against the complainant.

In his complaint to the Ombudsman, the complainant alleged, among other things, that the team conducting the administrative inquiry had breached his right of defence.

The Ombudsman pointed out that respect for the right of defence constitutes a general principle of Community law, which must be observed even in the absence of an express provision.

The Ombudsman considered that the right to a hearing applied in the present case. However, it did not require that all the materials relied on by the investigators be communicated to the complainant, provided that, before the inquiry report was finalised, the complainant was notified of, and given a reasonable opportunity to comment on, the preliminary factual findings made by the investigators and the substance of the relevant supporting evidence.

It appeared that the investigating team had in fact finalised the report and forwarded it to the relevant Director-General without informing the complainant of, and without giving him a reasonable opportunity to comment on, its preliminary findings and the evidence relied upon. In the Ombudsman's view, this amounted to a failure to respect the complainant's right of defence and therefore to an instance of maladministration.

### **ACCESS TO FISHERIES IN AZOREAN WATERS**

#### ***Summary of decision on complaint 1273/2004/GG against the European Commission***

The complaint concerned the extent to which fishing was permitted prior to 1 August 2004 in the "Azorean waters", that is, waters surrounding the Azores, a group of islands



belonging to Portugal. Since the accession of Portugal to the European Communities in 1986, certain transitional provisions had been applicable to fisheries in the Azorean waters. These provisions, the most important of which were ultimately laid down in Council Regulations (EC) Nos 685/95<sup>19</sup> and 2027/95<sup>20</sup>, effectively reserved the right to fish in Azorean waters to Portugal.

Council Regulation (EC) No 1954/2003<sup>21</sup>, which entered into force on 14 November 2003, effectively repealed the old system governing access to Azorean waters, as set out in Regulations 685/95 and 2027/95. Article 11 provided for the adoption of a Regulation, by 31 July 2004 at the latest, fixing the maximum annual fishing effort for each Member State and for each fishery. This Regulation was adopted on 19 July 2004 and entered into force on 5 August 2004. According to Article 15 of the Regulation, Regulations 685/95 and 2027/95 were to be repealed with effect from the date of entry into force of the Article 11 Regulation or 1 August 2004, whichever was the earlier.

The question thus arose of whether the old system had been repealed on 14 November 2003, when Regulation 1954/2003 entered into force, or on 1 August 2004, the date mentioned in Article 15 of Regulation 1954/2003.

In January 2004, Spanish fishing vessels were detected in Azorean waters. The Spanish authorities took the view that this was lawful, since the old system had been abolished as of 14 November 2003.

The Regional Government of the Azores thereupon submitted a complaint against Spain to the Commission, arguing that the activity of the Spanish fishing vessels was in breach of Regulations 685/95 and 2027/95.

The complainant, a Portuguese Member of the European Parliament, asked the Commission to clarify matters. The Commission ultimately made it clear that it agreed with Spain's interpretation of Regulation 1954/2003.

In his complaint to the Ombudsman, the complainant alleged that the Commission had committed a legal error and that its position had been inconsistent.

The Ombudsman recalled that it is good administrative practice for the administration to avoid legal errors and inconsistencies in its public statements and to acknowledge and correct any errors that may occur. He noted that the Commission's interpretation of the relevant rules was based on the principle that, in the event of a conflict between two legal acts, the more recent prevails (*lex posterior derogat legi priori*). In the Ombudsman's view, the application of this legal maxim was justified if two conditions

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<sup>19</sup> Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources, OJ 1995 L 71, p. 5.

<sup>20</sup> Council Regulation (EC) No 2027/95 of 15 June 1995 establishing a system for the management of fishing effort relating to certain Community fishing areas and resources, OJ 1995 L 199, p. 1.

<sup>21</sup> Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95, OJ 2003 L 289, p. 1.

were fulfilled, namely (i) that the more recent act is incompatible with the older one and (ii) that the issue of the relationship between the two acts has not been settled by the legislator in a different way. The Ombudsman noted that the first condition was fulfilled in the present case. However, Regulation 1954/2003 contained an explicit provision concerning the date on which the repeal of Regulations 685/95 and 2027/95 was to take effect and this date was not 14 November 2003. The Ombudsman considered that the most logical interpretation of this provision was that the legislator had intended that the 1995 Regulations should not be repealed with immediate effect but only after the "Article 11 Regulation" had been adopted or after a period sufficient for its adoption had passed, a period the end of which the legislator fixed at 1 August 2004. The Ombudsman considered that this interpretation was confirmed by the wording and the structure of the Regulation and that it was also consistent with the purpose of Article 15 of Regulation 1954/2003.

Finally, the Ombudsman noted that the Commission itself, in its Explanatory Memorandum for a legislative proposal that it had submitted on 3 February 2004, had confirmed that Regulations 685/95 and 2027/95 had not yet been abolished.

In these circumstances, the Ombudsman took the view that the Commission's interpretation of Regulation 1954/2003 was erroneous and inconsistent with the position set out in its Explanatory Memorandum of 3 February 2004.

## **ACCESS TO DOCUMENTS CONCERNING A CONTRACT IN CHINA**

### ***Summary of decision on complaint 1368/2004/GG against the European Commission***

The complainant, a German company, belonged to a consortium with which the Commission had concluded a service contract for the provision of two EU experts, a co-director and a financial/administrative manager, for an environmental project in China. An expert employed by the complainant was appointed financial/administrative manager and, following an addendum to his contract, effectively became deputy co-director. Two years later, the Commission's Delegation in Beijing informed the consortium that it had decided to terminate the service contract because the expert had failed to fulfil his tasks as modified in the addendum. The complainant asked the Commission for access to the documents on which the termination of the contract was based. The Commission rejected this request.

In its complaint to the Ombudsman, the complainant alleged that the Commission had failed to comply with Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>22</sup>. It also alleged that the termination of the contract had been unlawful.

The Commission maintained that the documents could not be disclosed because they would affect the expert's personal integrity and his commercial interests. It added that the documents could only be made available to a judicial authority, following a court order

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<sup>22</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

to produce them. As to the termination of the contract, the Commission had written to the consortium twice to complain that the expert was not fulfilling his new responsibilities but the situation had not improved.

Following an inspection of the Commission's file and having examined all the evidence, the Ombudsman arrived at the conclusion that, whereas there was no maladministration as regards the termination of the contract, the Commission had failed to provide a reasonable explanation for its refusal to grant access to the relevant documents. He therefore addressed a draft recommendation to the Commission asking it to reconsider the complainant's request.

The Commission stated that it remained convinced that it had properly dealt with the request. However, in a spirit of good co-operation, it had reconsidered the matter and could grant partial access to 13 of the 16 documents concerned by blanking out certain names and contractual details. The complainant welcomed the concessions made by the Commission but stressed that they did not go far enough.

Although the Ombudsman acknowledged that the Commission had gone a long way towards accommodating his concerns, he considered that the measures it had taken to implement his draft recommendation were not satisfactory. In his view, the Commission had failed to provide a reasonable explanation for having blanked out the name of the EU co-director from certain documents and for not granting at least partial access to the remaining three documents. Having concluded that it was not appropriate to submit a special report to the European Parliament, the Ombudsman closed the case with a critical remark.

### **MISLEADING STATEMENT IN OPINION ON EARLIER COMPLAINT**

#### ***Summary of decision on complaint 2862/2004/GG against the European Commission***

A German NGO applied to the Humanitarian Aid Office of the European Communities (ECHO) with a view to signing the Framework Partnership Agreement. This application was rejected and the Commission's handling of the case gave rise to a first complaint submitted by the complainant in 2001 (case 1702/2001/GG). In his decision on this complaint, the Ombudsman made several critical remarks.

In its opinion in case 1702/2001/GG, the Commission had referred to its correspondence with the German Foreign Office. It had stated that the Foreign Office, when requested to provide information on the complainant's suitability, had forwarded a reply stating that an investigation was under way against the complainant and that it was therefore unable to give recommendations. In a later internal note, a member of the ECHO staff had put on record that the German authorities had been unable to give any reference because they did not work with the complainant and therefore did not know it. The Commission had added that, despite continuous contacts between ECHO and the German Foreign Office in the context of verification of German NGOs, no further information concerning the complainant had been provided by the German authorities.

In its new complaint, lodged in September 2004, the complainant referred to information it had received from the German Foreign Office. According to this information, the Foreign Office had not felt obliged to provide ECHO with further information and ECHO had never asked it about the state of the proceedings to which it had referred. The complainant therefore alleged, among other things, that ECHO had, contrary to its own statements, never tried to obtain up-to-date, relevant and ascertainably correct information on it and had lied to the Ombudsman in its opinion in case 1702/2001/GG.

The Commission submitted that the relevant statements could not be interpreted as suggested by the complainant. In the light of the information received from the German Foreign Office, it had decided to suspend the treatment of the complainant's application. It submitted that it had waited for a follow-up from the Foreign Office and had never pretended otherwise.

The Ombudsman noted that the reference to "continuous contacts" was bound to be understood as referring to contacts concerning the complainant's case but that the Commission did not appear to dispute that no such contacts were made after the one described in the internal note. Furthermore, he found it difficult to see what kind of definitive answer could still be expected from an institution that had declared that it did not know the complainant.

The Ombudsman therefore concluded that the Commission's statement, according to which no further information was provided by the German authorities despite continuous contacts, was misleading. He made a critical remark. However, he considered that there was not enough evidence to show that the statement constituted a deliberate lie. Concerning the complainant's further allegations no maladministration was found.

## **HANDLING OF COMPLAINT AGAINST PRIVATE FIRM**

### ***Summary of decision on complaint 3622/2004/GG against the European Commission***

A German national living in France used the French telecommunications company Tele 2. He wished to pay his bills by direct debit from his German bank account. However, Tele 2 refused to provide him with the information necessary to carry out such transactions, i.e., its IBAN (International Bank Account Number) and its BIC (Bank Identifier Code). Considering that the behaviour of Tele 2 constituted an infringement of EU rules on the internal market, the complainant submitted a complaint against Tele 2 to the Commission.

In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to handle his complaint properly.

As regards the substance of the case, the Commission submitted that there had been no breach of the relevant regulation by Tele 2, because nothing in the regulation obliged a company to accept a specific payment instrument. It only laid down a principle of non-discrimination between national and cross-border payment instruments. Since Tele 2 was not invoicing on a cross-border basis, it was entitled to refuse to give its international banking co-ordinates to the complainant. The Commission stated that, at present, direct

debit did not exist in the EU on a cross-border basis. It added that it was currently working on the creation of a single payment area, including a pan-European direct debit scheme, to which effect it intended to propose a directive in 2005.

The Ombudsman considered that the Commission's conclusion that there was no infringement of Community law by Tele 2 was reasonable. He found it regrettable that direct debit did not appear to exist in the EU on a cross-border basis but noted that the Commission had announced steps to amend this situation in the near future.

However, as regards procedural aspects, the Ombudsman found that there was nothing to suggest that the procedural safeguards as regards the handling of infringement complaints had been respected in the present case. The Commission's 2002 Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law<sup>23</sup> provides that letters criticising the behaviour of private firms do not need to be registered as a complaint but that, where the Commission decides not to register a letter as a complaint, the author has to be informed accordingly. The Ombudsman noted that there was nothing to show that this had been done in the present case. Furthermore, the Ombudsman considered that it would have been good administrative practice for the Commission to inform the complainant about the result of its inquiries to the French authorities regarding the behaviour of Tele 2. However, no such information appeared to have been provided before the complainant turned to the Ombudsman. The Ombudsman therefore closed this case with a critical remark.

## **INELIGIBILITY OF PROFIT-MAKING ENTITIES**

### ***Summary of decision on complaint 2673/2004/PB against the European Commission***

The complainant was informed by the Commission that his group would not fulfil the eligibility criteria of an EU programme aimed at disseminating information to the general public about EU enlargement, because it was a long-standing administrative practice to exclude profit-making entities from such programmes. In his complaint to the Ombudsman, the complainant alleged that the Commission's practice was wrong.

The Commission explained that the exclusion of profit-making entities had not been a question of "administrative practice" but was based on a number of specific considerations. Firstly, EU financial aid may not result in profit by its recipients. The Commission considered that the risk of profit was greater in the case of private profit-making entities than in the case of civil society actors, which the Commission considered not to include profit-making entities. Secondly, civil society offers a multiplier effect, which was considered useful for the programme here concerned. Thirdly, information on EU enlargement distributed by civil society actors that work in the public interest is more credible for citizens than information distributed by profit-making entities.

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<sup>23</sup> OJ 2002 C 244, p. 5.

The Ombudsman noted that EU institutions enjoy a wide discretion in laying down selection criteria and other conditions in calls for proposals. The Ombudsman could, however, examine whether the institutions have acted within the limits of that discretion.

With regard to the Commission's first consideration that there would be a greater risk of profit being made in the case of profit-making entities, the Ombudsman first pointed out that it was legitimate for the Commission to decide that the programme should not result in profit by the recipients of the EU funds. The Ombudsman noted, however, that this aim could presumably also have been attained by way of an express condition in the grant agreements concerned. The Commission's concern therefore seemed to be based on the presumption that profit-making entities would be less likely to respect the conditions of the grant agreement than civil society actors. The Ombudsman expressed doubts as to whether such a presumption would in fact be justified. However, in the light of the finding relating to the second and third considerations, the Ombudsman did not consider it necessary to inquire further into that issue.

With regard to the second and third considerations set out by the Commission, these essentially concerned the advantages likely to be derived from focussing the programme on civil society actors working in the public interest. It did not appear to have been unreasonable for the Commission to consider that these advantages could be best obtained by focusing on civil society actors. In the Ombudsman's view, the complainant had therefore not established that the Commission had acted beyond the boundaries of its discretionary powers when it decided to exclude profit-making entities from the relevant call for proposals. The Ombudsman therefore found no maladministration.

The Ombudsman also made a critical remark concerning the Commission's failure to acknowledge receipt of the proposals sent by the complainant and the other applicants in response to the call for proposals.

### **3.4.4 The European Anti-Fraud Office (OLAF)**

#### **LACK OF INDICATION BY OLAF OF LIKELY LENGTH OF INQUIRY**

##### ***Summary of decision on complaint 140/2004/PB against the European Anti-Fraud Office (OLAF)***

An official complained against OLAF in respect of its handling of information that he had submitted to it about suspected illegalities in a Community body for which he had worked. The complainant alleged, among other things, lack of information from OLAF regarding the reasonable period necessary for it to carry out the investigations into his complaint. The relevant provision in force at the time contained the "whistle-blowing" condition that the official had "allowed a reasonable period of time for [OLAF] or the Commission to take appropriate action" before the official could inform the heads of other specified Community institutions about the alleged wrongdoings. It furthermore defined "reasonable period" as "the period which the Office or the Commission, as the case may be, has indicated as being necessary to carry out the investigations" and provided that "[t]he official or servant shall be duly informed".

OLAF essentially argued that this provision was not at issue, because the complainant had not alleged that he had suffered any adverse consequences from having disclosed the information outside the Commission or OLAF. It also stated that even if the provision were applicable, it had been fully respected in this case, since the complainant had never indicated that he believed that a reasonable period had passed.

The Ombudsman considered: (i) that the provision in question was intended to make it possible for the official concerned to know when he or she could disclose the information outside the Commission or OLAF, without suffering any adverse consequences; (ii) that the provision did not require that the official concerned should already have suffered adverse consequences or have requested the information about the reasonable period of time; and (iii) that the provision clearly imposed an obligation on OLAF to provide the official, in all cases, with information as to the period of time within which it expected to conclude its investigation into a "whistle-blowing" complaint. While recalling that the highest authority on the meaning and interpretation of Community law is the Court of Justice, the Ombudsman therefore made a critical remark concerning OLAF's handling of the case.

#### *Note*

The amended Staff Regulations (2004) contain specific rules governing this matter (Title II, "Rights and obligations of officials").

### **3.4.5 The European Investment Bank**

#### **E-MAIL CORRESPONDENCE WITH AN APPLICANT FOR A JOB**

##### ***Summary of decision on complaint 1700/2004/MF against the European Investment Bank***

The complainant was short-listed by the European Investment Bank (EIB) in a selection procedure. On 30 May 2002, the complainant sent an e-mail requesting information on the possibilities he had to begin working at the EIB. On the same day, the Head of the Resources Unit of the EIB sent two e-mails to the complainant. In the first, he wrote "*He has gone completely mad*" and noted that the complainant had sent his application to more than 18 Heads of Unit. In the second e-mail, he advised the complainant to stop writing any further e-mails. He then made the following statement: "*I would be grateful if you could refrain from these actions which are not bound to be in favour of your application.*"

In his complaint to the Ombudsman, the complainant's primary allegation was that the Head of the Resources Unit of the EIB had behaved in an abusive and intimidatory way towards him in the two e-mails dated 30 May 2002.

The EIB explained that the first of the two e-mails had been sent to the complainant by mistake and that the EIB sincerely regretted its content. As for the second e-mail, the complainant had not been subjected to any kind of intimidation. The Head of Unit had simply sent this e-mail in an effort to assist the complainant by advising him that

frequent contacting of the EIB in relation to the possibility of his employment with it could jeopardise his chances.

The Ombudsman considered that the content of the first e-mail would have clearly constituted inappropriate language if it had been deliberately addressed to the complainant. Since the EIB had explained that the e-mail had been sent to the complainant by mistake, the Ombudsman considered that there appeared to be no grounds for further inquiries into this aspect of the complaint.

The Ombudsman noted that the EIB's second e-mail of 30 May 2002 established a link between the complainant's e-mails and his application, namely that it could be rejected if he continued to send e-mails requesting information. The Ombudsman pointed out that, by using terms which could be understood as conveying a threat by the average reader when answering the complainant's request for information on his application, the EIB had failed to respect Articles 11 and 12(1) of the European Code of Good Administrative Behaviour. The Ombudsman therefore made a critical remark.

#### **HANDLING OF A REQUEST FOR ACCESS TO INFORMATION BY THE EIB**

##### ***Summary of decision on complaint 3442/2004/PB against the European Investment Bank***

The complainant had asked for information on loans that the European Investment Bank (EIB) had made available, through intermediary banks, for small and medium-sized renewable energy projects. He alleged that the EIB had wrongly rejected his request. The EIB explained its policy that "[d]isclosure of detailed information on global loan allocations is the competence of the intermediary bank (...). The EIB provides, on request, aggregate data on global loan financing, including country and sector breakdowns." According to the EIB, this practice was based on the consideration that the final beneficiaries' contractual relationship was with the intermediary bank, not with the EIB and that the EIB should not disclose information that was part of the confidential relationship between the intermediary bank and the final beneficiary. In light of the relevant exception in the EIB's Rules on Public Access to Documents, this consideration appeared legitimate. The Ombudsman therefore made a finding of no maladministration.

The complainant also alleged that there had been delays in the EIB's response to his complaint about the refusal to provide access to the information referred to above. The EIB stated that, in the light of the complexity of the complainant's complaint, it had been necessary to wait until all the relevant expert staff could be fully consulted.

In his assessment of this allegation, the Ombudsman pointed out that it is good administrative practice to respond to complaints within a reasonable period of time and in any case within the deadline, if any, laid down by the institution concerned. In the present case, the deadline laid down by the EIB in its own Code of Good Administrative Behaviour was two months. The Ombudsman was unconvinced by the EIB's explanation for its late reply, because he failed to see why the EIB considered the issues raised to have been "complex" within the meaning of the relevant provision of its Code of Good Administrative Behaviour. The Ombudsman therefore considered that the EIB's failure



to reply to the complainant's complaint of 9 July 2004 within the two-month deadline set out in its Code of Good Administrative Behaviour was an instance of maladministration and a critical remark was made.

### **3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION**

#### **3.5.1 The European Commission**

##### **AGE LIMITS IN TRAINEESHIP PROGRAMME**

##### ***Summary of decision on complaint 2107/2002/(BB)PB against the European Commission***

The complaint concerned the rules governing in-service training periods with the Commission, which explicitly mentioned an age limit of 30 years. The complainant alleged that the age limit constituted age discrimination and was contrary to the Charter of Fundamental Rights of the European Union.

Article 21 of the Charter of Fundamental Rights states that: "Any discrimination based on any ground such as [...] age [...] shall be prohibited". According to the established case-law of the European Court of Justice, a difference in treatment is discriminatory if it is not justified by objective factors.

The Commission argued that the age limit of 30 years was objectively justified because the Commission's in-service training programme was aimed at young people at the beginning of their careers and that the age limit was therefore non-discriminatory and in conformity with Article 21 of the Charter of Fundamental Rights.

After carefully examining the Commission's arguments, the Ombudsman took the view that the age limit in its traineeship programme constituted unjustified discrimination. He therefore addressed a draft recommendation to the Commission on 15 June 2004 according to which it should abolish the age limit.

On 29 March 2005, the Commission informed the Ombudsman that it had adopted new rules governing its traineeship programme that contained no age limit. The rules were applicable as from 1 March 2005.

On the basis of his inquiries, the Ombudsman concluded that the Commission had accepted the Ombudsman's draft recommendation and that the measure taken by the Commission was satisfactory. The Ombudsman therefore closed the case.

The Ombudsman also noted that several other Community institutions and bodies apply an age limit in their traineeship programmes. The Ombudsman therefore announced that he would launch an own-initiative inquiry into these programmes.

**CANCELLATION OF A FINANCIAL COMMITMENT*****Summary of decision on complaint 2111/2002/MF (Confidential) against the European Commission***

The complainant submitted a project to the Commission Representation in France on communication strategies in relation to EU enlargement. The project comprised three press visits. In November 2001, the Commission made a financial commitment to co-finance the complainant's project for a sum amounting to EUR 94 854 for the three visits. However, four weeks before the final part of the project concerning the third press visit, the Commission Representation in France decided to cancel the commitment.

In his complaint to the Ombudsman, the complainant claimed that he should receive reimbursement of the costs and compensation for the damage caused.

The Commission argued that the decision in question did not constitute a unilateral termination of a contractual obligation and that there was no legal obligation on its part towards the complainant. As a result, there appeared to be no question of any damage suffered.

The Ombudsman recalled Article 10 of the European Code of Good Administrative Behaviour. He observed that the complainant had been informed that the project had been approved and that the identified costs would be covered. He further noted that the Commission had made a financial contribution to the two first press visits. The Ombudsman considered that, in these circumstances, the complainant could reasonably expect that the Commission would make a financial contribution to the last press visit.

The Ombudsman made a proposal for a friendly solution in which he suggested the Commission take measures to ensure that the complainant, as far as possible, be put in the same position as if the maladministration had not occurred. This could include a reasonable offer of financial compensation.

The Commission informed the Ombudsman that it had decided to accept his proposal. However, the complainant noted that, despite this commitment, he had not been contacted by the Commission. The Ombudsman therefore made a draft recommendation urging the Commission to contact the complainant without delay in order to seek a fair settlement that would include an offer of a reasonable compensation.

The Commission finally agreed to pay the complainant compensation of EUR 56 000, which satisfied the complainant. The Ombudsman therefore closed the case.

**SELECTION OF PUPILS FOR THE EUROPEAN SCHOOLS*****Summary of decision on complaint 1435/2003/MF against the European Commission***

The complainants applied for the enrolment of their son in the English-language section of the primary school of the European School of Ixelles, in Brussels, for the school year 2003/2004 but the application was rejected. In their complaint to the Ombudsman, the

complainants alleged that they had not been given the reasons justifying the rejection decision and claimed that it should be annulled.

