



European
Ombudsman

Annual Report **2010**

Mission statement 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.



European
Ombudsman

Annual Report **2010**



Table of contents

The Ombudsman's Overview	4
1 Complaints and inquiries	13
1.1 The Ombudsman's mandate and procedures	14
1.2 Overview of complaints examined in 2010	19
1.3 Analysis of inquiries opened	25
1.4 Findings of the Ombudsman's inquiries	28
1.5 Star cases exemplifying best practice	35
1.6 Thematic analysis of inquiries closed	36
1.7 Transfers and advice	55
2 Relations with institutions, ombudsmen, and other stakeholders	59
2.1 Relations with EU institutions, bodies, offices, and agencies	60
2.2 Relations with ombudsmen and similar bodies	62
2.3 Relations with other stakeholders	65
3 Resources	69
3.1 Personnel	70
3.2 Budget	72
How to contact the European Ombudsman	75

The Ombudsman's Overview



I am delighted to present you with the European Ombudsman's new-look *Annual Report*. I hope that it gives you a good overview of the progress we have made in investigating complaints from citizens, businesses, and organisations, and promoting the highest standards of administration in the institutions, bodies, offices, and agencies¹ of the European Union.



The Report has been partially modified since last year, to take on board feedback we have received from readers and to reflect the institution's new visual identity. This Overview by the Ombudsman, in which I draw attention to the highlights from the year in question, replaces the previous Introduction and Executive Summary. The former Chapters 2 and 3 have been merged into a single chapter – Chapter 1 – to give a comprehensive overview of the Ombudsman's work handling complaints and conducting inquiries in 2010, including the Ombudsman's mandate and procedures. Chapter 2 concerns the Ombudsman's relations with other EU institutions, relations with

Fifteen years of the European Ombudsman

On 27 September 2010, the European Ombudsman institution celebrated its fifteenth anniversary. In this decade and a half, the Ombudsman has answered more than 36 000 complainants and completed more than 3 800 inquiries into possible maladministration. By responding to complaints, proposing friendly solutions, and making recommendations, the Ombudsman has helped the European institutions to provide redress, to raise the quality of their administration, and – as a result – to come closer to European citizens.

I hope that you enjoy this new and more succinct report, which reflects our dual aim of making the best possible use of resources, while remaining as accessible and transparent as possible.

the community of national, regional, and local ombudsmen in Europe, and contains an overview of the Ombudsman's communication and outreach activities. Chapter 3 provides details of the Ombudsman's personnel and budget.

I hope that you enjoy this new and more succinct report, which reflects our dual aim of making the best possible use of resources, while remaining as accessible and transparent as possible. We look forward to receiving your feedback, which allows us to make continuous improvements.

But more than that: as a result of dealing with complaints, the Ombudsman has developed a real insight into trends in maladministration, systemic problems, and structural weaknesses. Armed with this information, he has sought to do the thing that many of our complainants want most – to make sure that what happened to them is not repeated in the future. By engaging with the institutions, we have worked to ensure that the wider lessons from complaint-handling are learnt across the administration.

We had some good examples of this in 2010. I would like to mention, in particular, two access to documents cases we dealt with concerning the European Medicines Agency (EMA) in London. In both cases, EMA accepted the Ombudsman's recommendation to grant access to the documents. More

The Ombudsman's Overview

importantly, EMA adopted and published a new access to documents policy aimed at giving the public much broader access to documents in its possession. I publicly praised EMA's constructive approach. By taking this important policy step, EMA gave wider effect to the recommendations that I made to it. This shows the concrete and long-lasting results that the Ombudsman's work can have for citizens when an EU body engages constructively and helpfully with him.

It is also with a view to ensuring that institutions introduce systemic

In over half of the cases closed in 2010, the institution concerned accepted a friendly solution or settled the matter.

improvements that we published, once again in 2010, a study to examine the EU institutions' follow-up to all the critical and further remarks issued by the Ombudsman during 2009. The study revealed that, taking critical and further remarks together, the rate of satisfactory follow-up was 81%, a slightly better result than for the previous year. The study contains plenty of examples where real improvements have been introduced, in areas ranging from the documentation of internal procedures to tenders and contracts. This is extremely encouraging. I did note with concern, however, the relatively high number of unsatisfactory replies to critical remarks submitted by the European Commission (10 of the 32 replies). This demonstrates that there is still major 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.

