

Европейски омбудсман

El Defensor del Pueblo Europeo

Evropský veřejný ochránce práv

Den Europæiske Ombudsmand

Der Europäische Bürgerbeauftragte

Euroopa Ombudsman

Ο Ευρωπαίος Διαμεσολαβητής

e The European Ombudsman

Le Médiateur européen

An tOmbudsman Eorpach

Il Mediatore europeo

Eiropas ombuds

Europos ombudsmenas

Az Európai Ombudsman

L-Ombudsman Ewropew

De Europese Ombudsman

Europejski Rzecznik Praw Obywatelskich

O Provedor de Justiça Europeu

Ombudsmanul European

Európský ombudsman

Evropski varuh človekovih pravic

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Europeiska ombudsmannen

■ Annual Report

The European Ombudsman

2009

■ Annual Report

The European Ombudsman

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THE EUROPEAN OMBUDSMAN



P. NIKIFOROS DIAMANDOUROS

Mr Jerzy Buzek
President
European Parliament
Rue Wiertz
1047 Brussels
BELGIUM

Strasbourg, 19 April 2010

Mr President,

In accordance with Article 228(1) of the Treaty on the Functioning of the European Union 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 2009.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Nikiforos Diamandouros'.

P. Nikiforos DIAMANDOUROS

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Introduction



I AM delighted to present you with the *Annual Report 2009*, which records the Ombudsman's work for citizens, businesses, and organisations over the past year. I hope that it gives you a good overview of the progress we have made in promoting the highest standards of administration in the EU institutions. As always, we look forward to receiving your feedback.



An important year for ombudsmen

The year 2009 was the 200th anniversary of the ombudsman institution and colleagues from all over the world celebrated this event in Stockholm in June. From the perspective of the European Ombudsman, it saw the start of our fifteenth year of operation. It also saw the end of my first full mandate as Ombudsman. The European Parliament's decision on 20 January this year to re-elect me to a second full mandate constitutes, I believe, an endorsement of the work this office has been doing and encourages us to continue to strive for a more open, accountable, service-minded, and citizen-centred EU administration.

It is an exciting time to be leading this institution. One of the Ombudsman's main priorities over the next five years will be to help ensure that the EU delivers the benefits for citizens promised by the Treaty of Lisbon. Of particular importance is the Charter of Fundamental Rights of the EU, which is now legally binding. In this context, I will promote, in particular, the fundamental right to good administration, as laid down in Article 41 of the Charter. Already in December 2009, as part of our contribution to the public consultation on the reform of the EU's Financial Regulation, the Ombudsman stressed that the relevant rules should take account of Article 41 by providing guidance to officials as to how they should ensure both sound financial management and good administration. By way of example,

the Financial Regulation should, in exceptional cases, provide for *ex gratia* payments, as redress for serious inconvenience or severe distress caused by maladministration. The reform of the Financial Regulation offers an excellent opportunity to put the fundamental right to good administration into practice.

Given the high number of inquiries that the Ombudsman carries out each year into lack of transparency (36% of inquiries in 2009), I will also continue to insist on the fundamental right of access to documents, as provided for in Article 42 of the Charter and Article 15 of the Treaty on the Functioning of the European Union. And I will ensure that the right to address the Ombudsman and to petition Parliament (Articles 43 and 44 of the Charter respectively) are both known and properly used, so that citizens can best seek redress.

The Treaty of Lisbon also introduces a new form of public participation in the democratic life of the Union: the "citizens' initiative". This should make an important contribution to the empowerment of European citizens. Early in 2010, I responded to the public consultation on how the citizens' initiative should work in practice. It is important to try to anticipate questions that could arise in its operation, especially those that could result in complaints to the Ombudsman. By identifying such questions in advance and proposing effective answers, the Ombudsman aims to promote good

One of the Ombudsman's main priorities over the next five years will be to help ensure that the EU delivers the benefits for citizens promised by the Treaty of Lisbon.

administration by the European Commission and thereby contribute to the success of this valuable new instrument for citizens. I shall also aim to ensure that citizens, representative associations, and civil society benefit from the new provisions in the Treaty concerning consultation, dialogue, and the opportunity to make known and publicly exchange their views.

A good year in terms of results

A second priority for the Ombudsman will be strengthening the culture of service in the EU administration. It is obvious from their responses to my inquiries that the Union institutions, bodies, offices, and agencies already adhere to a high standard of administrative practice. In over half of the cases closed in 2009 (56%), the institution concerned accepted a friendly solution or settled the matter. This compares with 36% in 2008. A total of nine star cases, highlighted in this Report, serve as examples of best practice in reacting to complaints.

Four own-initiative inquiries were launched into systemic issues in the Commission, such as the timeliness of payments and access to documents in infringement cases. The Ombudsman also dealt with a range of cases on important points of principle, such as the need to document properly relevant meetings and reviews. These cases are also summarised in this Report.

While the Ombudsman only had to make critical remarks to the institutions in 35 cases, compared to 44 in 2008 and 55 in 2007, there is still room for further improvement. To that end, I will continue to follow up the institutions' responses to critical and further remarks by publishing an annual study on my website. The 2009 study revealed that, taking critical and further remarks together, the rate of satisfactory follow-up was 79%. The follow-up to further remarks was satisfactory in all cases, while the rate of satisfactory follow-up of critical remarks was significantly lower at 62%. This demonstrates that there is still important work to be done, by the Ombudsman and by the institutions themselves, in persuading officials that a defensive approach to the Ombudsman represents a missed opportunity for their institution and risks damaging the image of the European Union.

Improving the quality of administration for the benefit of citizens is the touchstone for all of the Ombudsman's actions. With regard to the work of my own office, I am happy to report that the time

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for the benefit of citizens is the touchstone
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taken to complete inquiries fell from an average of 13 months in 2008 to nine months in 2009. We aim to reduce even further the time taken to achieve results through inquiries.

A busy year communicating

The year 2009 began with the launch of the Ombudsman's new website, which contains an interactive guide to help identify the most appropriate body to turn to with complaints. The guide has been a great success, providing advice to more than 26 000 people during the year. The number of complaints to our office fell from 3 406 in 2008 to 3 098 in 2009 as more individuals began to find the right address the first time around. This is a source of great encouragement to me. To further ensure this, we stepped up co-operation during the year with other information and problem-solving networks, such as Europe Direct and SOLVIT.

We intensified our efforts to reach out to potential complainants, organising a range of events with NGOs, interest groups, businesses, and think tanks. These outreach activities, combined with the impressive results obtained for complainants, led to an 85% increase in media coverage of the Ombudsman's work. This enhanced coverage is key to raising awareness about the right to

complain and about the Ombudsman's role in holding the EU administration to account. The rise in the number of inquiries opened, from 293 to 335, based on complaints received in 2009 must also be partly attributed to these activities.

In almost 80% of cases registered, we were able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn. Over 55% of cases were within the competence of a member of the European Network of Ombudsmen, thereby confirming the need to further strengthen co-operation among the European, national, and regional ombudsmen and petitions committees in the Network. The Seventh Seminar of National Ombudsmen of EU Member States and candidate countries, which was held in Cyprus in April, offered us a good opportunity to do this.

One final important development in 2009 was the adoption of a mission statement for the institution. It reads as follows:

The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards of behaviour in the Union's institutions.

Beginning early in 2010, I intend to develop a strategy based on this mission to cover the whole five-year mandate of the Ombudsman.

I look forward to serving citizens on this basis in the years to come.

Strasbourg, 16 February 2010

A handwritten signature in dark ink, appearing to read 'P. Nikiforos Diamandouros', with a long horizontal line extending to the right.

P. Nikiforos DIAMANDOUROS

The background is a solid light beige color. On the left side, there is a large, white, abstract geometric shape. It consists of a vertical rectangular bar and a trapezoidal shape attached to its top-left side, extending towards the top-left corner of the page.

Executive Summary

THE fifteenth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2009. It is the seventh Annual Report to be presented by Mr P. Nikiforos DIAMANDOUROS, who began work as European Ombudsman on 1 April 2003.

■ Structure of the Report

The Report consists of five chapters. It starts with a personal introduction by the Ombudsman and is followed by this Executive Summary, which constitutes Chapter 1.

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

Chapter 3 gives an overview of the complaints dealt with in 2009, as well as an in-depth study of inquiries carried out. There is a section on star cases identified by the Ombudsman, as well as a thematic analysis covering the most significant findings of law and fact contained in the Ombudsman's decisions in 2009. The Chapter ends with a look at cases which the Ombudsman referred to other complaint-handling bodies.

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

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

■ The role of the European Ombudsman

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

The Ombudsman investigates complaints about maladministration in the activities of the Union institutions, bodies, offices, or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

activities of the Union institutions, bodies, offices, or agencies¹, with the exception of the Court of Justice of the European Union² acting in its judicial role. With the approval of the European Parliament, the Ombudsman has defined 'maladministration' in a way that requires respect for the rule of law, for principles of good administration, and for fundamental rights.

1. Article 228 of the Treaty on the Functioning of the European Union (TFEU) (previously Article 195 of the Treaty establishing the European Community) extends the Ombudsman's mandate from complaints concerning maladministration in the activities of "Community institutions or bodies" to "Union institutions, bodies, offices, or agencies". While the Ombudsman's Annual Report previously used the term "institutions and bodies", we now use, in appropriate places, the term "institutions" to refer to all the EU institutions, bodies, offices, and agencies.

2. The Lisbon Treaty changed the names of the Court of Justice of the European Communities and the Court of First Instance. They are now referred to, collectively, as the Court of Justice of the European Union and separately as the Court of Justice and the General Court respectively.

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

■ Complaints and inquiries

Overview of complaints examined

The Ombudsman registered 3 098 complaints in 2009, compared to 3 406 in 2008. Almost 60% of these complaints were submitted over the Internet, mostly using the electronic complaint form, which is available on the Ombudsman's website in 23 languages.

A total of 3 119 complaints were processed³, compared to 3 346 in 2008. Of all the complaints processed, 55% (1 704 complaints) were found to be within the competence of a member of the Euro-

In almost 80% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem.

pean Network of Ombudsmen, with 23% (727 complaints) found to be inside the European Ombudsman's mandate. A total of 11% gave rise to an inquiry. In almost 80% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem.

In total, the Ombudsman handled almost 5 000 complaints and information requests during the year in question.

Analysis of inquiries opened

A total of 335 new inquiries (up from 293 in 2008) were opened in 2009 on the basis of complaints. Of these, 84% were submitted by individual citizens, whereas 16% were submitted by companies and associations.

The Ombudsman also launched four inquiries on his own initiative, to tackle possible systemic problems concerning the European Commission.

As is the case each year, most inquiries opened by the Ombudsman in 2009 concerned the Commission (191 inquiries or 56% of the total). Given that the Commission is the main EU institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints. It should be noted, however, that the comparable figure for 2008 was 66% of the total. There were 38 inquiries (11%) concerning the European Parliament's administration, 30 (9%) concerning the European Personnel Selection Office (EPSO), 12 (4%) concerning the Council of the EU, and 9 (3%) concerning the Court of Justice of the European Union. With regard to the Court, it is important to mention that the Ombudsman can only open inquiries into its non-judicial work. Twenty three other EU institutions, bodies, offices, and agencies were the subject of a further 59 inquiries.

The main types of maladministration alleged in inquiries opened in 2009 were lack of transparency, including refusal of information (121 cases or 36% of the total), unfairness or abuse of power (48 cases, 14%), avoidable delay (45 cases, 13%), unsatisfactory procedures (44 cases, 13%), negligence (22 cases, 6%), failure to ensure fulfilment of obligations, that is, failure by the Commission to carry out its role as guardian of the Treaties vis-à-vis the Member States (21 cases, 6%), legal error (19 cases, 6%), and discrimination (17 cases, 5%).

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

Most of the inquiries were completed within one year (70%). Over half (55%) were completed within three months. On average, inquiries took nine months to complete.

The Ombudsman completed 318 inquiries in 2009 (compared to 355 in 2008). Of these, 311 were linked to complaints and seven were own-initiatives. Most of the inquiries were completed within one year (70%). Over half (55%) were completed within three months. On average, inquiries took nine months to complete.

Findings of the Ombudsman's inquiries

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 EU institutions 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. A positive outcome was readily achieved for the complainant in 179 cases closed in 2009 (56% of the total). These cases were either settled by the institution or a friendly solution was agreed. This compares to 129 cases in 2008, which itself was twice the number of such cases only two years previously, in 2006.

In 18% of cases (58), no maladministration was found. This is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution concerned of what it did, as well as the Ombudsman's view of the case.

The Ombudsman concluded that there was maladministration in 12% of cases (37), but was nevertheless able to obtain a positive outcome for the complainant in two of these cases through the acceptance of the draft recommendations that he made. No special report was submitted to the European Parliament during the year in question. In 35 cases, the inquiry was closed with a critical remark. A critical remark confirms to the complainant that his or her complaint was justified and indicates to the institution concerned what it has done wrong, so as to help it avoid maladministration in the future.

It is similarly with a view to improving the EU institutions' performance in the future that the Ombudsman has made increasing use of further remarks, when he identifies an opportunity to enhance the quality of the administration. The Ombudsman made further remarks in a total of 28 cases in 2009.

It is important for the institutions to follow up critical and further remarks from the Ombudsman and to take action to resolve outstanding problems. With this in mind, the Ombudsman published on his website, in 2009, a study of the follow-up undertaken by the institutions involved to all critical remarks and further remarks issued in 2008.

Star cases exemplifying best practice [→→→]

Nine cases closed in 2009 constitute illustrative examples of best practice and have been designated as star cases.

Nine cases closed in 2009 constitute illustrative examples of best practice and have been designated as star cases. They serve as a model for all EU institutions, bodies, offices, and agencies in

terms of how best to react to issues that the Ombudsman raises.

Two concern the **Commission's** handling of infringement cases in the area of air passenger rights (**2980/2008/GG**) and the environment (**791/2005/(IP)FOR**). In two additional cases, the Commission showed a constructive approach by agreeing (i) to cancel a recovery order in a staff case (**1908/2007/JF**) and (ii) to examine whether it could cancel a recovery order of EUR 500 000 in a contractual case (**2119/2007/ELB**).

In the area of transparency, the **European Anti-Fraud Office (OLAF)** agreed to release a long list of documents to two Belgian companies (in joined cases **723/2005/OV** and **790/2005/OV**), while the **European Personnel Selection Office (EPSO)** agreed to allow all candidates, and not just unsuccessful candidates, to have access to their test marks (**2346/2007/JMA**).

Finally, three executive agencies responded in an exemplary fashion to the Ombudsman's proposals: the **Executive Agency for Competitiveness and Innovation (1562/2008/BB)** and the **European Research Council Executive Agency (2003/2008/TS)** in recruitment cases, and the

Education, Audiovisual and Culture Executive Agency in a case concerning the rejection of a grant application (1537/2008/(TJ)GG).

Thematic analysis of inquiries closed

Decisions closing cases are normally published on the Ombudsman's website (<http://www.ombudsman.europa.eu>) in English and, if different, in the language of the complaint. A selected number of cases are made available on the Ombudsman's website in summary form in all 23 official EU languages. The summaries reflect the range of subjects and of EU institutions, bodies, offices, and agencies covered by the 318 decisions closing cases in 2009, as well as the different reasons for closing cases.

Section 3.5 of this Report analyses the most significant findings of law and fact contained in the Ombudsman's decisions in 2009. It is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around seven main categories⁴:

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

The first section of the thematic analysis reviews the Ombudsman's decisions in 2009 on complaints concerning (i) public access to documents, (ii) public access to information, and (iii) the protection of personal data and the right of data subjects to have access to their data. Issues examined range from delays in registering requests and giving access to documents to diverging interpretations of the exceptions provided for in Regulation 1049/2001 on public access to documents⁵. Cases in which the protection of personal data was concerned are also examined.

The second category of cases concerns complaints against the Commission in its role as guardian of the Treaties. The Ombudsman can deal with both procedural and substantive aspects of the Commission's treatment of such cases. Among the allegations examined in 2009 were failure to register complaints, delays in taking decisions and keeping complainants informed, and disagreements over the Commission's decisions not to pursue particular complaints.

The third section of the thematic analysis deals with complaints about the award, or non-award, of tenders and grants. The Ombudsman's review in such cases is limited to checking whether the rules governing the procedure are complied with, the facts are correct, and no manifest error of assessment or misuse of powers has occurred. He may also review if the institutions have complied with their duty to state reasons and if these are coherent and reasonable. In 2009, the Ombudsman examined issues of unfair treatment, wrong or unfair exclusion of tenders or bids, and delays.

The fourth category looks at cases in which complainants contest the institutions' failure to fulfil obligations arising from contracts. With regard to contractual disputes, the Ombudsman considers it justified to limit his inquiry to examining whether the Union institution involved has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. In 2009, the Ombudsman examined problems relating to sub-contractors, questions of eligible costs, and allegations of unfair treatment.

The fifth category looks at complaints concerning the administrative activities of the institutions, notably, in terms of the application of the Staff Regulations for officials and other relevant

4. On the basis of inquiries completed in 2009, the breakdown in terms of the main subject matter of inquiries is as follows: transparency (31%), administration and staff regulations (16%), competitions and selection procedures (16%), institutional and policy matters (14%), the Commission as guardian of the Treaties (9%), execution of contracts (8%), and award of tenders or grants (6%).

5. 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.

texts. The nature of these cases varies considerably and they concern almost all institutions, bodies, offices, and agencies.

The sixth section of the thematic analysis examines complaints relating to open competitions and other selection procedures. Most of these cases concern EPSO and relate to allegations concerning lack of transparency, discrimination, and delay.

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

■ Relations with institutions, ombudsmen, and other stakeholders

Relations with EU institutions

Constructive relations with the EU institutions are hugely important for the European Ombudsman to ensure the highest possible standards of administration. The Ombudsman meets regularly with Members and officials of the EU institutions, bodies, offices, and agencies to discuss ways of raising the quality of the administration and to ensure appropriate follow-up to his remarks, recommendations, and reports.

In 2009, Mr DIAMANDOUROS addressed the Directors-General of the European Commission and held a range of other meetings with Commission representatives. He continued to work closely with SOLVIT, the network aimed at resolving internal market complaints, and stepped up co-operation with Europe Direct, which provides answers to questions from individuals about the EU.

In terms of relations with Parliament, of particular importance in 2009 were meetings with representatives of Parliament linked to the ongoing legislative process to revise Regulation 1049/2001 on public access to documents. The Ombudsman also met the new Chair of the Committee on Petitions, Ms Erminia MAZZONI MEP, on 2 September 2009 and presented his *Annual Report 2008* to the Committee on 14 September. The plenary debate on the Ombudsman's activities in 2008, based on the report drafted by Ms Chrysoula PALIADELI MEP, took place on 12 November.

Further highlights from the year in question include presentations to the Reflection Group on the Future of Europe and to the Council's Working Group on Information. The Ombudsman also

Further highlights from the year in question include presentations to the Reflection Group on the Future of Europe and to the Council's Working Group on Information.

addressed the European Economic and Social Committee, took part in the European Investment Bank's public consultation on its complaint and transparency policies, and enhanced co-operation with the European Personnel Selection Office.



The Ombudsman continued to reach out to the EU institutions, bodies, offices, and agencies in 2009. In addition to his meetings with representatives from the Parliament, Commission and Council, he also met with Members of the Court of Justice of the EU and the European Court of Auditors, the Director of the European Anti-Fraud Office, and the Assistant European Data Protection Supervisor. The Ombudsman is pictured here with the President of the Court of Auditors, Mr Vítor DA SILVA CALDEIRA.

Relations with ombudsmen and similar bodies

Many complainants turn to the European Ombudsman when they have problems with a national, regional, or local administration. The European Ombudsman co-operates closely with his counter-

The European Ombudsman co-operates closely with his counterparts in the Member States to make sure that citizens' complaints about EU law are dealt with promptly and effectively.

parts in the Member States to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This co-operation takes place for the most part under the aegis of the European Network of Ombudsmen. The Network now comprises 94 offices in 32 countries, covering the national and regional levels

within the Union, as well as the national level in the candidate countries for EU membership, plus Norway, Iceland, and, most recently, Switzerland. The European Parliament's Committee on Petitions is also a full member of the Network.

One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. During 2009, in 977 cases, the complaint was transferred to a member of the European Network of Ombudsmen or the complainant was advised to contact a member of the Network.

Section 4.2 of this Report details the activities of the Network in 2009, the high point of which was the Seventh Seminar of National Ombudsmen of EU Member States and candidate countries, which took place in Paphos, Cyprus, in April. The Seminar was organised jointly by the European Ombudsman and the Commissioner for Administration (Ombudsman) of Cyprus, Ms Eliana NICOLAOU. National and regional ombudsmen offices from 29 countries were represented at the Seminar, which focused on the theme of migration.

Information visits co-organised with ombudsmen in the Member States and candidate countries have proved highly effective in terms of developing the Network. In the course of 2009, the European Ombudsman visited his ombudsman colleagues in Slovakia (May), the Czech Republic (May), Finland (October), and Estonia (October).



During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. Among the major events that Mr DIAMANDOUROS attended in 2009 was the Ninth International Ombudsman Institute (IOI) World Conference organised in June in Stockholm, where the bicentennial of the Swedish Parliamentary Ombudsman was also celebrated. The conference to mark this important event traced the evolution of the ombudsman institution from its Swedish origins to its various present day forms.

The Network serves as a useful mechanism for exchanging information on EU law and best practice through the aforementioned seminars, a biannual Newsletter, an electronic discussion and document-sharing forum, and an electronic daily news service. In addition to these regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. During 2009, one new such query was received.

Relations with other stakeholders

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

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

Section 4.3 of this Report gives an overview of the myriad ways in which the Ombudsman sought to raise awareness about the right to complain in 2009. Around 145 presentations were made by the Ombudsman and his staff to groups interested in his work. The Ombudsman's main media activities in 2009 included press conferences in Brussels and as part of the aforementioned

information visits. Twenty one press releases were issued during the year. Among the issues covered were the revision of the EU rules on public access to documents, air passenger rights, late payment by the Commission, the financing of Parliament buildings, and a complaint submitted by micro-processor producer, Intel.

On 5 January 2009, the European Ombudsman launched his new website. Of particular interest on the new website is the interactive guide, which aims to help individuals identify the most appropriate body to turn to with their complaint. In 2009, more than 26 000 people sought and received advice from the Ombudsman through the interactive guide. The website was regularly updated throughout the year with decisions, case summaries, press releases, details of upcoming events, and publications. From 1 January to 31 December 2009, it received around 340 000 unique visitors, who, combined, viewed over 4 million pages. The greatest number of visitors came from Spain, followed by Italy, Germany, France, and Belgium.

Of particular interest in terms of publications in 2009 were the new style *Annual Report* and the new summary document, *Overview 2008*.



To help raise awareness about the new interactive guide on the European Ombudsman's website, and, more generally, about the full range of problem-solving mechanisms available to individuals, companies, and associations, the Ombudsman organised a seminar in Brussels in March 2009. The services provided by the European Ombudsman, the European Parliament's Committee on Petitions, SOLVIT, and the European Citizen Action Service (ECAS) were presented at the seminar.