The Commission stated that the rules for admission of pupils to the European Schools had been approved by the Board of Governors, which had decided that "enrolment in one of the language sections of the European Schools (nursery school, primary school and secondary school) shall be decided, as a rule, on the basis of the tongue mainly spoken by the pupil". In the complainants' case, the languages spoken within the family were Italian and Spanish. The complainants' son was entitled to be enrolled in a European School but not necessarily in the language section chosen by his parents.

The Ombudsman noted that the letter sent to the complainants on 25 September 2003 by the Director of the European School of Ixelles referred both to the languages that, according to him, were mainly spoken by the complainants' son, i.e., Spanish and Italian, and to the lack of available places in the English-language section. Thus, the decision appeared to be based on both of these considerations. However, if the admission to a specific language section depended on the languages mainly spoken by the pupil, it was difficult to understand why the Director had also referred to the lack of available places in the English-language section, given that this language did not, according to the Director, belong to the languages mainly spoken by the complainants' son. If, on the other hand, admission to a specific language section depended on the availability of places in that section, it was difficult to understand why the Director also referred to the languages mainly spoken by the complainants' son. The Ombudsman therefore considered that the letter of the Director of the European School of Ixelles was not clear enough to enable the complainants to understand the reasons for the decision not to enrol their son in the English-language section. This constituted a lack of transparency in the procedure for the selection of the pupils and thus an instance of maladministration.

The Ombudsman addressed a draft recommendation to the Commission according to which the Commission should endeavour to clarify the conditions of admission of pupils in the language sections of the European Schools.

In its detailed opinion, the Commission informed the Ombudsman that the Board of Governors had decided that the Board of Inspectors should look into the organisation of language sections in the European Schools in general. The Commission also stated that it had, in the meantime, transmitted a request for clarification of the criteria for admission of pupils to the Secretary-General of the European Schools. With a view to promoting good management, transparency and accountability in the European School system, the Commission had launched a wide-ranging consultation on the development of the European Schools, which was to run until 30 June 2005.

The complainants informed the Ombudsman's services that they were satisfied by the Commission's detailed opinion and that their son had been accepted in the English-language section for the school year 2005/2006. The Ombudsman concluded that the Commission had accepted his draft recommendation and that the measures taken by the Commission were satisfactory. The Ombudsman therefore closed the case.

**ACCESS TO A DOCUMENT ORIGINATING FROM A MEMBER STATE IN THE EXCESSIVE DEFICIT PROCEDURE*****Summary of decision on complaint 116/2005/MHZ against the European Commission***

The complainant, a Member of the European Parliament, asked the Commission for access to a letter sent to the Commission in March 2004 by Portugal's then Minister of Finance in the framework of the excessive deficit procedure. The Commission, invoking Article 4(1)(a), fourth indent, of Regulation 1049/2001 on public access to Parliament, Council and Commission documents<sup>24</sup>, refused the application on the grounds that disclosure of the letter would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Member State concerned.

The complainant alleged that the Commission had interpreted the above exception too broadly and claimed that he should be granted access to the document.

The Commission maintained that disclosure of the letter would adversely affect the Portuguese government's economic and financial policy. It further stated that, since it considered that this exception precluded it from disclosing the relevant letter, it had not consulted the Portuguese authorities before refusing the complainant's application.

The Ombudsman then wrote to the Permanent Representation of Portugal to the European Union, asking for the view of the Portuguese authorities as to whether disclosure of the letter in question would adversely affect the Portuguese government's economic and financial policy. In their reply, the Portuguese authorities took the view that the letter in question did not contain elements that could affect Portugal's economic and financial policy and that it could therefore be disclosed to the complainant.

The Ombudsman forwarded the Portuguese authorities' reply to the Commission and asked the Commission to inform him whether it would now be ready to grant access to the letter in question. Since the Commission failed to reply within the prescribed deadline, the Ombudsman made a draft recommendation that the Commission should reconsider its refusal to give access to the document in question.

Shortly after the draft recommendation was made, the Ombudsman received a reply from the Commission to his earlier request. In this reply, the Commission agreed to give the complainant access to the document in question and enclosed a copy. The Commission also apologised for its delay in replying to the Ombudsman.

The Ombudsman concluded that the Commission's reply constituted, in substance, acceptance of his draft recommendation and included satisfactory measures for its implementation.

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<sup>24</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

### 3.5.2 The European Anti-Fraud Office (OLAF)

#### MISLEADING INFORMATION IN PRESS REVIEW

##### *Summary of decision on complaint 3446/2004/GG against the European Anti-Fraud Office (OLAF)*

The complainant, who used to be the Brussels correspondent of the German weekly newspaper *Stern*, made a number of complaints to the Ombudsman against OLAF. Case 1840/2002/GG concerned accusations by OLAF that confidential OLAF documents used by the complainant in two press articles had been acquired through bribery. Following an inquiry, the Ombudsman made a critical remark in that case (see the Ombudsman's *Annual Report 2004*). Case 2485/2004/GG (see below, section 3.7.3) concerned incorrect and misleading statements in OLAF's submissions to the Ombudsman during the inquiry into case 1840/2002/GG.

The present case concerned a press review for June 2004, which OLAF published on its website and which contained references to articles in the *Süddeutsche Zeitung* and the *EUobserver* about the complainant's conflict with OLAF. The complainant alleged that, by citing these articles in a manner that distorted their meaning and that was tendentious, OLAF had failed to behave objectively and impartially. Following his request, OLAF had already changed the relevant passage. However, the complainant considered that it was still misleading. He claimed that OLAF should immediately withdraw or correct the text.

The Ombudsman considered that OLAF's text clearly implied that a former spokesman of the Commission had confirmed his accusations against the complainant. However, according to the article in the *Süddeutsche Zeitung*, the spokesman had rather qualified and toned down his statements. Therefore, the Ombudsman considered that OLAF's text was misleading.

Furthermore, OLAF's press review mentioned that its deputy spokesman had told the *EUobserver* that he saw no reason for a disclaimer as regards the article in the *Süddeutsche Zeitung*. However, since OLAF had not presented the contents of that article correctly, the Ombudsman considered that the meaning of the spokesman's statement had been distorted. In a draft recommendation, he therefore asked OLAF to review and correct the information in its press review.

In response, OLAF suggested three possibilities as to how the Ombudsman's draft recommendation could be implemented: (i) to eliminate two paragraphs of the press review; (ii) to modify one paragraph or (iii) to remove all press analyses from its website and to discontinue this service. The Ombudsman informed OLAF that the first two of the possibilities appeared to be likely to solve the problem and that the complainant considered the second of the options to be particularly appropriate. OLAF then changed the wording of the paragraph concerned and the complainant acknowledged that OLAF had made the necessary corrections.

Although noting that the complainant had also made further criticism of OLAF, the Ombudsman took the view that OLAF had accepted his draft recommendation and that the measures taken to implement it were satisfactory. He therefore closed the case.

### **3.6 CASES CLOSED FOR OTHER REASONS**

#### **3.6.1 The European Commission**

##### **ARTICLE 226 COMPLAINT CONCERNING PENSION TRANSFER**

##### ***Summary of decision on complaint 1423/2004/ELB against the European Commission***

The complainant, a temporary agent of the European Parliament, had previously acquired pension rights through working in the agricultural sector in France. He unsuccessfully sought to transfer these pension rights to the Community pension scheme, in accordance with the Staff Regulations. He then made an Article 226 complaint against France to the Commission.

In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to deal properly with his Article 226 complaint.

The Commission explained that, with the agreement of the French Ministry of Social Affairs, a French pension authority was considering the possibility of transferring pension rights irrespective of whether France had ratified a special agreement on transfer of pension rights. It advised the complainant to contact the administration for which he was working (i.e., Parliament), inviting it to address a reasoned reminder to the relevant French pension authority. The Commission considered that it was not appropriate for the moment to bring the matter before the Court of Justice. However, if no result was achieved in the short term, the Commission would review its position and bring the matter before the Court. The Commission subsequently informed the Ombudsman of the reply sent by the French pension authority, in which it stated that provisions similar to the ones adopted for the general regime could be adopted for agricultural employees and that the requests submitted to it would be re-examined.

On the basis of the available evidence concerning the ongoing activity of the Commission to ensure compliance with Community law in this matter, the Ombudsman considered that the Commission did not appear to have gone outside the limits of its legal authority as guardian of the Treaty. The Ombudsman considered it useful to make a further remark pointing out that he understood the Commission to be committed to finding a solution that would enable the complainant to enjoy his rights as a servant of the European Communities.

**ARTICLE 226 COMPLAINT IN A CASE PENDING BEFORE A NATIONAL SUPREME COURT*****Summary of decision on complaint 3254/2004/(OV)ID against the European Commission***

The complaint to the Ombudsman alleged that the Commission had not dealt properly with the complainant's Article 226 complaint, concerning the Greek authorities' failure to recognise him as a Chemical Engineer on the basis of his professional qualification, obtained in the United Kingdom, as a Materials Engineer. The complainant alleged, in particular, that the Commission had wrongly interpreted and applied Directive 89/48/EEC<sup>25</sup> and Articles 43 and 47 of the EC Treaty in his case.

In deciding whether it is justified to pursue an inquiry into a complaint, the Ombudsman examined whether an assessment of the merits of the complaint would involve an examination of legal or factual issues raised in an action filed before a Community or national court. This is all the more important where the complaint involves issues pertaining to the interpretation and application of national legislation, since national courts are in a better position than the Ombudsman to deal with such questions.

After having carefully examined the complaint, the complainant's observations on the Commission's opinion, and the action for annulment that the complainant had filed before the Council of State (the Supreme Administrative Court) of Greece in September 2004, the Ombudsman found that an assessment of the merits of the complainant's allegation would involve a thorough examination of issues raised in the complainant's action before the Council of State of Greece, including, *inter alia*, questions pertaining to the interpretation and application of Greek legislation regarding the regulation in Greece of the professional activities of a "Materials Engineer, with specialisation in Polymer Science and Technology" and their relationship with the activities which fall within the scope of the profession of Chemical Engineer, as regulated in that Member State. Under these circumstances, the Ombudsman concluded that further inquiry into, and consideration of, the complaint was not justified, since it would, in essence, amount to a duplication of the legal proceedings initiated by the complainant before the Greek Council of State.

The Ombudsman explained, however, the circumstances in which the complainant might renew his complaint to the Ombudsman after the completion of the national legal proceedings.

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<sup>25</sup> Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, OJ 1989 L 19, p. 16.

**FREE LENDING OF BOOKS FROM PUBLIC LIBRARIES*****Summary of decision on joint complaints 3452/2004/JMA and others against the European Commission***

The Ombudsman received a large number of complaints concerning the Commission's decision to start infringement proceedings against Spain in relation to the implementation of Directive 92/100 on rights related to copyright in the field of intellectual property<sup>26</sup>.

According to the complainants, the Commission had taken the view that the practice of Spanish public libraries to lend books to the public free of charge was contrary to the Directive. They alleged that the Commission's interpretation of the Directive and its subsequent decision to pursue infringement proceedings against Spain undermined the existence of public libraries as a basic public service and went against the fundamental rights of citizens to have access to culture.

As part of his inquiry into the case, the Ombudsman requested information from his national and regional counterparts in the European Network of Ombudsmen. On the basis of the responses from the Network, it appeared that many Member States had been able to correctly implement Directive 92/100 by means that do not involve charging individuals for borrowing books from public libraries.

The Commission explained that it had initiated infringement proceedings not because public libraries in Spain lend books free of charge but because the Spanish authorities had failed to ensure that authors were remunerated for the lending of their works through public libraries. Respect for the right of copyright and related rights and the remuneration of these rights, as provided for in Directive 92/100, does not mean that borrowers may no longer borrow books free of charge, nor does it mean that libraries are required to pay additional fees. In most Member States this remuneration is financed by the relevant public authorities. The Commission also informed the Ombudsman that it had referred the matter to the Court of Justice (Case C-36/05).

In view of the legal proceedings in the Court of Justice, the Ombudsman closed his consideration of the case. He underlined that his inquiry, and especially the co-operation with national ombudsmen, had helped clarify for complainants the reasons for the Commission's actions and the possibilities for correct implementation of the Directive.

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<sup>26</sup> Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ 1992 L 346, p. 61.



## 3.7 CASES CLOSED AFTER A SPECIAL REPORT

### 3.7.1 The Council of the European Union

#### FAILURE TO GIVE VALID REASONS FOR CONTINUING TO LEGISLATE BEHIND CLOSED DOORS

##### *Summary of special report following complaint 2395/2003/GG against the Council of the European Union*

The complainants, a German MEP and a representative of the youth group of the Christian Democratic Union (CDU), alleged that the Council's Rules of Procedure were not in conformity with Article 1(2) of the Treaty on European Union, according to which the Council and the other Community institutions and bodies must take decisions as openly as possible.

The Council argued that the degree of openness of its meetings is a political choice to be made by the Council. The Ombudsman disagreed on the grounds that Article 1(2) of the Treaty on European Union applies to the Council and that, although Article 207 of the EC Treaty provides for it to adopt its own Rules of Procedure, it does not provide that the degree to which its meetings in its legislative capacity are to be open to the public should be regarded as a political choice and left to the discretion of the Council.

The Council also argued that Article 1(2) of the Treaty on European Union merely indicated that the *future* Union should be as open as possible. The Ombudsman took the view that developments since that Article was adopted in its present form in 1997 should also be taken into account. He pointed out that the Council had already adopted new Rules of Procedure in 2000 that provided for increased openness of its meetings as a legislator. In the Ombudsman's view, the Council thus made it clear that steps to increase the transparency of its legislative activity had to and could be taken. The adoption of these new Rules of Procedure also confirmed that doing so was and is possible under Community law as it presently stands.

The Ombudsman therefore concluded that the Council had failed to submit any valid reasons as to why it should be unable to amend its Rules of Procedure with a view to meeting in public whenever it is acting in its legislative capacity. The Ombudsman forwarded this finding of maladministration to the European Parliament in a special report, with a recommendation that the Council "*should review its refusal to decide to meet publicly whenever it is acting in its legislative capacity*".

### 3.7.2 The European Commission

#### EDUCATIONAL COSTS FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

##### *Summary of special report following complaint 1391/2002/JMA against the European Commission*

The complainant was a Commission official whose daughter had special educational needs that could not be met by the European Schools, which provide education free of charge to the staff of the Community institutions and bodies. Since the European Schools were unable to cater for her daughter, the complainant had to send the child to a different school and pay part of the cost of her education.

In the course of the inquiry, the Ombudsman received 21 additional complaints which involved similar facts and raised identical allegations.

The Ombudsman's inquiry showed that the integration of disabled children into the ordinary education system is a policy goal of the Commission which to date, however, lacks a mandatory character. Furthermore, there is considerable divergence among the laws and practices of the Member States in this regard. Against this background, the Ombudsman took the view that the Commission had offered a reasonable explanation as to why the European Schools cater for only some children with special educational needs, while children with a more severe degree of disability are not integrated into the Schools. The Ombudsman was not convinced, however, that the Commission had adequately explained the financial aspects of the matter. In the absence of such an explanation, the Ombudsman found unjustified discrimination in the differing financial treatment of staff.

The Ombudsman therefore made a draft recommendation to the Commission that it should take the necessary steps to ensure that parents of children with special educational needs who are excluded from the European Schools because of their degree of disability should not be required to contribute to the educational costs of their children.

The Commission's detailed opinion expressed willingness in principle to review the current policy, subject to budgetary constraints which could be tackled in the budget process. Although encouraging, this did not amount to an unequivocal acceptance of the draft recommendation.

The Ombudsman therefore considered it appropriate to make a special report to the European Parliament, containing a recommendation in the same terms as the earlier draft recommendation.

### 3.7.3 The European Anti-Fraud Office (OLAF)

#### PROVISION OF INCORRECT AND MISLEADING INFORMATION TO THE OMBUDSMAN DURING A PREVIOUS INQUIRY

##### *Summary of special report following complaint 2485/2004/GG against the European Anti-Fraud Office (OLAF)*

The complainant, who was the Brussels correspondent of the German weekly newspaper *Stern*, had obtained copies of confidential OLAF documents and used these documents in two articles. Two weeks later, OLAF had published a press release in which it stated that "a journalist" had obtained a number of confidential OLAF documents, possibly "by paying a civil servant" and that it had therefore decided to open an internal inquiry. The complainant and his newspaper considered that, even though no name had been mentioned in the press release, the accusation of bribery had to be understood as directed at them. According to the complainant, this accusation was unfounded.

When OLAF refused to withdraw the press release, the complainant lodged a complaint with the Ombudsman (case 1840/2002/GG). During the Ombudsman's inquiry into that complaint, OLAF rejected the complainant's accusations and submitted a number of arguments in order to show that the reference to "a journalist" could have meant any of several journalists who had published articles indicating that they were in possession of the documents in question. Furthermore, it suggested that "the reference could also be to any other journalist, since OLAF did not state that the investigation was linked to any specific material which had already been published".

However, on the basis of the evidence in his possession, the Ombudsman came to the conclusion that the relevant press release had to be understood as referring to the complainant and that OLAF had not put forward any evidence to support the accusation it had made therein. The Ombudsman therefore addressed a draft recommendation to OLAF inviting it to withdraw the allegation of bribery. Since the Ombudsman considered that OLAF had not properly implemented this draft recommendation, he made a critical remark.

Subsequently, the Belgian prosecutor's office carried out a search of the complainant's office and home in Brussels, seizing a great number of documents. It emerged that these measures of inquiry had been based on information that OLAF had forwarded to the Belgian and German authorities. The complainant lodged a new complaint with the Ombudsman, submitting copies of OLAF's letters to the authorities, which, according to him, showed that OLAF had provided incorrect information in the context of case 1840/2002/GG that was likely to mislead the Ombudsman and to manipulate the inquiry.

OLAF submitted that its statements had been fully accurate and not misleading.

The Ombudsman examined four statements or groups of statements that the complainant considered to be wrong or misleading and came to the conclusion that OLAF had indeed provided incorrect or misleading information in all four instances. The Ombudsman therefore addressed a draft recommendation to OLAF, asking it to acknowledge that it

had made incorrect and misleading statements in its submissions to the Ombudsman concerning case 1840/2002/GG.

After examining OLAF's detailed opinion, the Ombudsman considered that OLAF had in effect refused to accept his draft recommendation. He therefore addressed a special report to the European Parliament in which he restated his draft recommendation as a recommendation.

### **3.8 OWN-INITIATIVE INQUIRY BY THE OMBUDSMAN**

#### **PAYMENT FOR A FLORAL DECORATION**

##### ***Summary of decision on own-initiative inquiry OI/3/2005/OV (Confidential) concerning the European Commission***

In April 2005, the Ombudsman received a complaint from a florist in a non-EU country concerning an alleged failure of the Commission Delegation in that country ("the Delegation") to reimburse the complainant for the floral decoration that he had provided for the Delegation's newly opened Press Centre. The complainant claimed that the Commission should honour an oral agreement on the matter and pay him for the service that he had provided.

The Ombudsman could not open an inquiry into the complaint as such, because the complainant was not an EU citizen and did not have his residence in an EU Member State (Article 195 of the EC Treaty). However, given that the issue raised merited examination, the Ombudsman decided to open an own-initiative inquiry against the Commission into the matter.

The Commission explained that it had put the premises of the Delegation's Press and Information centre at the disposal of the Italian embassy and an associated foundation for an event and that the floral decoration had been supplied in that context. The complainant's contract for the supply of the floral decoration was with the Italian embassy and the foundation. No contract was established between the Delegation and the complainant.

The Ombudsman concluded that there indeed existed no contract between the Commission and the complainant with regard to the floral decoration and that this conclusion was not altered by the fact that the decoration itself was provided on the Delegation's premises. The Ombudsman therefore found that the complainant's claim for payment against the Commission could not be upheld and that there was no instance of maladministration.

The Ombudsman, however, informed the complainant that he could consider lodging a complaint with the Italian Ministry of Foreign Affairs. Considering that one of the reasons for the problems encountered by the complainant appeared to be that the person in charge in the Italian embassy had left the embassy, the Ombudsman also found it appropriate to send a copy of his decision to the Italian embassy in the country of the Delegation.

The complainant responded to the Ombudsman by stating that his decision was correct and could help him resolve his complaint.



## **4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES**





Constructive working relations between the European Ombudsman and the EU institutions and bodies are vital in ensuring that citizens' complaints are dealt with promptly and effectively. The Ombudsman uses the opportunities offered by meetings with Members of the institutions and bodies and their 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 also invites representatives of other institutions and bodies to address his staff with a view to keeping them abreast of political and legislative developments in the Union. Finally, he regularly exchanges information with key interlocutors, such as the European Data Protection Supervisor, whose work is of direct relevance to the Ombudsman's activity.

On the occasion of the tenth anniversary of the institution, the Ombudsman sought to build on the co-operation that has developed to date so as to ensure a top class EU administration. This objective was pursued most notably during the formal dinner for the Presidents and Secretaries-General of EU institutions and the Heads of EU bodies and agencies held on 17 November (see section 6.1). European Commission President, Mr José Manuel BARROSO, gave the keynote speech on this occasion, reiterating the commitment he expressed during the Ombudsman's 25 May meeting with the College of Commissioners to work closely with the Ombudsman for the benefit of citizens. This meeting is covered in detail in section 4.2 below.

### ***The Ombudsman and Parliament — a special relationship***

The Ombudsman's special relationship with the European Parliament, which elects him and to which he reports annually, is of particular importance. He enjoys a fruitful working relationship with Parliament's Committee on Petitions, which is responsible for relations with the Ombudsman and drafts the report on his Annual Report. Moreover, at a meeting of the Committee on Petitions on 12 October 2005, the Ombudsman undertook, in accordance with Rule 195(3) of Parliament's Rules of Procedure, to appear before the Committee at his own request, whenever he presents a special report to Parliament.

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 equally co-operates closely with Parliament's administration to enable his Office to work effectively. Interinstitutional co-operation is key to making the most judicious use of the resources granted to his Office, helping to avoid duplication of staff and, where possible, to ensure economies of scale. This is particularly the case on a number of budgetary and administrative matters (see Annex B). To make certain that the Ombudsman 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 2005.

This chapter contains an overview of the meetings and events held with Members of the EU institutions and bodies and their officials during 2005<sup>1</sup>.

#### 4.1 THE EUROPEAN PARLIAMENT

22 February: Meeting with Mr Gregorio GARZÓN CLARIANA, Jurisconsult of the European Parliament.

7 March: Meeting with Mr David HAMMERSTEIN MINTZ MEP.

8 March: Meeting with Mr Josep BORRELL FONTELLES, President of the European Parliament.

10 May: Meeting with Mr Stanisław JAŁOWIECKI MEP.

10 May: Presentation of the Ombudsman's *Annual Report 2004* to the Committee on Petitions of the European Parliament.

11 May: Meeting with Mr Gregorio GARZÓN CLARIANA.

8 June: Meeting with Mr Valdis DOMBROVSKIS MEP, European Parliament Rapporteur on the European Ombudsman's Budget for 2006.

6 July: Meeting with Sir Robert ATKINS MEP.

6 July: Meeting with Mr Julian PRIESTLEY, Secretary-General of the European Parliament.

7 July: Meeting with Mr Manolis MAVROMMATIS MEP, European Parliament Rapporteur for the European Ombudsman's *Annual Report 2004*.

6 September: Dinner, hosted by the European Ombudsman, in honour of the Bureau and Co-ordinators of the Committee on Petitions. Mr Marcin LIBICKI MEP, Chairman of the Committee, Ms Marie PANAYOTOPOULOS-CASSIOTOU MEP, Ms Alexandra DOBOLYI MEP, Mr David HAMMERSTEIN MINTZ MEP and Mr David LOWE, Head of the Secretariat of the Committee on Petitions, attended the dinner.