Results for complainants in 2010

It is always better if the Ombudsman does not have to issue a critical remark or proceed to the stage of a draft recommendation in order to secure improvements. It is much better if cases can be settled by the institution itself or if a friendly solution can be accepted. In over half of the cases closed in 2010, the institution concerned accepted a friendly solution or settled the matter. I applaud the institutions as a whole for their commitment to finding a solution in these cases.

This report identifies ten star cases, which serve as examples of best practice in reacting to complaints. They serve as a model for all EU institutions in terms of how best to react to issues that the Ombudsman raises. Three of these cases concern the Commission, while the Parliament, the Council, the European Economic and Social Committee, the European Investment Bank, the European Medicines Agency, the European Aviation Safety Agency, and the Education, Audiovisual and Culture Executive Agency each have one star case. The issues covered range from transparency and fairness to the rights of persons with disabilities, contracts and tenders, and recruitment.

The Ombudsman completed 326 inquiries in 2010 (compared to 318 inquiries in 2009). Of these, 323 were linked to complaints and three were own-initiatives. The Ombudsman concluded that there was maladministration in 12% of cases (40) and obtained a



positive outcome for the complainant in seven of these cases by making draft recommendations that were accepted. While the Ombudsman had to make critical remarks to the institutions in only 33 cases, compared to 35 in 2009 and 44 in 2008, there is still room for improvement. Further remarks were made in 14 cases (28 in 2009), with a view to enhancing the quality of the administration.

The Ombudsman submitted one special report to Parliament in 2010, during an inquiry into a complaint about access to documents relating to CO₂ emissions from cars. The special report pointed out that the Commission failed to reply to a draft recommendation for almost 15 months, although the deadline established by the Treaty is three months. The Commission also failed to implement an undertaking it had made to the Ombudsman. These failures constituted a breach of the Commission's duty of sincere co-operation with the Ombudsman.

Many of these cases are included in the thematic analysis contained in Chapter 1, which outlines the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2010. The analysis is organised in terms of a classification of the main subject matter of inquiries, based on seven main categories: (i) Openness, public access, and personal data; (ii) The Commission as guardian of the Treaties; (iii) Award of tenders and grants; (iv) Execution of contracts; (v) Administration and staff regulations; (vi) Competitions and selection procedures; and (vii) Institutional, policy matters, and other. It includes cases which had a significant impact in terms of promoting transparency and good administration in the EU institutions, cases which resulted

in a particularly positive outcome for the complainant, and cases which allowed the Ombudsman to clarify important points of law or to deal with an issue that had not previously been presented to him. In light of the Ombudsman's efforts to promote the application of the Charter of Fundamental Rights of the EU, cases which concern rights laid down in the Charter are also highlighted. The issue of fairness features regularly. Fairness is mentioned in Article 41(1) of the Charter's fundamental right to good administration and the Ombudsman has long regarded fairness as a key principle of good administration.

I am happy to report that the time taken to complete inquiries fell from an average of 13 months in 2008 to nine months in 2009 and 2010. Most of the inquiries were completed within one year (66%). Over half (52%) were completed within three months. All this was achieved with an establishment plan that totalled 63 posts in 2010, and budgeted appropriations of EUR 9 332 275.

A strategy for the years ahead

The event we held to mark our fifteenth anniversary saw the launch of a strategy for the Ombudsman's 2009-2014 mandate². The strategy exercise began at our February 2010 staff retreat, which centred on the theme "The European Ombudsman's vision for the next five years". The strategy was then developed through consultation with internal and external stakeholders.

² The strategy document is available in 23 languages on the Ombudsman's website at: <http://www.ombudsman.europa.eu/resources/strategy.faces>

The Ombudsman's Overview



Among the events that helped to generate ideas for the European Ombudsman's strategy was one held on 12 March 2010 entitled "The European Ombudsman's new mandate – What to expect?" The purpose of this event was to discuss, with interested parties, the Ombudsman's priorities for 2009-2014. Citizens, NGOs, business associations, interest groups, journalists, and regional authority offices participated in the discussions.