■ Resources

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

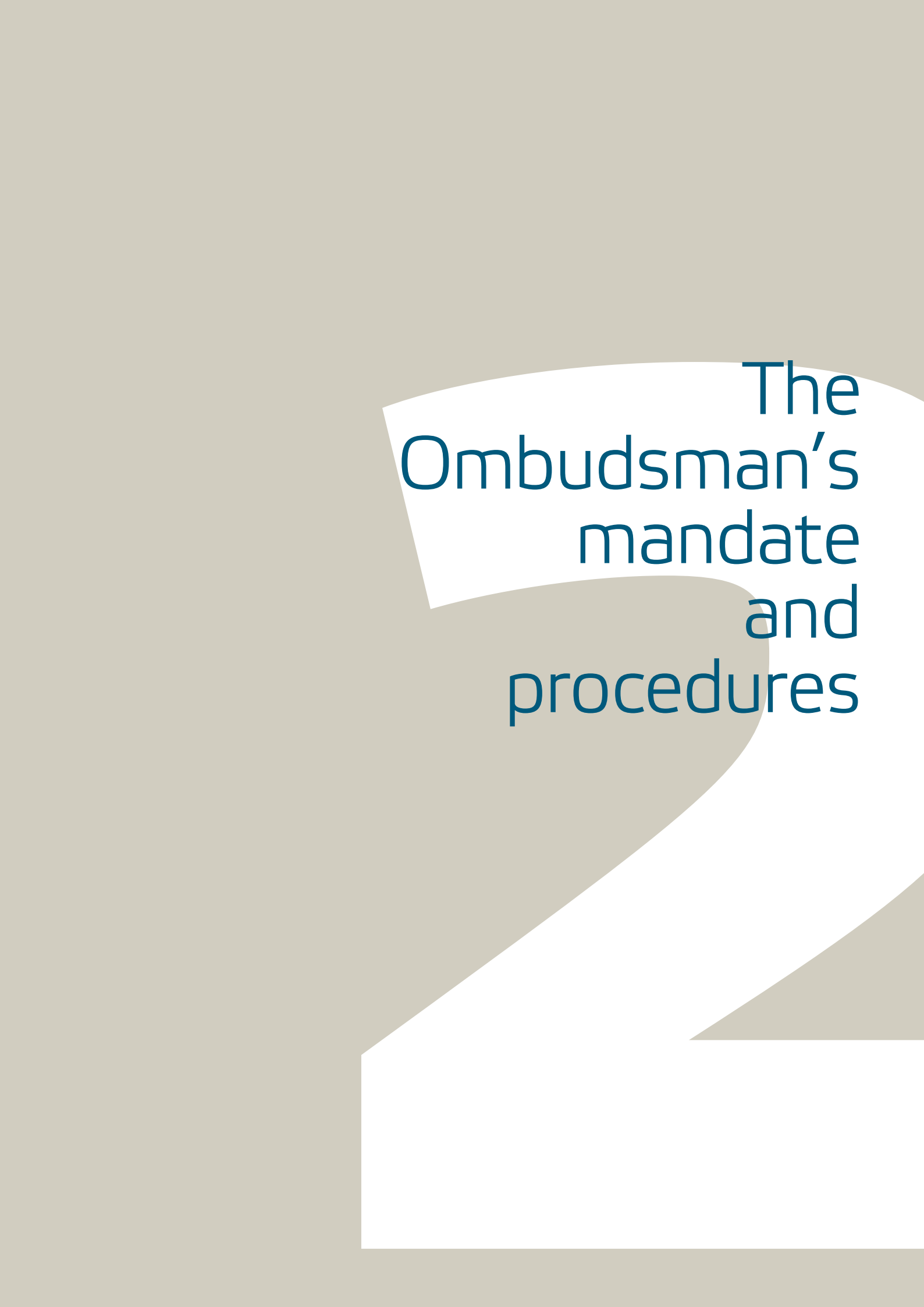
The Section also contains information about the Ombudsman's staff retreats and staff meetings. The staff retreats form an integral part of the Ombudsman's strategic planning, most notably by

The 2009 staff retreat took place from 11 to 13 February to discuss the theme "Working together".

providing useful guidance for policy-making and the preparation of the Annual Management Plan (AMP). They form part of an annual cycle of events that provide staff and trainees with an

opportunity to share views on subjects directly linked to the Ombudsman's work. The 2009 staff retreat took place from 11 to 13 February to discuss the theme "Working together". Like its predecessors, the third retreat was regarded by staff as a very positive experience.

The establishment plan of the Ombudsman showed a total of 63 posts in 2009. The budgeted appropriations in 2009 amounted to EUR 8 906 880.



The Ombudsman's mandate and procedures

THIS Chapter contains a detailed explanation of the European Ombudsman's role, covering the legal basis of his work, a description of his mandate, and information regarding admissibility and grounds for opening inquiries. It includes examples of cases dealt with in 2009 to illustrate these elements and highlights specific developments, such as the entry into force of the Treaty of Lisbon and the implications for the Ombudsman's work. The Chapter ends with an overview of the Ombudsman's procedures for handling complaints and conducting inquiries, including the increasing use of informal procedures aimed at the prompt resolution of complaints.

2.1 The right to complain to the European Ombudsman

Article 24 of the Treaty on the Functioning of the European Union (TFEU) – ex Article 21 of the EC Treaty – provides for the right to complain to the European Ombudsman as one of the rights of citi-

Possible instances of maladministration come to the Ombudsman's attention mainly through complaints, although the Ombudsman also conducts inquiries on his own initiative.

zenship of the European Union. This right is also included in the Charter of Fundamental Rights of the EU¹ (Article 43). Possible instances of maladministration come to the Ombudsman's attention mainly through complaints, although the Ombudsman also conducts inquiries on his own initiative (see next section).

2.2 The legal basis of the Ombudsman's work

Changes to the legal basis resulting from the Treaty of Lisbon

The Treaty of Lisbon entered into force on 1 December 2009. Article 195 of the EC Treaty on the Ombudsman became Article 228 TFEU. The Ombudsman's mandate was broadened from the "Community institutions or bodies" to the "Union institutions, bodies, offices, or agencies". This has two main implications:

1. Since the Treaty of Lisbon abolishes the pillar structure of the EU, the former second pillar (Common Foreign and Security Policy) now falls within the Ombudsman's mandate.
2. According to Article 13 of the Treaty on European Union (TEU), the European Council is an institution. It is therefore now subject to the Ombudsman's mandate.

Two additional changes should also be mentioned. Article 228 (1) TFEU specifies that the Ombudsman is "elected" rather than "appointed" by the European Parliament, while Article 228 (4) TFEU provides for the Statute of the Ombudsman to be a regulation of the European Parliament, rather than a decision. ■

The Ombudsman's work is governed by Article 228 TFEU (ex Article 195 of the EC Treaty), as well as the Statute of the Ombudsman and the Implementing Provisions adopted by the Ombudsman under

1. The Charter was originally proclaimed in December 2000 and signed and proclaimed again on 12 December 2007 prior to the signing of the Treaty of Lisbon on 13 December 2007, OJ 2007 C 303, p. 1. The Treaty of Lisbon gives the Charter the same legal value as the Treaties.

Article 14 of the Statute. In June 2008, the European Parliament adopted a decision² revising the Ombudsman's Statute, with effect from 31 July 2008. On 3 December 2008, the Ombudsman revised his Implementing Provisions in order to reflect the changes to the Statute and to take account of experience gained since 2004, when the provisions were last changed. The new Implementing Provisions came into force on 1 January 2009. The Statute and the Implementing Provisions are available on the Ombudsman's website (<http://www.ombudsman.europa.eu>). The Implementing Provisions are also available in hard copy from the Ombudsman's Office.

■ Complaints and own-initiative inquiries

Article 228 TFEU empowers the Ombudsman to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State. The Ombudsman also has the power to open inquiries on his own initiative. Using the own-initiative power, the Ombudsman may investigate a possible case of maladministration brought to his attention by a person who is not entitled to make a complaint. The Ombudsman's practice in such cases is to give the person concerned the same procedural opportunities during the inquiry as if the matter had been dealt with as a complaint. The Ombudsman normally approaches on a case-by-case basis the question of whether to use the own-initiative power in this way. No such own-initiative inquiries were opened in 2009.

Memorandum of Understanding with the European Investment Bank (EIB)

In his Annual Report for 2006, the Ombudsman declared that, subject to possible future resource constraints, he envisaged using the own-initiative power whenever the only reason not to inquire into a complaint alleging maladministration by the EIB in its lending activities outside the EU (external lending) is that the complainant is not a citizen or resident of the Union. In its Resolution of 25 October 2007, the European Parliament welcomed the Ombudsman's declaration of intent and invited him to consider concluding a Memorandum of Understanding (MoU) with the EIB.

The MoU³ was signed by the Ombudsman and the EIB President on 9 July 2008. The purpose of the agreement is to improve stakeholders' protection from any possible maladministration as regards the EIB's activities. It foresees that stakeholder protection will be extended to those who are not citizens or residents of the EU or who do not have a registered office in the EU. ■

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 four occasions in 2009, all concerning the European Commission, including the following:

Citizens' requests for access to infringement documents

The Ombudsman launched and closed an own-initiative inquiry concerning the Commission's rules for handling citizens' requests for access to documents related to infringement procedures. The aim was to ensure that (i) citizens know how to obtain access to documents relating to infringements and (ii) if access is refused, they can find out whether it is the Commission or a Member State which is responsible for the refusal, and whether the refusal is based on national or EU law. During the inquiry, the Ombudsman also

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

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

invited Member States to provide comments. He closed the inquiry with a finding of no maladministration, encouraging, however, the Commission to inform citizens that they can gain access to such documents by applying either to the Commission, or to the authorities of the Member State concerned, or both. Furthermore, citizens could be informed that, if they submit their request for access to Member State authorities, it is national law that applies. The Commission could include such information on its excellent and citizen-friendly website concerning infringements.

OI/2/2009/MHZ ■

2.3 The Ombudsman's mandate

Article 228 TFEU empowers the Ombudsman to receive complaints concerning instances of maladministration in the activities of Union institutions, bodies, offices, and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. A complaint is therefore outside the mandate if it:

- (i) is not against a Union institution, body, office, or agency;
- (ii) is against the Court of Justice, the General Court, or the Civil Service Tribunal acting in their judicial role; or
- (iii) does not concern a possible instance of maladministration.

Each of these items is further discussed below.

■ Union institutions, bodies, offices, and agencies

The European Ombudsman's mandate covers the Union institutions, bodies, offices, and agencies. The institutions are listed in Article 13 TEU. According to this Article, the European Council is

The European Ombudsman's mandate covers the Union institutions, bodies, offices, and agencies.

now an institution and therefore subject to the Ombudsman's mandate.

There is no definition or authoritative list of Union bodies, offices, and agencies. The term includes bodies established by the Treaties, such as the European Economic and Social Committee and the European Central Bank, as well as bodies set up by legislation under the Treaties, including agencies such as the European Environment Agency and the European Agency for the Management of Operational Co-operation at the External Borders (Frontex). Since the Treaty of Lisbon abolished the pillar structure of the EU, possible maladministration in the former second pillar (Common Foreign and Security Policy) now falls within the Ombudsman's mandate.

Complaints against public authorities of the Member States are not within the European Ombudsman's mandate, even if they concern matters falling within the scope of EU law. Many such complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen (see below section 3.6).

Complaint that was not against an EU institution, body, office, or agency

The complainant asserted that the Greek authorities had required him to submit a disproportionate number of certificates and documents in order to recognise his (German) diploma. He also alleged that the authorities did not comply with the deadline of four months to recognise his diploma as required by Directive 2005/36/EC. Because the complaint was against the Greek authorities and not a Union institution, body, office, or agency, it was outside the European Ombudsman's mandate.

The complainant had earlier approached the Greek Ombudsman about the matter, and the latter had advised him to complain to the European Commission. The European

Ombudsman therefore provided the complainant with information about how to submit an infringement complaint to the Commission.

2769/2009/BEH (Confidential) ■

■ The courts acting in their judicial role

The Ombudsman cannot investigate complaints against the Court of Justice, the General Court, or the Civil Service Tribunal acting in their judicial role. The following case helps to illustrate this point.

Complaint against the Court of Justice acting in its judicial role

A British citizen turned to the Ombudsman claiming that the Court of Justice had refused to consider questions of European law, which he had addressed to it. He claimed that the Court's refusal to answer his questions was abuse of power and that it should have referred them for a judicial decision by its judges.

Before turning to the Ombudsman, the complainant asked the Court whether its refusal to consider questions of European law on purely procedural grounds contravened the Charter of Fundamental Rights. In reply, the Court said that it had nothing to add to its previous letter to the complainant.

The Ombudsman informed the complainant that the complaint was outside the mandate because it was made against the Court of Justice acting in its judicial role.

634/2009/BU ■

■ 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. In this regard, it is important to mention that the Charter of Fundamental Rights, which is now legally binding, includes the right to good administration as a fundamental right of Union citizenship (Article 41).

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices, and agencies of the Union.
2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language. ■

The legally binding nature of the Charter and the resulting possibility of judicial protection of individuals are likely to increase the impact of the right to good administration. The Ombudsman's efforts to promote good administration in the public interest, as well as in seeking non-judicial solutions to the problems of individuals, are also likely to be strengthened.

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.

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.

It is important to note, however, that the definition does not limit maladministration to cases where the rule or principle that is being violated is 'legally' binding. The principles of 'good administration' go further than the law, requiring the EU institutions not only to respect their legal obligations, but also to be service-minded and to ensure that members of the public are properly treated and enjoy their rights fully. Thus while illegality necessarily implies maladministration, maladministration does not automatically entail illegality. Findings of maladministration by the Ombudsman do not therefore automatically imply that there is illegal behaviour that could be sanctioned by a court⁴.

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

A complaint which did not concern maladministration

The complainant had been a long distance lorry driver for 13 years. He alleged that, following the entry into force of European rules on the organisation of working time relating to road transport activities, his working conditions had deteriorated significantly. The complainant claimed, in particular, that the imposition of maximum working hours per week and the obligation to drive home every two weeks reduced his income and leisure time and increased his expenditure.

As the complaint did not concern maladministration, the complainant was advised to consider petitioning the Parliament.

2543/2009/FS ■

■ Culture of service

It is important to recognise that a culture of service to citizens forms an integral part of good administration. It should not be confused with a culture of blame that encourages defensiveness. (In this context, it is worth noting that the Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure for officials.)

The Ombudsman's strategy for promoting a service culture includes not only various proactive initiatives, but extends also to the handling of complaints. An important part of a service culture is the need to acknowledge mistakes when they occur and to put matters right if possible. A prompt apology may be all that is needed to satisfy the complainant, or at least to avoid the need for the Ombudsman to make any formal criticism of the institution concerned.

In more complex cases in which the Ombudsman makes a preliminary finding of maladministration, he tries, if possible, to promote a 'friendly solution' that will be acceptable both to the complainant and to the institution concerned. It is important to note, however, that the relevant

4. See, in this context, the judgments of the General Court of 28 October 2004 in joined cases T-219/02 and T-337/02, *Herrera v Commission*, paragraph 101, and of 4 October 2006 in case T-193/04 R, *Hans-Martin Tillack v Commission*, paragraph 128.

provisions of the Statute (Article 3.5⁵) and the Implementing Provisions (Article 6.1⁶) apply only if there appears to be maladministration and if it appears possible that it can be eliminated.

■ The European Code of Good Administrative Behaviour

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

The Ombudsman very much welcomes the decision of the European Economic and Social Committee in July 2009 to adopt the European Code of Good Administrative Behaviour (see section 4.1 below).

2.4 Admissibility and grounds for inquiries

Before the Ombudsman can open an inquiry, a complaint must meet further criteria of admissibility. These criteria, as set out in the relevant article of the Statute, specify that:

1. the author and the object of the complaint must be identified (Article 2(3));
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)); and
5. in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Article 2(8)).

Complaint in which appropriate administrative approaches were not made

A German citizen who sought access to Council documents complained to the Ombudsman that the Council replied to him in English although his request was in German. He also said that the Council's justification for extending the time-limit to reply by 15 working days was not in accordance with Regulation 1049/2001 on public access to documents. The complainant forwarded his letter of complaint to the Council, which responded by sending him a translation into German of the reply it had sent him earlier. He withdrew his complaint as regards language but maintained the second allegation.

The fact that the complainant approached the Council and the Ombudsman at the same time (19 October 2009) made his complaint to the Ombudsman inadmissible. The Ombudsman stated that the Council needs a reasonable period of time to deal with the issue the complainant raised. He concluded that if the Council were to fail to provide a satisfactory answer by the second week of November 2009, then the complaint could be renewed.

2596/2009/CH ■

5. "As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complainant."

6. "If the Ombudsman finds maladministration, as far as possible he co-operates with the institution concerned in seeking a friendly solution to eliminate it and to satisfy the complainant."

Article 228 TFEU provides for the Ombudsman to “conduct inquiries for which he finds grounds”. To avoid raising unjustified expectations among complainants and to ensure the best use of resources,

Of the admissible cases dealt with in 2009, 33% were considered not to provide grounds for an inquiry.

all admissible complaints are carefully studied to check if there is a reasonable prospect that an inquiry will lead to a useful result. If not, the Ombudsman closes the case as not providing sufficient

grounds for an inquiry. The Ombudsman also takes the view that, if a complaint has already been dealt with as a petition by the Committee on Petitions of the European Parliament, there are normally no grounds for an inquiry by the Ombudsman, unless new evidence is presented. Of the admissible cases dealt with in 2009, 33% were considered not to provide grounds for an inquiry. When the Ombudsman considers that there are no grounds for opening an inquiry, he informs the complainant and, in certain cases, sends an anonymised version of this decision to the institution concerned.

2.5 The Ombudsman's procedures

All complaints sent to the Ombudsman are registered and acknowledged, normally within one week of receipt. The acknowledgement informs the complainant of the procedure to be followed

All complaints sent to the Ombudsman are registered and acknowledged, normally within one week of receipt.

and includes a reference number, as well as the name and telephone number of the person who is dealing with the complaint.

The complaint is analysed to determine whether an inquiry should be opened and the complainant is informed of the results of the analysis, normally within one month. If no inquiry is opened, the complainant is informed of the reason. Whenever possible, the complaint is transferred, or the complainant is given appropriate advice about a competent body to which he or she could turn.

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

■ Simplified inquiry procedures

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

During 2009, 114 cases were settled after the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence (see section 2.9 of the *Annual Report 1998* for details of the procedure). A simplified procedure is also used in some other cases, for example the following:

Commission settles overdue allowance and replies to request for information

On noticing that the child allowance that the Commission had paid her over a period of three months was too low, an individual requested information on the amounts of allowance that the Commission should pay for each of her children. She then alleged to the Ombudsman that the Commission had failed to reply to her request. She claimed that the Commission should pay her the overdue allowance.

Applying the simplified procedure, the Ombudsman's services contacted the Commission and asked it to settle the issue. The Commission responded positively and decided to pay the complainant EUR 2 400, i.e., the overdue allowance. It also replied in detail to her request for information on the amounts of allowance per child. The complainant thanked the Ombudsman for his successful and prompt intervention.

2248/2009/MF ■

■ Starting an inquiry

Should the Ombudsman decide to open a written inquiry, the first step is to forward the complaint to the institution concerned and request that it send an opinion to the Ombudsman, normally within three calendar months. The European Parliament and Commission agreed in 2004 to accept a shorter time limit of two months for complaints concerning refusal of access to documents.

■ Fair procedure

The principle of fair procedure requires that the Ombudsman's decision on a complaint must not take into account material which the complainant or the EU institution chooses to send to the Ombudsman, unless the other party has had the opportunity to see and respond to that material.

The Ombudsman therefore sends the institution's opinion to the complainant with an invitation to submit observations. The same procedure is followed if further inquiries into the complaint need to be conducted.

Neither the Treaty nor the Statute provides for appeal or other remedies against the Ombudsman's decisions concerning the handling or outcome of a complaint. However, like all other EU institutions, the Ombudsman is subject to actions for damages based on Article 340 TFEU. It is possible, in principle, to bring such an action in the General Court based on the Ombudsman's alleged mis-handling of a complaint⁷.

■ Inspection of the files and hearing of witnesses

Article 3(2) of the Ombudsman's Statute requires the EU institutions to supply the Ombudsman with any information he has requested from them and to give him access to the files concerned. Following the 2008 revision of the Statute, they can no longer refuse to disclose documents on "duly substantiated grounds of secrecy".

The Ombudsman's power to inspect files allows him to verify the completeness and accuracy of the information supplied by the EU institution, body, office, or agency concerned. It is therefore an

The Ombudsman's power to inspect files allows him to verify the completeness and accuracy of the information supplied by the EU institution, body, office, or agency concerned.

important guarantee to the complainant and to the public that the Ombudsman can conduct a thorough and complete investigation. During 2009, the Ombudsman's power to inspect the institution's files was used in 23 cases.

Article 3(2) of the Statute also requires officials and other servants of the EU institutions to testify at the request of the Ombudsman. Again, following the 2008 Statute revision, EU officials who give evidence to the Ombudsman are no longer required to speak "on behalf of and in accordance with instructions from their administrations". They continue, however, to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy. The Ombudsman's power to hear witnesses was not used in 2009.

The requirement for the Ombudsman to maintain the confidentiality of documents and information has been clarified and strengthened by the 2008 Statute revision. As amended, the Statute provides that the Ombudsman's access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation 1049/2001⁸, shall be subject to compliance with the rules on security of the EU institution concerned. The institutions supplying such classified information or documents shall inform the Ombudsman of such classification. Moreover, the Ombudsman shall have agreed in advance with the relevant institution the conditions for

7. See, for example, case T-412/05 *M v Ombudsman* [2008] ECR II-197.

8. 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.

treatment of classified information or documents and other information covered by the obligation of professional secrecy.

The year 2009 saw an initial difference of view between the Ombudsman and the Council with regard to the latter's application of the Ombudsman's Statute. This concerned, specifically, the manner in which an inspection of *EU-restreint* documents held by the Council would be carried out. With a view to resolving the issue, the Ombudsman participated in a meeting of the Council's Working Group on Information on 14 October 2009. The meeting was extremely useful and led to a speedy and mutually satisfactory resolution of the issue.

■ Open procedure

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

Article 13 of the Implementing Provisions provides for the complainant to have access to the Ombudsman's file on his or her complaint. Article 14 provides for public access to documents held by the Ombudsman. The Ombudsman's Decision of 3 December 2008 amending the Implementing Provisions, referred to in section 2.2 above, includes changes to Articles 13 and 14, which are designed to bring the Ombudsman's practices in line with the realities created by the amendment of his Statute.

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Complaints and inquiries

CHAPTER 3 gives an overview of the complaints and inquiries dealt with in 2009. It begins with a look at complaints examined. It then gives an overview of the work on inquiries, including the results obtained and examples of cases. A section on star cases identified by the Ombudsman is followed by a thematic analysis, covering the most significant findings of law and fact contained in the Ombudsman's decisions in 2009. The Chapter ends with a look at complaints that the Ombudsman referred to other complaint-handling bodies.

3.1 Overview of complaints examined

The Ombudsman registered¹ 3 098 complaints in 2009, compared to 3 406 in 2008. A total of 3 119 complaints were processed², compared to 3 346 in 2008. Of all the complaints processed, 55% (1 704 complaints) were found to be within the competence of a member of the European Network of Ombudsmen, with 23% (727 complaints) found to be inside the European Ombudsman's mandate. A study of the complaints dealt with by members of the Network other than the European Ombudsman can be found at the end of this Chapter.

The European Ombudsman opened a total of 335 inquiries on the basis of complaints, while an additional four inquiries were launched on the Ombudsman's own-initiative (this compares with 293 and three, respectively, in 2008).

Table 3.1: Cases dealt with during 2009

Complaints registered in 2009	3 098
Complaints processed in 2009	3 119
Complaints within the competence of a member of the European Network of Ombudsmen	1 704
Complaints inside the mandate of the European Ombudsman	727
Of which:	230 inadmissible 162 admissible but no grounds for opening an inquiry 335 inquiries opened on the basis of complaints
Inquiries opened on the basis of complaints	335
Own-initiative inquiries opened	4
Inquiries closed	318
Of which:	182 from 2009 (57%) 80 from 2008 (25%) 56 from previous years (18%)

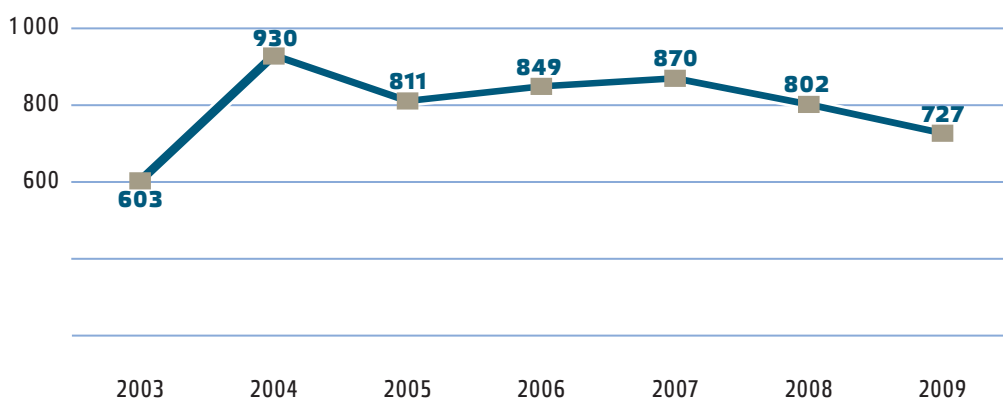
1. The European Ombudsman's Annual Report makes use of the statistical category "complaints registered" instead of "complaints received", to distinguish between complaints actually registered during a given calendar year and those received during the same period but registered in the following year.

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

The Ombudsman closed 318 inquiries in 2009 (compared to 355 in 2008). Out of this total, 182 had been registered in 2009, while 80 dated from 2008 and 56 from previous years.

As Figure 3.1 reveals³, the number of complaints inside the Ombudsman's mandate over the past six years has gone from a low of 603 in 2003 to 727 in 2009. It peaked in 2004 at 930, with the second highest level reached in 2007 at 870.

Figure 3.1: Number of complaints inside the mandate 2003–2009



As Figure 3.2 shows⁴, the number of complaints outside the Ombudsman's mandate has fallen in 2009 to 2 392, the lowest figure recorded since 2003, when it was 1 768. The Ombudsman will continue his efforts to reduce the number of complaints outside the mandate, by providing clear information about what he can and cannot do, and helping guide complainants to the right address first time around.