8 September: Meeting with Mr Proinsias DE ROSSA MEP.

14 September: Meetings with Mr Herbert BÖSCH MEP and with Mr Julian PRIESTLEY.

27 September: Meeting with Mr Gregorio GARZÓN CLARIANA.

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<sup>1</sup> The meetings and events took place in Brussels, Luxembourg and Strasbourg.

27 September: Reception for MEPs, representatives of the European Commission and the European Parliament to celebrate the tenth anniversary of the establishment of the European Ombudsman (see section 6.1). The keynote address at this reception was given by the President of the European Parliament, Mr Josep BORRELL FONTELLES.

10 October: Meetings with Ms Alexandra DOBOLYI MEP and with Mr David HAMMERSTEIN MINTZ MEP.

12 October: Meetings with Mr Herbert BÖSCH MEP and with Sir Robert ATKINS MEP.

27 October: Presentation of the Ombudsman's *Annual Report 2004* to the plenary of the European Parliament (see Section 6.1).

## 4.2 THE EUROPEAN COMMISSION

On 25 May, the European Ombudsman met with the College of Commissioners in Brussels. Mr DIAMANDOUROS was welcomed by Commission President, Mr José Manuel BARROSO, who expressed his commitment to work closely with the Ombudsman to ensure that citizens' rights are fully respected. Commission Vice-President for Institutional Relations and Communication, Ms Margot WALLSTRÖM, then outlined a number of ways in which co-operation between the two institutions could be improved. Among the measures envisaged were attaching strong political ownership by the respective Commissioners to each case, strengthening the co-ordination, monitoring and follow-up of cases by the Legal Service and the Secretariat-General, and enhancing efforts to agree to friendly solutions proposed by the Ombudsman. With a view to guaranteeing these improvements, the Commission Vice-President proposed that officials of the Commission's co-ordinators network in charge of inquiries by the Ombudsman and officials from the Ombudsman's Office should meet regularly and hold training courses on the relations and working arrangements between the two institutions.

The Ombudsman then presented his work to the College, placing particular emphasis on his role as a resource to help improve the quality of the administration. In this regard, the Ombudsman referred to the European Code of Good Administrative Behaviour and urged the Commission to take an initiative to put an end to the present confusing situation, in which different institutions and bodies apply a variety of different codes. The Ombudsman equally encouraged the Commission to consider adopting measures designed to spread and strengthen best practice among the various Directorates-General and other departments of the Commission in the preparation of responses to his inquiries. Finally, the Ombudsman announced that he would make more use of his powers to propose friendly solutions to the Commission and to open own-initiative inquiries in order to identify problems and encourage best practice.

After the presentation, the Ombudsman joined the College for lunch to pursue the discussion on his work for citizens.

In addition to this event, the following meetings took place with Commissioners and officials in 2005:

12 January: Meeting with Ms Margot WALLSTRÖM, Vice-President of the European Commission for Institutional Relations and Communication.

23 February: Meeting with Mr Siim KALLAS, Vice-President of the European Commission for Administrative Affairs, Audit and Anti-Fraud.

12 April: Meeting with Ms Margot WALLSTRÖM.

10 May: Meeting with Mr Giuseppe MASSANGIOLI, Director in the European Commission responsible for relations with the European Ombudsman.

7 September: Meeting with Mr Giuseppe MASSANGIOLI and Mr Andrea PIERUCCI, Head of Unit in the Commission.

14 September: Meeting with Mr Siim KALLAS.

### **4.3 THE EUROPEAN DATA PROTECTION SUPERVISOR**

In May 2005, the European Data Protection Supervisor (EDPS), Mr Peter HUSTINX, consulted the European Ombudsman during the preparation of the EDPS's background paper No. 1 on *Public access to documents and data protection* (available on the website of the EDPS <http://www.edps.eu.int>). Information on co-operation between the Ombudsman and the EDPS in dealing with complaints is provided in section 2.8.1.

On 20 October, the European Ombudsman met with Mr Peter HUSTINX and the Assistant European Data Protection Supervisor, Mr Joaquín BAYO DELGADO. This meeting offered an opportunity to review the co-operation and exchange of information between the institutions, especially in relation to complaints to the Ombudsman in which questions of data protection are raised. Earlier that day, Mr DIAMANDOUROS had welcomed the Data Protection Officers of the Community institutions and bodies to a meeting that was co-hosted by Mr Alessandro DEL BON, the European Ombudsman's Data Protection Officer and Mr Jonathan STEELE, Data Protection Officer of the European Parliament. In the afternoon, the meeting of the Data Protection Officers was held in presence of the European Data Protection Supervisor and the Assistant Supervisor.

### **4.4 OTHER INSTITUTIONS AND BODIES**

20 January: Meeting and luncheon hosted by Mr DIAMANDOUROS for the Heads of Administration of the European institutions.

21 January: Attendance at the solemn undertaking before the European Court of Justice by the President and the new Members of the European Commission.

8 June: Meeting with Mr David WALKER, Director of the European Administrative School.

5 October: Attendance at the solemn undertaking before the European Court of Justice by the Members of the newly-established Civil Service Tribunal of the European Union.

11 October: Speech on "The role of the ombudsman and co-operation between the European Ombudsman and regional counterparts" to the Bureau of the Committee of the Regions.

24 October: Speech by Mr Bo VESTERDORF, President of the Court of First Instance of the European Communities, to the staff of the European Ombudsman, on the subject of the "Relationship between courts and ombudsmen".

17 November: Formal dinner for the Presidents and Secretaries-General of EU institutions and the Heads of EU bodies and agencies to mark the tenth anniversary of the institution of the European Ombudsman (see section 6.1).



## **5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES**





National, regional and local ombudsmen have a key role to play in ensuring that citizens' rights under EU law are fully respected throughout the Union. The European Ombudsman co-operates closely with his counterparts to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This co-operation takes place for the most part under the aegis of the European Network of Ombudsmen, the 2005 activities of which are described in detail in section 5.1 below. This chapter also details the wider range of conferences and meetings in which the Ombudsman and his staff participated in 2005, with a view to promoting ombudsmanship throughout the Union and beyond. It ends with an overview of the bilateral meetings that took place between the European Ombudsman and his ombudsman colleagues.

## **5.1 THE EUROPEAN NETWORK OF OMBUDSMEN**

The European Network of Ombudsmen consists of almost 90 offices in 30 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 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 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, described below, are key to enabling the ombudsmen to play their full role in ensuring that EU law is implemented correctly throughout the Union. This role was the theme of the fifth seminar of national ombudsmen that took place in The Hague in September 2005. This section contains a detailed account of the discussions at that seminar, where important decisions were taken regarding the future direction of the Network and how best to strengthen it.

Information visits to ombudsmen in the Member States and applicant countries have also 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 mention of the Ombudsman's information visit to the United Kingdom in November 2005, which is covered in greater detail in section 6.2.

### *National ombudsmen seminars*

National ombudsmen seminars are held every two years, organised jointly by the European Ombudsman and a national counterpart. The fifth seminar, organised by the Dutch National Ombudsman, Mr Roel FERNHOUT, and the European Ombudsman, took place in The Hague from 11 to 13 September 2005.

This was the first seminar to include ombudsmen from the candidate countries and the first after the Union's biggest ever enlargement. All 25 EU Member States were represented at the meeting, as were Croatia, Romania, Iceland and Norway. The seminar took place on the occasion of the tenth anniversary of the European Ombudsman institution and exactly nine years after the first seminar of the national ombudsmen of the EU Member States, which was organised in Strasbourg in September 1996.

All of these aspects added a special dimension to the theme of the 2005 Seminar which was "The role of ombudsman institutions and similar bodies in the application of EU law", a subject matter seen as highly relevant for ombudsmen throughout the enlarged Union. As supervisory bodies, ombudsmen have a critical role to play in ensuring the full and correct application of EU law in the Member States. The discussions in The Hague focused on how best ombudsmen can work together to properly play their part.

#### *Discussions at the seminar*

The seminar was opened by the President of the House of Representatives of the States General (the Dutch Parliament), Mr Frans W. WEISGLAS, and the Dutch Minister for European Affairs, Mr Atzo NICOLAÏ.

Mr Rick LAWSON, Professor at the Europa Institute of Leiden University's Faculty of Law, launched the discussions with the presentation of a report on ombudsmen's experiences in the application of EU law. This report was based on a questionnaire that had been circulated to all of the national offices to gain an insight into their experiences in supervising EU law. It covered, for example, the types of "EU cases" that ombudsmen encounter in their daily work, the frequency and importance of these cases and best practice in dealing with them.

According to Mr LAWSON, ombudsmen do indeed have a key role to play in ensuring that public authorities apply EU law fully and correctly. In fulfilling this duty within their field of competence, Mr LAWSON argued, ombudsmen must disregard any national rules which prevent them from protecting the rights that individuals derive from Community law. In addition, they should not only apply EU law when a complainant invokes it but rather aim to apply it proactively. Mr LAWSON agreed that this is a daunting task given the scope of EU law. As regards fundamental rights, Mr LAWSON insisted that an ombudsman, when reviewing the conduct of administrative bodies in any area covered by EU law, must check that fundamental rights have been complied with.

*Thematic session one: Ombudsmen and the Constitution of the European Union*

Mr Luís Miguel POIARES PESSOA MADURO, Advocate-General at the Court of Justice of the European Communities, was the keynote speaker in this session. In his view, ombudsmen have two clear institutional advantages over courts as far as the application of EU law is concerned: firstly, in an area such as free movement, judicial redress is not effective, because of the expense and the length of time involved. Ombudsmen are therefore particularly well placed to address citizens' concerns in this area; secondly, ombudsmen can perform a key role in educating public authorities about their obligations regarding the implementation of EU law. They have the moral authority to encourage the public administration to give full effect to EU law provisions.

Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, followed up as the discussant during this session. He pointed out that, in view of the difficulties encountered in ratifying the Constitution for Europe, we face uncertainty as to the future development of fundamental rights and freedoms within the Union. This is happening at a time when the protection of those rights and freedoms is of crucial importance (most notably in light of the body of legislation that is being adopted in response to the terrorist threat and the exceptions being made to existing rules). In his view, ombudsmen need to follow legal developments closely, with regard both to EU legislation to be adopted and to the implementation procedure in the respective Member States. Efficiency should not be given priority over lawfulness, he stated.

*Thematic session two: Environment*

Ms Catherine DAY, Director-General for the Environment in the European Commission, launched the second thematic session with an overview of the state-of-play of EU law in the area of the environment. According to Ms DAY, 80% of environmental law in the Member States now emanates from the EU level. It is perhaps not surprising therefore that around one-quarter of the complaints to the Commission about the implementation of EU law concern the environment and, more specifically, problems concerning the Natura 2000 network and the failure to ensure adequate environmental impact assessments. Ms DAY was of the opinion that it should not be necessary for citizens to bring all their complaints to the EU level — ombudsmen could play a key role in resolving complaints relating to Member States' infringements of EU environmental law. Should legal advice from the Commission be necessary in this regard, she confirmed that it could be provided.

Mr Jean-Paul DELEVOYE, National Ombudsman of France, was the discussant in this session. He explained how the French Ombudsman tackles citizens' complaints relating to the environment, underlining the important role of the French Ombudsman's delegates in resolving problems that are raised at a local level.

*Thematic session three: Discrimination*

Mr Jenő KALTENBACH, Parliamentary Commissioner of Hungary for National and Ethnic Minorities Rights, was the keynote speaker in this session. He pointed out that despite the significant progress achieved to date in tackling discrimination, the

transposition of relevant EU Directives has not been completed. National ombudsmen have a vital interest in promoting the transposition process into the domestic legal system of their countries, he said. Moreover, they should work closely with specialised bodies that have been set up to address the problem of discrimination in various areas. Mr Marc FISCHBACH, National Ombudsman of Luxembourg, followed up with a number of examples of complaints that had been brought to him, including a complaint alleging discrimination based on sexual orientation.

#### *Thematic session four: Free movement*

Ms Elsbeth GUILD, Professor of Migration Law at the University of Nijmegen, the Netherlands, made the keynote speech in the final thematic session on free movement, highlighting a range of remaining obstacles to free movement. Ms GUILD pointed out that most institutions at the national level still deal with citizens of the Union who are not nationals of their country as foreigners subject to foreigners' law. In addition, third country national family members of (migrant) citizens of the Union are not always awarded the position of EU national.

Ms Emily O'REILLY, National Ombudsman of Ireland, was the discussant in this session and focused on the area of social security, outlining a number of problems faced by citizens in claiming their rights under EU law (specifically in terms of Regulation 1408/71<sup>1</sup>). A major part of the problem, she indicated, concerns the complexity of the relevant legislation. In this regard, Ms O'REILLY referred to the European Commission's TRESS (Training and Reporting in Social Security) Project, which aims to improve the knowledge of the relevant Community provisions amongst all stakeholders involved, such as national judges, in particular by organising training seminars.

#### *Institutional issues*

In addition to the thematic sessions, the seminar included an in-depth discussion on a number of institutional issues of concern to ombudsmen in the EU and candidate countries. This discussion was based on a keynote speech given by the European Ombudsman in which he spoke about the objective of establishing a clearer public identity for the European Network of Ombudsmen. With a view to making the Network more visible to citizens and public policy-makers alike, the European Ombudsman declared his willingness to invest resources to further develop the Network's use of the Internet to communicate both with the public and amongst ombudsmen. He further proposed that over the next two years a statement be developed that explains to citizens what they can expect if they turn to an ombudsman in the Network. Such a statement could be discussed and eventually adopted at the ombudsmen's sixth seminar, which will take place in Strasbourg in 2007, co-hosted by the European Ombudsman and the French National Ombudsman. Given the importance of ensuring that the views of regional ombudsmen are adequately represented in the discussion of the statement to citizens, the European Ombudsman proposed to invite regional colleagues in each Member State where they exist to nominate one representative to attend the 2007 seminar in

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<sup>1</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ 1971 L 149, p. 2.

Strasbourg, in addition to the relevant national ombudsman. The European Ombudsman further committed his institution to meeting with the regional ombudsmen on a biennial basis, in alternate years from meetings of the national ombudsmen.

### *Seminar conclusions*

The seminar ended with a short speech by the European Ombudsman, followed by a presentation of conclusions by Mr LAWSON.

### *The way forward*

The discussions in the seminar gave rise to many ideas that can help define the course of action for co-operation within the European Network of Ombudsmen over the coming months and years. The European Ombudsman has offered the following as preliminary, operational conclusions to be drawn from the meeting:

1. Ombudsmen are public authorities and should, therefore, within their fields of competence, give full effect to rights under EU law, including human rights.
2. Ombudsmen are very well placed to examine whether in individual cases EU law has been applied correctly by public administrations in the Member States – national, regional and local – and to take action where failures have occurred with a view both to providing an effective remedy and to avoiding similar failures in the future.
3. Ombudsmen have a clear comparative advantage in some fields, as compared to the courts, because they can offer quicker remedies. Individuals confronted with a serious obstacle to the exercise of their freedom of movement, such as lack of recognition of a diploma for example, cannot afford to wait years for a remedy.
4. The co-operation that has been developed among ombudsmen in Europe through the European Network of Ombudsmen should be made more visible so that citizens and public policy-makers can become more aware of its purpose. Greater use should be made of the Internet to promote a clearer public identity for the Network, while a statement outlining what ombudsmen in the Network can do for citizens should be drawn up.
5. Sessions on, for instance, the free movement of persons and the prohibition of discrimination demonstrated in a very tangible way how rich and detailed EU law can be and how it is constantly evolving. Continuous education is essential, both for the national administrations and for the ombudsmen themselves, but it requires sustained efforts and resources. In response to requests, the European Ombudsman agreed to increase his efforts to serve as a resource for the European Network of Ombudsmen in this respect.

### *An excellent seminar*

In addition to the stimulating formal sessions, the meeting allowed for more informal discussions and contacts. The sightseeing tour of post-war Rotterdam, the canal tour in Amsterdam and the visit to the Van Gogh and Mauritshuis art museums added to the overall enjoyment of the event, as did the gala dinner to celebrate the tenth anniversary

of the European Ombudsman. The reception offered by Her Majesty Queen Beatrix, at the Huis ten Bosch Palace, provided an additional highlight, while the informal dinner at the office of the Dutch Ombudsman served as a thoroughly fitting conclusion to an excellent fifth seminar.

### ***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 2005, the Ombudsman advised 945 complainants to turn to a national or regional ombudsman and transferred 91 complaints directly to the competent ombudsman. Examples of these complaints are given in section 2.5 of this Report.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or channels the query, if appropriate, to another EU institution or body for response. In 2005, four queries were received (two from national and two from regional Ombudsman) and three were closed (including two brought forward from 2004).

### ***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 2005, issues covered included the future Fundamental Rights Agency of the EU, access to documents and data protection, discrimination and obstacles to free movement, prison-related problems in a number of Member States, healthcare provision, and problems faced by immigrants.

### ***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 30 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 as well as from the European Union. Almost all national and regional ombudsman offices throughout Europe contribute to and consult the *Daily News* on a regular basis.

In 2005, the discussion forum continued to provide a very useful way for offices to share information through the posting of questions and answers, with several major discussions initiated, covering issues as diverse as the free lending of books by public libraries, making ombudsmen's decisions public on the Internet, and the implementation of ombudsmen's recommendations.

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 Ombudsman visited the United Kingdom Parliamentary and Health Service Ombudsman, Ms Ann ABRAHAM in November 2005 (see section 6.2).

## **5.2 OTHER OMBUDSMAN SEMINARS AND CONFERENCES**

The European Ombudsman's efforts to collaborate with his ombudsman counterparts stretch beyond the activities of the European Network of Ombudsmen. The Ombudsman is an active member of an array of ombudsman organisations and participates regularly in conferences and seminars that they organise. This section gives an overview of the Ombudsman's participation, and that of his staff, in such events in 2005.

### ***The tenth anniversary of the Seimas Ombudsmen of the Republic of Lithuania***

On 14-15 April 2005, Mr Ian HARDEN represented the European Ombudsman at a conference organized in Vilnius by the Seimas Ombudsmen of the Republic of Lithuania on "The ombudsman as a remedy for the protection of the right to good administration" to celebrate the tenth anniversary of their institution. Mr HARDEN delivered a speech entitled "The role of the European Ombudsman in protecting and promoting the rights of European citizens."

### ***The 50<sup>th</sup> anniversary of the Danish Ombudsman Institution***

From 30 March to 2 April 2005, Mr DIAMANDOUROS participated in the events and celebrations organised in connection with the 50<sup>th</sup> anniversary of the Danish Ombudsman Institution, which has been headed by Mr Hans GAMMELTOFT-HANSEN since 1987. These events incorporated the Ninth Round Table Meeting of European Ombudspersons and the Council of Europe Commissioner for Human Rights, which was organised by the Commissioner for Human Rights, Mr Alvaro GIL-ROBLES, on 31 March and 1 April.

A Seminar on "Establishing and assisting democratic institutions" was held on 30 March and was opened by Mr Hans GAMMELTOFT-HANSEN, who welcomed participants and read out a message of congratulations from the United Nations High Commissioner for Human Rights, Ms Louise ARBOR. The participants in the panel for the opening session were Mr Carsten STAUR, State Secretary and Ambassador from the Danish Ministry of Foreign Affairs, and Mr Morten KJÆRUM, Executive Director of the Danish Institute for Human Rights.

Developments in Jordan were presented by Mr Fawaz AL ZU'BI, former Minister of Administrative Development, Information and Communications Technology. Developments in Albania were presented by Mr Ermir DOBJANI, People's Advocate of Albania, and Mr Hans Henrik BRYDENSHOLT, Judge at the United Nations International Criminal Tribunal for the former Yugoslavia. Developments in Ghana were presented by Ms Anne BOSSMAN, Functioning Commissioner at the Commission for Human Rights and Administrative Justice, and Mr Jens OLSEN, Senior Legal Adviser at the Danish Ombudsman Office. The members of the discussion panel at the end of this session were Mr Lars Adam REHOF, Senior Adviser at the Danish Ministry of Foreign Affairs, Mr Hans GAMMELTOFT-HANSEN, Mr Fawaz AL ZU'BI, Ms Anne BOSSMAN, Mr Morten KJÆRUM and Mr Morten ELKÆR, Chief Adviser at the Danish Ministry of Foreign Affairs.

The Ninth Round Table Meeting of European Ombudspersons and the Council of Europe Commissioner for Human Rights, was opened on 31 March in the presence of His Royal Highness, Crown Prince Frederik, by Mr Christian MEJDAHL, Speaker of the Danish Parliament, Mr Alvaro GIL-ROBLES and Mr Hans GAMMELTOFT-HANSEN. At the first working session, Mr DIAMANDOUROS and Mr Alvaro GIL-ROBLES delivered speeches on, respectively, "The role and the mandate of ombudspersons in tomorrow's Europe" and ""The role of the Council of Europe in supporting the activities of national ombudspersons". Mr Vladimir LUKIN, Federal Ombudsman of the Russian Federation, delivered a speech on the subject of "Relations between national and regional ombudspersons".

On 1 April, Mr Allar JÖKS, Legal Chancellor of Estonia, chaired the working session on "Dealing with difficult prisoners". Mr Andrzej ZOLL, Polish Commissioner for Civil Rights Protection, delivered a speech on "Difficult prisoners: practical problems", and Mr Albert TAKÁCS, Hungarian Deputy Parliamentary Commissioner for Human Rights, delivered a speech on "Difficult prisoners, legal challenges and responses".



These were followed by discussion groups chaired by Ms Nina KARPACHOVA, Ukrainian National Ombudsman, and Mr Pierre-Yves MONETTE, Belgian Federal Ombudsman.

Mr Mats MELIN, Swedish Chief Parliamentary Ombudsman, chaired the working session on "Protection of the right to privacy". Mr Otakar MOTEJL, National Ombudsman of the Czech Republic, delivered a speech on "Protection of the right to privacy: practical problems", and Mr Arne FLIFLET, Norwegian Parliamentary Ombudsman, delivered a speech on "Protection of the right to privacy: legal challenges and responses". Mr Lucius CAFLISCH, Judge at the European Court of Human Rights, chaired the discussion group on "Protection of the right to privacy: practical problems", and Mr Peter KOSTELKA, Chair of the Austrian Ombudsman Board, moderated the discussion group on "Protection of the right to privacy: legal challenges and responses". Mr Alvaro GIL-ROBLES chaired the final session at which the reports from the four discussion groups were presented and the conclusions of the Round Table were adopted.

On 2 April 2005, a symposium on "The ombudsman between legislator, administration and citizen — developing the ombudsman concept" was held at the University of Copenhagen. Ms Linda NIELSEN, Rector of the University of Copenhagen, welcomed the participants to the symposium and opening remarks were made by Mr GAMMELTOFT-HANSEN. Mr DIAMANDOUROS, and Mr Jens Peter CHRISTENSEN, Professor of Law at the University of Århus, delivered speeches during the session entitled the "Political science angle". Mr Ivan BIZJAK, first National Ombudsman of Slovenia, and Mr Svend AUKEN, former Minister of Labour and former Minister for the Environment, delivered speeches during the session entitled the "Political angle". Mr Kevin MURPHY, former Secretary-General of Public Service Management and Development at the Department of Finance and former Irish National Ombudsman, and Mr Michael LUNN, Permanent Secretary at the Danish Ministry of Justice, delivered speeches during the session entitled "Administrative angle". Ms Emily O'REILLY, Irish National Ombudsman and Information Commissioner, and Mr Tøger SIEDENFADEN, Editor-in-Chief of the Danish newspaper *Politiken*, delivered speeches during the session entitled "Media angle". The symposium was concluded by Mr Hans GAMMELTOFT-HANSEN.