The strategy seeks to provide a clear statement of the Ombudsman's mission, aspirations, and guiding principles. Building on what has been accomplished so far, it outlines a series of objectives and priorities, which are designed to achieve the Ombudsman's overarching aim of, first, ensuring that EU citizens enjoy their rights fully, and, second, enhancing the quality of the EU administration. It is worth outlining here the five objectives we have set ourselves for the years ahead:

- We want to listen to our stakeholders, by obtaining regular feedback from complainants, further developing contacts with the EU institutions, and engaging with civil society. Moreover, we will seek – via the European Network of Ombudsmen³ – to identify best practices.
- We want to deliver results faster, by reducing the time needed to close inquiries and by developing simplified procedures to promote, where possible, a rapid resolution of complaints.
- We want to have a positive impact on the Union's administrative culture, by emphasising the Ombudsman's role as a resource to help improve administrative practices and by focusing more on systemic questions.

- We want to provide timely and useful information, in an accessible way, to our stakeholders and to the public. In short, we want to communicate better.
- We want to constantly rethink how we use our resources. We will seek to ensure the highest standards of administration internally and will consistently monitor and increase the quality of our work.

By focusing on these objectives, we are endeavouring to help the Union to deliver on the promises it has made to citizens in the Treaty of Lisbon concerning fundamental rights, enhanced transparency, and greater opportunities for participation in policy-making. In so doing, we also seek to make our own, modest contribution to the lofty goals of deepening the rule of law and enhancing the quality of democracy in the European legal order.

An institution that is accessible, fair, and citizen-centred

Reaching out to citizens to inform them of their rights and of how to use those rights is a key priority. I was therefore delighted that our fifteenth anniversary event also

³ The Network includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and certain other European countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament.



served to launch new visual identities for both the European Ombudsman and the European Network of Ombudsmen. I am confident that our new visual identity will help project the image of an institution that is accessible, fair, and citizen-centred, while the Network's new identity should raise awareness of the important work that ombudsmen throughout Europe are doing to help citizens enjoy their rights under EU law.

We continued to help complainants find the most appropriate means of redress through our website's interactive guide, with over 19 000 people using it to obtain advice during the year. As more people found the right means of redress for themselves, we received 409 fewer "outside the mandate" complaints and the total number of complaints fell from 3 098 in 2009 to 2 667 in 2010. This is a source of great encouragement to me, since it implies that a higher percentage of complainants are coming to us for the right reason. We also intensified our co-operation with other information, advice, and problem-solving networks, such as Your Europe and SOLVIT.

As European Ombudsman, I am 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 me about maladministration. We continued to reach out to a range of target audiences during the year to draw attention to the services that the Ombudsman can provide to citizens, NGOs, interest groups, businesses, regional bodies, think tanks, and associations. Among the thematic events organised in 2010 were seminars on transparency, the Financial Regulation, and the Ombudsman's new mandate. The number of inquiries opened in 2010 was almost the same as in 2009 (335 compared to 339). Of inquiries closed in 2010, 78% were submitted by individuals, whereas 22% were submitted by companies and associations.

As is the case each year, most inquiries opened by the Ombudsman in 2010 concerned the Commission (219 inquiries or 65% of the total). Since the Commission is the main EU institution that makes decisions having a direct impact on citizens, it is logical that it should be the

As is the case each year, most inquiries opened by the Ombudsman in 2010 concerned the Commission (219 inquiries or 65% of the total).



The European Ombudsman's logo is designed to enhance the Ombudsman's efforts to reach out to a wide range of audiences, while evoking the institution's identity and values. The blue and yellow colours serve as a reminder of the European flag, while the circular shape represents unity and consensus. Within this circle, bidirectional arrows represent exchange and dialogue, which are key features of the European Ombudsman's methodology. The design of the layered arrows creates an equals sign, symbolising equality and fairness. (Design: Studio Philippe Apeloig)



The new logo of the European Network of Ombudsmen is designed to evoke the Network's identity and values. The logo is formed by a spectrum of vivid colours, which represent the diversity of our Network and its members. The colours of the European Union flag are juxtaposed at the most striking point of the formation. The circular composition represents communication, partnership, and unity, while the arrow heads symbolise the meeting of many different parties at one clear point. (Design: Studio Philippe Apeloig)

The Ombudsman's Overview

principal object of citizens' complaints. It should be noted, however, that the comparable figure for 2009 was 56% of the total. There were 35 inquiries (10%) concerning the European Personnel Selection Office (EPSO), 22 (7%) concerning the European Parliament, 6 (2%) concerning the Council of the EU, and 4 (1%) 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. A further 52 inquiries concerned 25 other EU institutions, bodies, offices, and agencies.