Figure 3.2: Number of complaints outside the mandate 2003–2009

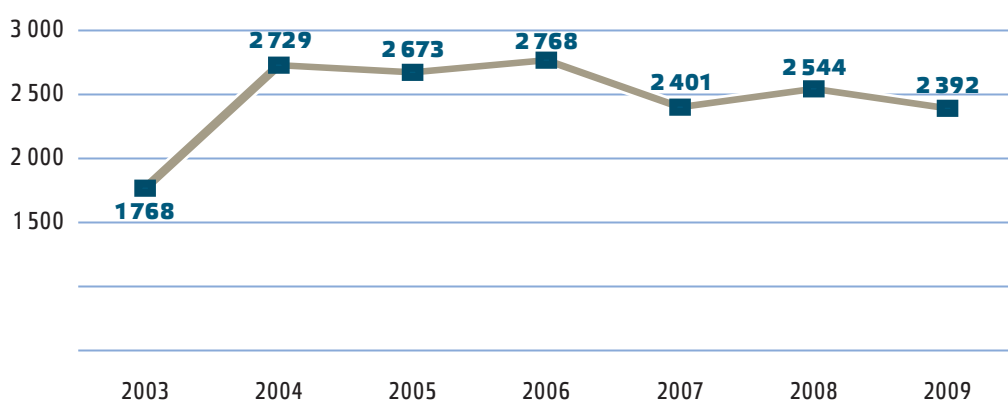


Table 3.2 gives an overview of the geographical origin of complaints registered in 2009. Germany, the EU's most populous country, submitted the greatest number of complaints, followed by Spain, Poland, and France. However, relative to the size of their population, most complaints came from Luxembourg, Malta, Cyprus, and Belgium.

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

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

Table 3.2: Geographical origin of complaints registered in 2009

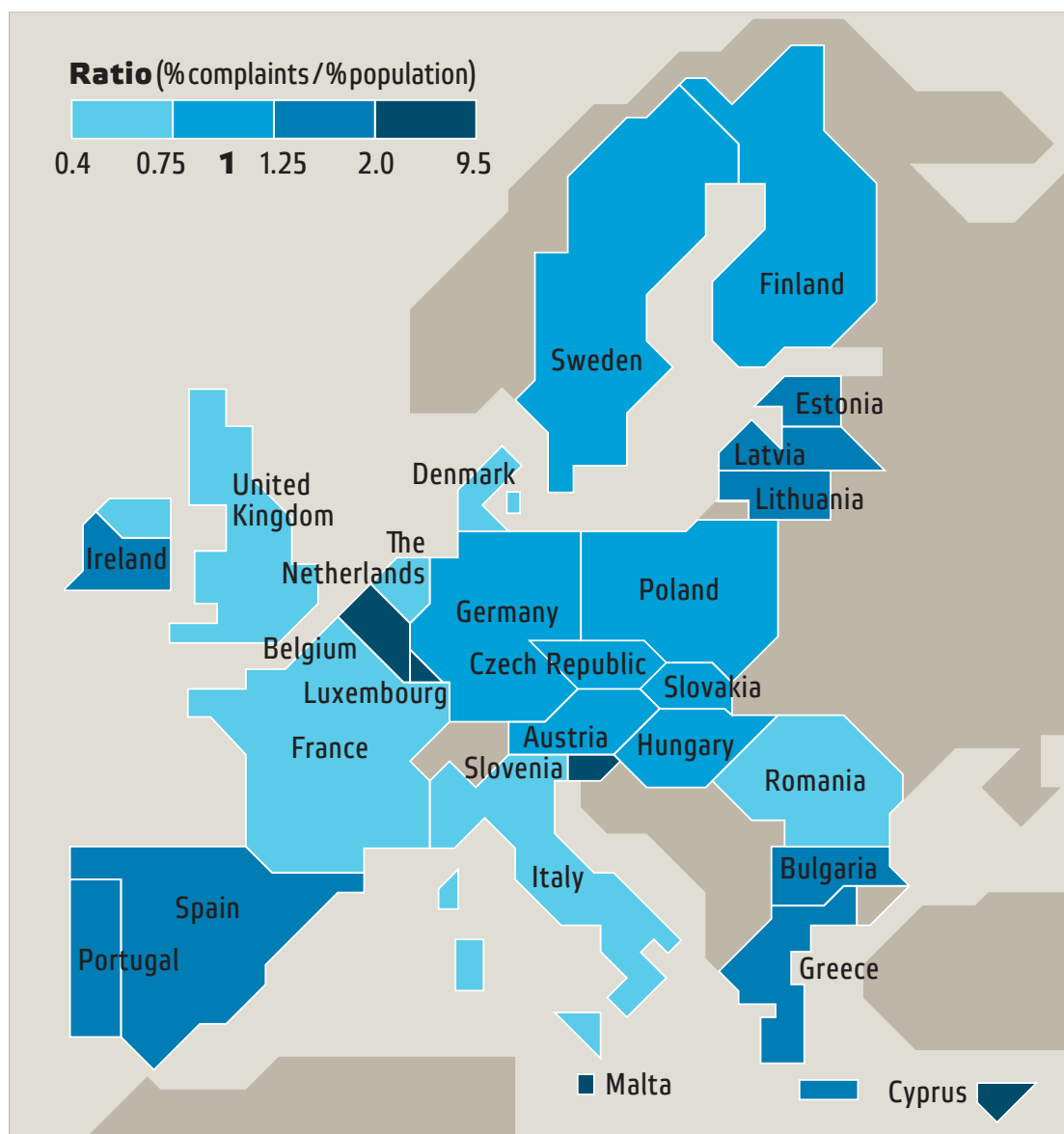
Country	Number of Complaints	% of Complaints	% of EU Population	Ratio
Luxembourg	29	0.9	0.1	9.4
Malta	25	0.8	0.1	8.1
Cyprus	24	0.8	0.2	3.9
Belgium	207	6.7	2.1	3.2
Slovenia	29	0.9	0.4	2.3
Estonia	17	0.5	0.3	1.8
Portugal	102	3.3	2.1	1.6
Bulgaria	77	2.5	1.6	1.6
Ireland	40	1.3	0.9	1.4
Spain	389	12.6	9.0	1.4
Lithuania	30	1.0	0.7	1.4
Latvia	20	0.6	0.5	1.3
Greece	91	2.9	2.3	1.3
Finland	42	1.4	1.1	1.2
Austria	62	2.0	1.7	1.2
Poland	235	7.6	7.7	1.0
Czech Republic	59	1.9	2.1	0.9
Hungary	55	1.8	2.0	0.9
Germany	413	13.3	16.6	0.8
Slovakia	27	0.9	1.1	0.8
Sweden	42	1.4	1.8	0.8
Denmark	23	0.7	1.1	0.7
Romania	81	2.6	4.4	0.6
France	235	7.6	12.8	0.6
The Netherlands	59	1.9	3.3	0.6
Italy	183	5.9	11.9	0.5
United Kingdom	176	5.7	12.3	0.5
Others	157	5.1		
Not known	169	5.5		

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

In 2009, 15 Member States submitted more complaints than might have been expected given the size of their population, 11 submitted fewer, while one submitted a number of complaints reflecting the size of its population.

The map below provides a graphical illustration of how likely people in each Member State are to complain to the European Ombudsman. It is based on the number of complaints from each Member State relative to the size of its population presented in Table 3.2 (see the note below Table 3.2 on how the ratio is calculated).

Geographical origin of complaints registered in 2009

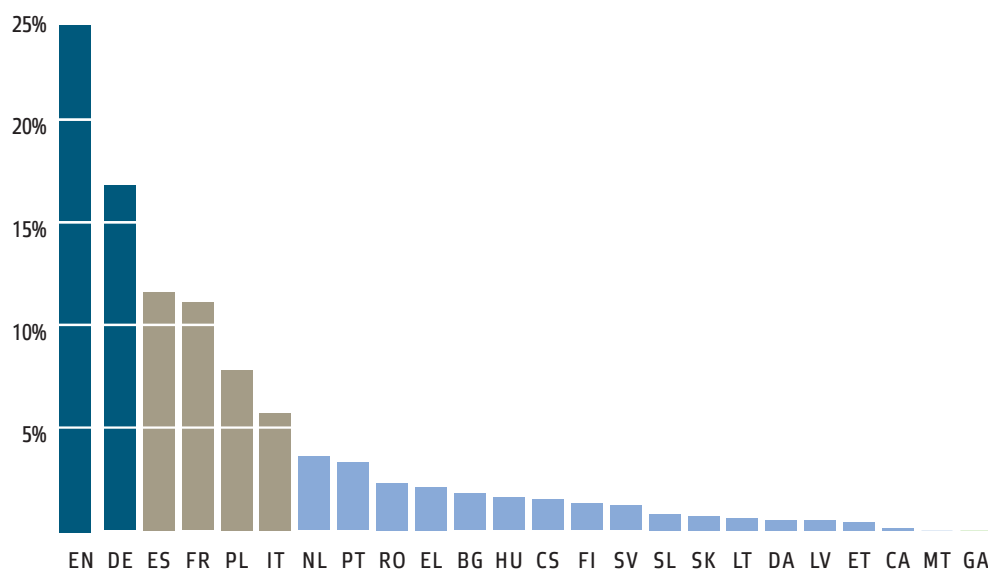


Complaints can be submitted to the European Ombudsman in any of the 23 EU Treaty languages⁵. Following an agreement signed in November 2006 between the Ombudsman and the Spanish government, citizens may also complain to the European Ombudsman in any of the co-official languages in Spain (Catalan/Valencian, Galician, and Basque)⁶. As Figure 3.3 shows, in 2009 most complainants chose to submit their complaint to the Ombudsman in English, followed by German, Spanish, and French. A limited number of complaints were submitted in Estonian, Catalan, Maltese, and Irish.

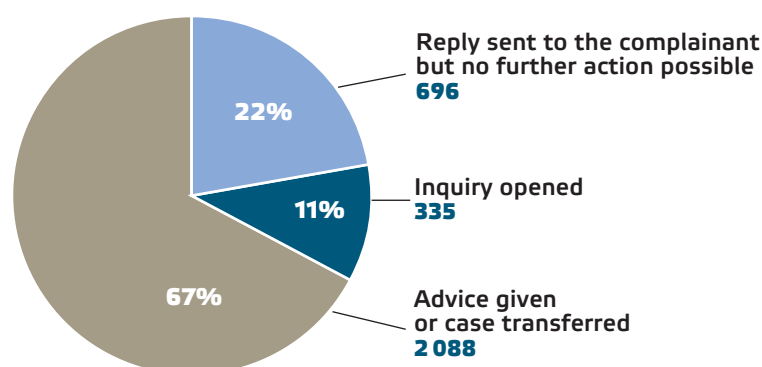
Complaints can be submitted to the European Ombudsman in any of the 23 EU Treaty languages.

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

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

Figure 3.3: Language distribution of complaints

As Figure 3.4 reveals, in almost 80% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case (11% of cases), by transferring it to a competent body, or by giving advice on where to turn (67%). Section 3.6 below provides an overview of the cases which were transferred or where advice was given to the complainant. In 22% of cases dealt with in 2009, a reply was sent to the complainant but the Ombudsman deemed that no further action was possible. In some cases, this was because the complainant failed to identify who or what he/she wished to complain about.

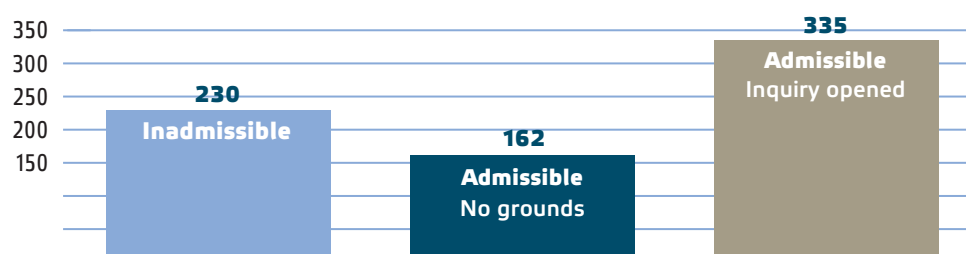
Figure 3.4: Type of action taken by the European Ombudsman following receipt of complaints

NOTE The figures include 215 complaints registered towards the end of 2008, which were processed in 2009 and excludes 94 complaints registered towards the end of 2009, which were still being processed at the end of the year to determine what action to take.

3.2 Analysis of inquiries opened⁷

All of the complaints which fell inside the Ombudsman's mandate were further analysed to determine admissibility. Out of 727 complaints falling within the mandate, 230 were found to be inadmissible; for a further 162, which were admissible, the Ombudsman found no grounds for opening an inquiry.

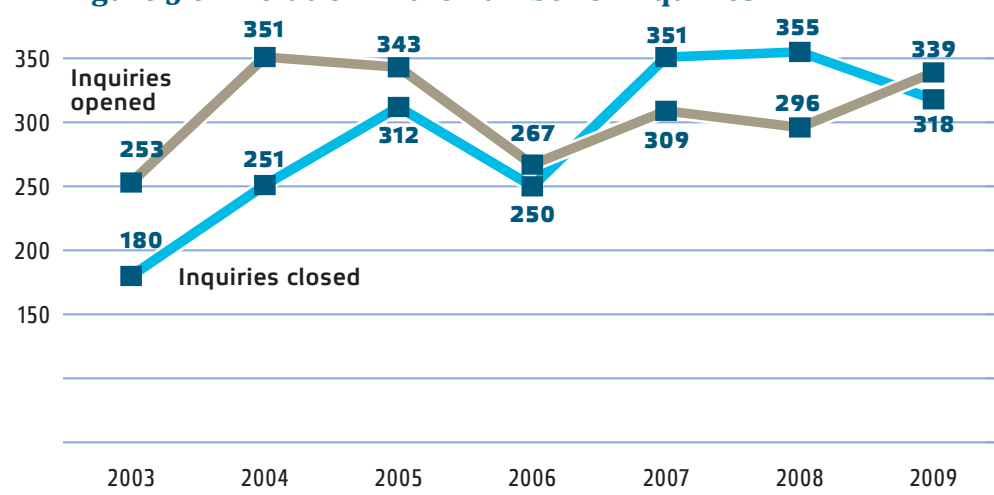
Figure 3.5: Complaints within the mandate of the European Ombudsman



A total of 335 new inquiries were opened during the year on the basis of complaints. This constitutes an increase of 14% compared with 2008. The Ombudsman also began four inquiries on his own initiative.

As Figure 3.6 reveals, the number of inquiries opened in 2009 is just below the high levels reached in 2004 (351) and 2005 (343). Inquiries closed will be analysed in section 3.3 below.

Figure 3.6: Evolution in the number of inquiries



A total of 84% of complaints leading to inquiries were submitted by individual citizens, whereas 16% were submitted by companies and associations.

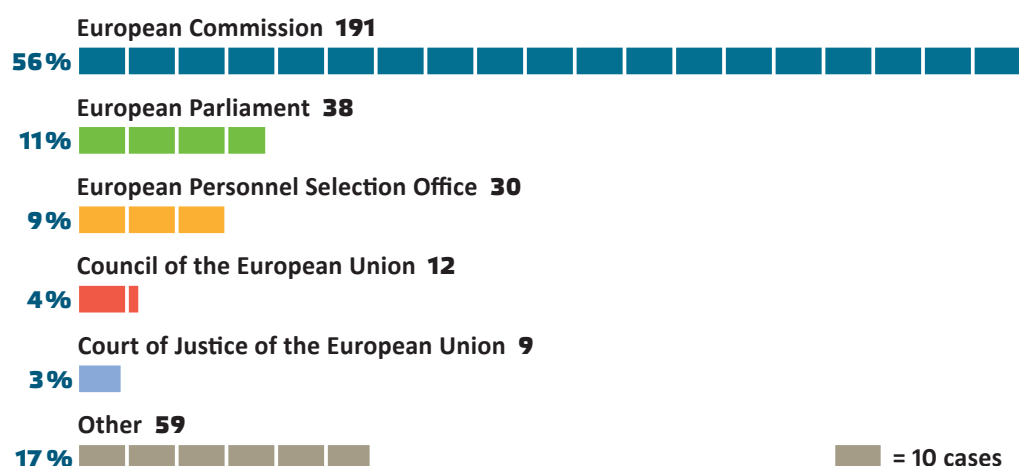
Table 3.3: Source of complaints leading to inquiries

Individual citizens	84% (283)
Companies and associations	16% (52)

7. As with the *Annual Report 2008*, the analysis in this section is based on the number of inquiries opened in 2009, rather than – as in earlier years – the total number of inquiries dealt with during the year (i.e., including cases carried over from previous years). This method of calculating the statistics gives a better indication of trends, year-on-year.

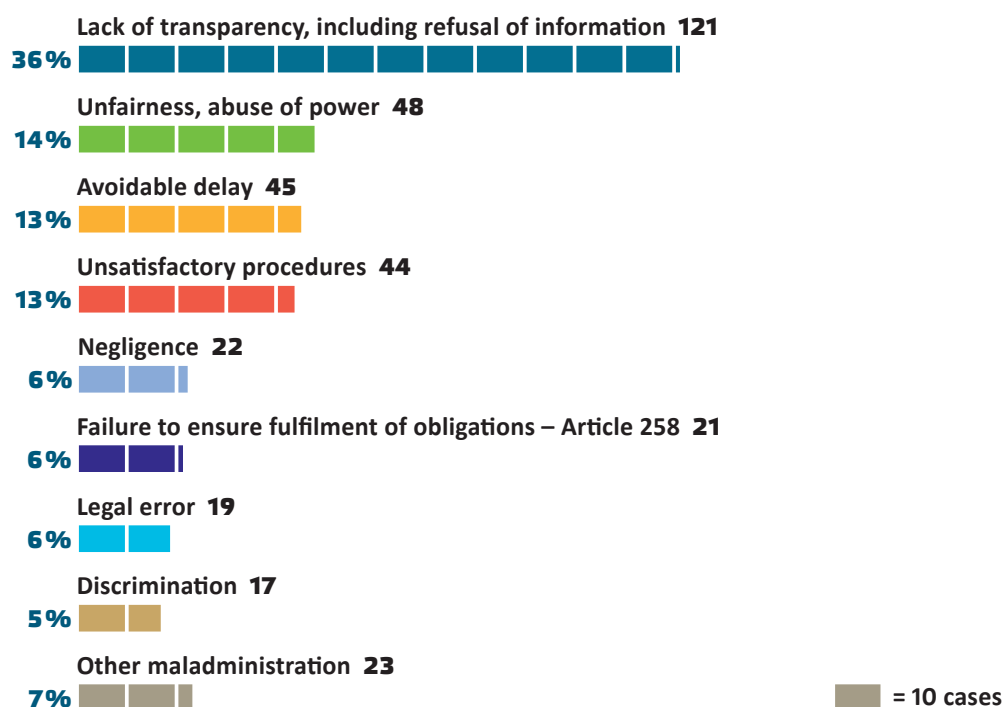
Most inquiries opened by the Ombudsman in 2009 concerned the European Commission (56%). Given that the Commission is the main EU institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints. It is worth noting, however, that while the absolute number of inquiries opened concerning the Commission fell (from 195 in 2008 to 191 in 2009), the number of inquiries opened concerning the European Parliament's administration, the European Personnel Selection Office (EPSO), the Council, and the Court of Justice of the European Union increased (by ten, ten, two, and six inquiries respectively). With regard to the Court, it is important to mention that the Ombudsman can only open inquiries into its non-judicial work. Twenty three other EU institutions, bodies, offices, and agencies were the subject of a further 59 inquiries⁸.

Figure 3.7: Institutions, bodies, offices, and agencies subject to inquiry



The main types of maladministration alleged in inquiries opened in 2009 were lack of transparency, including refusal of information (36% of inquiries), unfairness or abuse of power (14%), avoidable delay (13%), unsatisfactory procedures (13%), negligence (6%), failure to ensure fulfilment of obligations, that is, failure by the Commission to carry out its role as guardian of the Treaties vis-à-vis the Member States (6%), legal error (6%), and discrimination (5%).

8. European Anti-Fraud Office (6), Committee of the Regions of the European Union (6), Education, Audio-visual and Culture Executive Agency (5), European Aviation Safety Agency (5), European Economic and Social Committee (4), European Police College (3), European Food Safety Authority (3), European Investment Bank (3), European Medicines Agency (3), European Research Council Executive Agency (3), Europol (3), European Court of Auditors (2), European Network and Information Security Agency (2), Office for Harmonisation in the Internal Market (2), Translation Centre for Bodies of the European Union (1), European Central Bank (1), European Chemicals Agency (1), European Defence Agency (1), European Union Agency for Fundamental Rights (1), Eurojust (1), European Agency for the Management of Operational Co-operation at the External Borders of the European Union (1), Office for Official Publications of the European Union (1), Trans-European Transport Network Executive Agency (1).

Figure 3.8: Types of maladministration alleged

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

3.3 Findings of the Ombudsman's inquiries

As Figure 3.6 above shows, the Ombudsman closed 318 inquiries in 2009. Of these, 311 were linked to complaints and seven were own-initiative inquiries.

Most of the inquiries closed by the Ombudsman in 2009 were completed within one year (70%). Over half (55%) were completed within three months. This includes cases that the Ombudsman was able to resolve very quickly, for example, by telephoning the institution concerned to propose a solution⁹ (see section 2.5 above). Over 80% of inquiries were completed within 18 months, while the remaining cases took longer, due to their complexity or to delays. On average, cases took nine months to close. This constitutes a significant improvement (the average in 2008 was 13 months), and reflects the aim set out in the *Annual Report 2008* to further improve the institution's performance in 2009 by taking even less time to close cases, while maintaining or improving quality standards. The improvement results mainly from the fact that the additional workload which resulted from the significant rise in the number of complaints from 2004 onwards has now been completed.

Table 3.4: Cases closed in 2009 following inquiries

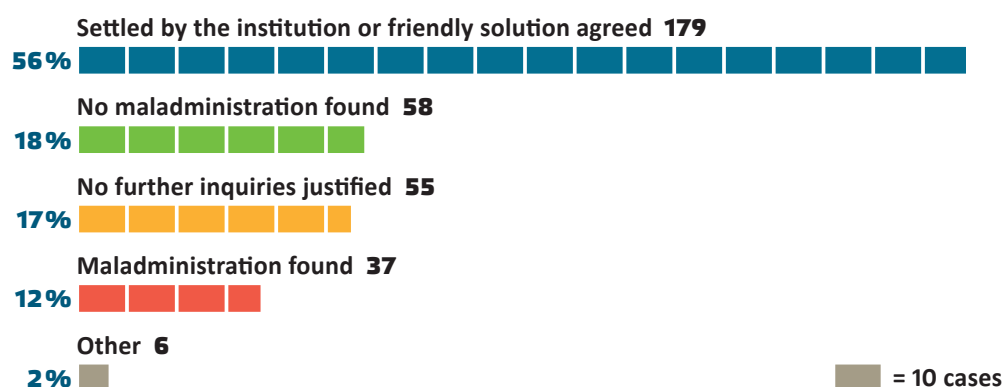
Average length of inquiry	9 months
Cases closed within 3 months	55%
Cases closed within 12 months	70%
Cases closed within 18 months	81%

NOTE These figures assume that a month consists of 30 days. It should also be noted that the percentages represent cumulative figures.

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

As can be seen from Figure 3.9, a positive outcome was readily achieved for the complainant in 179 cases closed in 2009 (56% of the total). These cases were either settled by the institution or a friendly solution was agreed. The comparable figure for 2008 was 129 cases. In a further 55 cases, the matter was clarified so that no further inquiries were needed, while in 58 cases, the Ombudsman found no maladministration. The Ombudsman concluded that there was maladministration in 37 cases. In two such cases, the institution concerned accepted the Ombudsman's draft recommendation, while critical remarks were made in 35 cases (see Figure 3.10). These findings are further detailed below¹⁰.

Figure 3.9: Results of inquiries closed



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

- **No maladministration**

In 2009, 58 cases were closed with a finding of no maladministration. This is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution concerned of what it has done, as well as obtaining the Ombudsman's independent analysis of the case. At the same time, such a finding serves as tangible evidence that the institution concerned has acted in conformity with the principles of good administration.

→→→ Commission helps resolve air passenger rights case

A German traveller had to organise his own trip back to Germany from Madagascar, via Paris, because Air France cancelled his connecting flight due to a strike. He claimed not to have received any assistance or compensation from the airline or the responsible French supervisory body, the Directorate-General for Civil Aviation (DGAC), with whom he could not communicate because of language problems. The complainant turned to the Commission for help but was not satisfied with its response. In his complaint to the Ombudsman, he alleged that the Commission failed to ensure that EU Member States are properly applying the rules on compensation and assistance to passengers, in the event of denied boarding and of cancellation or long delay of flights.

The Ombudsman found that the Commission had actively pursued the complainant's case by ensuring that the DGAC took the necessary measures. The airline had, in the meantime, compensated the traveller. The Ombudsman also welcomed the Commission's

10. The analysis that follows is based on inquiries completed during 2009. If an inquiry dealt with more than one allegation or claim, these may have given rise to several findings by the Ombudsman.

announcement that it would help national supervisory bodies to reduce language barriers for European travellers who encounter problems.