### ***British and Irish Ombudsman Association Conference, Warwick, United Kingdom***

On 7 and 8 April, Mr DIAMANDOUROS attended the Conference of the British and Irish Ombudsman Association (BIOA), which was held at Warwick University, Coventry, United Kingdom. Following the Annual Meeting of BIOA, on the morning of 7 April, the Conference began with a plenary session on "Redress in the round" which was chaired by the Parliamentary and Health Service Ombudsman and Chair of the Association, Ms Ann ABRAHAM. The speakers were Dame Deirdre HUTTON DBE, Chair of the National Consumer Council, Rt Hon Lord COULSFIELD QC, Former High Court Judge and Chairman of a Review by the Scottish Consumer Council of Civil Justice in Scotland, and Mr Philip KELLY, Assistant Secretary-General of the Department of the Taoiseach in Ireland. The next plenary session concerned "Administrative justice" and was chaired by Mr Walter MERRICKS, Chief Financial

Ombudsman. The topic was addressed by Rt Hon Lord NEWTON of Braintree OBE, Chairman of the Council on Tribunals, Mr Peter HANCOCK CBE, Chief Executive Designate of the Tribunals Service, and Mr Martin PARTINGTON CBE, Law Commissioner. On the morning of 8 April, the first plenary session, concerning "Judicial review", was chaired by the Northern Ireland Ombudsman, Mr Tom FRAWLEY. The speaker was Rt Hon Sir Brian KERR QC, Lord Chief Justice of Northern Ireland. In the final plenary session, chaired by Mr Tony REDMOND, Chairman of the Commission for Local Administration in England, Mr DIAMANDOUROS spoke on "The role of the European Ombudsman". A total of twelve workshops took place during the two days of the Conference, covering issues as varied as freedom of information legislation, compensation, settling complaints and remedies.

***Seminar on "Human rights in Europe from the perspective of ombudsmen", Ibiza, Spain***

On 5 September, the European Ombudsman participated in a seminar, jointly organised by the University of the Balearic Islands and the Spanish Ombudsman, devoted to the subject of human rights in Europe from the perspective of ombudsmen. In his speech, Mr DIAMANDOUROS addressed the issue of the role of the European Ombudsman in the defence of fundamental human rights. The seminar was attended by numerous participants, including students and academics.

***Commemoration of the 20<sup>th</sup> anniversary of the Catalan Ombudsman Act, Barcelona, Spain***

On the invitation of Mr Rafael RIBÓ, Regional Ombudsman (*Síndic de Greuges*) of Catalonia, Mr DIAMANDOUROS participated in a series of events to mark the 20<sup>th</sup> anniversary of the Catalan Ombudsman Act, which were held in Barcelona on 29 and 30 September. Participants included many national and regional ombudsmen from various EU countries, including Ms Emily O'REILLY, National Ombudsman of Ireland, Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, Ms María Luisa CAVA DE LLANO, Deputy Ombudsman of Spain, Mr Peter KOSTELKA, Chair of the Austrian Ombudsman Board, Mr Yorgos KAMINIS, National Ombudsman of Greece, and Mr Alvaro GIL-ROBLES, Commissioner for Human Rights of the Council of Europe. Mr DIAMANDOUROS delivered a speech entitled "Methods of protecting citizens' rights: The co-operation between the European Ombudsman and national and regional ombudsmen". In his speech, Mr DIAMANDOUROS underlined the role of regional ombudsmen and made a number of proposals to strengthen the existing co-operation through the European Network of Ombudsmen.

### **5.3 OTHER EVENTS WITH OMBUDSMEN AND THEIR STAFF**

***Bilateral meetings with ombudsmen***

The year 2005 saw multiple bilateral contacts between the European Ombudsman and ombudsmen from within Europe and further afield with a view to promoting ombudsmanship, discussing interinstitutional relations and exchanging best practice:

On 31 January, Mr DIAMANDOUROS met with Mr Alvaro GIL-ROBLES, Commissioner for Human Rights of the Council of Europe and Mr Peter KOSTELKA, Chair of the Austrian Ombudsman Board and Regional Vice-President for Europe of the International Ombudsman Institute, to discuss and co-ordinate the various meetings and events planned by their respective institutions over the following eighteen months.

On 17 February, Mr DIAMANDOUROS met with Ms Eliana NICOLAOU, Commissioner for Administration (Ombudsman) of Cyprus and Ambassador Constantin YEROCOSTOPOULOS, Permanent Representative of Greece to the Council of Europe.

On 18 February, Mr DIAMANDOUROS met with Mr Matjaž HANŽEK, Human Rights Ombudsman of Slovenia.

On 12 March, Mr DIAMANDOUROS met with Ms Eliana NICOLAOU, Commissioner for Administration (Ombudsman) of Cyprus, in Nicosia, Cyprus.

On 6 April, Mr DIAMANDOUROS met with Mr Karlheinz GUTTMACHER, Chairman of the Petitions Committee of the German Bundestag.

On 24 May, Mr John MACQUARRIE, the Deputy Assembly Ombudsman of Northern Ireland, visited the European Ombudsman's office in Strasbourg. The purpose of the visit was to study the European Ombudsman's inquiry procedure. This was achieved by examining a selection of cases and interviewing the Legal Officers responsible for dealing with them. Mr MACQUARRIE also met with Mr DIAMANDOUROS and Mr Ian HARDEN, Head of the Legal Department.

On 10 June, Mr Josef HAUSER, the Ombudsman of Tirol, Austria, and seven of his staff visited the European Ombudsman's Office in Brussels. Mr HAUSER and his staff met with Ms Benita BROMS, Principal Legal Adviser and Head of the European Ombudsman's Brussels Office, and Ms Rosita AGNEW, Head of the Communications Sector, to exchange views on complaint-handling and communicating with citizens. The delegation then spoke with the European Ombudsman, Mr DIAMANDOUROS, by videoconference, during which they discussed the possibility of an information visit to the region of Tirol.

On 30 June, Mr DIAMANDOUROS had a dinner in Florence with Mr Giorgio MORALES, Regional Ombudsman of Tuscany (Italy), and some members of his staff. They exchanged views on their respective roles and on communicating with citizens. They also discussed the possibility of an official visit to the European Ombudsman by the Ombudsman of Tuscany.

On 7 July, Mr Sozar SUBARI, Public Defender of Georgia, visited the European Ombudsman as part of his official mission to Strasbourg organised by the Council of Europe. Mr SUBARI and Mr DIAMANDOUROS had a brief meeting, following which Mr José MARTINEZ-ARAGÓN, Principal Legal Adviser, explained the mandate and role of the institution to him.

On 10 October, Mr DIAMANDOUROS met with Mr Ramón CUSTODIO LÓPEZ, National Human Rights Commissioner of Honduras.

On 1 December, Mr DIAMANDOUROS met with representatives of the 3rd Control Yuan (Ombudsman Institution) of the Republic of China (Taiwan).

### ***Events involving staff members***

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

On 6 and 7 June, the Office of the Parliamentary Ombudsman of Finland and the Office of the Chancellor of Justice of Finland hosted the "Baltic Sea seminar of overseers of legality". Ombudsmen or their representatives from Denmark, Estonia, Latvia, Lithuania, Norway, Poland and Sweden took part in this seminar. The seminar was also attended by a delegation from the Committee on Petitions of the German *Bundestag*. The European Ombudsman's Office was represented by Mr Gerhard GRILL, Principal Legal Adviser. In total, some 60 persons attended the seminar.

On 28 and 29 November, Mr Olivier VERHEECKE, Principal Legal Adviser, participated in the Fourth Congress of the AOMF (*Association des Ombudsmans et Médiateurs de la Francophonie*), the French-speaking Ombudsman Association, which was held in Paris. The Congress, entitled "The Ombudsman: relaying expectations, promoting reform" ("Le Médiateur: interprète des attentes, acteurs des réformes") was organised by the French Ombudsman, Mr Jean-Paul DELEVOYE. Among the speakers were Mr Robert BADINTER, former President of the French Constitutional Court, Mr Luc FERRY, former Minister, and Mr Jacques DERMAGNE, President of the Economic and Social Council.

## **6 COMMUNICATIONS**



## 6.1 HIGHLIGHTS OF THE YEAR

### ***THE EUROPEAN OMBUDSMAN'S TENTH ANNIVERSARY***

The institution of the European Ombudsman celebrated its tenth anniversary in 2005. To mark the occasion, a number of events were organised, each of which is described in detail below. With a view to ensuring the direct involvement in these events of all of the Ombudsman's key interlocutors — EU institutions, bodies and agencies, MEPs, fellow ombudsmen, the media, NGOs, academics, complainants and citizens alike — each such event was aimed at a different target audience.

Further information about all the events can be found at:

<http://www.euro-ombudsman.eu.int/10anniversary/en/default.htm>

#### ***Gala dinner for the national ombudsmen of the EU Member States and Candidate Countries, The Hague, The Netherlands***

Over 80 representatives of national ombudsman offices in the EU Member States and Candidate Countries attended the fifth Seminar of national ombudsmen held in The Hague from 11 to 13 September 2005. A gala dinner was organised on this occasion to mark the tenth anniversary of the European Ombudsman institution. Over 70 people attended the dinner, including those involved in the establishment of the institution, who contributed to the commemorative volume published on the occasion of the tenth anniversary. The volume, entitled *The European Ombudsman: Origins, Establishment, Evolution*, was launched by Mr DIAMANDOUROS during the dinner, in the presence of the first European Ombudsman, Mr Jacob SÖDERMAN.

#### ***Reception to celebrate the tenth anniversary of the European Ombudsman's establishment, Strasbourg, France***

On 27 September 1995, the first European Ombudsman, Mr Jacob SÖDERMAN, took up his duties. On Tuesday, 27 September 2005, during the European Parliament's September Part-Session in Strasbourg, a reception was organised to celebrate the tenth anniversary of the establishment of the European Ombudsman. Members of the European Parliament and of the European Commission were invited to attend the reception, as were the staff of the European Ombudsman, staff from the European Parliament and staff from the other EU institutions and bodies that have closely co-operated with the Ombudsman over the last decade. The first European Ombudsman, Mr Jacob SÖDERMAN, was the guest of honour at the event. Given the central role of the European Parliament in enabling the creation of the European Ombudsman institution and given the support that the Parliament has given the Ombudsman over the last decade, it was fitting that the keynote address at the reception was given by the President of the European Parliament, Mr Josep BORRELL FONTELLES. The reception was attended by over 250 people, including five Members of the European

Commission, over 100 Members of the European Parliament, five Directors-General of the European Parliament, and representatives of the British Presidency of the EU.

***Colloquium on "The European Ombudsman — Assessment and perspectives",  
Strasbourg, France***

On 28 October, the *Institut des hautes études européennes* of Strasbourg's *Université Robert Schuman* organised a colloquium around the European Ombudsman's tenth anniversary, under the scientific responsibility of Mr Syméon KARAGIANNIS, Professor at the *Université Robert Schuman*, and Mr Yves PETIT, Professor at the *Université de Bourgogne*. The theme of the colloquium, which took place in the European Parliament, was *Le Médiateur européen: bilan et perspectives (The European Ombudsman — assessment and perspectives)*. The colloquium was opened and addressed by the Senator and Mayor of Strasbourg, Ms Fabienne KELLER, and by the President of the *Université Robert Schuman*, Ms Florence BENOÎT-ROHMER.

The morning session was presided by the Co-director and Professor of the *Centre d'études internationales et européennes* of the *Université Robert Schuman*, Mr Vlad CONSTANINESCO. During the first half of the session, the Ombudsman and his institutional environment was examined. Mr Yves PETIT analysed the relations between the Ombudsman and the European institutions, while Mr Loïc GRARD, Professor at the *Université de Bordeaux IV*, evaluated the relations between the European Ombudsman and the national ombudsmen. The second half of the session examined the Ombudsman and his activities. Mr Claude BLUMANN, Vice-President and Professor at the *Université de Paris II*, presented the contribution of the Ombudsman to European citizenship. Mr Syméon KARAGIANNIS then analysed the contribution of the Ombudsman to the protection of fundamental rights. After each pair of presentations, the many academics, students, and other participants present were given the opportunity to put questions to the speakers and to give their thoughts on the issues raised.

The afternoon session took the form of a round-table, with the theme "The European Ombudsman — 10 years of activity". The round-table was presided by Mr Robert KOVAR, former President of the *Université Robert Schuman* and emeritus Professor at the University. The round-table participants were Mr DIAMANDOUROS, Mr Mats MELIN, Chief Parliamentary Ombudsman of Sweden, Mr Bernard DREYFUS, Delegate-General of the French National Ombudsman, Mr David LOWE, Head of Division at the Secretariat of the European Parliament's Committee on Petitions, Mr Giuseppe MASSANGIOLI, Director at the Secretariat-General of the European Commission, and Mr Alvaro GIL-ROBLES, Commissioner for Human Rights of the Council of Europe. Themes discussed included the European Ombudsman and the challenge of enlargement, relations between ombudsmen and the influence of the European Ombudsman on national and regional ombudsmen, and the impact of the activity of the European Ombudsman on the work of the institutions of the European Union.

The conclusions of the colloquium were presented by Mr Jean-Paul JACQUÉ, Director at the Legal Service of the Council of the European Union.



Over 80 academics, students, lawyers, European Union staff and other participants attended the event. The colloquium's findings will be published by the *Centre d'études internationales et européennes* of the *Université Robert Schuman* during 2006.

***Formal dinner for the Ombudsman's key interlocutors in France, Strasbourg, France***

On 28 October, the Mayor of Strasbourg, Ms Fabienne KELLER, and the President of the *Communauté Urbaine de Strasbourg*, Mr Robert GROSSMANN, organised a formal dinner to commemorate ten years of the European Ombudsman's presence in Strasbourg. Local, regional and national politicians and administrators were invited to the dinner, as were the speakers from the colloquium that had taken place earlier in the day in Strasbourg (see above) and members of staff of the European Ombudsman. The guest of honour was the European Ombudsman, Mr DIAMANDOUROS. During the dinner, the Mayor reiterated the city of Strasbourg's commitment to its European vocation and to the protection of human rights and read a message of congratulations from the French Minister for European Affairs, Ms Catherine COLONNA. In response, the Ombudsman thanked the city and its region for all their support over the last decade, reiterated his commitment to further informing citizens of their rights at the EU level, and announced that the sixth Seminar of national ombudsmen will take place in Strasbourg in 2007.

***Formal dinner for the Presidents and Secretaries-General of EU institutions and the Heads of EU bodies and agencies, Brussels, Belgium***

On 17 November, the Ombudsman held a formal dinner for the Presidents and Secretaries-General of EU institutions, along with the Heads of the Union's bodies and agencies. Over 45 people attended the dinner, representing institutions, bodies and agencies from right across the Union. The aim of the event was to highlight the European Ombudsman's determination jointly to work with all institutions, bodies and agencies in the coming years to improve the quality of the EU administration and to ensure that citizens' rights are fully respected throughout the Union. In light of the fact that the European Commission accounts for around 70% of the inquiries carried out by the Ombudsman, the Commission President, Mr José Manuel BARROSO, was invited to deliver the keynote address. He outlined a number of areas in which co-operation could be enhanced in the coming years, including progress towards a uniform Code of Good Administrative Behaviour, the search for more friendly solutions and ensuring prompt follow-up of the Ombudsman's recommendations and remarks. In this regard, he mentioned the new Communication adopted by the Commission introducing a new internal procedure for responding to the Ombudsman's inquiries. In his speech, the Ombudsman confirmed the importance of dealing with complaints promptly and with due consideration. He described his role not only as an external mechanism of control but also as a valuable resource to managers — a resource capable of helping administrations to better their performance by directing attention to areas for improvement. In this regard, he underlined the value of the European Code of Good Administrative Behaviour as a useful guide for officials. Mr DIAMANDOUROS also described the Ombudsman's role as a facilitator, capable of helping institutions to explain themselves to citizens, to make citizens feel that their voice does count and that,

by complaining, they can help improve the situation. The ultimate destination, he said, is a top-class, citizen-centred EU administration.

### ***Press seminar and public workshop, Brussels, Belgium***

On 6 December, the European Ombudsman held two events in Brussels under the heading "The European Ombudsman: 10 years, 20 000 complaints — too many? too few?" Organised in association with the European Journalism Centre, the events took the form of a press seminar and public workshop aimed at the media, NGOs, interest groups, regional and local representations, and citizens interested in the Ombudsman's work.

The first session was entitled "A more open and accountable EU administration — the next steps for the Commission, the Parliament and the Ombudsman." Over sixty people attended this session where the panelists were Mr Derk-Jan EPPINK, Member of the Cabinet of European Commission Vice-President Mr Siim KALLAS, Mr Michael CASHMAN, MEP and Parliament's Rapporteur on the Regulation on public access to documents, Mr Tony BUNYAN, Director of *Statewatch*, and Mr Tim KING, Deputy-Editor of *European Voice*. Mr Aidan WHITE, General Secretary of the International Federation of Journalists, moderated this session which provided a useful overview of progress made to date in the EU institutions in the area of transparency and ideas for the way forward.

The second session, entitled "Raising awareness about the right to complain — the next steps for the European Ombudsman", took the form of a public workshop. Ms Margot WALLSTRÖM, Vice-President of the European Commission, Ms Emily O'REILLY, National Ombudsman of Ireland, Ms Claire DAMILANO, from the *European Citizen Action Service*, and Mr Aidan WHITE, General Secretary of the International Federation of Journalists, constituted the panel for this session. The workshop was moderated in a lively manner by the former President of the European Parliament, Mr Pat COX. Over 50 representatives of NGOs, interest groups, regional and local representations in Brussels, and EU institutions attended the workshop which explored how best the Ombudsman can work for them. The discussion was based around the following questions: How can the European Ombudsman raise awareness about his work? What can the Ombudsman do to encourage you to make use of your right to complain? How can your organisation help the Ombudsman build on the achievements of the past decade? How can the Ombudsman contribute to the Union's "period of reflection"? A paper summarising the main ideas put forward at the workshop was distributed to participants after the meeting and made available on the Ombudsman's website.

### ***Presentation to the Delegation for the European Union of the French National Assembly, Paris, France***

On 7 December, the Delegation for the European Union of the French National Assembly, held, for the first time, a hearing of the European Ombudsman. The meeting, chaired by the President of the Delegation, Mr Pierre LEQUILLER, gave the Ombudsman the opportunity to explain his role, the types of issues he deals with and the extent to which he co-operates with ombudsmen in the Member States. Members of the Delegation asked questions about complaints, including the complaint concerning the

lack of transparency in the Council's legislative proceedings, and the part that they could play, as Members of Parliament, in conveying to French citizens the European Ombudsman's role and competences. The hearing took place in Paris and was open to the press. It was convened to mark the tenth anniversary of the institution of the European Ombudsman.

### ***THE ELECTION OF THE EUROPEAN OMBUDSMAN***

On 11 January, the election for European Ombudsman took place in the European Parliament. Mr DIAMANDOUROS was re-elected to serve as European Ombudsman for the Parliamentary Term of 2004-2009, having received 564 of the 609 votes cast. A press conference, organised by the Chairman of the Committee on Petitions of the European Parliament, Mr Marcin LIBICKI MEP, followed the election. Mr DIAMANDOUROS used this occasion to outline his priorities for the institution, which include ensuring that citizens' rights are fully protected throughout the Union and guaranteeing the highest standards of administration in the EU institutions and bodies. Full information on the Ombudsman election is provided in Annex E.

### ***THE ANNUAL REPORT 2004***

The Annual Report is the Ombudsman's most important publication. By providing an overview of the Ombudsman's 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, the Annual Report was reconceptualised, starting with the 2004 Report. Full decisions were replaced with summaries that draw attention to the key points. A thematic analysis was introduced in chapter 2 (section 2.8 in this Report), highlighting the most important findings of law and fact in the major areas of work. The chapters covering communications and relations with other bodies were revised to highlight the benefit of these activities and to illustrate this with details of the events that took place.

The Ombudsman presented his Report for 2004 to the European Parliament's Committee on Petitions on 10 May. This gave him the opportunity to provide an overview of the work and results achieved during the year in question and to report on the objectives that he had set out following his re-election as European Ombudsman.

Mr Manolis MAVROMMATIS MEP drafted the Committee's Report on the Ombudsman's activities for 2004. On 27 October, MEPs adopted this Report, by 426 votes in favour, with 3 against and 9 abstentions, congratulating the Ombudsman on his work and the good relations he has with the Committee on Petitions.

## **OPEN DAYS**

### ***Brussels***

On 30 April, the European Parliament organised an Open Day for members of the public. The Ombudsman's Office participated in the Open Day, using the occasion to launch the new *Tenth anniversary postcard*, 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 15 000 people attended the event.

### ***Strasbourg***

On 8 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 *Tenth anniversary postcard*, was distributed to visitors in 24 languages. Staff members were present throughout the day to answer questions. Over 20 000 people 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 intensify his working relations with his national and regional counterparts, the Ombudsman embarked on an intensive programme of information visits to the Member States, accession and applicant countries during 2003 and 2004. The Ombudsman intends to continue his information visits during the 2005 to 2009 period. During these visits, the Ombudsman meets parliamentarians, judges, senior civil servants, ombudsman colleagues and others working in the field of non-judicial dispute resolution, the academic community, potential complainants and other citizens. He is 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. During the many presentations he makes during his visits, the Ombudsman illustrates his work with examples of the types of complaints he receives. But the Ombudsman's work goes beyond complaint-handling and, during meetings, he is always conscious of the need to raise awareness of this broader role. In his speeches and presentations, the European Ombudsman outlines the importance of the institution of ombudsman in promoting the rule of law, democracy and human rights. In bilateral meetings with ombudsmen, the participants explore 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 arrange in-depth programmes of activities and meetings for the Ombudsman during each of his visits, often accompanying him throughout the trip.

Due to the series of events organised to mark the tenth anniversary of the European Ombudsman institution in 2005, only one information visit was made during the year — a visit to the United Kingdom at the end of November.

The following section gives an overview of the wide range of meetings that took place, listing the key interlocutors and mentioning the numerous presentations that were made. The media activities that took place as part of the information visits are covered in section 6.4 of this Report.

### ***UNITED KINGDOM***

From 28 to 30 November 2005, the European Ombudsman visited London.

On 28 November, a working breakfast was held with the Parliamentary and Health Service Ombudsman, Ms Ann ABRAHAM. Mr DIAMANDOUROS and Ms ABRAHAM were then received by the Head of Representation of the European Commission in the United Kingdom, Mr Reijo KEMPINEN. This was followed by a meeting with Members of the European Parliament, which was hosted by the Director of the United Kingdom Office of the European Parliament, Mr Dermot SCOTT. Mr DIAMANDOUROS and Ms ABRAHAM then made a joint presentation to the European Fast Stream students at the National School of Government. The title of the presentation by the European Ombudsman was "The role of the European Ombudsman in the EU institutional framework". Following a lively questions and answers session, discussions with the students and the Course Director, Mr Howard EMMENS, continued over lunch.

The afternoon began with a meeting with Members of the European Scrutiny Committee of the House of Commons, which gave the Ombudsmen the opportunity to meet the Committee Members, to inform them of their respective institutions' work and to participate in an interesting exchange of views. The final meeting of the day was held at the Council on Tribunals and was hosted by the Chairman of the Council, Lord NEWTON of Braintree. Members and staff of the Council presented its work and the ensuing discussions showed the strong links that exist between the work of tribunals and that of ombudsmen. That evening, Lord NEWTON hosted a dinner in the House of Lords to mark the visit.