The main types of alleged maladministration investigated by the Ombudsman in 2010 were (i) breaches of: lawfulness (incorrect application of substantive and/or procedural rules (20.6% of inquiries), reasonable time limits for taking decisions (14.1%), fairness (11%), the duty to state the grounds of decisions and the possibilities of appeal (5.8%), the obligation to reply to letters in the language of citizens, indicating the competent official (5.5%), and the duty of

In over 70% of cases processed, 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.

care (3.1%); (ii) breaches of duties relating to: requests for information (30.4% of inquiries), requests for public access to documents (6.7%), and ensuring the absence of discrimination (3.7%).

Six own-initiative inquiries were launched into systemic issues in the institutions: three concerned EPSO, one concerned the Commission, one each the Parliament, the Commission, and the Council, while the final one concerned the latter two institutions.

In over 70% of cases processed, 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 53% of cases (1 435 complaints) were within the competence of a member of the European Network of Ombudsmen, with 27% (744 complaints) found to be inside the European Ombudsman's mandate, thereby confirming the need to further strengthen our co-operation. The Seventh Regional Seminar of the European Network of Ombudsmen, which was held in Innsbruck, Austria, in November, offered us a good opportunity to do this, as did the seventh gathering of the Network's liaison officers in Strasbourg in June. The Eighth National Seminar of the European Network of Ombudsmen will take place in Copenhagen in October 2011. Among the topics for discussion in Copenhagen will be a statement of public service principles drafted specifically for EU officials. I consulted the national ombudsmen before preparing a draft, in order to ensure that the future statement takes full account of best practice in the Member

States. They responded positively, making valuable suggestions and providing useful information, which are being taken into account in the drafting process.



Liaison officers act as the first point of contact for other offices in the European Network of Ombudsmen.

They met for the seventh time in Strasbourg from 6 to 8 June 2010. For the first time, a joint session was held with SOLVIT, to discuss issues of common interest and to increase co-operation. This joint session saw the launch of a project to map the competences of the national ombudsmen within the Network. The purpose of this project is to gather clear and comprehensive information about the types of complaints that national ombudsmen can and cannot deal with.



The Lisbon Treaty – one year on

Upon my re-election as European Ombudsman in January 2010, I announced that one of my main priorities over the next five years would be to help ensure that the EU delivers the benefits for citizens promised by the Treaty of Lisbon. Early in 2010, I responded to the public consultation on how the European Citizens' Initiative should work in practice. I underlined how important it is to try to anticipate questions that could arise in its operation, especially those that could result in complaints. I was greatly encouraged by the adoption of the Regulation on the Citizens' Initiative in December 2010 and am sure that this instrument will help empower European citizens. The Ombudsman also promoted the application by the institutions of the now legally binding Charter of Fundamental Rights in 2010, most notably through the handling of complaints and inquiries on issues such as the fundamental right to good administration and the rights of persons with disabilities.

I look forward to continuing this work on behalf of European citizens. I choose to interpret Parliament's decision to re-elect me to a second full mandate as an endorsement of the work this office has been doing to date, and as an encouragement to us to continue to strive for a more open, accountable, service-minded, and citizen-centred EU administration. These are lofty goals to which my colleagues and I remain steadfastly committed.

Strasbourg, 14 February 2011

P. Nikiforos Diamandouros

P. Nikiforos Diamandouros

1

Complaints and inquiries

Chapter 1 explains the Ombudsman's mandate and procedures, gives an overview of the complaints dealt with in 2010, and provides an in-depth study of the inquiries completed. There is a section on star cases, as well as a thematic analysis. The chapter ends with a look at referrals to other complaint-handling bodies.