2980/2008/GG ■

Further remarks

Even when the Ombudsman makes a finding of no maladministration or concludes that there are no grounds to continue his inquiry, he may issue a further remark if he identifies an opportunity to enhance the quality of the administration. A further remark should not, therefore, be understood as implying criticism of the institution to which it is addressed but rather as providing advice on how to improve a particular practice in order to enhance the quality of service provided to citizens. The Ombudsman made further remarks in a total of 28 cases in 2009, including the following:

Alleged breach of confidentiality in the Ryanair/Aer Lingus case

The Commission inquired into Ryanair's proposal to merge with Aer Lingus and declared that the merger would be incompatible with the common market. Ryanair alleged that the Commission breached its obligation to protect the confidentiality of highly sensitive information contained in a number of documents related to the proceedings, including the Statement of Objections.

The Ombudsman observed that the Statement of Objections was disclosed to the press. This constituted a serious breach of confidentiality. However, he noted that it could not be presumed that the Commission was the source of the leak, given that the national competition authorities were also in possession of the confidential version of the Statement of Objections. He made a further remark, encouraging the Commission to explore with national competition authorities the adoption of appropriate mechanisms for ensuring that the transmission of confidential information and documents remains secure.

1342/2007/FOR ■

■ 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 EU institutions 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 2009, 166 cases were settled by the institution or body itself following a complaint to the Ombudsman¹¹.

Commission apologises for delay

The complainant managed a study, which several companies and organisations carried out for the Commission. The complainant submitted the final report, financial statements, and other required documents within the three months agreed. The Commission acknowledged receipt of the report, but did not pay the outstanding balance. In reply to the first of several reminders from the complainant, the Commission cited holidays and capacity problems as the causes of the delay. The complainant then turned to the Ombudsman, alleging that the Commission had failed to deal with the matter and pay the balance within the 45-days agreed. Following an extended telephone procedure that the Ombudsman proposed to the Commission, the latter apologised to the complainant for the delay in dealing with its file and promised to calculate and pay the balance within four weeks, if the

11. As outlined in Chapter 2, 114 of these were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence.

complainant agreed with the calculations. The complainant announced that it was satisfied with this outcome and was now in contact with the Commission regarding this file.

2650/2009/KM (Confidential) ■

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

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

solution had been achieved. At the end of 2009, 20 proposals for friendly solutions were still under consideration.

Ombudsman achieves friendly solution to complaint about VIP tickets

Two high ranking Commission officials accepted VIP tickets for the Rugby World Cup in Paris from a sportswear supplier. An NGO complained to the Ombudsman that this could have resulted in a conflict of interest as both officials dealt with anti-dumping cases in which the sportswear supplier could be interested. The Ombudsman suggested that the Commission acknowledge that it would have been better not to allow its officials to accept the hospitality. The Commission agreed to this proposal and the complainant was satisfied with its statement.

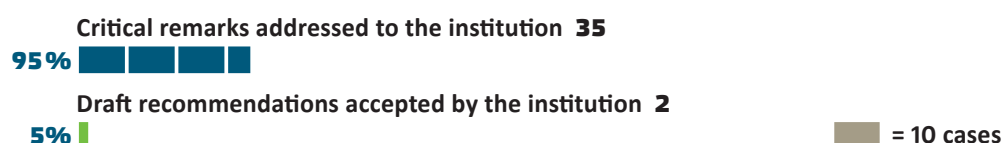
1341/2008/MHZ ■

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

■ Maladministration found

The Ombudsman concluded that there was maladministration in 12% of cases closed in 2009. In 35 such cases, the case was closed with critical remarks to the institution concerned (44 cases in 2008). Two cases were closed when the institution concerned accepted a draft recommendation made by the Ombudsman. These findings are analysed in more detail below.

Figure 3.10: Inquiries where maladministration was found



Critical remarks

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

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

draft recommendation. The Ombudsman normally makes a critical remark if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. The

Ombudsman also makes a critical remark if he considers that a draft recommendation would serve no useful purpose or in cases where the institution concerned fails to accept a draft recommendation but the Ombudsman does not deem it appropriate to submit a special report to Parliament.

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

Failure to make a proper note of a meeting in the Intel case

In 2008, the micro-processor producer, Intel, complained to the Ombudsman that the Commission had made procedural errors while investigating if Intel had abused its dominant position. Intel argued that the Commission failed to take minutes of a meeting with a senior executive of the computer manufacturer, Dell, held in August 2006, even though the meeting directly concerned the Commission's investigation of Intel.

The Ombudsman found that the meeting of August 2006 concerned the investigation of Intel. He also found that the Commission did not make a proper note of that meeting and that its investigation file did not include the agenda of the meeting. The Ombudsman concluded that this constituted maladministration. He made the critical remark that by failing to make a proper written note of the meeting of August 2006, the Commission infringed principles of good administration. However, he did not make any finding as to whether the Commission had infringed Intel's rights of defence.

The Ombudsman did not find maladministration in relation to Intel's second allegation that the Commission encouraged Dell to enter into an information exchange agreement with micro-chip producer, Advanced Micro Devices (AMD). In the complainant's view, this agreement gave AMD access to information in the Commission's investigation file. The Ombudsman found, however, that the Commission failed to make a proper note of a telephone call between the Commission and Dell, in which the information exchange agreement was discussed. Such a note would have helped to clarify the relevant facts. He thus recommended, in a further remark, that, in the future, proper notes should be made of any meetings or telephone calls with third parties concerning important procedural issues.

1935/2008/FOR (Confidential) ■

A critical remark does not, however, constitute redress for the complainant. Where redress should be provided, it is best if, once it has received the complaint, the institution concerned takes the initiative to acknowledge the maladministration and offer suitable redress. In some cases, this could consist of a simple apology. By taking such action, the institution demonstrates its commitment to improving relations with citizens. It also shows that it is aware of what it did wrong and can thus avoid similar maladministration in the future.

Follow-up to critical remarks and further remarks

With a view to ensuring that the institutions, bodies, offices, and agencies learn from their mistakes and that maladministration is avoided in future, the Ombudsman informs the public on an annual basis of his findings on the institutions' follow-up to critical and further remarks. He does this via a study which he publishes on his website.

Follow-up to critical and further remarks made in 2008

The Ombudsman invited the institutions concerned to respond, within a period of six months, to the critical and further remarks he made in 2008. He received responses to all the remarks made, albeit with a delay in some cases. This represents a significant improvement from 2007, when some responses arrived too late to be taken into account in the study concerning that year.

Taking critical and further remarks together, the rate of satisfactory follow-up was 79%. The follow-up to further remarks was satisfactory in all cases, while the rate of satisfactory follow-up of critical remarks was significantly lower at 62%. This demonstrates that there is still important work to be done, by the Ombudsman and by the institutions themselves, in persuading officials that a defensive approach to the Ombudsman represents a missed opportunity for their institution and risks damaging the image of the Union.

→→→ Five of the follow-ups warrant special mention as cases, which should serve as a model for other institutions on how best to react to critical and further remarks. They concern the **Parliament (3464/2004/(TN)TS)**, the **Commission (101/2004/GG and 3148/2007/BEH)**, the **European Economic and Social Committee (1473/2006/TS)**, and the **European Personnel Selection Office (OI/8/2006/BU)**. The institutions concerned handled the follow-up to these cases in an exemplary way. ■

Draft recommendations

In cases where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution, body, office, or agency concerned. In accordance with Article 3(6) of the Statute of the Ombudsman, the institution, body, office, or agency must send a detailed opinion within three months. During 2009, 15 draft recommendations were issued. In addition, seven draft recommendations from 2008 led to decisions in 2009, while two further cases were closed, following draft recommendations made in 2007. Two cases were closed during the year when a draft recommendation was accepted by the institution. Five cases were closed with critical remarks. At the end of 2009, 17 draft recommendations were still under consideration, including three made in 2008 and fourteen made in 2009.

Failure to document review of environmental impact assessment

The EU identified the Madrid-Barcelona-Perpignan-Montpellier axis as a priority Trans-European Network project. The project includes a high-speed railway connection between Madrid and the French border. The European Investment Bank (EIB) is to finance more than a quarter of the total cost of the project. In January 2006, a Spanish citizen complained to the Ombudsman that the planned railway segment through the centre of Barcelona could seriously damage the environment of surrounding buildings, such as Gaudí's Sagrada Família. The complainant argued that the EIB should re-examine the project and re-consider its decision to finance it.

The Ombudsman investigated the complaint and could not find any documentary evidence that the EIB had reviewed the Spanish authorities' environmental impact assessment. He called on the EIB to fully document the assessment before financing the project. The Bank agreed to adjust its rules and to improve the way it documents its review of future assessments.

244/2006/(BM)JMA ■

Special reports

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

If a Union institution, body, office, or agency fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament.

may include recommendations.

As was pointed out in the Ombudsman's *Annual Report 1998*, the possibility to present a special report to Parliament is of inestimable value for the Ombudsman's work. A special report to the European Parliament constitutes the last substantive step

which the Ombudsman takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for that institution's political judgment. The Ombudsman naturally provides whatever information and assistance may be required by Parliament in dealing with a special report. No special report was issued in 2009.

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.

3.4 Star cases exemplifying best practice

Nine cases closed in 2009 constitute illustrative examples of best practice and have been designated as star cases. They serve as a model for all EU institutions, bodies, offices, and agencies in terms of how best to react to issues that the Ombudsman raises.

The Ombudsman praised the **Commission** for its support to a German citizen in a case concerning air passenger rights. The inquiry showed that the Commission had actively pursued the complainant's case and had contacted the French authorities concerned to ensure that the relevant rules were correctly applied (**2980/2008/GG**). Also with a view to ensuring the full and correct application of EU law, the Commission re-opened an infringement procedure to check whether the landfill site at Malagrotta, near Rome, had been brought into compliance with the relevant Directive (**791/2005/(IP)FOR**). The Ombudsman had made a further remark in this regard.

In the area of transparency, the **European Anti-Fraud Office (OLAF)** agreed to release a long list of documents after consulting the relevant judicial authorities of the Member States concerned. The documents were requested by two Belgian companies (joined cases **723/2005/OV** and **790/2005/OV**). The **European Personnel Selection Office (EPSO)** agreed to allow all candidates, and not only unsuccessful candidates, to have access to their marks in the different tests. This followed a complaint alleging that successful candidates could not find out what marks they received (**2346/2007/JMA**).

In the area of contracts, the Commission announced its willingness to examine whether it would be possible retroactively to authorise the use of sub-contracting with a view to cancelling a recovery order of almost EUR 500 000 (**2119/2007/ELB**). Given that the company had successfully completed the three projects it had carried out, the Ombudsman called on the Commission to accept this friendly solution proposal. In case **1908/2007/JF**, the Commission agreed to cancel a recovery order, acknowledging that the reimbursement would put the complainant in a very precarious financial situation. The Ombudsman applauded the Commission for showing that it can be sensitive when there are difficult personal situations, and included this case among the star cases in 2009 to illustrate how the institutions can apply the principle of fairness in their work.

Further examples of best practice include **1562/2008/BB**, where the **Executive Agency for Competitiveness and Innovation (EACI)** apologised and gave additional explanations to an unsuccessful candidate for a position. It also mentioned the EACI's commitment to identify additional measures within its services to improve its officials' awareness of applicable administrative standards. The **European Research Council Executive Agency** acknowledged that, in its initial deci-

sion to exclude a candidate, it had failed to provide him with clear and understandable information concerning possible means of redress. It assured the Ombudsman that applicants would receive adequate information in the future. It also invited the candidate for interview (2003/2008/TS). Finally, the **Education, Audiovisual and Culture Executive Agency** apologised to the complainant and announced it had taken steps to remedy the problems identified, in a case concerning the rejection of a grant application. It also agreed to re-assess the application (1537/2008/(TJ)GG).

3.5 Thematic analysis of inquiries closed

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

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

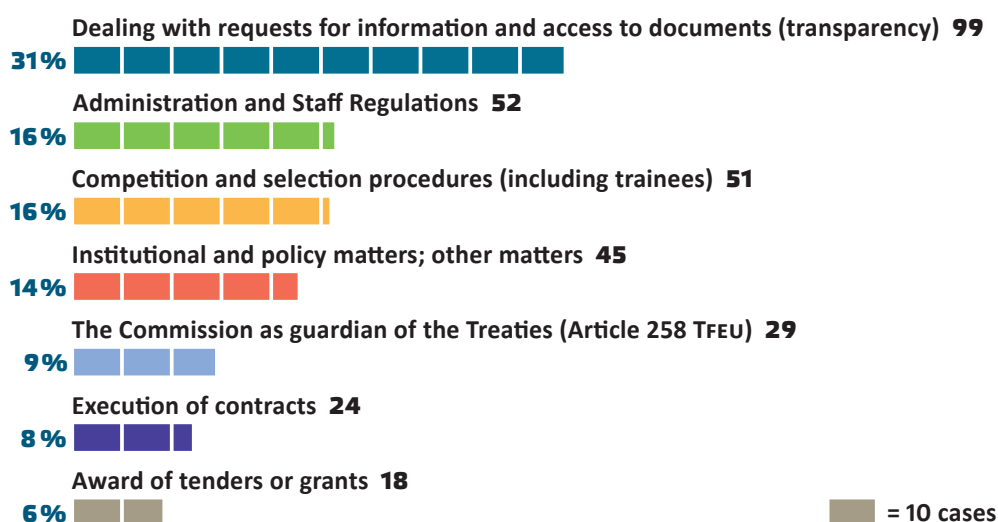
number of cases are made available on the website in summary form in all 23 official EU languages. The summaries reflect the range of subjects and of Union institutions, bodies, offices, and agencies covered by the 318 decisions closing cases in 2009, as well as the different reasons for closing cases.

This section analyses the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2009. It is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around the following seven main categories:

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

It should be noted that there is substantial overlap among the above categories. For example, issues of openness are often raised in complaints concerning recruitment or the Commission's role as guardian of the Treaties. It should also be noted that the categories are not listed in the order in which they appear in Figure 3.11¹².

Figure 3.11: Subject matter of inquiries



12. Figure 3.11 provides information on all inquiries "completed" in 2009 based on subject matter. In 2008, this graph was calculated on the basis of all inquiries opened. As the thematic analysis provides an overview of the most significant findings contained in a selection of cases "closed" in 2009, it was deemed more appropriate to calculate the graph on that same basis. The graph is positioned in this section to give the reader an indication of the significance of the subject matter discussed in terms of the Ombudsman's overall caseload.

■ Openness, public access, and personal data

This section reviews the Ombudsman's decisions in 2009 on complaints concerning (i) public access to documents, (ii) public access to information, and (iii) the protection of personal data and the right of data subjects to have access to their data.

Public access to documents

Article 10(3) of the Treaty on European Union (ex Article 1 of the TEU) refers to decisions in the Union being taken “as openly and as closely as possible to citizens”, whilst Article 15(1) of the Treaty on the Functioning of the European Union (TFEU) requires the Union institutions, bodies, offices, and agencies to conduct their work as openly as possible, in order to promote good governance and ensure the participation of civil society. Article 15(3) TFEU (ex Article 255 of the EC Treaty) further provides for a right of access to documents of the Union's institutions, bodies, offices, and agencies. Regulation 1049/2001 governs this right of access to documents¹³. On 30 April 2008, the Commission put forward a proposal¹⁴ to amend and replace Regulation 1049/2001 regarding public access to European Parliament, Council, and Commission documents. Discussions on this legislative revision continued in 2009. Following own-initiative inquiries by the Ombudsman in 1996 and 1999, many other institutions and bodies also adopted rules on access to documents.

Regulation 1049/2001 gives applicants a choice of remedy: they may challenge a total or partial refusal of access either in court proceedings under Article 263 TFEU (ex Article 230 of the EC Treaty),

During 2009, the Ombudsman completed inquiries into 19 complaints concerning the application of Regulation 1049/2001, 15 of which were against the Commission.

or by complaining to the Ombudsman. During 2009, the Ombudsman completed inquiries into 19 complaints concerning the application of Regulation 1049/2001, 15 of which were against the Commission.

→→→ Two complaints against the European Anti-Fraud Office (OLAF) (cases **723/2005/OV** and **790/2005/OV**) were the subject of a joint inquiry. They concerned two Belgian companies which were the subject of an investigation into the use of false certificates to import bananas at a preferential tariff. In order to clarify the facts and potentially prepare an appeal, they asked for access to a long list of documents. OLAF refused access to the majority of those documents on the grounds that it would undermine the protection of its investigation and of court proceedings in Member States. After inspecting the file, the Ombudsman concluded that OLAF had acted incorrectly. He made a friendly solution proposal inviting OLAF to reconsider its position. OLAF accepted the friendly solution after consulting the relevant judicial authorities of the Member States concerned. ←←←

In case **1349/2008/GG**, a journalist who addressed a series of questions to OLAF and received an answer from OLAF's spokesman complained that this spokesman had intended to forward his answers to various third parties. In its opinion, OLAF submitted that the spokesman had acted on his own behalf and not in his capacity as OLAF's spokesman. Because that person had indeed declared that he was acting in a personal capacity when sending the relevant e-mail, the Ombudsman concluded that the complaint was outside his mandate and he closed the case.

A former Commission official, who had submitted a complaint to the European Data Protection Supervisor (EDPS) alleging that the Commission had breached his data protection rights, lodged a complaint with the Ombudsman against the EDPS (case **491/2008/PB**). The complainant alleged that the EDPS failed to reply to correspondence and, more specifically, to grant access to some documents. The EDPS apologised for the delay in answering to correspondence. As regards the issue of access to documents, the Ombudsman considered that, at the time of the decision, which did not comply with the relevant rules, the EDPS had not yet established a structured approach on how to handle such requests for access. The Ombudsman therefore closed the case with a further remark.

13. 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.

14. COM(2008) 229 final.

Several complaints involved allegations of delay. In cases **11/2008/DK** and **1010/2008/DK**, the Ombudsman identified several shortcomings in the Commission's handling of the complainants' requests for access¹⁵. These concerned the registration of requests, complying with applicable time limits, and failure to provide reasons for extending time limits. Because such shortcomings had already been identified in a previous case (**367/2006/PB**), where the Ombudsman made several critical remarks (to which the Commission responded very positively), and because the facts concerning these two cases predated the Commission's commitments to the Ombudsman, he did not make critical remarks again. Case **541/2008/VIK** also contained allegations that the decision rejecting the request for access to documents was improper. During the course of the inquiry, it emerged that the information the complainant was looking for had been published by the relevant national authorities. The Ombudsman identified several shortcomings in the Commission's behaviour but made no critical remarks because the complainant had not made any allegations concerning these procedural aspects.

In case **1491/2008/(ID)(BU)CK**, a candidate in a competition organised by the European Personnel Selection Office (EPSO) argued that he had received no answer to a request for access to the questions and answers of the test he had passed. Several months later and, while apologising for the delay, the Commission's Secretariat-General rejected the request and acknowledged that the confirmatory application had been lost or misplaced. This case was related to case **1150/2008/(ID)(BU)CK**, which the same complainant brought against EPSO. In this latter case, the complainant alleged that EPSO failed to transfer his confirmatory application to the Commission's Secretariat-General, in accordance with Article 15(1) of the European Code of Good Administrative Behaviour. It merely told the complainant that he should address the confirmatory application to the Commission. EPSO acknowledged that, given the established practice whereby the Commission deals with confirmatory applications, it should have made the transfer. The Ombudsman made a further remark, encouraging EPSO to take all necessary steps to establish its autonomy in the area of processing access to document requests.

In case **3085/2008/GG**, the Ombudsman criticised the Commission for not having initially identified the complainant's letter as a request for access. The Commission had also failed to deal properly with the complainant's confirmatory application. Even if the Commission's decision refusing access was correct in substance, the Ombudsman made a critical remark because the Commission failed to apologise for its procedural errors.

Case **429/2007/PB** also concerned serious delays in the handling of a request for access. The Ombudsman made a critical remark. The issue of fees to be charged for the processing of requests for access to very large and numerous documents was also raised in this case. The Ombudsman considered that the Commission did not comply with the standards laid down in Article 10 of Regulation 1049/2001 for charging such fees and also made a critical remark in this respect.

The Ombudsman launched an own-initiative inquiry in relation to the Commission concerning citizens' requests for access to documents related to infringement procedures (**OI/2/2009/MHZ**). While he closed the inquiry with a finding of no maladministration, he encouraged the Commission to inform citizens that they can gain access to such documents by applying either to the Commission, or to the authorities of the Member State concerned, or both. Citizens could also be informed that, if they submit their request for access to Member State authorities, it is national law that applies. The Ombudsman added that the Commission could include such information on its excellent and citizen-friendly website concerning infringements¹⁶.

Other Ombudsman inquiries dealt with further exceptions to public access foreseen in Regulation 1049/2001. Case **70/2008/TS** dealt with the exception relating to the danger of undermining the decision-making procedure and of exposing services to undue external pressure. The Ombudsman considered that the reasons put forward by the Commission were neither valid nor adequate. He closed the case with critical remarks. Case **488/2007/PB** dealt with the exception to public access

¹⁵. An illustrative example of how some services still have difficulties complying with the provisions of Regulation 1049/2001, is case 2673/2009/MHZ which was finally settled by the institution.

¹⁶. In relation to access to an infringement case file, see also case 1059/2008/(WP)VL.

based on the protection of commercial interests and the protection of international relations. The Ombudsman found that the Commission failed to give adequate reasons for refusing full access to the documents. The Commission replied that it had consulted the Member States concerned and that all but one had agreed to the disclosure. It would keep the Ombudsman informed of that Member State's position, it said. The complainant was satisfied with that response and the Ombudsman closed the case. However, he made a further remark that the Commission had failed to address important issues, namely, whether it considered that the documents in question originated from the Member States or were documents written by the Commission's services. He invited the Commission to clarify that issue.

Case **819/2007/PB** dealt with the Commission's refusal to give access to Ireland's application in a case before the Court of Justice on the grounds that it would be damaging to the Court's proceedings. During the inquiry, the General Court issued a judgment which appeared to be relevant to the matter in question. The Ombudsman therefore asked the Commission to revise its original decision in light of the judgment. The Commission maintained its refusal, without providing valid reasons. The Ombudsman therefore made a critical remark. He noted that the Commission's refusal appeared to rely on the fact that an appeal had been brought against the judgment. That cannot justify a decision to ignore the legal interpretation set out in that judgment, he said.

Public access to information

The Ombudsman dealt with many complaints alleging failure to provide information. Many of these cases were dealt with through accelerated and simplified procedures, and were therefore closed quickly after the institution concerned provided the relevant information. In two cases, a fully fledged inquiry was launched. Case **1694/2007/(WP)BEH** dealt with an allegation that the Commission had given insufficient and deliberately incorrect replies to a request for information concerning a certain legislative procedure. While the Ombudsman concluded that the allegation concerning deliberately incorrect information was unfounded, he agreed that the Commission's replies to the complainant were insufficient. Given that the Commission provided the relevant information during the inquiry, the Ombudsman considered that no further action was necessary on his part. In case **443/2009/VL**, the European Police Office (Europol) was accused of failing to respond to letters, in which the complainant informed it of what he considered to be a serious threat to international security. It also failed to give him the contact details of Europol's liaison bureau in Germany. In its opinion, Europol explained that the matters raised by the complainant concerned national issues and that it had transmitted the information to Germany's Europol liaison bureau which was situated in its premises in The Hague. The Ombudsman therefore closed the case.

Data protection

In case **3486/2006/(GK)(ID)RT**, the complainant asked the Commission to provide employment data concerning one of its officials. Because the official refused her permission, the Commission refused to disclose the starting date of her employment. The Ombudsman considered that the Commission failed to provide adequate grounds for its refusal and made a friendly solution proposal, which the Commission accepted. However, the official concerned had, in the meantime, lodged a complaint with the EDPS against the Commission's intention to disclose the information. When the EDPS confirmed that the data in question could be disclosed, the official brought an action before the General Court. In light of that pending action, the Ombudsman closed his inquiry. He made a further remark that the Commission should inform the complainant of the outcome of the court case.

Case **672/2007/(WP)PB** concerned issues regarding the handling of access applications and the applicability of Regulation 1049/2001 as regards data protection rules. The Ombudsman found that the Commission's handling of the request in this case was tainted by gross and unjustified delays amounting to maladministration. He made a critical remark. With regard to the applicability of Regulation 1049/2001, the Ombudsman referred to case-law that was subsequent to the submission of the complaint and which appeared to have been implicitly recognised by the Commission. He considered that the legal issues in question were no longer in dispute.

→→→ Case **2346/2007/JMA** concerned EPSO's refusal to inform successful candidates of their marks in the different tests. The Ombudsman considered that, by refusing to do so, EPSO disregarded the fundamental principle of transparency enshrined in Article 1 TEU (now Article 10(3) TEU) and in Article 22 of the European Code of Good Administrative Behaviour. He also consulted the EDPS on the matter, who took the view that the test results must be considered as personal data to which complainants should have the right of access. While EPSO originally refused the Ombudsman's friendly solution proposal to disclose the data, it decided to change its policy and to allow all candidates to have access to their marks, after consulting EPSO's Management Board. ←←←

■ The Commission as guardian of the Treaties

The rule of law is a founding principle of the European Union. One of the Commission's most important duties is to be the guardian of the Treaties¹⁷. Article 258 TFEU (ex 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 EU law by Member States. The Commission may open investigations on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions addressed to it under Article 227 TFEU (ex Article 194 of the EC Treaty). Other procedures apply in relation to specific matters, such as illegal state aids.