On 29 November, Mr DIAMANDOUROS was interviewed by a PhD student, Ms Melanie SMITH, in the context of her thesis on infringement actions under Article 226 of the EC Treaty. During the first meeting of the day, Mr DIAMANDOUROS and Ms ABRAHAM were received by the Minister for Europe, Mr Douglas ALEXANDER MP. Issues discussed included the European Ombudsman's Special Report, submitted to the European Parliament in October 2005, in which the Ombudsman called on the Council to review its refusal to meet publicly whenever it is acting in its legislative capacity. A visit to the Office of the Parliamentary and Health Service Ombudsman then gave Mr DIAMANDOUROS the opportunity to acquaint himself with the wide range of cases handled by the Ombudsman. The Deputy Ombudsman, Ms Trish LONGDON, and her colleagues presented the issue of continuing care, while Ms Ann ABRAHAM and

Mr Iain OGILVIE outlined the latest developments in an investigation involving the Equitable Life insurance company.

In a lunchtime seminar hosted by Mr Robert HAZELL, Director of the Constitution Unit at the School of Public Policy, University College London, Mr DIAMANDOUROS gave a lecture on "The role of the Ombudsman in strengthening accountability and the rule of law". During both an animated questions and answers session and a buffet lunch, he replied to questions from, and discussed with, not only the many professors and students in attendance but also the large number of United Kingdom ombudsmen present.

In his first meeting of the afternoon, Mr DIAMANDOUROS gave evidence to the House of Lords European Union Select Committee. The evidence session was presided by the Chairman of the Committee, Lord GRENFELL, and attended by fourteen Members of the House of Lords. During an intensive cross-examination, Members of the Committee asked Mr DIAMANDOUROS a wide-range of questions covering issues such as the need to develop the European Network of Ombudsmen, the relation between the European Code of Good Administrative Behaviour and the Charter of Fundamental Rights, and future relations with the EU's Fundamental Rights Agency. Mr DIAMANDOUROS and Ms ABRAHAM then met with the Chair of the Public Administration Select Committee of the House of Commons, Mr Tony WRIGHT MP. That evening, Ms ABRAHAM hosted a dinner which was attended by public-sector ombudsmen from throughout England, Scotland, Wales and Northern Ireland.

The morning of 30 November began with a visit to the London Office of the Local Government Ombudsmen for England. Mr DIAMANDOUROS started by meeting with the Chair of the Local Government Ombudsmen, Mr Tony REDMOND, during which many important issues were discussed, including the development of ombudsman competences in the field of human rights. He then met the Deputy Local Government Ombudsman, Mr Peter MACMAHON, for a discussion regarding international co-operation between ombudsman offices. Mr DIAMANDOUROS then continued to the London School of Economics and Political Science (LSE), where he gave a lecture entitled "Human rights and non-judicial remedies — the European Ombudsman's perspective". The lecture was chaired by Lord WALLACE of Saltaire, Emeritus Professor of International Relations at the LSE. The lecture was followed by a wide-ranging questions and answers session and discussions continued over a lunch hosted by Lord WALLACE.

The first meeting of the afternoon was with Mr Jim MURPHY MP, Parliamentary Secretary to the Cabinet Office. Issues discussed included improving the means of redress available to citizens and the development of ombudsmanship in the United Kingdom. The visit concluded with a final meeting with Ms Ann ABRAHAM, at the Office of the Parliamentary and Health Service Ombudsman.

### **6.3 OTHER CONFERENCES AND MEETINGS**

Conferences, seminars and meetings offer an excellent opportunity for the Ombudsman to raise awareness about his work among key target audiences such as NGOs, interest

groups and academic institutions. They equally facilitate his work of promoting the concept of ombudsmanship more generally. Conferences and meetings also enable the Ombudsman and his staff to keep abreast of developments on the European landscape that are of particular relevance to the institution.

This section details the full range of activities aimed at promoting the concept of ombudsmanship generally and the work of the European Ombudsman in particular. Where the Ombudsman cannot participate personally in an event, he entrusts the representation of the institution to an appropriate staff member. Many groups also learn about the Ombudsman's work as part of study trips to Strasbourg. This section therefore includes a list of group presentations that took place during the year.

### ***INVOLVING THE OMBUDSMAN***

On 7 January, Mr DIAMANDOUROS met with Ambassador Marios LYSSIOTIS, Permanent Representative of Cyprus to the Council of Europe, to discuss the role of the European Ombudsman.

On 27 January, Mr DIAMANDOUROS addressed the Strasbourg branch of the English-Speaking Union on the topic "The European Ombudsman — The guardian of good administration".

On 28 January, the Ombudsman made the final keynote speech at a conference organised in Brussels by the Association of Former Trainees of the European Union (ADEK International). The conference was entitled "Communicating Europe". The Ombudsman focused on the questions of "why" we should communicate about Europe, "how" we should communicate about Europe and "what" we should communicate about Europe. After his speech, Mr DIAMANDOUROS answered questions from the audience.

On 23 February, Mr DIAMANDOUROS met with Ms Aleksandra POPOVIĆ, Assistant Minister of Justice of the Republic of Serbia and Montenegro. They discussed developments in the Union related to the protection of citizens' rights through judicial and non-judicial remedies.

On 4 March, Mr DIAMANDOUROS gave a speech at an international conference held in Geneva, Switzerland on the subject of "The fundamental principles of the Constitution for Europe". The conference was organised by the Centre for European Legal Studies of the University of Geneva.

On 11 March, Mr DIAMANDOUROS held a series of meetings in Nicosia, Cyprus, with: Mr Tassos PAPADOPOULOS, President of the Republic of Cyprus, Mr Nikos CLEANTHOUS, Chairman of the European Affairs Committee of the Parliament of Cyprus, Mr Panayiotis DEMETRIOU MEP, Mr Costakis CHRISTOFOROU, General Director of the Parliament of Cyprus, Mr Ronald EVERS, Head of the Information Office of the European Parliament in Cyprus, and Mr Adriaan VAN DER MEER, Head of the Representation of the European Commission in Cyprus. Later that day he delivered a speech on "European citizens' rights as they derive from European citizenship, the democratic life of the Union and the Charter of Fundamental Rights" at a

seminar on citizens' rights organised by the Parliament of Cyprus and the Press and Information Office of Cyprus.

On 12 March, Mr DIAMANDOUROS met with Mr Michalis ATTALIDES, Dean of the School of Humanities, Social Sciences and Law of Intercollege in Nicosia, Cyprus, where he delivered a speech on "Defending democracy and the rule of law: the role of the ombudsman".

On 17 March, Mr DIAMANDOUROS addressed the Fifth Congress of the European Women Lawyers' Association on the topic "Access to European mediation".

On 18 March, the Ombudsman had a meeting with Mr Christos ROZAKIS, Vice-President of the European Court of Human Rights. Mr ROZAKIS then participated in a meeting of the staff of the European Ombudsman where he made a presentation on "The panoply of European protection of human rights: expanding the protection through the EU Constitutional Treaty".

On 21 March, Mr DIAMANDOUROS met with Mr Guillermo O'DONNELL, Professor at the University of Notre Dame, Indiana, United States, and Ms Gabriela IPPOLITO O'DONNELL, to discuss the role of the European Ombudsman and prospects for co-operation to promote and develop the ombudsman institution in Latin America.

On 22 March, Mr DIAMANDOUROS made a presentation on "Recent developments relating to the protection of human rights and fundamental rights in the European Union — the perspective of the European Ombudsman" at a working lunch of Permanent Representatives to the Council of Europe. This event was hosted by Ms Ann-Marie NYROOS, Permanent Representative of Finland to the Council of Europe.

On 14 May, Mr DIAMANDOUROS delivered a speech on "The European Ombudsman and EU drugs policy" to the Tenth European Conference on Rehabilitation and Drug Policy in Heraklion, Greece.

On 18 May, Mr DIAMANDOUROS spoke on "The European Ombudsman as promoter of transparency and contributor to the fight against corruption" to the Greek Chapter of Transparency International in Athens, Greece.

On 19 May, Mr DIAMANDOUROS participated in a round table on "Maladministration and corruption in the Greek public sector — reflections on ways and means of combating them" at the Greek Leadership Conference 2005, organised by the Association of Chief Executive Officers in Athens, Greece.

On 24 May, Mr DIAMANDOUROS met with Ms Fabienne KELLER, Mayor of Strasbourg, to prepare the tenth anniversary Colloquium and formal dinner, foreseen for 28 October.

On 31 May, Mr DIAMANDOUROS spoke on "Democracy, rule of law, accountability and the ombudsman institution" at the University of Duisburg, Germany.



On 3 June, Mr DIAMANDOUROS delivered a speech on "Patients' rights in today's Europe" at the Second Hygeia-Harvard Medical International Conference on "Preventive medicine in the 21st century" in Athens, Greece

On 6 June, Mr DIAMANDOUROS delivered a speech on "Respect for fundamental and human rights by the European administration: standards and remedies" at an international conference in Krakow, Poland organised by the Polish Ombudsman Mr Andrzej ZOLL and the Jagiellonian University, to mark the establishment of the Oświęcim Human Rights Academy.

On 30 June, Mr DIAMANDOUROS was invited by Mr Anthony MOLHO and Mr Diogo RAMADA CURTO, Professors at the European University Institute (EUI) in Florence, Italy, to give the first presentation at the summer course organised by the Department of History of the EUI. Mr DIAMANDOUROS delivered a speech on "The development of the rights of migrants in the European legal order during the post-war era". Afterwards, Mr DIAMANDOUROS had lunch with a group of five doctoral candidates from Greece.

On 1 July, Mr DIAMANDOUROS had a meeting in Florence, Italy, with Mr Yves MENY, President of, and Professor at, the European University Institute and Ms Helen WALLACE, Director of, and Professor at, the Robert Schuman Centre for Advanced Studies at the University, to discuss ways of promoting the study of institutions capable of enhancing democratic accountability in Europe.

On 6 July, the Ombudsman met with Ms Eugenia KOTSELIDOU, Head of Personnel Development and Mediator in the area of Performance Management at the European Patent Office in Munich, Germany. Ms KOTSELIDOU was interested in Mr DIAMANDOUROS' experience in mediation, including the search for friendly solutions and the role of the institution as an alternative to the courts.

On 7 July, Mr DIAMANDOUROS gave a presentation entitled "The European Ombudsman: an instrument for the defence of citizens" to a Delegation of Mayors from the Italian Region of Trentino Alto-Adige, hosted by Ms Lilli GRUBER MEP.

On 13 July, the Ombudsman presented his work to 25 members of the Society of European Affairs Professionals (SEAP), the professional organisation for European public affairs practitioners. In a speech entitled "The European Ombudsman: helping to promote an open, accountable and service-minded EU administration", Mr DIAMANDOUROS explained the service he provides through complaint-handling and own-initiative inquiries. The Ombudsman focused in particular on the European Code of Good Administrative Behaviour and SEAP's own Code of Conduct. Ms Catherine STEWART, SEAP Vice-President, chaired the event which ended with a lively questions and answers session.

On 23 September, Mr DIAMANDOUROS made a presentation on "The European Ombudsman — a non-judicial means of redress for citizens" to a delegation of members of the former European Commission of Human Rights of the Council of Europe. This

event was organised by Mr Christos ROZAKIS, Vice-President of the European Court of Human Rights.

On 26 September, Mr DIAMANDOUROS made a presentation on the role of the European Ombudsman to a delegation of the District Chamber of Legal Advisers from Krakow, Poland.

On 6 October, Mr DIAMANDOUROS gave a speech entitled "The European Ombudsman: an institution for the protection and promotion of fundamental rights" at a Conference commemorating the 60<sup>th</sup> Anniversary of the establishment of the French *Ecole National d'Administration* and the Tenth Anniversary of the establishment of the Centre of European Studies in Strasbourg.

On 14 October, Mr DIAMANDOUROS delivered a speech entitled "The rule of law and fundamental rights in the European Union" to the National Defence Academy in Athens, Greece.

On 21 November, Mr DIAMANDOUROS delivered a lecture entitled "Democracy, rule of law and the ombudsman" at Columbia University, New York, United States.

On 21 and 22 December, Mr DIAMANDOUROS held meetings in Athens, Greece, with Mr Karolos PAPOULIAS, President of Greece, Mr Kostas KARAMANLIS, Prime Minister of Greece, Mr Kostis STEFANOPOULOS, former President of Greece, and Mr Konstantinos MITSOTAKIS, former Prime Minister of Greece.

### ***INVOLVING THE OMBUDSMAN'S STAFF***

On 25 January, Mr Olivier VERHEECKE, Principal Legal Adviser, participated in a public hearing on the proposed Fundamental Rights Agency of the European Union, organised by the European Commission. The public hearing was subdivided into four discussion topics. Topic one covered the rights and thematic areas of work of the Agency and its geographical scope. Topic two discussed sustaining and securing relations with the Council of Europe, national institutions, civil society and other entities. Topic three concerned the tasks to be allocated to the Agency and topic four covered the structure of the Agency. The public hearing was closed by Mr Franco FRATTINI, Commission Vice-President responsible for Justice, Freedom and Security.

On 16 February, Mr Nicholas CATEPHORES, Assistant to the Ombudsman, participated in a roundtable meeting on the possible creation of a "European Ombudsman for Financial Services" organised by the Federation of European Securities Exchanges and Houston Consulting Europe in Brussels, Belgium.

On 1 March, Ms Tina NILSSON, Legal Officer, and Ms Rosita AGNEW, Head of the Communications Sector, had a meeting with Mr Paul FIRTH, an independent consultant undertaking a study into the grant-making process of the European Commission. The study was being carried out on behalf of a number of non-governmental organisations. Ms NILSSON and Ms AGNEW explained the Ombudsman's procedures and illustrated his work with examples of grant-related complaints that had been dealt with over the

period 2002-04. Mr FIRTH asked about the extent to which the Ombudsman is successful in resolving such cases and the average amount of time it takes to do so. Mr FIRTH was particularly interested in complaints concerning the EU's Financial Regulations and problems that had been brought to the Ombudsman's attention in this regard.

On 5 April, Mr Olivier VERHEECKE and Ms Rosita AGNEW discussed the Ombudsman's work with Ms Melanie Smith, Ph.D. student at the University of Manchester and Research Assistant to Ms Jo SHAW, Professor at the University of Edinburgh.

On 13 and 14 July respectively, Mr Olivier VERHEECKE received Ms Rhita BOUSTA, Ph.D. student at the University of Paris 1 Panthéon-Sorbonne, and Ms Costanza HERMANIN DE REICHENFELD from the *Institut de Sciences Politiques* in Paris, to discuss the Ombudsman's work and, in particular, the European Code of Good Administrative Behaviour.

On 28 and 29 September, the Brandenburg State Commissioner for Data Protection and Access to Information hosted, in co-operation with the *Alcatel SEL Stiftung für Kommunikationsforschung* and the *Deutsche Gesellschaft für Recht und Informatik e.V.*, an international symposium on "Freedom of information in Germany and Europe". More than 120 people attended the conference. The European Ombudsman's Office was represented by Mr Gerhard GRILL, Principal Legal Adviser.

On 15 December, Ms Ida PALUMBO received Ms Margherita BARSI, student at the Faculty of Law at the University of Lecce, Italy, and trainee at the Office of the European Parliament in Milan. During the meeting, Ms PALUMBO presented the mandate of the European Ombudsman and gave examples of cases dealt with by the Ombudsman.

### ***Group presentations***

In 2005, Mr DIAMANDOUROS and members of his staff (indicated in parentheses) explained the role and work of the Ombudsman to:

#### **January**

- a group of 30 students of political science from the University of Regensburg, Germany. This presentation was organised by the *Europäische Akademie Bayern* and the group was accompanied by Ms Andrea RIESCH; (Mr Gerhard GRILL)
- a group of students from the *Institut des Hautes Etudes Européennes* of the Robert Schuman University of Strasbourg, France; (Mr José MARTINEZ ARAGON)

**February**

- 20 students of Public Administration from the University of Twente, the Netherlands. The group was accompanied by Mr Jaap H. DE WILDE; (Mr Gerhard GRILL)
- 40 students from the *Bayern Kolleg Augsburg*, Bavaria, Germany, within the framework of a trip to Strasbourg organised by the *Europäische Akademie Bayern*. The group was accompanied by Mr Alexander FRISCH; (Mr Gerhard GRILL)
- 50 students from the joint European Masters in Business Administration of the University of Mannheim, Germany, and the *Ecole Supérieure des Sciences Economiques et Commerciales*, France. This presentation was organised by Mr Brian CASSIDY, Member of the European Economic and Social Committee; (Ms Rosita AGNEW)

**March**

- 45 persons from the *CDU Frauenunion Ibbenbüren*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Mr Gerhard GRILL)
- a group of law students (Master's degree) from the University of Nîmes, France; (Ms Marjorie FUCHS)
- 37 persons from the *Europa-Union München*, Germany, in the context of a trip organised by the *Europäische Akademie Bayern*; (Mr Gerhard GRILL)
- a group of 30 students from the *Politischer Jugendring Dresden e.V.*, Germany; (Mr Olivier VERHEECKE)

**April**

- a group of 10 young administrators from Central and Eastern Europe and from Madagascar, in the context of a seminar on European affairs organised by the *Centre des Etudes Européennes* de Strasbourg; (Mr Alessandro DEL BON)
- students attending the 20th Session of the European Institute of Public Affairs and Lobbying (EIPAL), Brussels; (Mr Olivier VERHEECKE)
- 38 persons from Dortmund, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Ms Wiebke PANKAUKE)
- a group of 43 students from the *Europa-Institut, Universität des Saarlandes*, Germany; (Ms Marta HIRSCH-ZIEMBIŃSKA)
- 32 persons from the *Altenakademie Dortmund*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Mr Branislav URBANIČ)

- a group of 41 third- and fourth-year law students specialising in European law from the University of Leiden, the Netherlands. The group was accompanied by Mr Rick LAWSON; (Mr Ian HARDEN)
- a group of 22 postgraduate students and three members of staff from the School of Law and Social Sciences of Glasgow Caledonian University, United Kingdom. The group was accompanied by Ms Marcela CHISHOLM; (Mr Gerhard GRILL)
- a group of 25 students from the Faculty of Economics of the University of Nürnberg-Erlangen, Germany; (Mr Gerhard GRILL)
- a group of 68 participants in the "Europa-Seminar" organised by the *Kolpingwerk*, Germany; (Mr Gerhard GRILL)

### May

- a group of 20 Asian diplomats in the context of a seminar on European affairs organised by the *Centre des Etudes Européennes* of Strasbourg; (Mr Gerhard GRILL)
- 42 persons from Cologne, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Mr Branislav URBANIČ)
- a group of 35 students from the department of International Relations of the University of Groningen, the Netherlands, in the context of a study trip to Brussels and Strasbourg; (Mr Gerhard GRILL)

### June

- a group of 34 young teachers from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*; (Mr Gerhard GRILL)
- a group of 26 students and two members of staff from the *Thorbecke Academie Leeuwarden*, the Netherlands, in the context of a study trip to Brussels and Strasbourg; (Mr Branislav URBANIČ)
- 35 persons from the *CDU Frauenunion Wesseling*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Mr Gerhard GRILL)
- a group of 10 political science students from the University of Southern Maine, Portland, United States; (Mr Olivier VERHEECKE)
- a group from the *Kirchlicher Dienst in der Arbeitswelt*, Oldenburg, Germany; (Mr Gerhard GRILL)
- a group of 48 young teachers from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*; (Mr Gerhard GRILL)

**July**

- a group of 47 young teachers from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*; (Mr Gerhard GRILL)
- a group of 45 young teachers from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*; (Mr Branislav URBANIČ)
- 29 persons from Kerpen, Germany; (Mr Branislav URBANIČ)
- a group of 49 teachers taking part in a study trip to Strasbourg organised by the District Government of Upper Palatinate (*Regierung der Oberpfalz*), Germany; (Mr Branislav URBANIČ)
- a group of 23 students and five members of staff from the *Masters in European Studies* programme of the University of Tübingen, Germany; (Mr Gerhard GRILL)
- a group of 7 Algerian high officials in the context of a seminar on European affairs organised by the *Centre des Etudes Européennes* of Strasbourg; (Mr José MARTINEZ-ARAGON)

**August**

- a group of 6 persons from the visitors' service of the Council of Europe; (Mr José MARTINEZ-ARAGON)

**September**

- A group of 20 MPs and civil servants from the Hungarian Parliament who participated in the "Questions & answers session on petitions and European citizenship" organised by the European Commission's Directorate-General Enlargement (TAIEX Office), Brussels; (Mr Olivier VERHEECKE)
- a group of 37 persons from the *Socialdemokraterne-Vejle amt*, Denmark, in the context of a study trip to Brussels and Strasbourg; (Mr Peter BONNOR)
- 38 persons from the region of Münster, Germany, including local politicians and council members in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Mr Gerhard GRILL)
- 37 persons from the *Heimat- und Geschichtsvereins Bonn-Beuel*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Ms Wiebke PANKAUKE)

- a group of 22 persons from 13 countries representing different NGOs taking part in a study trip to Brussels and Strasbourg organised by the *Europahaus Burgenland*, Austria; (Ms Wiebke PANKAUKE)
- a group of 25 teachers from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*; (Ms Wiebke PANKAUKE)
- 38 high-school pupils from Brühl, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*; (Ms Wiebke PANKAUKE)

### October

- 42 persons from Germany following vocational training *Bilanzbuchhaltung International* in the context of a trip organised by *Fit for Europe*; (Mr Gerhard GRILL)
- a group of 49 telecommunications, information technology and data processing seniors in the context of a trip organised by the trade union *ver.di*, Germany; (Mr Gerhard GRILL)
- a group of 15 persons in the context of a seminar on European affairs organised by the *Forum Demokratie*, Düsseldorf, Germany; (Mr Gerhard GRILL)
- a group of 53 persons from Germany invited by Ms Silvana KOCH-MEHRIN MEP; (Mr Gerhard GRILL)
- a group of 50 Doctors in Law in the framework of the *Corso di applicazione forense* organised by the Bar Association of Messina, Italy. This meeting was organised by Mr Antonio DE MATTEIS, member of the Bar Association of Messina, Italy; (Ms Ida PALUMBO)
- 50 mayors from Trentino-Alto Adige, Italy, in the context of a trip to Strasbourg; (Ms Ida PALUMBO)

### November

- 30 members of the CDU party from Horstmar-Leer (Münster region), Germany. The trip to Strasbourg was organised by the *Karl-Arnold-Stiftung*; (Mr Gerhard GRILL)
- a group of 50 persons from Germany invited by Ms Silvana KOCH-MEHRIN MEP; (Mr Gerhard GRILL)
- a group of 41 persons from Italy invited by Ms Lilli GRUBER MEP; (Mr Gerhard GRILL)
- 31 persons from the *Deutsche Gesellschaft e.V. Berlin*, Germany, taking part in a study trip to Luxembourg and Strasbourg; (Mr Gerhard GRILL)

- a group of 27 students from Germany taking part in a study trip to Brussels organised by the *Politischer Jugendring Dresden e.V.*; (Ms Tina NILSSON)
- 16 persons from Germany in the context of a trip organised by *Gästeführer Trier*; (Mr Gerhard GRILL)
- 22 magistrates from France following a vocational training course organised by the *Centre des Etudes Européennes* of Strasbourg; (Ms Marjorie FUCHS)

## December

- a group of 6 members of the *Consiglio Nazionale Forense*, Italy; (Ms Ida PALUMBO)
- a group of 45 persons from Germany invited by Graf Alexander LAMBSDORFF MEP; (Mr Gerhard GRILL)
- a group of 14 trainees from the European Economic and Social Committee; (Mr Branislav URBANIČ)

In addition to the above, members of the Ombudsman's staff presented his work to trainees from the European Commission on 15 occasions in 2005, with approximately 50 trainees attending each session.

## 6.4 MEDIA RELATIONS

The Ombudsman's media activities range from interviews to press conferences and from written articles to press releases. These activities help draw attention to the service the Ombudsman provides to citizens, organisations and companies and highlight cases of particular salience. The media can help emphasise the importance of these cases, thereby prompting the institution or body to seek a solution for the citizen. The Ombudsman's media 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.

Seventeen press releases were issued in 2005 and distributed to journalists and interested parties throughout Europe. Among the issues covered were the abolition of age limits for trainees in the Commission, the integration of people with disabilities, misleading statements made by the European Anti-Fraud Office (OLAF), in the context of an inquiry by the Ombudsman and lack of openness in the work of the Council.

The Ombudsman gave over 50 interviews to representatives of the print, broadcast and electronic media in 2005, in Strasbourg, Brussels and elsewhere. This section lists the interviews given by the Ombudsman and his staff in 2005 and includes the range of media events organised during the year.

- On 11 January, following his re-election as European Ombudsman, Mr DIAMANDOUROS participated in a press conference organised by the



Chairman of the Committee on Petitions of the European Parliament, Mr Marcin LIBICKI. The press conference gave the Ombudsman the opportunity to outline his priorities for his new mandate and to answer questions from journalists.

- Following the press conference, the Ombudsman was interviewed by Ms Nicoletta SPINA from an Italian regional radio station, Mr Sergio NAVA from Italian *Radio 24*, and Mr Jannis PAPADIMITRIOU for the Greek section of *Deutsche Welle*.
- On 12 January, the Ombudsman was interviewed by Ms Verónica ALCÁZAR from Spanish television, *Telemadrid*, for a programme entitled "From Madrid to Europe". The journalist asked the Ombudsman to explain the work of his institution for Spanish citizens and to give an overview of his relations with the national and regional ombudsmen in Spain.
- Later that day, he had press interviews with Ms Fouli DIMITRAKOPOULOU of *ERT 3* Television of Greece and Mr Manolis SPINTHOURAKIS of the Greek newspaper *To VIMA*.
- On 12 January, Mr Olivier VERHEECKE, Principal Legal Adviser, was interviewed by Ms Christina GERHAUSSER from the Brussels studio of *Deutsche Welle*, Germany, for a short radio programme covering the types of complaints dealt with by the European Ombudsman.
- On 12 January, Ms Rosita AGNEW, Press and Communications Officer, gave an interview to Ms Claire DENIS from the Centre for Journalism Studies in Strasbourg, France. Ms DENIS was interested in the work of the European Ombudsman and, in particular, in his relations with the other EU institutions and with citizens.
- On 13 January, the Ombudsman was interviewed by Ms Teresa CARRERAS for the programme "European Affairs" on Spanish television, *Televisión Española*. The journalist asked the Ombudsman to explain the reasons for the high percentage of Spanish complaints and the types of issues Spanish citizens complain about.
- On 13 January, Mr DIAMANDOUROS gave an interview to Mr Giorgos KAPOPOULOS of *NET* radio station of Greece.
- On 18 January, Ms Olga TSANTILA, Editor-in-chief of *Epilogos*, the weekly magazine supplement of the Greek newspaper *Makedonia*, interviewed the European Ombudsman about his priorities for his second mandate.
- On 24 January, the Ombudsman gave a telephone interview to Ms Kathy TZILIVAKIS for the English-language newspaper *Athens News* of Greece. The journalist asked Mr DIAMANDOUROS about his work for citizens and his future plans as European Ombudsman, following his re-election.

- On 27 January, Ms Marjorie FUCHS, Legal Officer, was interviewed by Ms TUETUY from the Brussels-based radio station *BFM*. The journalist was interested in a case handled by the European Ombudsman that resulted in the highest ever level of compensation being paid to a complainant.
- On 2 February, Ms Maria VERZA from the Spanish press agency *Faxpress* interviewed the Ombudsman about his views on the Constitution for Europe. The journalist asked Mr DIAMANDOUROS about the implications of the Constitution for the Ombudsman's work and, more generally, about the benefits of the Constitution for citizens. The interview took place in the run-up to the Spanish referendum on the Constitution.
- On 2 March, Ms Barbara KUŽNIK, journalist with the Slovene national radio station *VAL202*, interviewed the European Ombudsman by telephone. The interview formed part of a programme on the role of the ombudsman institution in Europe. Ms KUŽNIK asked Mr DIAMANDOUROS about the types of complaints that ombudsmen are called upon to address, their work on behalf of minorities and co-operation among ombudsmen throughout the EU.
- On 7 March, the Ombudsman gave a telephone interview to Ms Merise FREDERIKSEN, a student at the Danish School of Journalism. Ms FREDERIKSEN asked Mr DIAMANDOUROS about the role of the European Ombudsman in bringing Europe closer to the citizen. She was particularly interested in the Ombudsman's views on the Constitution for Europe.
- On 8 March (and subsequently on 9 June, 26 September and 15 November), the Ombudsman addressed 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 9 March, Mr DIAMANDOUROS gave a telephone interview to Mr Roland DHORDAIN of *Radio France: France Inter*. Mr DHORDAIN was preparing a radio programme aimed at familiarising citizens with the EU and asked the Ombudsman to explain his work and the service he provides.
- Later that day, the Ombudsman was interviewed for a television programme on the Constitution for Europe to be broadcast by *VPRO Television*, the Dutch public service broadcaster. Entitled "The Bliss of Holland", the programme aimed to explain the Constitution to Dutch citizens. Ms Hannah DOGGER conducted the interview.
- On the same day, he was also interviewed by Mr Lars LARSSON, correspondent with the Swedish news agency, *Tidningarnas Telegrambyrå*. Mr LARSSON was

interested in the Ombudsman's perception of his role for citizens and, more specifically, the types of complaints Swedish citizens lodge with him.

- Finally on 9 March, Mr DIAMANDOUROS gave an interview to Mr Nikos ROUSSIS of *Canali Voulis* (Parliament Channel) Television of Greece.
- On 11 March, Mr DIAMANDOUROS gave an interview to Mr Giorgos FRANGOS of the newspaper *Phileleftheros* of Cyprus in Nicosia, Cyprus.
- On 12 March, Mr DIAMANDOUROS gave an interview to Mr Yiannis KAREKLAS of *CYBC* National Radio in Nicosia, Cyprus.
- On 11 May, the Ombudsman presented his *Annual Report 2004* to journalists at a press conference in Strasbourg. Over 25 journalists attended the presentation and followed-up with questions about the European Code of Good Administrative Behaviour, the types of complaints the Ombudsman has received from the ten countries that joined the EU in 2004 and the extent to which the EU institutions accept his recommendations.
- Following this press conference, the Ombudsman was interviewed by Ms Shirin WHEELER of *BBC Parliament*, United Kingdom, for a programme entitled "The Record: Europe". The journalist asked the Ombudsman about complaints from the United Kingdom and the results achieved for citizens.
- There followed an interview with *Radio France: France Bleu* during which the journalist asked the European Ombudsman about his views on the Constitution for Europe and what it contains for citizens.
- Later that day, the Ombudsman was interviewed by Mr Jannis PAPADIMITRIOU for the Greek section of *Deutsche Welle*. Mr PAPADIMITRIOU asked Mr DIAMANDOUROS about his work in 2004 and, more specifically, about complaints from Greek citizens.
- Finally, Mr Alain BEUVE-MÉRY from *Le Monde*, France, interviewed Mr DIAMANDOUROS for a profile of the Ombudsman in the economic supplement of the paper entitled *Le Monde: Économie*. The journalist's questions centred around the evolution of the institution of the ombudsman in Europe, the changes brought about to the institution of the European Ombudsman as a result of enlargement and the place of the European Ombudsman in the EU's institutional set-up.
- On 12 May, Mr DIAMANDOUROS was interviewed by Ms Nicoletta SPINA for a programme to be broadcast on Italian regional radio. The journalist asked the Ombudsman about his work for Italian citizens and the results achieved in 2004.
- On 17 May, Ms Eleni HOURMOUZI from the Greek section of the *BBC World Service* interviewed Mr DIAMANDOUROS by telephone. The interview, broadcast in the run-up to the French referendum on the Constitution for Europe,

focused on the Ombudsman's views on the Constitution and what it contains for citizens.

- On 25 May, Ms Katharina STROBEL interviewed the Ombudsman for the purpose of a feature article to be published on the online version of German television station, *ZDF*. The journalist asked Mr DIAMANDOUROS about his work prior to becoming European Ombudsman, his experience in office and his plans for the future of the institution.
- The Ombudsman then did a radio interview with Mr Niels WENSING for the programme "AVRO 1opdeMiddag" to be broadcast on the Dutch radio station, *Radio 1*. Mr WENSING asked the Ombudsman about the types of complaints he receives from Dutch citizens and his views on the Constitution for Europe, in light of the Dutch referendum on the issue.
- Later that day, the Ombudsman was interviewed for Slovak television by Mr Martin THUMA. Mr THUMA asked the Ombudsman about complaints from the ten new Member States in general and Slovakia in particular. He also asked about the co-operation between the European Ombudsman and his Slovak counterpart, the Slovak Public Defender of Rights.
- The day ended with an interview by Ms Ingrid HVASS for the European Commission's weekly newsletter, *Commission en Direct*. Ms HVASS focused on the Ombudsman's meeting earlier that day with the College of Commissioners and asked the Ombudsman how, in his view, the Commission could improve its administrative behaviour vis-à-vis citizens.
- On 13 July, the Ombudsman started the day with an interview with Dutch journalist, Ms Joke LIGTERINK, who was preparing a chapter for the book on the Dutch Ombudsman, Mr Roel FERNHOUT, to be presented to him at the end of his term as Ombudsman. The journalist asked Mr DIAMANDOUROS about his relations with the Dutch Ombudsman, their co-operation on complaint-handling and the Fifth Seminar of National Ombudsmen in The Hague in 2005.
- Later that day, Mr DIAMANDOUROS had a working lunch with Mr George PARKER, Brussels Bureau Chief of the *Financial Times*. Mr DIAMANDOUROS outlined the service he provides to the business community, in areas such as late payment, contractual disputes and access to information. Mr PARKER asked the Ombudsman about his working relations with the EU institutions, in particular the Commission and OLAF, the European Anti-Fraud Office.
- The day ended with a presentation to 20 United Kingdom journalists who were on a fact-finding mission to Brussels, the meeting was organised by Mr John SZEMEREY, Brussels representative of the Chartered Institute of Journalists. Mr DIAMANDOUROS explained his work, gave examples of complaints he had dealt with and answered questions that ranged from the issue of compensation to discrimination.

- On 15 September, the Ombudsman had a telephone interview with Mr Martin JENSEN of the Danish publication, *Politiken*. Mr JENSEN asked Mr DIAMANDOUROS about his mandate and, more specifically, about his supervision of the European Anti-Fraud Office, OLAF.
- On 26 September, Mr Gianni BORSA of *SIR-Europa (Servizio Informazione Religiosa-Europa)*, an Italian weekly publication, interviewed the Ombudsman in Strasbourg. Mr BORSA was interested in the Ombudsman's efforts to promote and defend citizens' rights throughout Europe.
- On 18 October, Ms Rosita AGNEW, Head of the Communications Sector, gave an interview to Ms Irmtraud RICHARDSON, journalist with German public radio, *Bayerischer Rundfunk*. Ms RICHARDSON was doing a series of interviews aimed at explaining the European Union to German citizens.
- On 18 October, Mr DIAMANDOUROS gave an interview to Mr Angelos ATHANASOPOULOS of the Greek Newspaper *To VIMA tis KYRIAKIS*.
- On 20 October, Mr DIAMANDOUROS presented the work of the European Ombudsman to a delegation from the Nordic Centre of Journalism visiting Strasbourg. Mr Geo STENIUS organised the visit.
- On 26 October, Mr DIAMANDOUROS gave an interview to Mr Giannis PAPADIMITRIOU for the Greek section of *Deutsche Welle*.
- On 3 November, Mr DIAMANDOUROS gave an interview to Mr Andy DABILIS of *New Europe*, a Brussels based European newspaper.
- On 17 November, Ms Daniela SCHRÖDER from the English service of the German Press Agency, *dpa*, interviewed the Ombudsman in Brussels. Her feature described his work, his achievements, case studies and how to complain to the Ombudsman. It was published worldwide on the English *dpa* wire and the German translation appeared in several regional newspapers.
- Following his lecture at the London School of Economics and Political Science (LSE) on 30 November, Mr DIAMANDOUROS was interviewed by e-mail by Mr Stephen GUMMER, Editor of the LSE's Law Review, *The Obiter*.
- On 5 December, Mr Roland SIEGLOFF, Brussels correspondent of the German Press Agency, *dpa*, interviewed the Ombudsman. His article with the title "Germans should complain more" appeared in more than 50 national and regional newspapers, TV and radio stations and on their websites.
- On 16 December, Mr DIAMANDOUROS gave an interview to Ms Despina TSADE of *Athens Radio 9.84* of Greece.

## 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. To a large degree, the institution relies on hard-copy publications to inform key stakeholders and the general public. In 2005, the following publications were produced and distributed to interested parties:

***Annual Report 2004***; photocopied version (in English)

A photocopied version of the Ombudsman's *Annual Report 2004* was made available in English to Members of the European Parliament's Committee on Petitions in May, to allow the Committee to deliberate on the Ombudsman's work before the full plenary debate later in the year.

***Annual Report 2004 – Executive Summary and Statistics***; photocopied version (20 languages)

Also in May, a photocopied version of the *Annual Report 2004: Executive Summary and Statistics* publication was made available to Members of the Committee on Petitions in all 20 official languages.

***European Ombudsmen – Newsletter***; Issues No 4 and No 5 (5 languages)

Issues No 4 and No 5 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 Code of Good Administrative Behaviour*** (24 languages)

A new look version of *The European Code of Good Administrative Behaviour* was published in 24 languages in 2005. This edition updates the original version that was published by the Ombudsman in 2002 in the then 11 official EU languages and is intended to inform citizens and officials of their rights and obligations. Over 100 000 copies of the new-look Code were distributed to ombudsmen, MEPs, heads of EU institutions and bodies, Commission Representations and Parliament Offices in the Member States, the EU relays and networks, public administrations at the national and regional levels in the Member States, and citizens and organisations that have shown a particular interest in the work of the EU institutions. Great interest was shown in this publication with requests for many thousands of additional copies being received by the end of the year.

***The Tenth Anniversary postcard*** (24 languages)

To raise awareness among citizens about the tenth anniversary of the institution of the European Ombudsman, a postcard was published in all 20 official EU languages as well as in the languages of the candidate countries. Headed "The European Ombudsman:

10 years championing citizens' rights in Europe", the postcard briefly explained the role of the Ombudsman and gave examples of the issues he deals with. The postcard was widely distributed via ombudsmen offices, MEPs, Commission Representations and Parliament Offices in the Member States. It was launched during the European Parliament's Open Days in Brussels and Strasbourg and subsequently used during public information events.

***The Tenth Anniversary Commemorative Volume***; softback and hardback (in English)

The tenth anniversary of the institution of the European Ombudsman was marked by a series of commemorative events. A Founders' Workshop was organised in June 2004 to record the steps leading to the creation of the European Ombudsman and to identify developments and trends that may be worth pursuing further. It was decided to produce a commemorative volume as a result of this exercise. Entitled *The European Ombudsman: Origins, Establishment, Evolution*, this publication was produced in English in both hardback and softback versions. A French edition will be produced in 2006.

***Annual Report 2004***; printed version (20 languages)

The 20 official EU language versions of the Ombudsman's *Annual Report 2004* were distributed to MEPs, EU institutions and bodies, ombudsmen and the European Commission's relays and networks in October. 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* (10 200 copies), while making the *Executive Summary and Statistics* available to a much wider audience (24 000 copies). With a view to making the *Annual Report* more user-friendly, it included, for the first time, short summaries of the Ombudsman's decisions (chapter 3); the full decisions were made available in English, French and German in the electronic publication: *Annual Report 2004 — Compilation of Decisions* that was posted on the Ombudsman's website in October 2005.

***Annual Report 2004: Executive Summary and Statistics***; printed version (20 languages)

The 20 language versions of the *Executive Summary and Statistics*, made available in October, were distributed to recipients of the complete *Annual Report*, as well as to non-governmental organisations, consumer associations, professional organisations and universities.

***The Annual Report 2004 — Compilation of Decisions*** (3 languages)

In light of the decision to streamline the Ombudsman's Annual Report, it was decided to launch a more comprehensive electronic publication containing the full decisions, in English, French and German, in the cases included in chapter 3 of the Report. It was made available in October 2005 as a single electronic document on the Ombudsman's website, while a hard copy or CD-ROM was made available to those requesting it from the Ombudsman's office.

### ***Other publications***

The Ombudsman continued to distribute copies of his other publications during the year, most notably his *At a glance* leaflet in 25 languages and his *Could he help you?* brochure and complaint form in 21 languages.

## **6.6 ON-LINE 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 59% of all complaints received by the Ombudsman in 2005 was submitted over the Internet, of which a large proportion was received through the electronic complaint form.

In the year 2005, the main e-mail account of the Ombudsman received, in total, 6 426 e-mails requesting information. All received a reply. Of these, 3 157 were mass mailings submitted by citizens as part of a number of campaigns. Issues covered by these mass mailings included inhumane treatment of animals in Member States or outside the EU, national legislative provisions, paedophilia, and religious freedom. All the e-mails received a reply explaining the Ombudsman's mandate and, where possible, giving information on whom to address regarding the matter raised.

A total of 3 269 individual requests for information were received by e-mail in 2005, compared to around 3 200 in 2004 and 2 000 in 2003. All received individual replies from an appropriate member of the Ombudsman's staff.

### ***Website developments***

The Ombudsman's website was created in July 1998. In his budget for the year 2005, the Ombudsman obtained the necessary funds to create a post of Web Developer within his institution. After a rigorous selection procedure, the new post was filled as from the month of September. Following his arrival, the Web Developer began collaborating with the Heads of the Communications Sector, as well as with the technical services of the European Parliament, with a view to launching an entirely restructured and modernised version of the site during the course of 2006.

The Ombudsman continued to update his website in 2005, adding the electronic versions of his various publications as they became available. These included: his *Annual Report 2004*, and the related *Executive Summary and Statistics* in 20 languages; the *2004 Compilation of Decisions* in English, French and German and *The European Code of Good Administrative Behaviour* in 24 languages.

A new section of the website devoted entirely to the tenth anniversary of the institution was created in 2005. This contained the *Commemorative Volume* entitled *The European*



*Ombudsman: Origins, Establishment and Evolution*, as well as several documents relating to the tenth anniversary events. A further new section of the site was created containing historical documents connected to the establishment of the Ombudsman institution.

From 1 January to 31 December 2005, the homepages of the Ombudsman's website were visited 304 300 times. The English-language version of the site was the most consulted with 71 166 visits, followed by the French, Italian, Spanish, German and Polish versions. In terms of the geographical origin of visits, the greatest number of visitors came from Belgium (27 517 visits), followed by Italy, Spain, France, Germany and Poland.

In order to ensure that the Ombudsman's website stays at the forefront of EU websites, the Office of the Ombudsman participated throughout 2005 in the work of the Inter-Institutional Internet Editorial Committee (CEiii).



## **7 ANNEXES**

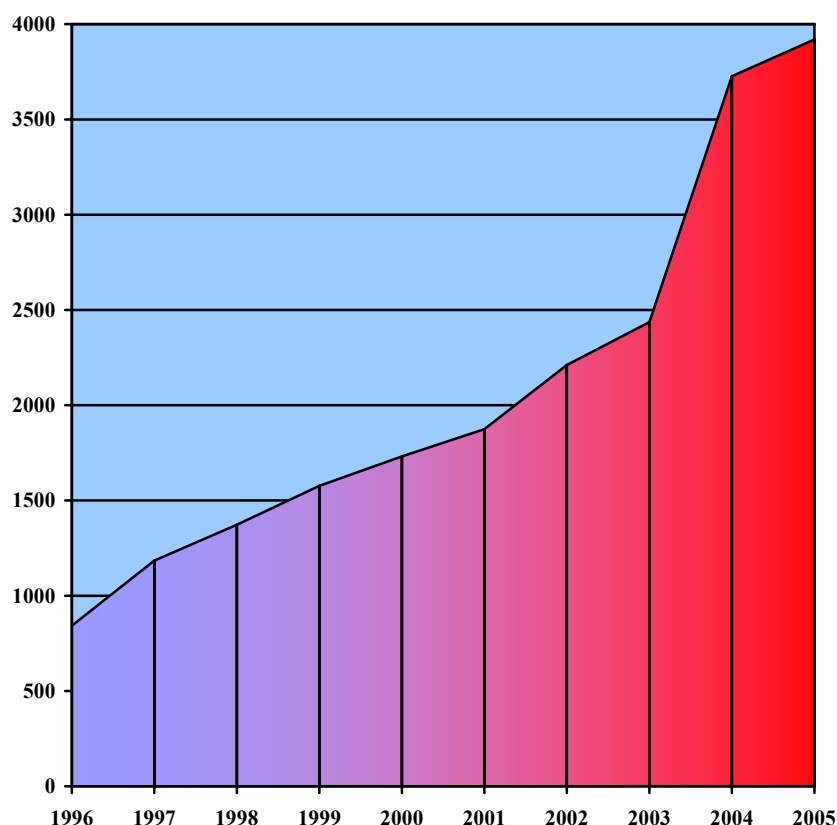


## A STATISTICS

### 1 CASES DEALT WITH DURING 2005

#### 1.1 TOTAL CASELOAD IN 2005..... 4 416<sup>1</sup>

- inquiries not closed on 31.12.2004..... 284<sup>2</sup>
- complaints awaiting decision on admissibility on 31.12.2004..... 207
- complaints received in 2005 ..... 3920<sup>3</sup>
- own-initiatives of the European Ombudsman ..... 5



Increase in complaints 1996-2005

#### 1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED..... 93%

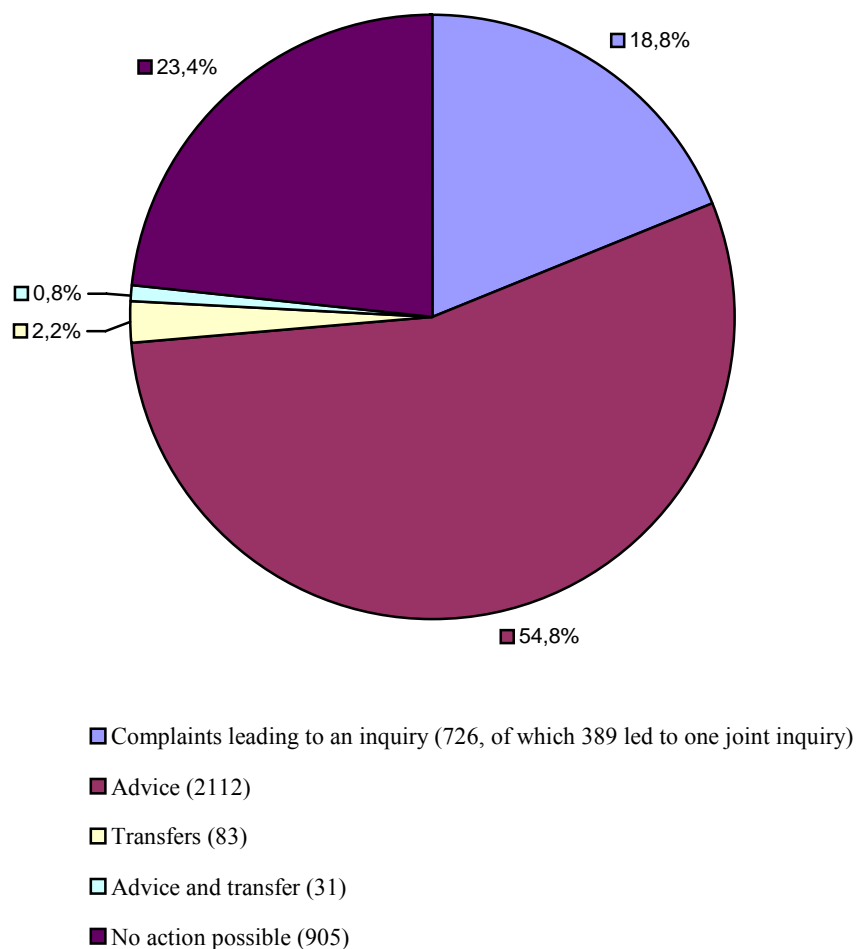
<sup>1</sup> Of which 389 complaints on the same subject-matter, which were dealt with as a joint inquiry (54 brought forward from 2004, and 335 received in 2005).