The Ombudsman receives and deals with complaints against the Commission in its role as guardian of the Treaties. When the Ombudsman opens an inquiry into such a complaint, he is always careful

The Ombudsman receives and deals with complaints against the Commission in its role as guardian of the Treaties.

to make clear to the complainant, where necessary, that the inquiry will not examine whether there is an infringement, because the European Ombudsman has no mandate to investigate the actions of Member State authorities. The Ombudsman's inquiry is only

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

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a Communication issued by the Commission in 2002¹⁸. The Communication lays down a certain number of procedural obligations relating to the registration of complaints submitted to the Commission and the exceptions to this obligation, as well as deadlines for dealing with complaints and for informing the complainants. This Communication was issued in 2002, as a response to the Ombudsman's previous inquiries and criticisms he had expressed towards the Commission in relation to these matters. The Ombudsman considers this Communication to constitute a very important step forward in terms of increasing the trust citizens have in the Commission as the guardian of the Treaties. In 2009, the Ombudsman's review of how the Commission applies its own rules revealed a certain number of shortcomings in the application of the Communication. An illustrative sample of these is presented and analysed immediately below.

The issue of inadequate information to complainants is a recurrent problem. In case **80/2009/BU**, while the Commission initially acknowledged receipt of correspondence from a Czech environmental NGO, it was only when the Ombudsman's inquiry was underway (i.e., more than one year later) that it informed the complainant of its intention not to register the correspondence as a complaint, and gave reasons for its action. The Ombudsman made a further remark that the Commission could inform all those complainants whose correspondence was not separately registered as a complaint,

¹⁷. Article 17 of the TEU (ex Article 211 of the EC Treaty) requires the Commission to "ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them".

¹⁸. 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.

but was rather added to similar on-going cases, about its handling of the registered complaint. Case **1890/2008/(CHM)BU** concerned an allegation by three companies that the Commission did not act with due care when sending its pre-closure letters in an infringement procedure against Portugal. It also failed to ensure the proper delivery of its decision to close the case. The Ombudsman recalled that points 9 and 10 of the Commission's Communication foresee that it should inform the complainant of its final decisions closing infringement complaints. Not doing so was an instance of maladministration which led the Ombudsman to issue a critical remark. He also made three further remarks relating to procedural aspects of the Commission's handling of the complaints.

A further recurrent problem, already alluded to, relates to the registration of complaints. The Commission's Communication foresees an obligation to register the complaints it receives in the central registry (point 3(1) of the Communication). The exceptions to this obligation are enumerated in the following paragraph: "[w]here there is doubt as to the nature of an item of correspondence, the Secretariat-General of the Commission shall consult the department(s) concerned within 15 calendar days of receipt. If the department(s) fails to reply within 15 working days, the complaint shall be formally recorded at the central registry of complaints." This clear obligation has given rise to numerous problems. Case **2884/2008/(WP)GG** concerned a German cosmetician who wished to have her professional qualifications recognised in Greece. Given that an infringement procedure against Greece concerning similar problems was already pending, the Commission added this new case to the procedure. It then informed the complainant that it intended to close the case because the complainant could submit her request to the competent national authorities. The Ombudsman found that the Commission's position was reasonable and that it had adequately corresponded and informed the complainant of its intention. However, it had only registered the complaint more than five months after having received it. As this was not the issue of the complaint, the Ombudsman made a further remark that the Commission should review its practice concerning such matters. The same problems arose in case **1628/2008/TS**. Only after the Ombudsman opened his inquiry did the Commission register the correspondence as a complaint and provide the complainant with the information it requested. The Ombudsman made a further remark that the Commission should clearly separate the process of identifying, registering, and acknowledging receipt of complaints, from the process of deciding how to deal with each complaint.

Similar problems concerning registration and information about complaints were identified in case **1174/2007/TN**, which concerned two complaints about Sweden's alleged failure to transpose EU law on free movement of persons. Only after the Ombudsman made a friendly solution proposal did the Commission agree to register the second complaint and to inform the complainant of its handling of the two complaints. The same registration problems were detected in case **1087/2009/JMA**, which concerned the refusal by the Italian authorities to register the double-barrelled name of the complainant's son. The Ombudsman found that the Commission should have registered the correspondence as a complaint. If it considered otherwise, it should have informed the complainant accordingly. The Ombudsman made a further remark that the Commission should inform the complainant of the results of its actions undertaken in relation to the Italian authorities.

Case **3303/2008/ELB** concerning an allegedly wrong decision of the Commission not to register an infringement complaint against Belgium for failing to recognise the complainant's French diploma in nursing was closed with a finding of no maladministration. The Ombudsman agreed with the Commission that there was no breach of EU law because recognition of diplomas for academic purposes is a prerogative of Member States and no provision of EU law deals specifically with those matters. The Ombudsman also closed case **1440/2008/(WP)OV** with a finding of no maladministration on an allegation by a Spanish citizen that the Commission had failed to provide him with information on the means to challenge Spanish customs duties for certain products. The Ombudsman's detailed analysis revealed that the Commission replied to the complainant's questions and provided him with the relevant information concerning the applicable procedures. It also kept him informed of the relevant discussions in the Customs Code Committee.

Prompted by concerns arising from these and similar cases, the Ombudsman launched in 2009 an own-initiative inquiry in relation to the Commission's practices concerning the registration of

correspondence and complaints (**OI/3/2009/MHZ**). This inquiry was still ongoing at the end of that year.

The Ombudsman can also review the substance of the analyses and conclusions reached by the Commission when investigating infringement complaints. This review aims at verifying whether the conclusions reached by the Commission are reasonable and whether they are well argued and thoroughly explained to complainants. If the Ombudsman were fundamentally to disagree with the Commission's assessment, he would state so, while also pointing out that the highest authority in interpreting EU law is the Court of Justice. Disagreements of this kind are exceptional, however. In most of the above-mentioned cases, the Ombudsman considered the Commission's stance on the substance of the case to be correct¹⁹.

→→→ Case **2980/2008/GG** concerned an allegation by a German citizen that the Commission failed to deal properly with a complaint to ensure that Member States correctly apply the EU regulation concerning air passengers' rights. The inquiry showed that the Commission had actively pursued the complainant's case and had contacted the French authorities concerned. In the Ombudsman's opinion, the Commission's Directorate-General for Transport and Energy was to be commended for its active approach and its support to the complainant in this case. ←←←

Also in case **443/2008/JMA**, which concerned an allegation that the Commission failed properly to handle a complaint against Spain and wrongly decided to include his complaint in an ongoing, single horizontal procedure against Spain concerning urban water treatment, the Ombudsman concluded that, according to the case law of the Court of Justice of the European Union, the Commission has a wide margin of discretion to decide whether or not individual complaints should be grouped into a single horizontal procedure. Moreover, the Commission correctly informed the complainant of the actions it had taken. By comparison, in case **706/2007/(WP)BEH**, the Ombudsman took the view that the Commission failed to deal with the complainant's infringement complaint as rapidly and diligently as possible and that this failure constituted maladministration. The complaint had been submitted in 2005 by an Austrian citizen against Austria for failing to comply with EU legislation on air quality. The Ombudsman considered that, in spite of a sufficiently clear factual background, the Commission did not adopt a position on the complaint by the date the complainant turned to the Ombudsman in 2007.

→→→ Case **791/2005/(IP)FOR** concerned an allegedly unfair decision to close an infringement complaint against Italy regarding a landfill site at Malagrotta, near Rome. The complainant alleged that the Commission's decision to close the case was unfair because there were several irregularities involved. The Ombudsman found that the relevant deadline for compliance was 16 July 2009 and the fact that the landfill did not yet comply with the relevant standards, when the Commission closed the infringement procedure, was not wrong or unfair. However, in the light of significant information brought to his attention by the complainant, he urged the Commission to check, after the July 2009 deadline, whether the landfill had indeed been brought into compliance with the Directive. Later in 2009, the Commission re-opened the infringement procedure. ←←←

Case **1532/2008/GG** concerned an alleged failure to conduct infringement proceedings against Austria. The Commission opened an investigation following complaints from 27 Austrian citizens' initiatives that Vienna airport had undergone repeated extensions, in the absence of an obligatory environmental impact assessment (EIA). The Commission subsequently agreed that the Austrian authorities could carry out a retroactive EIA. The Ombudsman's inquiry identified several problems with this retroactive EIA, including a potential conflict of interest within the national authorities. Since the Commission had not yet taken a final decision on this case, the Ombudsman closed his inquiry, indicating that he trusted that the Commission, when taking its final decision, would take his findings and concerns into consideration.

19. See, for instance, case 822/2009/BU concerning the alleged violation of environmental directives by the Czech Republic and case 2036/2008/(CD)BEH regarding the alleged incompatibility of Austrian pension laws with the Treaty provisions on freedom of movement.

■ Award of tenders and grants

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

However, he considers that the institutions and, in particular, the evaluation committees and the

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

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

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

The Ombudsman closed six cases in which the complainants alleged unfairness in the work of the selection committees because of conflict of interest or lack of impartiality by some of their members. In case **3112/2007/MF**, concerning a tender for the rehabilitation of a National Park in Chad, the Ombudsman considered that the circumstances of the case could cast objective doubts on the impartiality of a particular member of the evaluation committee and that, contrary to the Commission's view, the said member's declaration of impartiality was not sufficient to eliminate these doubts. He concluded that the Commission did not take sufficient action to remove the doubts and did not demonstrate that its actions were the only ones at its disposal. In case **2400/2006/JF**, a consultancy firm alleged that its tender was unsuccessful because of instructions given by the Commission's Delegation in a third country. The Ombudsman's inquiry did not produce any evidence relating to the alleged instructions to sustain the complainant's allegation.

In case **491/2007/PB**, concerning a call for proposals launched by the Commission Representation in Berlin and, more specifically, the fairness of the competition and transparency of the procedure, the Ombudsman found that there were unduly restrictive requirements in the tender, and that the Commission failed to respond properly to the complainant's information requests. He also expressed concerns about the absence of rules and practices regarding the issue of conflict of interest in the case of current or former in-house providers of services or other products, who participate in tenders. In a further remark, he invited the Commission to examine the possibility of adopting such rules or guidelines.

In case **1270/2007/(ET)(ID)(DK)CK**, the complainant, who originally received a letter awarding the contract, was informed by the Commission that the tender had been cancelled because of irregularities in the procedure and because of potential infringement of confidentiality and impartiality, as well as possible external influence during the evaluation procedure. The Ombudsman issued a draft recommendation calling on the Commission to provide more specific and adequate grounds for the tender cancellation. After inspecting the file, the Ombudsman confirmed that it contained evidence supporting the explanation which the Commission had put forward in response to his draft recommendation. He, therefore, closed the case on the grounds that the draft recommendation had been implemented.

In an own-initiative inquiry (**OI/4/2005/GG**), the Ombudsman investigated further into the allegation by a German NGO that the Commission had deliberately disadvantaged it and had acted fraudulently when it rejected its application to sign a Framework Partnership Agreement. The Ombudsman identified serious instances of maladministration. In addition to the deficiencies he had already identified in previous related inquiries (cases 1702/2001/GG and 2862/2004/GG), he found that the Commission had deliberately concealed the truth and thus misled the NGO. The way in which it handled the NGO's application had seriously disadvantaged the complainant. In response to the Ombudsman's draft recommendation, the Commission admitted that it should have handled the application more diligently. However, it did not apologise to the complainant but pointed out that the relevant procedures had since been improved. The Ombudsman concluded that the Commission's admission was not sufficient to address the serious concerns raised in his draft recommendation. However, given that the maladministration had taken place a long time ago and a new Partnership Agreement was now in force, he closed the case with a critical remark.

Finally, in case **1192/2008/BU** against the European Parliament, the complainant was dissatisfied with the results of a tender to carry out renovation works in Parliament's Information Office in Malta. He challenged the accuracy of the evaluation criteria established. The Ombudsman found no maladministration by Parliament and considered that its explanations were reasonable. He referred to the relevant case-law, according to which institutions have a broad discretion when assessing the factors to be taken into account for the purposes of awarding a contract, and found that there was no evidence that the institution made a manifest error of assessment.

A second group of complaints concerned alleged wrong or unfair exclusion of the complainants' tenders or bids²⁰. Case **1928/2008/TS** concerned the rejection of an application for a scholarship for Turkish Cypriot students. The Commission agreed that the evaluation committee's explanations could have been clearer. The Ombudsman concluded that the committee's decision to exclude the application did not comply with the pertinent call for expressions of interest. He noted, however, that the Commission was in agreement that the complainant would be eligible for the 2009-2010 scholarship programme. Case **2576/2008/(AF)GG** concerned the allegedly wrong exclusion of the complainant's tender because he failed to enclose the relevant VAT document. The Ombudsman examined the application and concluded that the complainant had not been able to establish that he submitted the required document. No maladministration was found but the Ombudsman made a further remark with a view to avoiding these kinds of problems in the future.

In case **3222/2005/IP**, the complainant alleged that the Commission's decision not to select its bid was unfounded. The evaluation committee had recalculated the bid on its own initiative because it wrongly understood it to contain arithmetical errors. These unwarranted modifications resulted in the bid exceeding the maximum budget of EUR 4 million by EUR 21. The Ombudsman concluded that, in the case at hand, a request for clarification would have provided the complainant with the opportunity to clarify the bid. Failing to seek that clarification resulted in maladministration. The Commission rejected the Ombudsman's friendly solution proposal that it try to agree on adequate compensation for the loss of opportunity. After the complainant announced that he was considering taking the matter to court, the Ombudsman closed the case with a critical remark.

→→→ Case **1537/2008/(TJ)GG** concerned the rejection by the Education, Audiovisual and Culture Executive Agency (EACEA) of a grant application by a town twinning association because an important document was missing. The complainant identified a series of errors in the Agency's procedures and practices. In response to the Ombudsman's inquiry, the Agency apologised to the complainant and announced that it had taken steps to remedy the problems identified. It agreed to re-assess the application, in accordance with the relevant award criteria. Again, the proposal did not qualify for the grant. The Ombudsman inspected the file and concluded that no manifest error could be found in relation to the evaluation. He made a further remark, however, that, in the future, the Agency should provide more detailed information on the results of its evaluations to applicants challenging the assessment of their applications. ←←←

Two cases offered an opportunity to clarify the difference between illegality and maladministration: in case **1561/2008/RT**, the Ombudsman considered that the information provided in the invitation to tender was not sufficiently precise and exhaustive for those tenderers who decided to deliver their bids by courier service (private post) or by hand. The Ombudsman made a friendly solution proposal which the Commission rejected, saying that the information provided complied with the applicable provisions of the Financial Regulation. The Ombudsman closed the case with a critical remark, recalling that the term 'maladministration' constitutes a broader concept than illegality. The fact that a decision was adopted without breaching the law does not necessarily mean that it was adopted in conformity with principles of good administration. Case **271/2009/VL** was submitted by an employee of an office of the European Consumer Centre in Germany. Her contract could not be renewed on time because the Commission, which finances the Centre with a grant, could not complete on time the necessary procedures to renew the grant. The Ombudsman agreed that the Commission did not breach any legal obligations. However, he was not convinced that the Commis-

20. See also case 1414/2007/IP.

sion dealt with the application for the grant as rapidly as it should have for him to consider that it had acted in accordance with good administrative practice. Given that the Commission accepted that grant applications are best dealt with before the end of the year preceding the one for which the grant is requested, the Ombudsman closed the case with a critical remark.

■ Execution of contracts

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

However, the scope of the review that the Ombudsman can carry out in such cases is necessarily limited. The Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question can only be dealt with effectively by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

In cases concerning contractual disputes, the Ombudsman considers it justified to limit his inquiry to examining whether the Union institution, body, office, or agency has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction. If the parties do so, the Ombudsman will close his inquiry immediately with no further assessment, in light of the provision in Article 2(7) of his Statute.

On the basis of the aforementioned examination, the Ombudsman closed several cases in 2009 with findings of no maladministration or considered that no further inquiries were justified. These included disputes about delays in making balance payments due for work in some projects²¹, failure to pay interest for late payment to a firm²², disputes over eligible costs and/or amounts to be recovered or paid after audit actions²³, disputes over failure to provide reasons when asking for the dismissal of persons working for contractors of the institutions, and breach of the right to be heard²⁴.

Unlike in previous years, the Ombudsman closed no cases relating to delays in payment. It appears that, either the Commission is improving its system of payment or is making an effort to settle relevant problems before its contractors complain to the Ombudsman. It should be noted that, in 2009, the Ombudsman opened a follow-up to his previous own-initiative inquiry (**OI/5/2007/GG**) into late payment by the Commission. This inquiry (**OI/1/2009/GG**) should reveal whether progress has indeed been made.

A recurrent problem dealt with by the Ombudsman in contractual cases relates to the particular contracts the Commission uses to carry out EU-funded actions or programmes. As a rule, the Commission establishes a contractual relationship with a certain firm or consortium, which then implements the project in question by using sub-contractors, experts, or its own employees. Some of these contracts and the respective framework programmes give the Commission some rights in relation to the contractor's experts or employees. This particular contractual environment can give rise to disputes between the Commission's contractors and their staff or experts, with respect to which the Ombudsman considers that the Commission has a certain degree of responsibility. Case **2449/2007/VIK** concerned the dismissal of a team leader after the Commission expressed

21. Cases 177/2008/RT and 670/2009/(BU)RT against the European Commission.

22. Case 1264/2008/MF against the European Parliament.

23. Cases 2119/2007/ELB, 2781/2007/(BEH)OV, and 1462/2007/DK against the Commission.

24. Cases 226/2007/MHZ, 2449/2007/VIK, 2910/2008/TN, and 582/2008/MF against the Commission.

its dissatisfaction with the work he had done. Although the Ombudsman found no maladministration as regards the substance, namely, the reasons provided by the Commission, he concluded that, as regards the procedure, the Commission failed to act in accordance with the principles of good administration, when it failed to give the complainant the possibility to respond to the criticism. The Ombudsman's contribution to the public consultation concerning the revision of the Financial Regulation contains concrete proposals to tackle this kind of problem²⁵.

The Ombudsman would like to underline that, in 2009, many of the cases he dealt with concerning contractual matters were closed with findings of no maladministration. In a case where he identi-

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fied a possible instance of maladministration, the Commission made a real effort to accept his friendly solution proposal.

→→→ In case **2119/2007/ELB**, the Commission concluded that some personnel costs claimed by the firm in question could not be paid because it had sub-contracted the work, without prior

authorisation. The Commission claimed back the full amount for the three projects, amounting to almost EUR 500 000. The Ombudsman pointed out that the Commission had failed to answer clearly to precise questions put to it about the use of sub-contractors. He also noted that the work of the complainant had been carried out to the satisfaction of the Commission. The Commission agreed to consider the merits of the company's request to use sub-contracting and declared that, if it was justified and the complainant submitted proof of its sub-contracting expenses, it could cancel its recovery order. ←←←

The following inquiries revealed no maladministration²⁶: in case **2492/2008/VL**, the complainant argued that the Commission's recruitment rules concerning the statement of exclusivity and availability (SEA), which it required from external experts, breached the experts' basic right to employment. The Ombudsman noted that the SEA limited the possibilities for key experts to apply for other positions. However, given that these experts play a key role in the award and implementation of a contract, the aim pursued by the Commission was legitimate. Moreover, the Ombudsman noted that, following the modifications made to the SEA, the possibility exists for key experts to carry out their duties part-time. They can, therefore, work on additional projects, provided that these further commitments are compatible with their duties under the existing project. In case **183/2008/MF**, the Ombudsman found no maladministration in the Commission's behaviour in relation to a complaint about an alleged infringement of a firm's copyright. In case **1906/2007/VIK**, an American citizen alleged that the evaluation process set up by the Commission for the assessment of projects financially supported by an EU programme to promote human rights and democracy worldwide suffered from a number of problems and deficiencies. After a thorough inquiry, the Ombudsman found no maladministration and concluded that no further inquiries were justified. In particular, he noted that OLAF had, in the meantime, examined the complainant's allegations of fraud and mismanagement.

■ Administration and staff regulations

Every year the Ombudsman receives a number of complaints concerning the administrative activities of the institutions (52 inquiries or 16% of the total closed in 2009). These activities relate to the application of the Staff Regulations for officials and other relevant texts. The nature of these cases varies considerably and they concern almost all institutions, bodies, offices, and agencies.

25. This contribution is available on the Ombudsman's website.

26. The same can be said for cases 771/2007/(TN)DK, 834/2007/TN, 870/2007/TN, 1895/2007/ELB, and 01/1/2008/(VIK)JMA, all against the Commission.


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of the administration²⁷.



The Ombudsman successfully closed one case concerning a former agent who complained to him about unfair recovery orders of monies unduly paid by the institution. The Ombudsman's approach in such matters is based on the case-law of the Court of Justice of the European Union²⁸ and on considerations of fairness

and reasonableness. The fact that undue payments are made to officials or to third persons who are less aware of EU rules and regulations obviously plays a role in this respect. In case **1908/2007/JF** against the Commission, the institution accepted a friendly solution proposal to cancel the recovery order, acknowledging that the reimbursement would put the complainant in a very precarious financial situation. The Ombudsman applauded the Commission for renouncing the recovery and for showing that it can be sensitive in difficult personal situations. 

The Commission showed the same kind of service-mindedness in two other cases. In case **2991/2008/(WP)GG**, the complainant was a former agent who was entitled to a severance grant. He applied but ten months later he had still not been paid. The Commission acknowledged that the delay was its responsibility and agreed to pay interest on account of late payment amounting to EUR 6 400. In case **2248/2009/MF**, the complainant noticed that the family allowances paid to her were too low. When she contacted the Commission, she received no explanations. The Ombudsman decided to apply a fast track procedure and contacted the Paymasters' Office (PMO). The Commission responded positively and paid EUR 2 400, representing the overdue allowances. It also provided full explanations in response to the complainant's requests for information.

Other institutions have also responded very positively to the Ombudsman's suggestions and recommendations in this area. The European Parliament agreed to rectify the maternity leave calculations of one of its agents after the Ombudsman opened his inquiry (case **2123/2008/ELB**). The European Aviation Safety Agency (EASA) agreed to correct the grading of one of its agents²⁹, following the Ombudsman's draft recommendation (case **3567/2006/JF**).

In several other cases, the Ombudsman concluded his inquiries with findings of no maladministration. In a case against the European Economic and Social Committee (EESC) concerning an alleged unjustified decision not to open a disciplinary procedure against one of its former officials (case **1016/2008/JMA**), the Ombudsman considered that there were no grounds to pursue further inquiries, but made a critical remark over the Committee's failure to respond to the complainant's correspondence. In case **572/2008/OV**, the Ombudsman confirmed Parliament's position concerning the withdrawal of a secretarial allowance under the new Staff Regulations. In case **2791/2007/(BEH) KM**, the Ombudsman confirmed the Commission's interpretation of Article 45(2) of the Staff Regulations and of the common rules concerning language training. In case **1179/2008/JF**, concerning the unfair date of dismissal given to the complainant, the Ombudsman upheld the argument that the one month notice given had not allowed him to terminate the leasing of his apartment in time to recover the advances already paid. The Ombudsman made a further remark in respect of this procedural issue. However, he did not uphold the claim for damages because the complainant had stayed in the apartment until the end of the leasing period and had in fact suffered no damages. The Ombudsman also confirmed the Commission's approach in case **699/2007/(WP)BEH** concerning access to a former official's medical file; in case **2518/2008/(NM)GG** concerning age discrimination and failure properly to handle a job application; and in case **2793/2007/WP** concerning the refusal to grant sickness insurance cover to a retired contract agent.

The Ombudsman would also like to highlight two complaints presented by persons with disabilities. In case **2631/2007/JMA**, a Commission employee who uses a wheelchair alleged that the

27. Case 495/2009/ELB concerning the transfer of pension rights from the Union's pension scheme to national schemes constitutes a good example.

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

29. Concerning the grading of officials, see also case 3199/2007/(WP)(VL)BEH.

Commission had failed to provide proper access to the building involved in the complaint. The Commission explained that it had launched a call for tenders and that a framework contract would be signed in the first quarter of 2009, with the building works completed by September 2009. It apologised for the inconvenience caused to the complainant. The Ombudsman asked the Commission to report to him by 31 October 2009 on the works in question and to further inform him of the progress made in bringing several Commission buildings in line with the project of guaranteeing proper access to disabled persons. Case **2350/2007/RT** against the European Parliament concerned the alleged failure to provide the complainant with the traineeship for which she had applied and to ensure that she was treated appropriately during the traineeship. Parliament admitted certain shortcomings but emphasised its services' commitment to offering the complainant the same training possibilities as under the standard traineeship programme. In response to a draft recommendation, Parliament again rejected the complainant's allegations, but offered her its apologies and explained the measures that it had taken to correct the deficiencies identified. While the complainant did not accept Parliament's apologies, the Ombudsman considered that no further inquiries were justified, given Parliament's commitments for the future and the fact that it apologised. He made a further remark, recalling that Parliament and the other EU institutions should be conscious of the need to respect the dignity of disabled people.

OI/6/2007/MHZ concerning the management of human resources in the scientific institutes of the Commission's Joint Research Centres (JRC) related to a previous Ombudsman joint inquiry on individual complaints about internal competitions leading to the establishment of temporary agents as permanent officials. The purpose of the inquiry was to give the Commission an opportunity to explain its management of human resources at the JRC, including the professional situation of the temporary agents. The Ombudsman found the Commission's presentation of its human resources policy at the JRC to be satisfactory. As regards the situation of the temporary agents, the Ombudsman made a draft recommendation that the Commission should organise internal competitions. The Commission refused but informed the Ombudsman of its broader initiative to organise EUR-27 internal competitions. It outlined that the temporary agents could also take part in these competitions, provided they comply with the eligibility criteria. The Ombudsman considered that no further action was justified and closed the case.

The Ombudsman would also like to draw attention to some cases where the institutions' negative and unco-operative response to his findings was particularly disappointing. Case **344/2007/BEH** concerned Parliament's failure properly to conclude a staff assessment procedure³⁰, most notably regarding merit points. Despite a ruling from the Civil Service Tribunal annulling an essentially identical decision by Parliament with regard to 2003, Parliament failed to reconsider its decision for 2004. The Ombudsman considered that the instance of maladministration he identified had already been brought to Parliament's attention by means of the aforesaid judgment. He concluded that a special report to Parliament would not serve a useful purpose and closed his inquiry with a critical remark.

A further case related to problems encountered during the staff evaluation procedure, by officials moving from one institution to another. The complainant argued in case **2007/2008/ELB** that the Commission's policy of awarding a fixed number of merit points to officials transferred from other institutions, irrespective of their performance at their institutions of origin, limited inter-institutional mobility. The Commission's applicable rules were changed before the Ombudsman's inquiry was completed.

The Commission's reaction to the Ombudsman's inquiry was particularly disappointing in case **OI/7/2006/JF**. This concerned the dismissal of a local agent in a delegation, who complained to the Ombudsman about the "inhumane and humiliating" dismissal she had been subjected to by the office. She argued that the Commission should apologise. The Commission merely expressed its regrets over the impressions and feelings which the complainant held as a result of the manner of her dismissal, insisting that the procedures followed by the office were correct. The Ombudsman criticised the

30. Also on matters relating to staff assessment, see case 3004/2007/BEH.

institution for not presenting any sincere, full, and meaningful apologies to the complainant, pointing out that this was particularly regrettable, given that an apology was all she was seeking.

■ Competitions and selection procedures

Since the establishment of the European Personnel Selection Office (EPSO), most of the Ombudsman's inquiries concerning open competitions and other selection procedures are directed against it. Given EPSO's clear potential to serve as a prominent and privileged point of contact with a significant number of EU citizens, it is particularly important that it adhere firmly to a culture of service towards citizens and that it operate transparently.

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lems. This is proof of a culture of service and a genuine will to seek improvements. Of the 15 fully-fledged Ombudsman inquiries involving EPSO, six found no maladministration, with the Ombudsman upholding EPSO's position. The Ombudsman found maladministration in three cases and closed the inquiry with a critical remark or with implicit criticism. In six further cases where the Ombudsman made a preliminary finding of maladministra-

tion, EPSO accepted his suggestions to solve the problem. These figures confirm that EPSO disposes of a margin of manoeuvre in seeking to resolve complaints from dissatisfied candidates. Even if a certain tension arises in trying to reconcile the need for selection boards to be free from any undue interference or pressure, and the equally important need to ensure transparency and accountability in their activities, these two issues can be adequately tackled via EPSO approaches based on a culture of service and of fairness. The Ombudsman is encouraged by the results of his co-operation with EPSO and intends to intensify such co-operation with it, with an eye to further embedding the positive results achieved so far. Many of the following examples illustrate EPSO's positive attitude.

Six cases were closed with findings of no maladministration, including case **1245/2007/JF** concerning EPSO's online registration form and the answers given through its website. Three other cases concerned decisions taken by selection boards rejecting applications because of insufficient academic qualifications (professional experience or diplomas) required to give access to a certain competition. In cases **1569/2007/IP**, **2965/2008/(VL)BEH**, and **2116/2007/IP**, the Ombudsman referred to the wide discretion that selection boards enjoy when assessing applicants' qualifications and to the scope of the Ombudsman's review, which is limited to examining whether the board's assessment was not tainted by a manifest error.

Case **1943/2008/BB** involved allegations of unfairness and discrimination in test arrangements for a candidate sitting the tests in Malta. The Ombudsman found that EPSO had complied fully with the wording of the notice of competition and had justified its policy on the grounds of cost effectiveness and proportionality. However, he made a further remark that EPSO should render its policy clear to candidates in future notices of competition. Case **3035/2008/(MHZ)RT** also concerned an allegation of discrimination, this time on the basis of language. The complainant argued that candidates whose mother tongue is English, French, or German have an advantage in the admission tests. The Ombudsman agreed with EPSO that candidates have to demonstrate knowledge of both their main and second languages throughout the procedure. Moreover, he found that the term 'main language' corresponds better to the requirements of the Staff Regulations than the term 'mother tongue'.

As mentioned above, EPSO has shown great openness in dealing with the Ombudsman's findings of maladministration and has genuinely tried to find solutions. In this spirit, it was therefore able to settle or to accept fully or partially proposals for friendly solutions in the following six cases. Cases **2893/2008/WP** and **3024/2008/DK** concerned the non-admission of candidates to the written tests of a competition for doctors. Following the complainants' unsuccessful attempts to resolve the matter with the selection boards, the candidates turned to the Ombudsman. In both

cases, EPSO informed the Ombudsman that the selection boards had admitted the candidates to the competition. Case **1135/2006/(GK)(ID)MF** concerned a dispute about the accuracy of the corrections made by the board and its assessors in a translation from Greek into Italian. The complainant alleged that the original Greek text was of poor quality and contained mistakes. He further alleged that the members of the board did not speak Greek and that the board did not use an independent assessor. The Ombudsman asked EPSO to provide for a third correction of the complainant's test paper by a new assessor. EPSO accepted the Ombudsman's proposal.

→→→ Case **2346/2007/JMA** concerned EPSO's refusal to inform successful candidates of their marks in different tests (see under "Data Protection" above). After having consulted its Management Board, EPSO decided to change its policy and to allow all candidates to have access to their marks. ←←←

In case **397/2009/CK**, EPSO apologised to the complainant for delays in the payment of travel expenses incurred while participating in a competition and committed itself to revising the current procedures for making such reimbursements. The Ombudsman made a further remark, inviting EPSO to keep him informed of the outcome of the revision of such procedures. In case **1566/2007/DK**, EPSO accepted the Ombudsman's suggestion that it should explain to the complainant the reason for the technical problems he encountered when sitting the pre-selection tests and to allow him to sit the tests again. EPSO accepted the friendly solution proposal, but the complainant subsequently decided that he was no longer interested in sitting the tests again.

The Ombudsman expressed criticism in relation to EPSO practices in only three cases. The first (case **1303/2007/(WP)(BEH)KM**) concerned the alleged failure to schedule an interview before the date on which the candidate was due to give birth. Although a completely satisfactory solution could not be found, the Ombudsman acknowledged EPSO's openness to tackle the general problem. The second case related to his own-initiative inquiry launched in 2007 and closed in 2009 (**01/4/2007/(ID)MHZ**). It concerned access by unsuccessful candidates in computer-based tests (CBT) to the questions and answers they gave. Having received a substantial number of individual complaints about this practice and having concluded that it constituted an instance of maladministration³¹, the Ombudsman launched this inquiry. Many other complaints were submitted subsequently on this subject³². The Ombudsman did not agree with EPSO's arguments relating to the administrative and financial difficulties likely to arise if it gave candidates such access. He stated that the principle of transparency, as well as the progress which the institutions have made in this respect, could not be overridden by such difficulties. EPSO also invoked the rules on access to documents and the relevant case law concerning the secrecy of the work of selection boards and the principle of equal treatment of candidates. Referring to a number of cases pending before the courts, which challenge EPSO's refusal, the Ombudsman felt that continuing the present inquiry was not justified. While awaiting the decisions of the Court of Justice of the European Union in relation to the disclosure of the CBT questions, the Ombudsman recalled the critical remarks he issued in his previous inquiries on individual complaints. The Ombudsman also issued a critical remark in case **99/2008/VIK** concerning the wrong content of a verbal reasoning question. He argued that the wording of the answer EPSO considered as correct was not beyond doubt and that that constituted maladministration.

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

→→→ This was again experienced in case **2003/2008/TS** against the European Research Council Executive Agency (ERCEA), which concerned the alleged failure to respond adequately to repeated requests relating to job applications. Following the Ombudsman's inquiry, ERCEA decided to take into account applications from candidates who had the same profile as the complainant. The ERCEA

31. Case 370/2007/MHZ.

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

also invited the complainant for an interview. Moreover, it acknowledged that, in its initial decision to exclude the candidate, it had failed to provide him with clear and understandable information concerning possible means of redress. It assured the Ombudsman that applicants would receive adequate information in the future. <<<

→→→ The Executive Agency for Competitiveness and Innovation apologised and gave additional explanations to an unsuccessful candidate for a position. It also mentioned its commitment to identifying additional measures within its services designed to improve its officials' awareness of applicable administrative standards (case **1562/2008/BB**). <<<

Two inquiries were conducted into complaints against the Council of the EU (cases **296/2008/RT** and **945/2008/(DK)RT**) concerning alleged wrongful rejection of applications for open competitions and unfair delay in replying to a request for review. The problem in both complaints concerned the value, and the equivalence, of a certain French diploma. The Ombudsman considered that the selection board, which had contacted the French Permanent Representation to the EU and confirmed the level of the diploma in question, did not go beyond its margin of discretion when evaluating whether the complainant met the conditions for admission. He also considered that no further inquiries were justified concerning the alleged delays in replying to the complainant.

The Ombudsman closed three inquiries into complaints against the European Parliament. In case **502/2008/VIK**, the complainant alleged breach of the institution's internal rules in a recruitment procedure. The Ombudsman considered that Parliament had acted correctly. Case **3348/2008/GG** concerned the alleged failure to provide formal and timely information concerning a recruitment decision. Again, the Ombudsman found no maladministration. Finally, case **2909/2007/JMA** concerned Parliament's refusal to accept applications downloaded from the web or presented on photocopies of the application form, which was published in the Official Journal. The Ombudsman did not accept Parliament's argument that having to check photocopies or downloaded forms would imply a large amount of work for its services. He welcomed the more flexible practices announced by Parliament in this respect, underlined that, in the past, Parliament had indeed been more flexible in this respect, and pointed to the flexibility exhibited by EPSO in the competitions it organises.

The Ombudsman also closed two staff selection cases concerning the Commission. Case **2851/2008/TN** concerned the wrong handling of a request for reimbursement of a candidate's travel expenses. The Ombudsman closed the case with critical remarks because the Commission failed to explain properly its delay of many months in paying such expenses. He also made a further remark suggesting that the Commission clarify to candidates what kind of supporting documents are needed for reimbursement. Case **224/2005/ELB** was submitted by an unsuccessful candidate in selection tests organised by the Commission. The General Court concluded, in relation to two other candidates in the same selection procedure, that the oral tests were defective. The complaint to the Ombudsman argued that the Commission should deal with her case in a manner consistent with the Court's relevant ruling. The Ombudsman proposed that the Commission could compensate the complainant for the loss of opportunity. The Commission consistently maintained that the only effect of the Court cases concerning the other two candidates was to annul the individual decisions concerning them. After further contacts from the Ombudsman, the Commission explained that the complainant had already been compensated for loss of opportunity for recruitment by the Commission in the context of another selection procedure. As such, it could not compensate her twice for the same loss. While the Ombudsman agreed, he pointed out that the Commission should have apologised to the complainant for the errors committed, and should have explained to her, in detail, why it considered that, in her specific case, awarding her additional compensation could not be justified. He closed the case with a critical remark.

■ Institutional, policy matters, and other

This residual heading covers a range of complaints made against the institutions regarding their policy-making activities or their general functioning. The cases closed will be presented in four

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categories. The first three concern the activities of the Commission concerning (i) its role as initiator of legislation, (ii) the field of competition law, and (iii) its administrative activities. The fourth will describe cases concerning other institutions, bodies, offices, or agencies.

Case **1102/2008/(SL)OV** concerned an alleged failure to rectify an administrative error contained in a Regulation. The complainant was a Belgian firm which exports a certain category of waste. It protested against an error made in Regulation (EC) 1013/2006 which wrongly prevented the export of certain categories of waste to Malaysia. The Commission acknowledged the error but took a long time to correct it. It apologised for the error and the delay and promised to look for more expeditious ways to correct such administrative mistakes in the future. Case **3594/2006/PB** concerned alleged maladministration in the Commission's response to correspondence regarding alleged technical deficiencies in valves placed on the EU/EEA-market by a third country valve manufacturer. The Ombudsman – who for obvious reasons is not in a position to assess the technical findings in such cases – found that the Commission could have better responded to the complainant regarding the test results that he had submitted to it. He encouraged the Commission to inform the complainant why, as appeared to be the case, it considered the test results to be irrelevant. The Ombudsman found that the Commission's subsequent reply adequately addressed these issues. Case **1289/2008/MHZ** concerned the classification of nickel substances and contacts with the industry in this respect. In the course of the Ombudsman's inquiry, some of the complainant's members brought actions before the English and European courts concerning the Commission's classification of the nickel substances and its statement of reasons. Consequently, in accordance with Article 195 EC (now Article 228 TFEU) and Article 2(7) of his Statute, the Ombudsman filed the outcome of his inquiries. As regards the 'procedural aspects' of the case, the Ombudsman found that the Commission provided satisfactory explanations to all aspects, except in an issue relating to the distribution of a document entrusted to it by the complainant, without the latter's authorisation. The Ombudsman found that the Commission acted unfairly by doing so and made a critical remark. Case **406/2008/(WP)VIK** concerned the alleged failure on the Commission's part to consult civil society and to respect the deadline for the publication of its fifth report on European citizenship. The Ombudsman noted that the Commission was not under a legal obligation to consult civil society before publishing its reports on European citizenship. He pointed out, however, that consulting interested parties before publishing the reports in question would clearly be good administrative practice. During the course of the inquiry, the Commission committed itself to carrying out such consultations in future. Case **97/2008/(BEH)JF** concerned allegations that the work of a comitology committee had not been correctly conducted by the Commission. The Ombudsman concluded that the evidence available to him was sufficient to attest that the relevant committee meetings had been held in accordance with the applicable procedural rules and general principles of good administration. He nevertheless pointed out that, if the complainant wished to suggest changes to the comitology system, she could consider presenting a petition to the European Parliament. Case **1520/2008/RT** concerned the Commission's alleged failure to respect the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (the REACH Regulation), and alleged misuse of EU funds. The complainant contacted the Commission on behalf of 140 other European associations active in the field of animal protection. He asked it to prohibit experiments on animals and, in accordance with the provisions of the REACH Regulation, to introduce alternative test methods. According to the Commission, the new methods proposed by the complainant had not yet advanced to a stage where they could be used for regulatory purposes under the REACH Regulation. After a thorough analysis of the documentation submitted by both parties, the Ombudsman considered that the complainant failed to demonstrate that the Commission's findings relating to those new methods were not based

on excellent and independent scientific advice or were vitiated by a manifest error of assessment. Accordingly, he found no maladministration.

The Ombudsman dealt with several cases relating to the Commission's activities in the field of competition law. Case **2015/2008/GG** concerned an allegedly incorrect decision not to open proceedings following a competition complaint about anti-competitive practices by Dutch brick producers. The Ombudsman found that the Commission had acted within the limits of its discretion when it decided not to pursue its investigation. It examined the allegations raised by the complainant and did not find sufficient evidence to support them. He also found no manifest error of appreciation. Case **1142/2008/(BEH)KM** also concerned an alleged wrong decision not to open competition proceedings against two companies. In its opinion, the Commission essentially argued that (i) the conduct of the public utility company in question had no effect on cross-border trade, and (ii) as regards the conduct of the other company, the Commission had a discretion to prioritise other options of working towards increased competition in the national energy market concerned rather than those proposed by the complainant. The Ombudsman considered that the Commission's position concerning the conduct of the public utility company was correct. He also found that the Commission was right in arguing that it had discretion as to whether or not to commence proceedings on the basis of a competition complaint. The Commission acted within the limits of its discretion when deciding not to open an investigation against the other company, he concluded.

Case **2967/2008/FOR** dealt with an allegation of improper disclosure of highly sensitive information during an investigation of allegedly illegal state aid granted to a company in the context of an agreement on airport charges between that company and the state-controlled operator of an airport. The Ombudsman found that the Commission published, in the Official Journal of the EU, precise details of certain discounts granted to the company by the airport, despite having made a clear written commitment to the national authorities not to do so. He found that the disclosure of the information was an error and that this constituted maladministration. Given that, prior to the opening of the Ombudsman's inquiry, the Commission recognised that it had committed an error, and apologised, the Ombudsman did not consider it necessary to make a critical remark. He welcomed the new measures taken by the Commission with a view to ensuring that these types of errors do not occur again. In case **1342/2007/FOR** (see also section 3.3), the Commission was again accused of having improperly disclosed highly sensitive information in the context of merger proceedings. The Ombudsman found that a serious breach of confidentiality had indeed occurred. However, he noted that it could not be presumed that the Commission was the source of the leak, given that, at the relevant time, the two companies involved and the national Department of Transport also had copies of the relevant document. Further, the Ombudsman concluded that the Commission did, within the limits of its powers, investigate the complainant's allegation that the other company was the source of the leak to the press. He thus found no maladministration as regards this aspect of the allegation. The Ombudsman, however, observed that the Confidentiality Declaration used by the Commission was not fully adequate and he made a critical remark in this respect. He praised the fact that the Commission subsequently amended its Confidentiality Declaration, with a view to correcting this error. Case **1935/2008/FOR** concerned alleged procedural errors in a competition case (see also section 3.3). The complainant argued that the Commission failed to take minutes of a meeting, even though the meeting directly concerned the subject-matter of the Commission's anti-trust investigation. The Ombudsman found that the meeting did concern the subject-matter of the Commission investigation and that the Commission did not make a proper note of that meeting. The Ombudsman concluded that this constituted maladministration. He did not make a finding of maladministration in relation to the complainant's second allegation, which was that the Commission encouraged an information exchange agreement which, in the complainant's view, gave undue access to information contained in the Commission's investigation file. The Ombudsman did find, however, that the Commission failed to make a proper note of a telephone call in which the information exchange agreement was discussed. He thus recommended, in a further remark, that, in the future, proper notes should be made of any meetings or telephone calls with third parties concerning important procedural issues.

In case **1341/2008/MHZ**, concerning the acceptance of gifts and hospitality by civil servants, the Commission acknowledged that it would have been better not to allow two high-ranking officials, who dealt with anti-dumping cases, to accept VIP rugby tickets from a sportswear supplier. An NGO alleged that this could have resulted in a conflict of interest.

Other cases involving the Commission concerned the blacklisting of an NGO³³, the provision of vegetarian food in the canteen service of a European school³⁴, and the alleged wrong closure of a European Database³⁵. The use of different alphabets in the publications produced by the Publications Office of the EU³⁶ was also examined by the Ombudsman in 2009.

The Ombudsman also dealt with case **107/2009/(JD)OV** against the Council of the EU concerning an alleged failure to inform citizens about new visa requirements for entering Switzerland. Since the complainant's first allegation in fact questioned whether the date chosen in the Council decision was appropriate, the Ombudsman agreed with the Council that the allegation concerned the merits of the decision and was therefore outside his mandate. As regards the alleged failure to inform people adequately, the Ombudsman considered that he would only need to examine whether the Council itself had a duty to provide information if the information provided by the Swiss and British authorities was insufficient. It appeared that the Swiss authorities had made sufficient information available to the airlines concerned. The Ombudsman therefore found no maladministration.

Case **244/2006/JMA** against the European Investment Bank (EIB) concerned the Bank's review of the environmental impact assessment (EIA) of the high-speed railway project to link Madrid to the French border via Barcelona. Following a thorough review of the EIA document, the EIB concluded that it had been carried out correctly. The fact that alternative routes had been considered by the responsible national authorities formed part of this assessment. After having inspected the file, the Ombudsman did not find any document which documented that review. He made a draft recommendation. The EIB noted, in reply, that it had instructed its services to produce a note for the file setting out the actual status of the project. The Ombudsman concluded that the note for the file specifically referred to an "analysis of alternatives". In his view, this statement expressly confirmed that the EIB had verified that the EIA took alternative options into account. It did not expressly state, however, that the EIB had verified that reasons were given in the EIA for the decision of the national authorities. Since the EIB still had the option expressly to confirm, prior to disbursement, that reasons were in fact given in the EIA for the decision of the national authorities concerning the route chosen, the Ombudsman made a further remark suggesting that the EIB should consider recording its assessment of EIAs in a more systematic manner by using a comprehensive checklist of conditions which an EIA must comply with.

Case **310/2009/ELB** concerned the European Parliament's alleged wrongful refusal to allow an association to use Parliament's premises on the basis of rules providing that no seminars can be held on its premises if fees are charged for registration. The Ombudsman pointed out that access to Parliament's premises falls within the institution's powers of internal organisation and found no maladministration in this regard. He made a critical remark, however, in relation to the institution's failure to provide the complainant with information about the possibilities of appealing its decision.

The Ombudsman also dealt with two cases concerning OLAF. Case **2930/2008/JMA**, regarding an allegation of failure to handle an inquiry properly, was closed because, in the course of his investigation, the Ombudsman learned that the Spanish Regional Economic and Administrative Tribunal had issued a judgment regarding a case brought by the complainant against the decision of the Spanish custom authorities. The Ombudsman concluded that the complainant's pleas in his action before the Spanish court were identical to the allegations made in his complaint. In light of the Spanish court's ruling and, on the basis of Article 195 EC (now Article 228 TFEU) and Article 2(7) of his Statute, the Ombudsman decided to close the case. Case **1748/2006/JMA** concerned a complainant who had

33. Case OI/3/2007/GG.

34. Case 2530/2008/TS.

35. Cases 814/2008/IP, 277/2008/(IG)IP and 472/2008/IP.

36. Case 2060/2008/VIK.

worked for a number of firms on various EU-funded projects, and who became aware that one of his former employers had received a letter from OLAF stating that he had committed serious irregularities and requesting information about him in this regard. The complainant wrote to OLAF on several occasions. Since he considered that OLAF's reply was not satisfactory, he complained to the Ombudsman. The Ombudsman noted that, in order to carry out its inquiries effectively, OLAF may request information from third parties. However, he considered that OLAF had not respected the principles of fairness and proportionality, as well as the principle of the presumption of innocence. He therefore addressed a critical remark to OLAF. The Ombudsman also made other critical remarks and a further remark in relation to several aspects of OLAF's investigation and behaviour.

3.6 Transfers and advice

In almost 80% of all cases dealt with in 2009, the European Ombudsman was able to help the complainant by opening an inquiry into the case, by transferring it to a competent body, or by giving

Complaints that are outside the Ombudsman's mandate often concern alleged infringements of EU law by Member States. Many such cases can best be handled by a national or regional ombudsman within the European Network of Ombudsmen.

advice on where to turn. Complaints that are outside the Ombudsman's mandate often concern alleged infringements of EU law by Member States. Many such cases can best be handled by a national or regional ombudsman within the European Network of Ombudsmen. The Committee on Petitions of the European Parliament also participates in the Network as a full member. 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 (see section 4.2 below).

In total, 55% (1 704) of the complaints processed by the European Ombudsman in 2009 were found to be within the mandate of a member of the European Network of Ombudsmen (727 of these cases were within the mandate of the European Ombudsman). As can be seen from Figure 3.12, in 977 cases, the complaint was transferred³⁷ to a member of the Network or the complainant was advised to contact a member of the Network (792 were referred to a national or regional ombudsman, while 185 were referred to the European Parliament's Committee on Petitions).

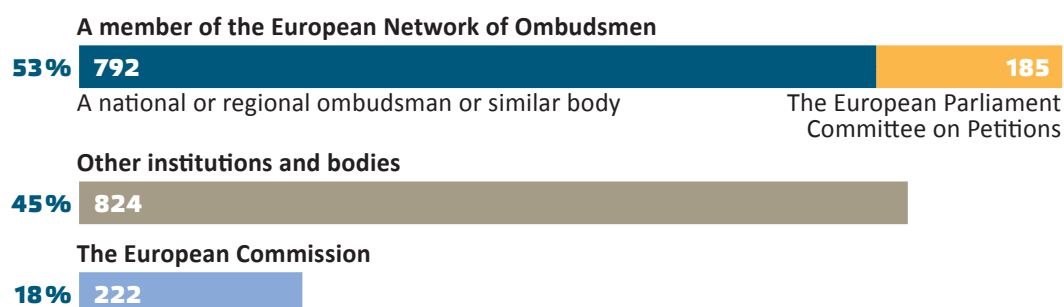
In some cases, the Ombudsman considers it appropriate to transfer the complaint to the European Commission or to SOLVIT, a network set up by the Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market. Before transferring a complaint or advising the complainant, the Ombudsman's services make every effort to ensure that the most appropriate advice is given. In 2009, 222 complainants were referred to the Commission³⁸, while 824 were referred to other institutions and bodies, including SOLVIT and specialised ombudsmen or complaint-handling bodies in the Member States.