<sup>2</sup> Of which eight own-initiative inquiries of the European Ombudsman and 276 inquiries based on complaints.

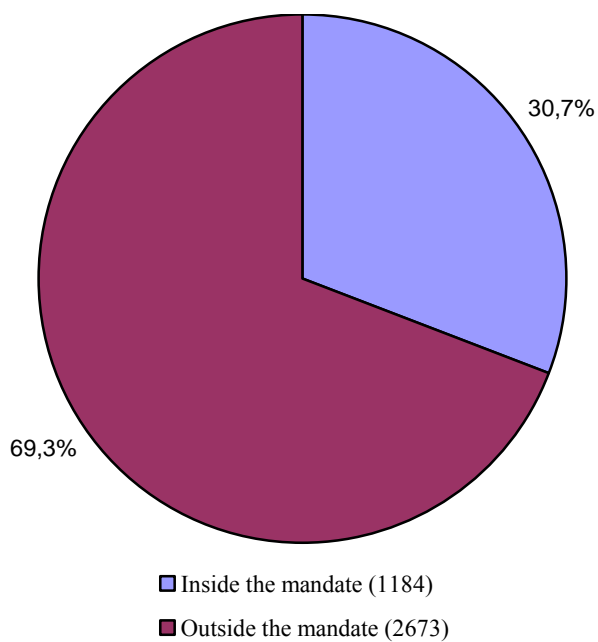
<sup>3</sup> Of which 335 complaints on the same subject-matter, as mentioned in footnote 1.

## 1.3 CLASSIFICATION OF THE COMPLAINTS

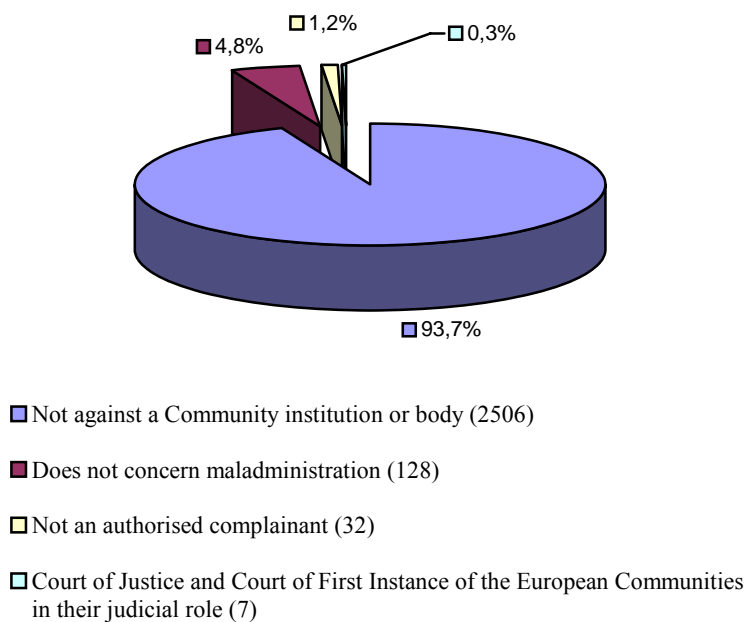
### 1.3.1 According to the type of action taken by the European Ombudsman to benefit the complainants



### 1.3.2 According to the Mandate of the European Ombudsman

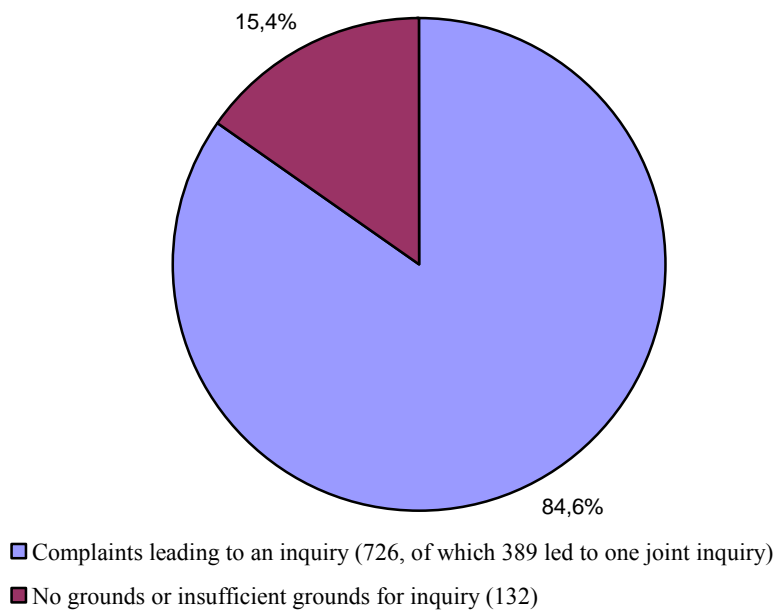


#### OUTSIDE THE MANDATE

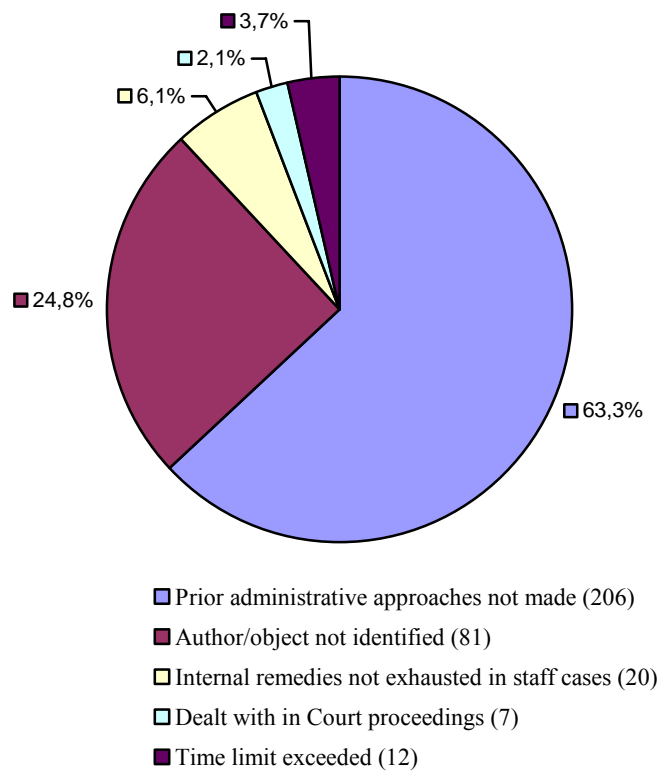


## INSIDE THE MANDATE

### *Admissible Complaints*



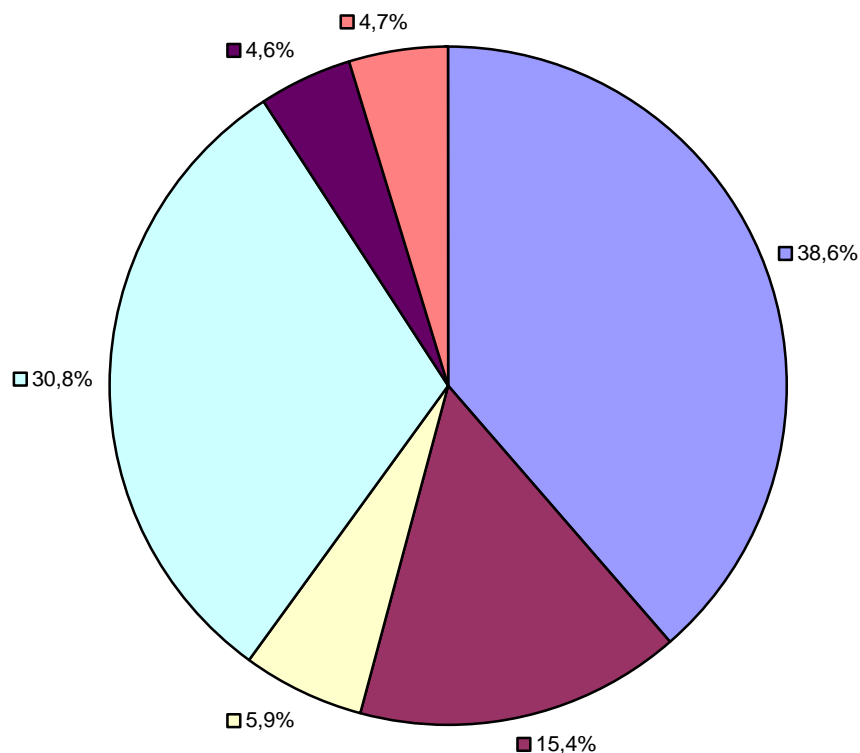
### *Inadmissible Complaints*





## 2 TRANSFERS AND ADVICE

(In some cases, more than one advice can be given)



- Advice to contact another ombudsman or petition a regional or national parliament (945)
- Advice to contact the European Commission (376)
- Advice to petition the European Parliament (144)
- Advice to contact other bodies (752)
- Advice to contact SOLVIT (112)
- Transfers (114)

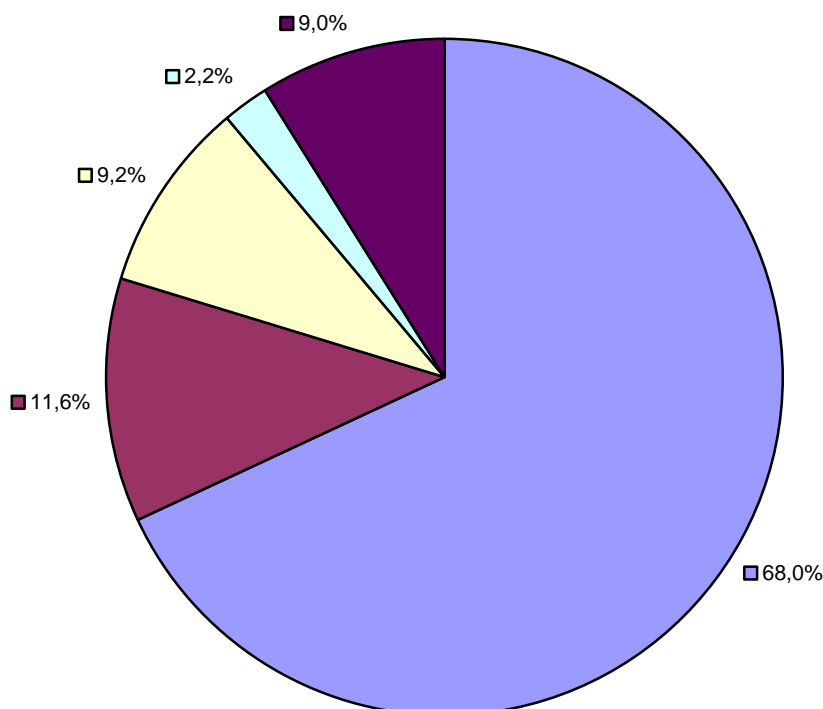
To the European Parliament (12)  
 To the European Commission (6)  
 To a national or regional ombudsman (91)  
 To SOLVIT (SOLVIT is a network set up by the European Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market) (5)

### 3 INQUIRIES DEALT WITH IN 2005..... 627<sup>4</sup>

In 2005, the European Ombudsman dealt with 627 inquiries. Of these, 343 were initiated in 2005 (of which five own-initiatives) and 284 were not closed on 31.12.2004.

#### 3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

(In some cases, two or more institutions or bodies are concerned by one inquiry)

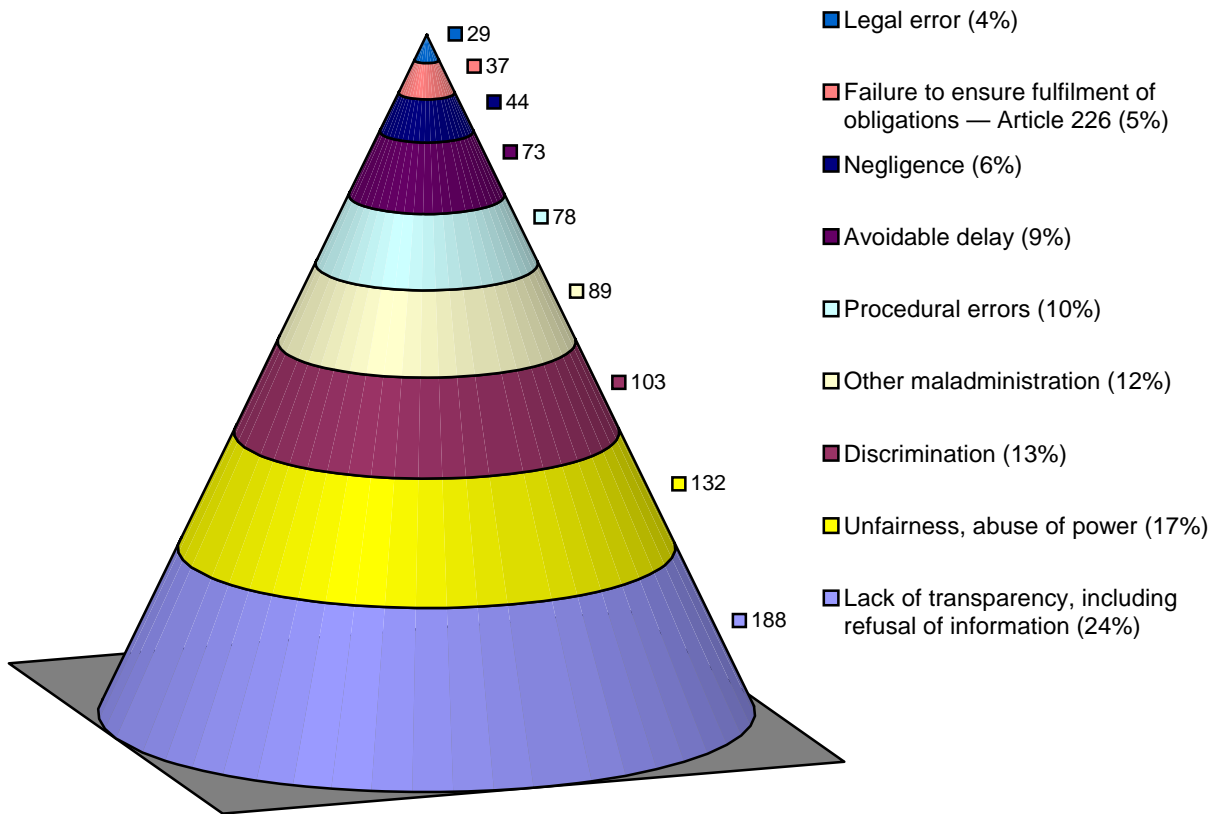


- European Commission (430)
- European Personnel Selection Office (73)
- European Parliament (58)
- Council of the European Union (14)
- Others (57):
  - Court of Justice (4)
  - European Court of Auditors (1)
  - European Anti-Fraud Office (OLAF) (12)
  - European Central Bank (4)
  - Committee of the Regions (3)
  - Economic and Social Committee of the European Communities (6)
  - European Monitoring Centre on Racism and Xenophobia (5)
  - European Union Police Mission in Bosnia and Herzegovina (1)
  - Eurojust (1)
  - Office for Official Publications (3)
  - European Investment Bank (8)
  - European Environment Agency (1)
  - European Centre for the Development of Vocational Training (1)
  - European Agency for Reconstruction (1)
  - European Aviation Safety Agency (1)
  - European Defence Agency (1)
  - European Agency for the Evaluation of Medicinal Products (3)
  - Office for Harmonisation in the Internal Market (1)

<sup>4</sup> As previously noted, the 389 cases mentioned in the footnotes to 1.1 above were dealt with in a single joint inquiry.

### 3.2 TYPE OF MALADMINISTRATION ALLEGED

(In some cases, two types of maladministration are alleged)

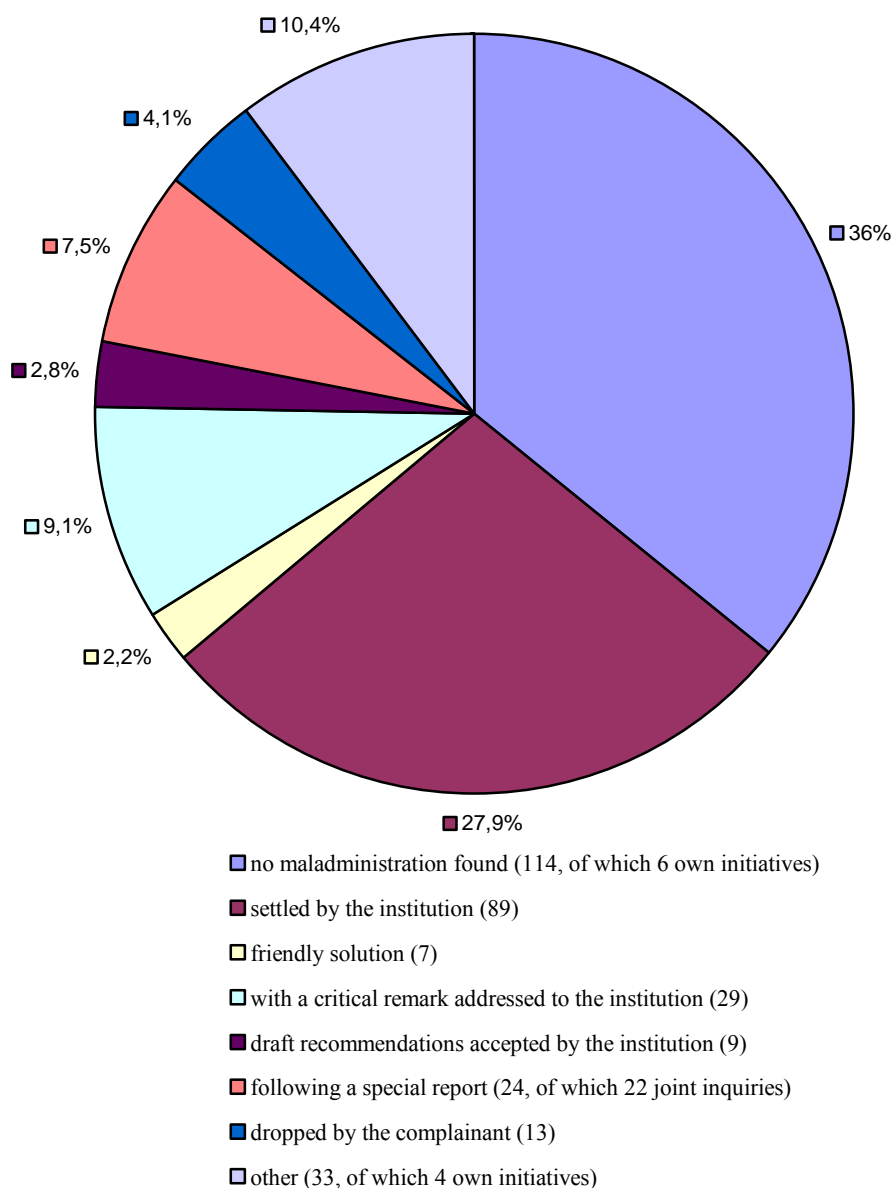


### 3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2005

- proposals for friendly solutions..... 22
- draft recommendations..... 20
- special reports..... 3<sup>5</sup>

### 3.4 INQUIRIES CLOSED WITH REASONED DECISION ..... 312<sup>6</sup>

(An inquiry can be closed for one or more of the following reasons)

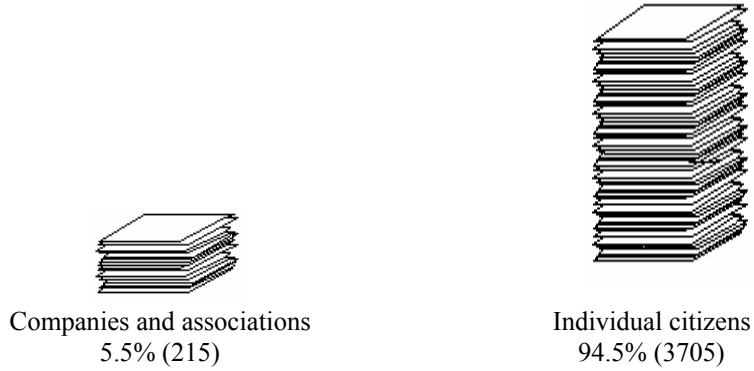


<sup>5</sup> One of the special reports concerned 22 complaints.

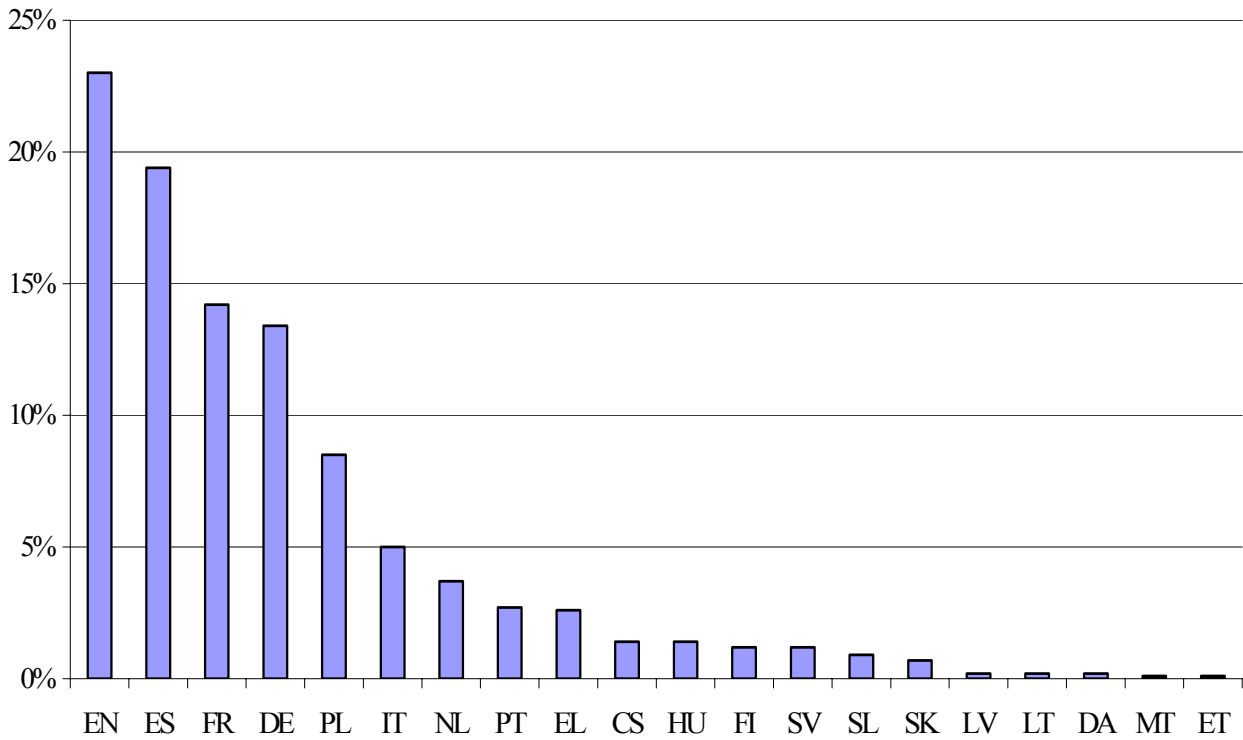
<sup>6</sup> Of which ten own-initiative inquiries of the Ombudsman.