In total, in 67% of all cases examined in 2009, advice was given or the case was transferred. The rest of this Chapter contains examples of such cases.

37. A complaint is transferred only with the prior consent of the complainant and provided there appear to be grounds for the complaint.

38. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches to the institution had not been made before the complaint was lodged with the Ombudsman.

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



NOTE 1 This includes 215 complaints registered towards the end of 2008, which were processed in 2009 and excludes 94 complaints registered towards the end of 2009, which were still being processed at the end of the year to determine what action to take.

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

The role of members of the European Network of Ombudsmen

A Romanian citizen, who bought a van in Austria to use in Romania, alleged that the national application fees that the Romanian government levied were disproportionately high. He also complained that his property was subject to the corrupt and arbitrary rule of a mayor. The complainant further claimed that the EU 'tolerated' corrupt behaviour by the Romanian government.

Regarding the allegations concerning the practices of the Romanian government and public authorities, the Ombudsman advised the complainant to consider contacting the Romanian Ombudsman. As to the allegation of the EU's failure to act, the Ombudsman advised the complainant to turn to the European Commission if he wished to complain about a possible infringement of EU law. He was further advised to consult information on the Commission's website regarding car taxation in Romania.

2326/2009/CH ■

The complainant's husband has severe disabilities. A special permit allows him to park his car in certain places where parking would normally be prohibited. This permit is valid in several German *Länder*. According to the complainant, who is German, it is also recognised in Belgium and Luxembourg and has been accepted in Veere, a Dutch municipality close to Middelburg. However, the complainant and her husband were charged more than EUR 50, when they parked their car in Middelburg. Moreover, the municipality of Middelburg appears to insist that complaints be lodged in Dutch, although the complainant and her husband do not master Dutch. The Ombudsman contacted the Dutch Ombudsman, who asked for the complaint to be transferred to him in German.

2168/2009/FS ■

The complainant alleged that the German Radio and Television Licences Agency (GEZ) may claim dues and enforce its claims, even retroactively, without the need for a court decision. Moreover, there is no public supervision of the GEZ's behaviour. The complainant alleged that the obligation to pay fees for radio and television contradicts the basic right to freedom of information. He claimed that the GEZ should either be abolished or made subject to efficient public supervision to allow citizens to defend themselves against unfair decisions. The GEZ should also require a court order to enforce its claims. The complainant agreed that his complaint be transferred to the Committee of Petitions of the Bundestag.

2851/2009/FS ■

Complainant advised to contact the European Commission

The complainant alleged that a third party had applied for an EU grant for her property, a parcel of land in Poland. The complainant raised the matter with the relevant agency, which told her that this was normal procedure. Dissatisfied with the answer, she complained to the European Ombudsman that the EU should not tolerate such behaviour. Insofar as her complaint concerned the EU, the Ombudsman advised the complainant to approach the Commission first, and to turn to the Polish Ombudsman with more specific information if she wished to complain about the relevant agency.

2699/2009/CH ■

Complaint transferred to SOLVIT

A British citizen residing in Cyprus complained to the European Ombudsman alleging that his wife, a non-EU national, had a residence permit, which enabled her to live with him in Cyprus, but not to work. The case was transferred to the UK SOLVIT Centre, whose intervention led to a positive outcome. The complainant's wife had obtained residence rights before Cyprus joined the EU, and it was for this reason that restrictions relating to work applied. The complainant was provided with information on how to apply for a new residence permit, which would enable his wife to work in Cyprus.

765/2009/EC ■



Relations
with institutions,
ombudsmen,
and other
stakeholders

THIS Chapter provides an overview of the European Ombudsman's efforts to reach out to the EU institutions¹, to his ombudsman colleagues, and to other key stakeholders. The purpose of these activities is to ensure that complaints are dealt with effectively, to share best practice, and to raise awareness about the Ombudsman's role in promoting good administration, transparency, and a culture of service.

4.1 Relations with EU institutions

Constructive relations with the EU institutions are hugely important for the European Ombudsman to ensure the highest possible standards of administration. The Ombudsman meets regularly with

The Ombudsman meets regularly with members and officials of the EU institutions to discuss ways of raising the quality of the administration and to ensure appropriate follow-up to his remarks, recommendations, and reports.

members and officials of the EU institutions to discuss ways of raising the quality of the administration and to ensure appropriate follow-up to his remarks, recommendations, and reports. His activities in this area are detailed below.

■ European Parliament

The European Parliament elects the Ombudsman and he reports to it, most notably via the presentation of this Annual Report and also via special reports. The Ombudsman enjoys an excellent working relationship with Parliament's Committee on Petitions, which is responsible for Parliament's relations with the Ombudsman and prepares a report on his Annual Report. The Ombudsman met the new Chair of the Committee on Petitions, Ms Erminia MAZZONI MEP, on 2 September 2009.

The Ombudsman presented his *Annual Report 2008* to the then President of Parliament, Mr Hans-Gert PÖTTERING MEP, and to the Chair of the Committee on Petitions, at the time, Mr Marcin



Parliament's annual debate on the Ombudsman's activities constitutes a highpoint in the Ombudsman's calendar. Mr DIAMANDOUROS is pictured here responding to questions on his *Annual Report 2008* during Parliament's Plenary session on 12 November in Strasbourg. Later that day, Parliament adopted a resolution on the Ombudsman's activities in 2008 based on the report drafted by Committee on Petitions member, Ms Chrysoula PALIADELI MEP.

1. Article 228 TFEU extends the Ombudsman's mandate from complaints concerning maladministration in the activities of "Community institutions or bodies" to "Union institutions, bodies, offices, or agencies". While this section of the Annual Report previously used the term "institutions and bodies", we now use, for brevity, the term "institutions" to refer to all the EU institutions, bodies, offices, and agencies.

LIBICKI MEP, on 23 April 2009. The presentation to the Committee on Petitions took place on 14 September. Ms Chrysoula PALIADELI MEP drafted the Committee's report on the Ombudsman's activities in 2008. At its session on 12 November, following the Ombudsman's presentation to the Plenary and a debate that day, Parliament adopted a resolution based on Ms PALIADELI's report. In its resolution, Parliament declared its satisfaction with the Ombudsman's work, his constructive co-operation with the institutions, and his public profile, particularly commending his new website and interactive guide.

At the Committee's request, a member of the Ombudsman's staff represented him at each of the meetings that the Committee held in 2009. The Committee discussed one Ombudsman special report during the year in question: the special report on age discrimination was discussed on 10 February. The Ombudsman was happy to note that Parliament's report, which was drafted by Mr Miguel MARTÍNEZ MEP and which reflected entirely the concerns that the Ombudsman had brought to Parliament's attention, was adopted by Plenary in May without a single vote against.

The ongoing revision of Regulation 1049/2001 on public access to European Parliament, Council, and Commission documents² also featured prominently in the Ombudsman's relations with Parliament in 2009. On 27 April, Mr DIAMANDOUROS met the Committee on Civil Liberties, Justice and Home Affairs to discuss Parliament's report on the ongoing revision. Prior to that, on 20 January, he attended a Joint Committee meeting of the Civil Liberties Committee of the European Parliament and National Parliaments to address the question "What inspiration can EU institutions draw from Member States' best practices in transparency and in good governance?". Finally, on 16 February, the Ombudsman participated in a public hearing organised by the Committee on "Problems and Prospects concerning European Citizenship".

Election of the European Ombudsman

Article 228(2) TFEU provides that the Ombudsman shall be elected after each election of the European Parliament for the duration of its term of office. The Rules of Procedure of the European Parliament set out details of the election procedure.

The European Parliament published a call for nominations for the office of Ombudsman in the Official Journal of 10 September 2009³, setting 9 October 2009 as the deadline for submission of nominations.

Detailed information on the election of the European Ombudsman can be found on Parliament's website at:

<http://www.europarl.europa.eu/electionombudsman/> ■

■ Council of the EU

During the year in question, the Ombudsman participated in a seminar organised by the Swedish Presidency of the EU, entitled "Transparency and Clear Legal Language in the European Union". He spoke of his experience investigating complaints about maladministration, especially regarding access to documents.

Of particular importance to the Ombudsman's working relations with the Council in 2009 was an issue stemming from the Council's application of the Ombudsman's Statute. This followed the revision of the Statute in 2008⁴. On 14 October 2009, the Ombudsman participated in a meeting of the Council's Working Group on Information with a view to exchanging views on the issue. The meeting was extremely useful and led to a speedy and mutually satisfactory resolution of the issue (see Chapter 2).

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

3. OJ 2009 C 216, p. 7.

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

■ European Commission

The European Commission is the institution that accounts for the highest proportion of inquiries that the Ombudsman carries out. Regular meetings between the Ombudsman and Commission

The European Commission is the institution that accounts for the highest proportion of inquiries that the Ombudsman carries out.

representatives are, therefore, important to ensure satisfactory responses to citizens' complaints. During 2009, the Ombudsman met Commission Secretary-General, Ms Catherine DAY, on a number of occasions. He addressed the Commission Directors-

General for the third time on 28 May, having met them already in 2005 and 2007. On 2 February, members of the Ombudsman's staff met with Commission officials to discuss the registration by the Commission of complaints and inquiries concerning infringement procedures and the review of the rules on public access to documents. The Head of the Ombudsman's Legal Department met, on a monthly basis, with the Director responsible for interinstitutional relations in the Commission's Secretariat-General in order to follow-up on inquiries concerning the Commission. Finally, the Ombudsman held two meetings with the Commission's Staff Mediator, Ms Mercedes DE SOLA, to discuss issues of common interest.

The year 2009 also saw strengthened co-operation with SOLVIT, a network set up by the Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market. For the first time ever, a SOLVIT representative attended the biennial Seminar of National Ombudsmen of EU Member States and candidate countries, which was held in Cyprus in April. Following a meeting on 17 February with officials from DG Internal Market and Services, members of the Ombudsman's staff met with the Commission's SOLVIT team on 17 June and again on 7 December. Both services were jointly presented at a workshop held in Stockholm on 9 October during the Annual Congress of the Enterprise Europe Network. Finally, the Ombudsman made every effort to raise awareness of SOLVIT's role during his information visits to the Member States and invited SOLVIT to participate in the event he organised on 13 March entitled "Problem solving in the EU – Where to turn?" (see further below).



The year 2009 saw enhanced co-operation between the Ombudsman and European Commission-sponsored networks at the service of citizens, organisations, and businesses. Mr DIAMANDOUROS is pictured here delivering the keynote speech to the annual general meeting of the Europe Direct Network in Tallinn on 23 September.

Also of importance in terms of raising awareness of the full range of services available to citizens, organisations, and businesses with questions or problems relating to their EU law rights were the Ombudsman's efforts to step up co-operation with Europe Direct. Activities were undertaken to ensure that the Europe Direct Network and Europe Direct Contact Centre are fully informed about the work of the European Ombudsman and the European Network of Ombudsmen. This is important so that individuals can be guided to the appropriate avenue of redress first time around. In December, the Ombudsman met with the Commission Director-General responsible for Communication, Mr Claus SØRENSEN, to discuss these and other initiatives.

■ European Economic and Social Committee

On 13 May, the Ombudsman addressed the European Economic and Social Committee (EESC) at a plenary session in Brussels, having the previous day met the Committee's President, Mr Mario

On 13 May, the Ombudsman addressed the European Economic and Social Committee (EESC) at a plenary session in Brussels.

At a second meeting, which took place on 9 November, Mr DIAMANDOUROS addressed the Committee staff.

SEPI, Vice-President, Ms Irini Ivoni PARI, President of Employees Group, Mr George DASSIS, President of the Various Interests Group, Mr Staffan NILSSON, and Secretary-General, Mr Martin WESTLAKE. At the session, Mr DIAMANDOUROS spoke mainly of his experience concerning citizens' expectations of the EU institutions. At a second meeting, which took place on 9 November, Mr DIAMANDOUROS addressed the Committee staff. His presentation covered the types of complaints he deals with, his role compared to the courts, his proactive work, and how he can be a resource for the administration. Throughout his presentation, he made reference to the European Code of Good Administrative Behaviour, which the Committee adopted in July 2009. The Ombudsman very much welcomed this development.

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■ European Investment Bank

The Ombudsman worked hard in 2009 to raise awareness about his role supervising the European Investment Bank (EIB). This followed the conclusion of a Memorandum of Understanding⁵ between the Ombudsman and the EIB in 2008. On 1 December, he organised an event with stakeholders to draw attention to this aspect of his work. This event, which gathered over 30 interested parties, took place in the framework of the EIB public consultation on its complaints mechanism⁶. Representatives of the Bank attended the event and provided helpful clarifications on how the EIB deals with complaints. The Ombudsman was also represented at the meetings held by the Bank during the year as part of its public consultation.



To help raise awareness about his role supervising the European Investment Bank (EIB), the Ombudsman organised an event with stakeholders on 1 December in Brussels. This took place in the framework of the EIB public consultation on its complaints mechanism. Over 30 interested parties, pictured here, participated in the event.

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

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

■ European Personnel Selection Office

Given its central role in EU recruitment activities, and, therefore, relations with European citizens, the European Personnel Selection Office (EPSO) accounts for a relatively high proportion of inquiries that the Ombudsman carries out. Strenuous efforts in recent years have, however, led to a marked improvement in both the transparency of the selection process and EPSO's responsiveness to candidates' queries and complaints. Ongoing efforts to modernise EU recruitment procedures should lead to further improvements. On 4 March 2009, EPSO organised an event to mark the implementation of several actions of its development programme, including a new website, on-line registration for competitions, a new logo, and new notice of competition. The Ombudsman was represented at the event by Secretary-General, Mr Ian HARDEN.

Mr DIAMANDOUROS met the Director of EPSO, Mr David BEARFIELD, on 1 July 2009, to discuss these and other improvements, and to initiate discussions on a possible Memorandum of Understanding between the two bodies.

■ Other EU institutions

The Ombudsman held a range of other meetings with representatives of the EU institutions during 2009. On 24 June, he met the President of the European Court of Auditors, Mr Vítor DA SILVA CALDEIRA, in Luxembourg and later participated in a working lunch with all the Members of the Court. That same day, he met with the President of the Court of Justice, Mr Vassilios SKOURIS. On 25 September, Mr DIAMANDOUROS attended the celebrations of the 20th anniversary of the General Court and on 29 November, met with the President of the Court, Mr Marc JAEGER, who travelled to Strasbourg to address the Ombudsman's staff. On 22 October, Mr DIAMANDOUROS met and discussed with the Reflection Group on the Future of Europe in Brussels. Finally, he met the Director of the European Anti-Fraud Office (OLAF), Mr Franz-Hermann BRÜNER, on 11 May, and the new Deputy European Data Protection Supervisor (EDPS), Mr Giovanni BUTTARELLI, on 29 June.

4.2 Relations with ombudsmen and similar bodies

With a view to helping as many complainants as possible, the European Ombudsman co-operates closely with his counterparts at the national, regional, and local levels. This co-operation is equally

With a view to helping as many complainants as possible, the European Ombudsman co-operates closely with his counterparts at the national, regional, and local levels.

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

Ombudsman also participates in conferences, seminars, and meetings outside of the Network.

■ The European Network of Ombudsmen

The European Network of Ombudsmen now comprises 94 offices in 32 countries, covering the national and regional levels within the Union, as well as the national level in the applicant countries for EU membership, plus Norway, Iceland, and, most recently, Switzerland.

The Network serves as an effective mechanism for co-operation on case-handling. It is equally active in sharing experiences and best practice – goals which it endeavours to achieve via seminars and meetings, a regular newsletter, an electronic discussion forum, and a daily electronic news service.

Co-operation on case-handling

Many complainants turn to the European Ombudsman when they have problems with a national, regional, or local administration. In many cases, a member of the European Network of Ombudsmen

Many complainants turn to the European Ombudsman when they have problems with a national, regional, or local administration. In many cases, a member of the European Network of Ombudsmen can provide an effective remedy.

can provide an effective remedy. When possible, the European Ombudsman transfers cases which are admissible for the Network directly to national and regional ombudsmen or gives suitable advice to the complainant. Further details of this co-operation are provided in Chapter 3.

To help make the EU dimension of ombudsmen's work better known and to clarify the service that they provide to people who complain about matters within the scope of EU law, the Network adopted a Statement in October 2007. This Statement, which is available on the European Ombudsman's website in 23 languages, was slightly revised during the Seventh Seminar of National Ombudsmen of EU Member States and candidate countries, held in Cyprus, in April 2009. The revised Statement reflects the fact that the European Ombudsman's website now contains an interactive guide, which helps individuals find which ombudsman or other body is best placed to deal with their complaint, or to answer their request for information. It was also agreed to revise the Statement whenever necessary.

Also with a view to raising awareness about the Network's role in helping citizens obtain their rights under EU law, the European Ombudsman stepped up co-operation in 2009 with Europe Direct (see Section 4.1). This Ombudsman initiative is linked to an earlier announcement to explore the feasibility of creating a single telephone number to contact the European Network of Ombudsmen. After a thorough examination of the different options, the Ombudsman concluded that, rather than establishing a new service, it would be more effective and cost-efficient to build on the existing role of the Europe Direct Contact Centre as a central entry point for the general public with questions about the EU. The Ombudsman has agreed to provide the Contact Centre with information and materials about the Network, so that individuals can be correctly signposted, where appropriate.

National and regional ombudsmen may ask the European Ombudsman for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or, if more appropriate, channels the query to another EU institution for response. During 2009, one query was submitted by the Regional Ombudsman of Emilia-Romagna, Italy. It concerned the interpretation of EU rules on social security schemes as they apply to employed persons and their family moving within the Union.

Seminars

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

The Seventh Seminar of the National Ombudsmen of EU Member States and candidate countries took place in Paphos, Cyprus, between 5 and 7 April 2009. The Commissioner for Administration



The Seventh Seminar of National Ombudsmen of EU Member States and candidate countries took place in Paphos, Cyprus, in April 2009. In total, national and regional ombudsmen offices from 29 countries were represented at the Seminar which focused on: the free movement of European citizens, equal treatment of European citizens, admission, integration, and regularisation of immigrants, and asylum and the right to an asylum procedure.

(Ombudsman) of Cyprus, Ms Eliana NICOLAOU, and the European Ombudsman jointly hosted the Seminar. In total, national and regional ombudsmen offices from 29 countries were represented at the Seminar. Participants also came from the European Parliament, the European Commission, the European Union Agency for Fundamental Rights, the Council of Europe, and Cypriot public authorities.

Entitled “Migration and its impact on the work of ombudsmen”, the Seminar was divided into four thematic sessions. Among the keynote speakers were Mr Jacques BARROT, Vice-President of the European Commission responsible for Justice, Freedom and Security who, via a video message, spoke on European immigration and asylum policy, and Ms Elspeth GUILD, Jean MONNET Professor of migration law at the University of Nijmegen in the Netherlands, who gave a comprehensive and insightful account of migration within the Union.

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 European Ombudsman publishes the *Newsletter* twice a year – in April and October. In 2009, the two issues contained articles on a wide range of topics, including the right of citizens to free movement, migration and asylum issues, the role of ombudsmen in supervising prisons, violations of healthcare rights, public access to documents, and the transfer of public functions to the private sector. Other articles dealt with the protection of the most vulnerable in society, in particular, children, people with disabilities, the homeless, and the elderly. A common theme running through many of these articles is the role of ombudsmen in ensuring that EU law is fully implemented.

Electronic communications tools

The Ombudsman’s Internet discussion and document-sharing forum for ombudsmen and their staff in Europe has proved to be an extremely useful tool for the Network. Over 260 individuals have access to the forum which offers possibilities for daily co-operation between and among offices.

The most popular part of the forum is the *Ombudsman Daily News* service, which is published every working day and contains news from ombudsman offices as well as from the EU. Almost all national and regional ombudsman offices throughout Europe contribute to and consult the *Daily News* on a regular basis.

In 2009, ombudsman offices continued to share information by posting questions and answers on the very useful discussion forum. Among the issues covered during the year in question were cross-border healthcare, unaccompanied foreign minors, religious discrimination and freedom of conscience, national security agencies, complaints against central banks, and contacts with national SOLVIT centres.

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

■ Ombudsman meetings

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsmanship

Among the major events that the Ombudsman attended in 2009 was the Ninth International Ombudsman Institute (IOI) World Conference organised in June in the Swedish capital, where the bicentennial of the Swedish Parliamentary Ombudsman was also celebrated.

and exchanging best practice, Mr DIAMANDOUROS and his staff attended events that national and regional ombudsmen organised throughout Europe, including in Albania, Greece, Ireland, Italy, Norway, Spain, Sweden, and the UK. Among the major events that the Ombudsman attended in 2009 was the Ninth International Ombudsman Institute (IOI) World Conference organised in June in the Swedish capital, where the bicentennial of the Swedish

Parliamentary Ombudsman was also celebrated. The conference to mark this important event traced the evolution of the ombudsman institution from its Swedish origins to its various present day forms. The European Ombudsman also addressed the British and Irish Ombudsman Association Annual Meeting in Warwick, UK, in May, and the General Assembly of the European Ombudsman Institute held in Florence, Italy, in October. The Ombudsman's Secretary-General, Mr Ian HARDEN, represented the institution at the Third Meeting of the Association of Mediterranean Ombudsmen held in Athens, Greece, in December.

4.3 Relations with other stakeholders

The European Ombudsman is committed to ensuring that any person or organisation who might have a problem with the EU administration is aware of the right to complain to him about maladministration. He is also keen to raise awareness more generally about his efforts to promote transparency, accountability, and a culture of service in the EU administration. Activities in this area were further developed during 2009, with around 145 presentations made by the Ombudsman and his staff.

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

■ Conferences and meetings

Involving the Ombudsman

The Ombudsman spent considerable time in 2009 meeting with key stakeholders to explain his services and to learn about their experience in dealing with the EU administration. He presented

The Ombudsman spent considerable time in 2009 meeting with key stakeholders to explain his services and to learn about their experience in dealing with the EU administration.

his work at over 60 events to members of the legal community, business associations, think-tanks, NGOs, representatives of regional and local administrations, lobbyists and interest groups, academics, high level political representatives, and civil servants.

These conferences, seminars, and meetings were organised in Brussels and in the Member States, often as part of the Ombudsman's information visits (see below). Particular highlights were the problem-solving event held in the European Parliament in March and the workshop for small and medium-sized enterprises, held as part of SME week in May 2009.

Involving the Ombudsman's staff

The Ombudsman's staff is equally active in promoting awareness of the institution. During 2009, staff made over 85 presentations to around 2 600 citizens from throughout the EU. Most visitors came from Germany, followed by France, Austria, and Greece. Among the participants at these presentations were students and trainees, lawyers and judges, journalists, entrepreneurs and lobbyists, government officials and civil servants, staff from ombudsman offices, and army staff.

The European Ombudsman works hard to ensure that individuals with a problem exercising their EU law rights know who might be able to help them. In March 2009, he organised a seminar in Brussels, entitled “Problem solving in the EU – Where to turn?”. Over 100 people attended this event to hear about the services provided by the European Ombudsman, the European Parliament’s Committee on Petitions, SOLVIT, and the European Citizen Action Service (ECAS).



While resource constraints limit the number of presentations that can be made each year, the Ombudsman attempts, as far as possible, to accept invitations and requests from interested parties. All of these presentations are extremely important in helping to give the EU administration a ‘human face’.

■ Information visits

With a view to raising awareness about his work and to further intensify relations with his national and regional counterparts, the Ombudsman embarked on an intensive programme of information

The Ombudsman’s information visits brought him to Slovakia and the Czech Republic in May 2009, and to Finland and Estonia in October.

visits to the Member States and accession countries in 2003. These visits have continued apace. The Ombudsman’s information visits brought him to Slovakia and the Czech Republic in May 2009, and to Finland and Estonia in October. The Ombudsman also travelled to Italy in June for a number of awareness-raising events.

SLOVAKIA — From 13 to 15 May 2009, the European Ombudsman visited Slovakia. The office of the Slovak Ombudsman, Mr Pavel KANDRÁČ, organised the visit. Mr DIAMANDOUROS met the Slovak President, Dr Ivan GAŠPAROVIČ, the Prime Minister, Mr Robert FICO, and the Deputy Speaker of the Parliament, Mr Miroslav ČÍŽ. He also met with the Slovak Bar Association and the Slovak Chamber of Commerce, with representatives of SOLVIT and the Enterprise Europe Network participating in these meetings. The Ombudsman gave a lecture at the University of Economics in Bratislava that NGO representatives also attended. Following a press conference, Slovak newspapers, radio, and TV extensively covered the Ombudsman’s visit.



SLOVAKIA — During his information visit to Slovakia, which took place from 13 to 15 May, the Ombudsman met the Slovak President, Prime Minister, and Deputy Speaker of the Parliament, and held a range of awareness-raising events. Mr DIAMANDOUROS is pictured with the Slovak Ombudsman, Mr Pavel KANDRÁČ, whose office organised the visit.

CZECH REPUBLIC — The office of the Public Defender of Rights (Ombudsman) of the Czech Republic organised the European Ombudsman's information visit to Brno and Prague from 17 to 20 May. In Brno, Mr DIAMANDOUROS met at length with the Ombudsman, Mr Otakar MOTEJL, and with his staff. He exchanged views with the highest representatives of the Czech legal system, including the Chairman of the Supreme Court, Ms Iva BROŽOVÁ. He also met with representatives of NGOs, and the Regional Council of the South-East Cohesion Region at an information event organised as part of the visit. In Prague, Mr DIAMANDOUROS met the Czech President, Mr Václav KLAUS, Prime Minister, Mr Jan FISCHER, and the Minister for Human Rights, Mr Michael KOCÁB. He also discussed with the Czech Chamber of Commerce and the Czech representatives of SOLVIT and the Enterprise Europe Network.



CZECH REPUBLIC — The office of the Public Defender of Rights (Ombudsman) of the Czech Republic organised the European Ombudsman's information visit to Brno and Prague from 17 to 20 May. The visit was covered extensively in Czech media, following a joint press conference of Mr DIAMANDOUROS and Mr MOTEJL, who are both pictured here with journalists.

FINLAND — The European Ombudsman visited Finland from 25 to 28 October. This followed an invitation from the Minister for European Affairs, Ms Astrid THORS. Prior to the visit, Mr DIAMANDOUROS met the Commissioner responsible for Enlargement, Mr Olli REHN, to discuss EU issues as they pertain to Finland. During his time in Helsinki, the Ombudsman met with the Parliamentary Ombudsman, Ms Riitta-Leena PAUNIO, and her staff, and presented his work to NGOs, members of the business community, university students, and to the media. He met with the President of Finland, Ms Tarja HALONEN, the President of the Supreme Administrative Court, Mr Pekka HALLBERG, and with the Minister for European Affairs, Ms Astrid THORS. He also held meetings with the Deputy Chancellor of Justice, Mr Mikko PUUMALAINEN, the Data Protection Ombudsman, Mr Reijo AARNIO, and with a number of parliamentary committees.



FINLAND — The European Ombudsman visited Finland from 25 to 28 October. The Finnish Parliamentary Ombudsman helped to organise the visit, along with the European Parliament Information Office and the European Commission Representation. A particular highlight during the visit was a meeting with the first European Ombudsman, Mr Jacob SÖDERMAN MP, who introduced Mr DIAMANDOUROS at the Ombudsman's lecture at the University of Helsinki and took part in the briefing with journalists.

ESTONIA — The Ombudsman went to Estonia, from 29 to 30 October, for an information visit organised by the Chancellor of Justice, Mr Indrek TEDER. The Ombudsman spoke to the staff of the Chancellor of Justice, and discussed at length with the Chancellor and his Deputy, Mr Madis ERNITS. He met with the President of Estonia, Mr Toomas HENDRIK ILVES, the President of Parliament, Ms Ene ERGMA, and the Minister of Justice, Mr Rein LANG, during his visit. He also delivered a public lecture at the University of Tartu and met with representatives of the Estonian business community, as well as the Estonian Association of Judges. Before leaving for Tallinn, Mr DIAMANDOUROS met with Commission Vice-President responsible for Administrative Affairs, Audit, and Anti-Fraud, Mr Siim KALLAS, to discuss the purpose of the information visit.

ESTONIA — As part of the Ombudsman's information visit to Estonia, the European Parliament Information Office in Tallinn organised a briefing for NGOs and journalists, as well as a number of media interviews, thereby helping to raise awareness about the Ombudsman's visit. Mr DIAMANDOUROS is pictured here at the briefing, along with the Head of Parliament's Information Office, Ms Kadi HERKÜL.



ITALY — ANCI (the National Association of Italian Municipalities) invited the European Ombudsman to Palermo for an event to raise awareness about his work. While in Palermo, on 2 and 3 June, Mr DIAMANDOUROS met with regional authority representatives, including the President of the Regional Council, Mr Alberto CAMPAGNA, and the Mayor of Palermo, Mr Diego CAMMARATA. The Ombudsman then travelled to Rome for several meetings, notably with the President of the Republic, Mr Giorgio NAPOLITANO. He spoke at an event organised by the Italian Bar Council and exchanged views with Mr Sabino CASSESE, judge at the Italian Constitutional Court, and with Mr Sandro GOZI MP, who has proposed the draft law to establish a national ombudsman in Italy. Mr DIAMANDOUROS also met the Head of the Italian Department for Community Policies, Mr Roberto ADAM, and with the Italian SOLVIT representatives.

ITALY — Mr DIAMANDOUROS visited Italy from 2 to 5 June, following an invitation from the Secretary-General of ANCI Sicilia, Mr Andrea PIRAINO, to speak to the members of the National Association of Italian Municipalities (ANCI). Mr DIAMANDOUROS is pictured at the event in Palermo, where he described his work and the types of complaints he deals with. The Ombudsman of Misilmeri, Mr Pierangelo BONANNO, helped to organise the Ombudsman's visit to Palermo.



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

■ Media activities

The Ombudsman recognises the important role that the media play in informing public opinion, enriching debate, and in increasing the visibility of his services in all the EU Member States. A pro-

A pro-active media policy constitutes a central component of his activities and of his efforts to promote respect for rights under EU law and to improve the quality of administration.

active media policy constitutes a central component of his activities and of his efforts to promote respect for rights under EU law and to improve the quality of administration.

The Ombudsman's main media activities in 2009 included press conferences in Brussels to present his Annual Report, as well as in Bratislava, Prague, Helsinki, and Tallinn, as part of the aforementioned information visits. Press briefings with interested journalists from a range of newspapers and press agencies also gave the Ombudsman the opportunity to explain his work for citizens and his views on relevant topics. Finally, Mr DIAMANDOUROS gave around 40 interviews to journalists from the print, broadcast, and electronic media in 2009, in Strasbourg, Brussels, and elsewhere, most notably during his information visits.



The year 2009 saw much media coverage of the Ombudsman's work, most notably on a complaint submitted by micro-processor producer, Intel, the issue of transparency, and the *Annual Report 2008*. The Ombudsman is pictured giving an interview to europarl tv, following the debate in Parliament on his activities in 2008.

In 2009, twenty one press releases were issued and distributed to journalists and interested parties throughout Europe. Among the issues covered were the revision of the EU rules on public access to documents, air passenger rights, late payment by the European Commission, the financing of European Parliament buildings, and a complaint submitted by micro-processor producer, Intel.

Media coverage of the Ombudsman's work increased significantly from 2008 to 2009, with an 85% increase in the number of press cuttings identified. This was largely due to the extensive coverage of the aforementioned Intel complaint (see Section 3.3).

■ Publications

Material about the work of the Ombudsman was distributed widely throughout the year, in particular at the Open Days that the European Parliament organised in Brussels and Strasbourg in May.

Of particular interest in terms of publications in 2009 were the new style *Annual Report* and the

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

new summary document, *Overview 2008*. The Ombudsman received very positive feedback on these two publications, which were completely overhauled to make them more user-friendly and accessible. Both publications were produced in the 23 official EU languages and distributed to key stakeholders and to the general public. All of the Ombudsman's publications are available

on his website <http://www.ombudsman.europa.eu> and can be obtained free of charge from the EU Bookshop <http://bookshop.europa.eu>

Also in 2009, the Ombudsman's Office finalised preparations to create a new visual identity for the institution, including new logos for both the European Ombudsman and the European Network of Ombudsmen. The new visual identity is to be rolled out in 2010.

■ Electronic communications

E-mail communication

Almost 60% of all complaints received by the Ombudsman in 2009 were submitted over the Internet. A large proportion of these (72%) was received through the electronic complaint form, which is available on the Ombudsman's website in 23 languages.

In 2009, the main e-mail account of the Ombudsman was used to reply to a total of over 1 850 e-mails requesting information. This compares with around 4 300 in 2008, 4 100 in 2007, and 3 500 in 2006. The significant reduction in information requests received in 2009 is largely due to the resounding success of the Ombudsman's new interactive guide available on his website. This enabled people to obtain the required information themselves without having to submit a request. Approximately 1 600 of the 1 850 e-mails requesting information were individual requests, all of which received individual replies from an appropriate member of the Ombudsman's staff. Around 250 related to a mass mailing, concerning primarily the alleged difficulties encountered by Catalan TV channels to broadcast in the region of Valencia.

Website developments

On 5 January 2009, the European Ombudsman launched his new website. The aim of the site is to give the visitor clear, succinct, and easy-to-understand information on what the European Ombudsman can do. It offers an overview of what the Ombudsman has achieved to date, and explains how to lodge a complaint. The website was regularly updated throughout the year with decisions, case summaries, press releases, details of upcoming events, and publications.

Of particular interest on the new website is the Ombudsman's interactive guide, which aims to help individuals identify the most appropriate body to turn to with their complaint. This service is

In 2009, more than 26 000 people sought and received advice from the Ombudsman through the interactive guide.

proving particularly useful for citizens, businesses, and other organisations throughout Europe. In 2009, more than 26 000 people sought and received advice from the Ombudsman through

the interactive guide. The most common advice given was to complain to the European Ombudsman, followed by advice to contact Europe Direct, information on the European Commission's role in ensuring the application of EU law, and advice to contact a national or regional ombudsman.

From 1 January to 31 December 2009, the Ombudsman's website received around 340 000 unique visitors, who, combined, viewed over 4 million pages. The greatest number of visitors came from Spain, followed by Italy, Germany, France, and Belgium.

In order to ensure that the Ombudsman's website stays at the forefront of EU websites, the Office of the Ombudsman participated throughout 2009 in the work of the EU Inter-Institutional Internet Editorial Committee (CEiii).

A large, stylized number '5' in a light beige color, positioned on the left side of the page. It has a thick, rounded stroke and a small horizontal bar at the top.

Resources

THIS Chapter gives an overview of the resources that were made available to the Ombudsman institution in 2009. It includes a description of the work carried out by the various departments and units within the Office, as well as the efforts made to ensure a smooth flow of information among staff, and to promote professional development opportunities. The second part of the Chapter is devoted to the Ombudsman's budget.

5.1 Personnel

To ensure that it can properly carry out the tasks of dealing with complaints about maladministration in the 23 Treaty languages, and of raising awareness about the Ombudsman's work, the institution

Regular staff meetings, combined with an annual staff retreat, help inform all staff of developments within the office and encourage them to reflect on how their work contributes to achieving the institution's objectives.

has a well-qualified, multilingual staff. Regular staff meetings, combined with an annual staff retreat, help inform all staff of developments within the office and encourage them to reflect on how their work contributes to achieving the institution's objectives.

■ Staff retreat

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

Staff retreats form part of an annual cycle of events that provide staff and trainees with an opportunity to share views informally on subjects directly linked to the Ombudsman's work. The 2009 retreat took place from 11 to 13 February and centred on the theme "Working together". The specific topics discussed were: complaint-handling, engaging with the institutions, the use of plain language, and informing, involving, and valuing staff.



The 2009 retreat took place from 11 to 13 February and centred on the theme “Working together”. Following on from the 2008 retreat, which focused on the institution’s identity and the concept of good administration, the 2009 retreat focused more on the internal work of the office. As part of the preparation for the retreat, members of staff were invited to respond to the same self-evaluation questionnaire that had been used for the 2006 retreat. This was to enable a direct comparison to be made between the results obtained, in order to identify the progress that had been made and the areas which still needed to be addressed. The results and analysis of the questionnaire were taken into account in establishing the final programme for the presentations and discussion topics for the retreat.

Like its predecessors, the third retreat was seen as a very positive experience by staff. The next retreat is scheduled to take place in February 2010.

■ Staff meetings

Regular staff meetings are convened with a view to ensuring a smooth flow of information among staff, and to promote professional development opportunities. As a rule, the agenda for these meetings includes an overview by the Ombudsman of his recent and future activities, as well as a presentation of the administrative, legal, and policy developments affecting the institution. The Secretary-General and the Department and Unit Heads also play an active role at staff meetings. During the year in question, staff meetings took place on 10 July and 11 December, providing a useful forum for discussion and information-sharing.



To help keep staff informed of developments within other EU institutions, the Ombudsman invites external speakers to make presentations on relevant topics. On 20 November 2009, the President of the General Court, Mr Marc JAEGER, travelled to Strasbourg to speak on “The principle of good administration in Community law”. He is pictured here with the Ombudsman.

To help keep staff informed of developments within other EU institutions, the Ombudsman also invites external speakers to make presentations on relevant topics. On 20 November 2009, the President of the General Court, Mr Marc JAEGER, travelled to Strasbourg to speak on “The principle of good administration in Community law”. This excellent presentation gave rise to a range of questions and comments on a topic that is of central importance to the Ombudsman’s work.

The Ombudsman and his staff

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

European Ombudsman

P. Nikiforos DIAMANDOUROS — EUROPEAN OMBUDSMAN

P. Nikiforos DIAMANDOUROS was born in Athens, Greece, on 25 June 1942. He was elected European Ombudsman on 15 January 2003. He took office on 1 April 2003 and was re-elected for a five-year term on 11 January 2005.

From 1998 to 2003, he was the first National Ombudsman of Greece. He was also Professor of comparative politics at the Department of Political Science and Public Administration of the University of Athens from 1993 through August 2009 (on leave from 2003 to 2009). From 1995 to 1998 he served as Director and Chairman of the Greek National Centre for Social Research (EKKE).

He received his BA degree in political science from Indiana University (1963) and his MA (1965), M.Phil. (1969), and Ph.D. (1972) degrees in the same field from Columbia University. Prior to joining the faculty of the University of Athens in 1988, he held teaching and research appointments at the State University of New York and Columbia University respectively (1973-78). From 1980 to 1983, he served as Director of Development at Athens College, Athens, Greece. From 1983 to 1988, he was Program Director for Western Europe, as well as the Middle East and North Africa at the Social Science Research Council, New York. From 1988 until 1991, he was the Director of the Greek Institute for International and Strategic Studies, Athens, a policy-oriented research think-tank established with joint funding from the Ford and MacArthur Foundations. In 1997, he held an appointment as visiting professor of political science at the Juan March Centre for Advanced Studies in the Social Sciences (Madrid).

He has served as President of the Greek Political Science Association (1992-98) and of the Modern Greek Studies Association of the United States (1985-88). Between 1999 and 2003, he served as a member of Greece's National Commission on Human Rights, while from 2000 to 2003 he was a member of the Greek National Council for Administrative Reform. From 1988 to 1995, he was co-chair of the Subcommittee on Southern Europe of the Social Science Research Council, New York, whose activities are funded by a grant from the Volkswagen Foundation. He is also joint General Editor of the Series on the New Southern Europe and the recipient of Fulbright and National Endowment for the Humanities research grants.

He has written extensively on the politics and history of Greece, southern Europe and south-eastern 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 and provides advice to the Ombudsman. It advises on relations with the other EU institutions and on issues related to the Ombudsman's case-work. It also undertakes a range of administrative tasks, including managing the Ombudsman's agenda, co-ordinating his incoming and outgoing correspondence, dealing with the protocol aspects of the institution's work, and performing general secretarial duties.

Secretary-General

The Secretary-General is responsible for strategic planning within the institution, and for overseeing the general administration of the Office. He advises the Ombudsman on the Office's struc-

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

ture and management, on the planning of its activities, and the monitoring of its work and performance. With regard, specifically, to the work of the Legal Department, the Secretary-General advises the Ombudsman on legal strategy, and assists and advises

the Ombudsman in dealing with complaints and inquiries. Finally, the Secretary-General co-ordinates relations between the Ombudsman's Office and the other European institutions and has a key role to play in developing relations with ombudsman offices throughout Europe and in reaching out to European citizens.

Ian HARDEN — SECRETARY-GENERAL

Ian HARDEN was born in Norwich, England, on 22 March 1954. He studied law at Churchill College, Cambridge, obtaining a BA with first class honours in 1975 and an LLB in 1976. After graduation, he joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a senior lecturer from 1990 to 1993, a reader from 1993 to 1995, and became professor of public law in 1995. He joined the European Ombudsman's Office as a Principal Legal Adviser in 1996, becoming Head of Secretariat from 1997 to 1999, then Head of the Legal Department from 2000. He was appointed Secretary-General of the Ombudsman's Office on 1 August 2006. He is the author or co-author of numerous publications on EU law and public law, including *The Contracting State* (Buckingham: Open University Press, 1992); *Flexible Integration: Towards a more effective and democratic Europe* (London CEPR, 1995), and *European Economic and Monetary Union: The Institutional Framework* (Kluwer Law International, 1997). He is a member of the *Association française de droit constitutionnel* and of the Study of Parliament Group in the United Kingdom and honorary professor at the University of Sheffield. ■

Legal Department

The Legal Department consists mainly of lawyers whose major responsibility is to analyse the complaints received by the European Ombudsman and conduct inquiries under the supervision of

The Legal Department consists mainly of lawyers whose major responsibility is to analyse the complaints received by the European Ombudsman and conduct inquiries under the supervision of the Head of the Legal Department and four Heads of Legal Unit.

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

During 2009, the Department had a total staff of 25, consisting of the Head of the Legal Department, four Heads of Legal Unit, three principal legal advisers, 14 legal officers, two lawyer-linguists, and an assistant to the Head of the Legal Department. During the year in question, the Legal Department supervised 21 trainees.

João SANT'ANNA — HEAD OF THE LEGAL DEPARTMENT

João SANT'ANNA was born in Setúbal, Portugal, on 3 May 1957. He studied law at the University of Lisbon from 1975 to 1980 and registered with the bar in Lisbon in 1981. Between 1980 and 1982, he worked as a lawyer in the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. Between 1982 and 1984, he pursued his legal studies, in the field of intellectual property rights, at the Ludwig-Maximilian University and the Max-Planck Institute in Munich. After returning to Portugal in 1984, he was appointed Head of the Legal and Administrative Division of the Portuguese Ministry of Internal Affairs for the Lisbon Region. In 1986, he became a civil servant of the European Parliament, working in the Directorates-General for Information and Public Relations, for Research, for Personnel and Finance, and finally, in the Legal Service of the European Parliament. He joined the European Ombudsman's Office as Head of the Administration and Finance Department in 2000. He was appointed Head of the Legal Department on 1 July 2007. ■

— Heads of Legal Unit

Each Head of Legal Unit supervises a team of legal officers and trainees with a view to ensuring high quality complaint-handling. They assist the Head of the Legal Department in ensuring that the Department's work is accurate, timely, and consistent. This involves promoting and monitoring compliance with internal procedures, standards, and deadlines. Heads of Legal Unit also have their own responsibilities, similar to those of legal officers described below. They also represent the Ombudsman at certain public events. They all report to the Head of the Legal Department, with whom they meet regularly.

There are currently four Heads of Legal Unit. They are, in alphabetical order: Mr Peter BONNOR, who is Danish and has worked in the Ombudsman's Office since 1998, Mr Gerhard GRILL, of German nationality, who joined the Ombudsman's Office in 1999, Ms Marta HIRSCH-ZIEMBINSKA, Polish, who joined in 2003, and Mr Fergal Ó REGAN from Ireland, who joined in 2006.

— Legal Officers

The Legal Officers deal with complaints, which may be submitted to the Ombudsman in any of the 23 Treaty languages of the European Union. They also propose and carry out own-initiative

inquiries, reply to requests for information from citizens, provide assistance to the Ombudsman on legal matters, advise on the legal procedures, developments, and traditions of their respective Member States, and make presentations about the Ombudsman's work.

Administration and Finance Department

The Administration and Finance Department is responsible for all the work of the Ombudsman's Office that is not directly related to examining complaints and conducting inquiries.

The Administration and Finance Department is responsible for all the work of the Ombudsman's Office that is not directly related to examining complaints and conducting inquiries. Since 1 July 2008, it is made up of four units, described below, as well as the Complaints Secretariat. The Head of the Administration and Finance Department co-ordinates the overall work of the Department. In that capacity, he is responsible for the general organisation and operation of the office, personnel policy, proposing and implementing the budgetary and financial strategy of the institution, and for representing the Ombudsman in a number of interinstitutional fora. In 2009, the Department had a total staff of 34.

João SANT'ANNA

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

— Complaints Secretariat

The Complaints Secretariat is responsible for the registration, distribution, and follow-up of complaints submitted to the European Ombudsman. The Secretariat ensures that all complaints are registered in 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 complaint-related statistics, and filing documents relating to complaints. Mr Peter BONNOR is Head of the Complaints Secretariat.

— Administration and Personnel Unit

The Administration and Personnel Unit's tasks are broad. They include the recruitment and management of staff, dealing with incoming and outgoing correspondence, the telephone switchboard, the office infrastructure, co-ordination of document translation, organisation and management of the legal reference library, and the institution's documentation and archive policy. This Unit is also responsible for the institution's information technology policy and for meeting the office's IT needs, a task it carries out in close co-operation with the European Parliament. This Unit is headed by Mr Alessandro DEL BON, who is of dual German-Italian nationality, and who joined the Ombudsman's Office in 1998.

— Budgetary and Financial Unit

The Budgetary and Financial Unit is charged with ensuring that the Ombudsman's Office complies with the applicable financial rules and with guaranteeing that available resources are used economically and efficiently, and are adequately protected. This Unit is also responsible for establishing and implementing the appropriate internal control mechanisms necessary for attaining these goals. These responsibilities derive from the fact that the European Ombudsman has an independent budget. Financial officers, under the responsibility of the Authorising Officer by Delegation, prepare and execute the budget. The Head of this Unit is Mr Loïc JULIEN, who is French, and who started working for the Ombudsman in 2005.

— Communication Unit

The Communication Unit is responsible for producing the Ombudsman's publications and promotional material, for maintaining and developing the Ombudsman's websites, and for establishing a visual identity for the institution. This Unit also co-ordinates the European Network of Ombudsmen

and, more generally, relations with ombudsman associations in Europe and beyond. The Head of this Unit is Mr Ben HAGARD, a British national, who joined the Ombudsman's Office in 1998.

— Media, Enterprise and Civil Society Unit

The Media, Enterprise and Civil Society Unit is responsible for assisting the Ombudsman in reaching out to individuals and organisations who might need his services. It helps raise awareness of the Ombudsman's work throughout the Union. The Unit maintains and promotes relations with the media, organises the Ombudsman's information visits and events, and liaises with other EU institutions on outreach initiatives. Members of this Unit are also responsible for writing the Ombudsman's publications and speeches. Ms Rosita AGNEW, who is Irish and who started working for the Ombudsman in 2001, is the Head of this Unit.

— Staff Committee

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

There are currently three elected members of the Committee, namely, the President, Mr Daniel KOBLENCZ, Ms Elodie BELFY and Mr Christopher MILNES.

— Data Protection Officer

Every EU institution has a Data Protection Officer (DPO), who co-operates with the European Data Protection Supervisor and ensures that the rights and freedoms of data subjects are unlikely to be adversely affected by data processing operations. The DPO also ensures that data controllers and data subjects are informed of their rights and obligations under Regulation 45/2001¹. Since March 2006, Mr Loïc JULIEN is the Data Protection Officer in the European Ombudsman's Office.

5.2 Budget

■ The budget in 2009

Since 1 January 2000, the Ombudsman's budget has been an independent section of the budget of the European Union (currently section VIII)². It is divided into three titles. Title 1 contains salaries, allowances, and other expenditure related to staff. Title 2 covers buildings, furniture, equipment, and miscellaneous operating expenditure. Title 3 contains the expenditure resulting from general functions carried out by the institution.

The budgeted appropriations in 2009 amounted to EUR 8 906 880.

1. Regulation (EC) 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

2. Council Regulation (EC, Ecsc, Euratom) No 2673/1999 of 13 December 1999 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1999 L 326, p. 1.

■ Interinstitutional co-operation

To ensure the best possible use of resources, and to avoid unnecessary duplication of staff, the Ombudsman co-operates with other EU institutions, where possible. While services thus provided

To ensure the best possible use of resources, and to avoid unnecessary duplication of staff, the Ombudsman co-operates with other EU institutions, where possible.

are of course invoiced to the European Ombudsman, this co-operation has allowed for considerable efficiency savings to the EU budget. The Ombudsman co-operates, in particular, with:

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

■ Budgetary control

With a view to ensuring effective management of resources, the Ombudsman's internal auditor, Mr Robert GALVIN, carries out regular checks of the institution's internal control systems and the financial operations carried out by the office.

Like other EU institutions, the Ombudsman institution is also audited by the European Court of Auditors.

How to contact the European Ombudsman

By mail

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By fax

+33 3 88 17 90 62

By e-mail

eo@ombudsman.europa.eu

Website

<http://www.ombudsman.europa.eu>

The European Ombudsman
investigates complaints
about maladministration
in the EU institutions, bodies,
offices, and agencies.

→→→ <http://www.ombudsman.europa.eu>

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