## 4 ORIGIN OF COMPLAINTS REGISTERED IN 2005

### 4.1 SOURCE OF COMPLAINTS



### 4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS



### 4.3 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Rate <sup>7</sup>
Malta	40	1.0	0.1	11.6
Cyprus	57	1.5	0.2	8.7
Luxembourg	33	0.8	0.1	8.5
Belgium	252	6.4	2.3	2.8
Slovenia	47	1.2	0.4	2.8
Spain	775	19.8	9.5	2.1
Ireland	64	1.6	0.9	1.8
Greece	134	3.4	2.4	1.4
Portugal	114	2.9	2.3	1.3
Finland	55	1.4	1.1	1.2
Poland	346	8.8	8.3	1.1
Austria	75	1.9	1.8	1.1
Czech Republic	80	2.0	2.2	0.9
Sweden	69	1.8	2.0	0.9
Hungary	76	1.9	2.2	0.9
Lithuania	24	0.6	0.7	0.8
The Netherlands	103	2.6	3.5	0.7
France	380	9.7	13.2	0.7
Slovakia	32	0.8	1.2	0.7
Latvia	13	0.3	0.5	0.7
Germany	410	10.5	17.9	0.6
Italy	215	5.5	12.7	0.4
United Kingdom	197	5.0	13.1	0.4
Estonia	4	0.1	0.3	0.4
Denmark	16	0.4	1.2	0.4
Others	309	7.9		

<sup>7</sup> 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 originally provided 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 2000<sup>1</sup>, 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 for 2005 was 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 individual entitlements;
- 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 made it possible to keep increases in the Ombudsman's administrative staff to a low level.

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 2005 budget included a lump-sum fee to cover the costs to the European Parliament arising from the provision of services, such as the administration of staff contracts,

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<sup>1</sup> Council Regulation 2673/1999 of 13 December 1999, OJ 1999 L 326, p. 1.

salaries and allowances, and a range of computing services. These costs relate solely to staff time.

The co-operation between the European Parliament and the European Ombudsman was initiated by a Framework Agreement dated 22 September 1995. Additional Agreements on Administrative Co-operation and on Budgetary and Financial Co-operation were signed on 12 October 1995.

One of the priorities in 2005, during which the Ombudsman's office was celebrating its 10 year anniversary, was to revisit the existing co-operation agreements between the two institutions, with an eye to adapting them to the new realities that the intervening decade had shaped. A new agreement is expected to be signed in early 2006. Its goal is to maintain intensive co-operation with the Parliament in all the domains where substantial economies of scale and budgetary savings are possible.

### **The 2005 budget**

The establishment plan of the Ombudsman showed a total of 51 posts in 2005, compared to 38 posts for 2004.

The total amount of initial appropriations available in the Ombudsman's 2005 budget was EUR 7 312 614. Title 1 (Expenditure relating to persons working for the institution) amounted to EUR 6 239 614. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounted to EUR 1 070 000. Title 3 (Expenditure resulting from special functions carried out by the institution) amounted to EUR 3 000.

The following table indicates expenditure in 2005 in terms of committed appropriations.

	(in EUR)
Title 1	5 375 889
Title 2	928 276
Title 3	2 979
<b>Total</b>	<b>6 307 145</b>

### **The 2006 budget**

The Ombudsman has presented the budget for the year 2006 according to a new budget structure (nomenclatures). The aim of this new structure is to increase transparency and to facilitate enhanced control on the part of the budget authority, by allowing for better oversight of expenditure of similar nature, which in the structure used to date was spread over several titles or chapters.

The 2006 budget, prepared during 2005, provides for an establishment plan of 57 posts. This increase represents an addition of 6 posts to the establishment plan for 2005 and is mainly due to the next enlargement of the European Union (Bulgaria and Romania) and



to the implementation of the decision to achieve full autonomy from Parliament's services with regard to the Ombudsman's staff management.

Total appropriations for 2006 are EUR 7 682 538. Title 1 (Expenditure relating to persons working with the institution) amounts to EUR 5 808 538. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounts to EUR 1 085 000. Title 3 (Expenditure resulting from general functions carried out by the institution) amounts to EUR 789 000.

The 2006 budget provides for total revenue of EUR 812 271.

## C PERSONNEL

### EUROPEAN OMBUDSMAN

#### **P. Nikiforos DIAMANDOUROS**

##### *European Ombudsman*

P. Nikiforos DIAMANDOUROS was born in Athens, Greece, on 25 June 1942. He was elected European Ombudsman on 15 January 2003. He took office on 1 April 2003 and was re-elected for a five-year term on 11 January 2005.

From 1998 to 2003, he was the first National Ombudsman of Greece. He has also been Professor of comparative politics at the Department of Political Science and Public Administration of the University of Athens since 1993 (currently on leave). From 1995 to 1998 he served as Director and Chairman of the Greek National Centre for Social Research (EKKE).

He received his B.A. degree 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). Between 1999 and 2003, he served as a member of Greece's National Commission on Human Rights, while from 2000 to 2003 he was a member of the Greek National Council for Administrative Reform. In 2000, he participated in the Bilderberg Conference. Between 1988 and 1995, he was co-chair of the Subcommittee on Southern Europe of the Social Science Research Council, New York, whose activities are funded by a grant from the Volkswagen Foundation. He is also joint General Editor of the Series on the New Southern Europe and the recipient of Fulbright and National Endowment for the Humanities research grants.

He has written extensively on the politics and history of Greece, southern Europe and southeastern Europe and, more specifically, on democratisation, state and nation-building, and the relationship between culture and politics.

**SECRETARIAT OF THE EUROPEAN OMBUDSMAN**

The Secretariat of the European Ombudsman is responsible for the running of the Ombudsman's private office. It manages the Ombudsman's agenda, co-ordinates his incoming and outgoing correspondence, advises on relations with the other EU institutions and bodies, deals with the protocol aspects of the institution's work and undertakes general secretarial duties for the Ombudsman.

**Alexandra ANDROULAKAKIS**  
*Secretary to the European Ombudsman*  
(as from 22.8.2005)  
Tel. +33 3 88 17 25 28

**Eleni-Anna GALATIS**  
*Secretary to the European Ombudsman*  
(until 15.9.2005)

**Nicholas CATEPHORES**  
*Assistant to the European Ombudsman*  
Tel. +33 3 88 17 23 83

**LEGAL DEPARTMENT**

The Legal Department consists mainly of lawyers who analyse the complaints received by the European Ombudsman and conduct inquiries under the supervision of the Head of the Legal Department and two Principal Supervisors. The Head of the Legal Department also advises the Ombudsman on the legal strategy and direction of the institution and manages the Department. The Assistant to the Head of the Legal Department ensures the operation of internal quality control and management information systems and co-ordinates the Department's contribution to the Annual Report.

In 2005, the Department consisted of the Head of the Legal Department, six Principal Legal Advisers, two of whom have the functions of Principal Supervisors, eleven Legal Officers, a Lawyer Linguist, a Legal Assistant and the Assistant to the Head of the Legal Department. During 2005, the Legal Department supervised fourteen trainees.

**Ian HARDEN**  
*Head of the Legal Department*  
Tel. +33 3 88 17 23 84

Ian HARDEN was born in Norwich, England, on 22 March 1954. He studied law at Churchill College, Cambridge, obtaining a BA with first class honours in 1975 and an LLB in 1976. After graduation, he joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a Senior Lecturer from 1990 to 1993, a Reader from 1993 to 1995, and 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 United Kingdom and honorary professor at the University of Sheffield.

**Murielle RICHARDSON**

*Assistant to the Head of the Legal Department*

Tel. +33 3 88 17 23 88

**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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**Elodie BELFY**

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**Gerhard GRILL**

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*Principal Supervisor*

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**Peter BONNOR**

*Legal Officer*

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**Marta HIRSCH-ZIEMBIŃSKA**

*Principal Legal Adviser*

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**Benita BROMS**

*Head of the Brussels Office*

*Principal Legal Adviser*

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**Anne EISENGRÄBER**

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**Georgios KATHARIOS**

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**Giedre KAZLAUSKAITE**

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**Daniel KOBLENCZ**

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**Jernej LETNAR CERNIC**

*Trainee (until 31.7.05)*

**Maria Salome LOPEZ RAMOS**

*Trainee (until 31.10.2005)*

**Wiebke PANKAUKE**

*Trainee (until 31.7.2005)*

**Roberto RANDO**

*Trainee (from 15.1.2005)*

**Andrea SACK**

*Trainee (until 31.7.2005)*

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**Sophia TABAU**

*Trainee (until 31.7.2005)*

**Asta UPTAITE**

*Trainee (until 31.7.2005)*

**Alexis VAN MAERCKE**

*Trainee (from 1.9.2005)*

Tel. +32 2 284 21 80

## **ADMINISTRATION AND FINANCE DEPARTMENT**

The Administration and Finance Department is responsible for all the work of the Ombudsman's office that is not directly related to dealing with complaints and conducting inquiries. It is made up of four sectors — the Administration Sector, the Finance Sector, the Complaints-Handling Sector and the Communications Sector. The Head of the Administration and Finance Department co-ordinates the overall work of the Department. In that capacity, he is responsible for the general organisation and operation of the office, personnel policy in the office, proposing and implementing the budgetary and financial strategy of the institution, and for representing the Ombudsman in a number of interinstitutional fora.

### **João SANT'ANNA**

*Head of the Administration and Finance Department*

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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.

### **ADMINISTRATION SECTOR**

The Administration Sector's tasks are broad. They include the recruitment and management of staff, dealing with incoming and outgoing correspondence, the telephone switchboard, the office infrastructure, co-ordination of document translation, the organisation and management of the legal reference library, and the institution's documentation and archive policy. This sector is also responsible for the information technology policy of the institution and for meeting the office's IT needs, a task it carries out in close co-operation with the European Parliament.

### **Alessandro DEL BON**

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### **FINANCE SECTOR**

The Finance Sector is in charge of ensuring that the Ombudsman's Office complies with the applicable financial rules designed to guarantee that budgetary resources are implemented economically, efficiently and adequately. These responsibilities derive from the fact that the European Ombudsman has an independent budget. Four Financial Officers, under the responsibility of the Authorising Officer by Delegation, prepare and execute the budget.

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**Véronique VANDAELE**  
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### **COMPLAINTS-HANDLING SECTOR**

The Complaint 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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**Isabelle LECESTRE**

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**Evelyne BOUTTEFROY**

*Secretary*

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**Caroline ZINCK**

*Secretary (from 1.9.2005)*

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**Elaine DRAGO**

*Secretary*

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**COMMUNICATIONS SECTOR**

The Communication Sector is responsible for promoting the image and values of the institution and assisting the Ombudsman in pursuing the second main task laid down in his mandate, namely reaching out to citizens and informing them of their rights under Community law. In doing so, it plays a key role in enhancing the relations and the trust between citizens and Europe and its institutions.

The sector is responsible for maintaining and promoting relations with the media, writing and producing the Ombudsman's publications, maintaining the Ombudsman's websites, organising the Ombudsman's information visits and events, and co-ordinating relations within the European Network of Ombudsmen.

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*Press and Communications Officer  
(until 30.4.2005)*

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**Ben HAGARD**

*Head of Sector (from 1.5.2005)*

*Internet and Communications Officer  
(until 30.4.2005)*

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**Marc AMIR-TAHMASSEB**  
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**Gabrielle SHERIDAN**  
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**Annika ÖSTERBERG**  
*Publications Officer (from 1.10.2005)*  
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1391/2002/JMA .....	120	1273/2004/GG .....	102
2107/2002/PB .....	111	1298/2004/PB .....	68
2111/2002/MF.....	112	1365/2004/TN.....	69
<b>2003</b>		1368/2004/GG .....	104
1336/2003/IP.....	89	1423/2004/ELB .....	116
1435/2003/MF.....	112	1700/2004/MF .....	109
1687/2003/JMA .....	61	1733/2004/OV .....	87
2097/2003/PB .....	78	1737/2004/TN.....	88
2188/2003/OV.....	90	1756/2004/MF .....	93
2191/2003/TN.....	62	1772/2004/GG .....	91
2229/2003/MHZ .....	96	1798/2004/PB.....	84
2395/2003/GG.....	119	1808/2004/JMA.....	73
2411/2003/MHZ .....	97	2038/2004/GG .....	94
2415/2003/JMA .....	77	2066/2004/TN.....	74
<b>2004</b>		2485/2004/GG .....	121
0127/2004/OV.....	82	2673/2004/PB.....	107
0140/2004/PB .....	108	2821/2004/OV .....	75
0224/2004/PB .....	98	2862/2004/GG .....	105
0237/2004/JMA .....	77	3054/2004/TN.....	81
0274/2004/JMA .....	63	3110/2004/GG .....	76
0295/2004/JMA .....	64	3254/2004/ID.....	117
0338/2004/OV.....	65	3381/2004/TN.....	84
0471/2004/OV.....	83	3442/2004/PB.....	110
0518/2004/MF.....	91	3446/2004/GG .....	115
0530/2004/GG.....	99	3452/2004/JMA.....	118
0538/2004/TN.....	101	3485/2004/OV .....	85
0620/2004/PB .....	102	3622/2004/GG .....	106
0628/2004/OV.....	86	<b>2005</b>	
0732/2004/ELB.....	66	0116/2005/MHZ.....	114
0758/2004/ELB.....	67	0501/2005/IP .....	85
0839/2004/MHZ .....	80	1266/2005/MF .....	86
0933/2004/JMA .....	70	1875/2005/GG .....	95
0948/2004/OV.....	71	OI/3/2005/OV.....	122
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2415/2003/JMA .....	77
0224/2004/PB .....	98
0237/2004/JMA .....	77
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1096/2004/TN .....	72
1737/2004/TN .....	88
2038/2004/GG .....	94
0116/2005/MHZ .....	114
1875/2005/GG .....	95

### Commission as guardian of the Treaty

1687/2003/JMA .....	61
2229/2003/MHZ .....	96
0274/2004/JMA .....	63
0295/2004/JMA .....	64
1273/2004/GG .....	102
1298/2004/PB .....	68
1423/2004/ELB .....	116
3254/2004/ID .....	117
3452/2004/JMA .....	118
3622/2004/GG .....	106

### Consumer policy

0295/2004/JMA .....	64
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### Contracts

2111/2002/MF .....	112
0338/2004/OV .....	65
0530/2004/GG .....	99
0538/2004/TN .....	101
1266/2005/MF .....	86
1772/2004/GG .....	91
1808/2004/JMA .....	73
2673/2004/PB .....	107
2862/2004/GG .....	105
3110/2004/GG .....	76
OI/3/2005/OV .....	122

### Culture

3452/2004/JMA .....	118
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### Data protection

0224/2004/PB .....	98
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### Development co-operation

0933/2004/JMA .....	70
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### Economic and monetary policy

3054/2004/TN .....	81
0116/2005/MHZ .....	114

### Education, vocational training and youth

0518/2004/MF .....	91
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### Environment

2229/2003/MHZ .....	96
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### Employment

#### Fisheries

1273/2004/GG .....	102
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### Free movement of persons and services

1298/2004/PB .....	68
3254/2004/ID .....	117

### Institutions

2395/2003/GG .....	119
0140/2004/PB .....	108
0628/2004/OV .....	86
1155/2004/TN .....	73
2485/2004/GG .....	121
3254/2004/ID .....	117
3446/2004/GG .....	115
0501/2005/IP .....	85

**Miscellaneous**

1435/2003/MF .....	112
0338/2004/OV .....	65
0732/2004/ELB .....	66
3622/2004/GG .....	106
OI/3/2005/OV .....	122

**Police and judicial co-operation**

2411/2003/MHZ .....	97
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**Public access**

0948/2004/OV .....	71
1368/2004/GG .....	104
1756/2004/MF .....	93
1798/2004/PB .....	84
2066/2004/TN .....	74
2821/2004/OV .....	75
3381/2004/TN .....	84
3442/2004/PB .....	110

**Research and technology**

0758/2004/ELB .....	67
1365/2004/TN .....	69

**Social Policy**

0274/2004/JMA .....	63
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**Staff****- Recruitment**

1336/2003/IP .....	89
2097/2003/PB .....	78
0518/2004/MF .....	91
0839/2004/MHZ .....	80
1700/2004/MF .....	109
3485/2004/OV .....	85

**- Other questions**

1391/2002/JMA .....	120
2107/2002/PB .....	111
2188/2003/OV .....	90
2191/2003/TN .....	62
0140/2004/PB .....	108
0471/2004/OV .....	83
0620/2004/PB .....	102
0628/2004/OV .....	86
1423/2004/ELB .....	116
1733/2004/OV .....	87
0127/2004/OV .....	82

### 3 BY TYPE OF MALADMINISTRATION ALLEGED

#### Abuse of power

1700/2004/MF ..... 109

#### Avoidable delay

0530/2004/GG ..... 99  
 1733/2004/OV ..... 87  
 1756/2004/MF ..... 93  
 1772/2004/GG ..... 91  
 3485/2004/OV ..... 85  
 1266/2005/MF ..... 86  
 OI/3/2005/OV ..... 122

#### Discrimination

1391/2002/JMA ..... 120  
 2107/2002/PB ..... 111  
 1687/2003/JMA ..... 61  
 2415/2003/JMA ..... 77  
 0237/2004/JMA ..... 77  
 0338/2004/OV ..... 65  
 0518/2004/MF ..... 91  
 0628/2004/OV ..... 86  
 1808/2004/JMA ..... 73  
 2673/2004/PB ..... 107

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0471/2004/OV ..... 83

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1687/2003/JMA ..... 61  
 2229/2003/MHZ ..... 96  
 0274/2004/JMA ..... 63  
 0295/2004/JMA ..... 64  
 1273/2004/GG ..... 102  
 1298/2004/PB ..... 68  
 1423/2004/ELB ..... 116  
 3254/2004/ID ..... 117  
 3452/2004/JMA ..... 118  
 3622/2004/GG ..... 106

#### Failure to state grounds for decision

2411/2003/MHZ ..... 97

#### Lack or refusal of information

2097/2003/PB ..... 78  
 2191/2003/TN ..... 62  
 2229/2003/MHZ ..... 96  
 0140/2004/PB ..... 108  
 0274/2004/JMA ..... 63  
 0538/2004/TN ..... 101  
 0758/2004/ELB ..... 67  
 1368/2004/GG ..... 104  
 1737/2004/TN ..... 88  
 1798/2004/PB ..... 84  
 2038/2004/GG ..... 94  
 2066/2004/TN ..... 74  
 3054/2004/TN ..... 81  
 3381/2004/TN ..... 84  
 3442/2004/PB ..... 110  
 1875/2005/GG ..... 95

#### Lack of transparency

1435/2003/MF ..... 112  
 2395/2003/GG ..... 119  
 0948/2004/OV ..... 71  
 2821/2004/OV ..... 75  
 0116/2005/MHZ ..... 114

#### Legal error

1273/2004/GG ..... 102  
 3254/2004/ID ..... 117  
 0127/2005/OV ..... 82

#### Negligence

2188/2003/OV ..... 90  
 0224/2004/PB ..... 98  
 0933/2004/JMA ..... 70  
 1096/2004/TN ..... 72  
 1155/2004/TN ..... 73  
 1365/2004/TN ..... 69  
 3622/2004/GG ..... 106

#### Procedural errors

2107/2002/PB ..... 111  
 2411/2003/MHZ ..... 97  
 0140/2004/PB ..... 108  
 0620/2004/PB ..... 102

**Unfairness**

2111/2002/MF .....	112
1336/2003/IP .....	89
3110/2004/GG .....	76
0839/2004/MHZ .....	80
0127/2005/OV .....	82
0471/2004/OV .....	83
0501/2005/IP .....	85
1733/2004/OV .....	87
OI/3/2005/OV .....	122

**Other maladministration**

0471/2004/OV .....	83
0538/2004/TN .....	101
0732/2004/ELB .....	66
0758/2004/ELB .....	67
1733/2004/OV .....	87
2485/2004/GG .....	121
2862/2004/GG .....	105
3446/2004/GG .....	115
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## **E THE ELECTION OF THE EUROPEAN OMBUDSMAN**

### **The legal provisions**

Article 195(2) EC provides that "The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment."

The Rules of Procedure of the European Parliament set out details of the election procedure:

#### *Rule 194*

- "1. At the start of each parliamentary term, immediately after his election or in the cases referred to in paragraph 8, the President shall call for nominations for the office of Ombudsman and set a time limit for their submission. A notice calling for nominations shall be published in the Official Journal of the European Union.*
- 2. Nominations must have the support of a minimum of thirty-seven Members who are nationals of at least two Member States.*

*Each Member may support only one nomination.*

*Nominations shall include all the supporting documents needed to show conclusively that the nominee fulfils the conditions required by the Regulations on the Ombudsman.*

- 3. Nominations shall be forwarded to the committee responsible, which may ask to hear the nominees.*

*Such hearings shall be open to all Members.*

- 4. A list of admissible nominations in alphabetical order shall then be submitted to the vote of Parliament.*

- 5. The vote shall be held by secret ballot on the basis of a majority of the votes cast.*

*If no candidate is elected after the first two ballots, only the two candidates obtaining the largest number of votes in the second ballot may continue to stand.*

*In the event of any tie the eldest candidate shall prevail.*

- 6. Before opening the vote, the President shall ensure that at least half of Parliament's component Members are present.*

- 7. The person appointed shall immediately be called upon to take an oath before the Court of Justice.*

8. *The Ombudsman shall exercise his duties until his successor takes office, except in the case of his death or dismissal."*

### **The 2005 election**

The European Parliament published a call for nominations in the Official Journal of 25 August 2004<sup>1</sup>, setting 30 September 2004 as the deadline for submission of nominations.

By letter of 22 October 2004, the President of the European Parliament informed the President of the Committee on Petitions that four applications had been received.

On 29 November 2004, the Committee on Petitions organised a public hearing of the two candidates whose applications had been declared admissible, namely: Mr P. Nikiforos DIAMANDOUROS and Mr Giuseppe FORTUNATO.

On 11 January 2005, Mr P. Nikiforos DIAMANDOUROS was duly elected European Ombudsman by the Members of the European Parliament in plenary session in Strasbourg on the first ballot by 564 votes out of 609 votes cast.

The decision of the European Parliament appointing Mr DIAMANDOUROS for the duration of the 2004-2009 parliamentary term was published in the Official Journal of 25 January 2005<sup>2</sup>.

Detailed information on the election of the European Ombudsman can be found on Parliament's website at:

[http://www.europarl.eu.int/comparl/peti/election2004/default\\_en.htm](http://www.europarl.eu.int/comparl/peti/election2004/default_en.htm)

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<sup>1</sup> OJ C 213, 25.8.2004, p. 9.

<sup>2</sup> OJ L 21, 25.1.2005, p. 8.



## HOW TO CONTACT THE EUROPEAN OMBUDSMAN

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