Complaints and inquiries

1.1 The Ombudsman's mandate and procedures

The role of the European Ombudsman

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

The office of European Ombudsman was established by the Maastricht Treaty as part of the citizenship of the European Union. Article 24 of the Treaty on the Functioning of the European Union (TFEU) provides for the right to complain to the European Ombudsman as one of the rights of citizenship of the Union. This right is also included in the Charter of Fundamental Rights of the EU (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.

The Ombudsman's work is governed by Article 228 TFEU, as well as the Statute of the Ombudsman¹ and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute². 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.

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.

Union institutions, bodies, offices, and agencies

The EU institutions are listed in Article 13 of the Treaty on European Union (TEU) and include the European Council. 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 Committee of the Regions, as well as bodies set up by legislation, such as the European Chemicals Agency and the European Union Agency for Fundamental Rights. The Treaty of Lisbon broadened the Ombudsman's mandate to include possible maladministration in the framework of the Common Foreign and Security Policy, including the Common Security and Defence Policy.

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 section 1.7 below).

¹ In June 2008, the European Parliament adopted a decision revising the Ombudsman's Statute, with effect from 31 July 2008. 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.

² On 3 December 2008, the Ombudsman revised his implementing provisions in order to reflect the June 2008 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.



Maladministration

In response to a call from the European Parliament for a clear definition of maladministration, the Ombudsman offered the following, which was welcomed by Parliament in a Resolution also agreed to by the Commission: “Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.”

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.

It is important to note that the aforementioned definition does not limit

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.

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. He 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. The Charter of Fundamental Rights includes the right to good administration as a fundamental right of Union citizenship (Article 41). 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.

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

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 in matters within the Ombudsman’s mandate 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 court³.

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.

³ 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.

Complaints and inquiries

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)).

Of the admissible cases dealt with in 2010, 40% were considered not to provide grounds for an inquiry.

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, 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 Parliament's Committee on Petitions, there are normally no grounds for an inquiry by the Ombudsman, unless new evidence is presented. Of the admissible cases dealt with in 2010, 40% 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.

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. Six such own-initiative inquiries were opened in 2010. With the encouragement of the European Parliament, the Ombudsman declared his intention to use the own-initiative power whenever the only reason not to inquire into a complaint alleging maladministration by the European Investment Bank is that the complainant is not a citizen or resident of the Union. In relation to other matters, the Ombudsman approaches on a case-by-case basis the question of whether to use the own-initiative power in this way.

The Ombudsman may also use his own-initiative power to tackle what appear to be systemic problems in the institutions. As already mentioned, he did this on six occasions in 2010. Three concerned the European Personnel Selection Office (**OI/6/2010/IP**, **OI/7/2010/IP**, and **OI/9/2010/RT**). Section 1.6 below contains an overview of an own-initiative inquiry concerning a specific instance of late payment by the Commission (see case **OI/2/2010/GG** under “Execution of contracts”). A further inquiry (**OI/4/2010/ELB**) concerned the rights and duties of civil servants, and, more specifically, how the institutions deal with requests, made by officials and agents under Article 90(1) of the Staff Regulations, to replace administrative acts in the light of evolving case-law. This inquiry was directed at the Parliament, Commission, and Council. Finally in 2010, the Ombudsman opened an own-initiative inquiry regarding accountability for instances of maladministration in the activities of EU Common Security and Defence Policy missions. This inquiry,

OI/12/2010/BEH, was addressed to the Commission and the Council. Five of the six inquiries were ongoing at the end of 2010 (**OI/2/2010/GG** was closed with no further inquiries justified).

The Ombudsman’s procedures

Written and simplified inquiry 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 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.

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.

Complaints and inquiries

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 2010, 91 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 further 73 cases were settled after the Ombudsman secured an additional and more detailed reply to his/her correspondence for the complainant.

Inspection of 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. The Ombudsman's power to inspect files allows him to verify the completeness and accuracy of the information supplied by the EU institution concerned. It is therefore an important guarantee to the complainant and to the public that the Ombudsman can conduct a thorough and complete investigation. The Ombudsman's power to inspect the institution's files was used in 26 cases in 2010.

Article 3(2) of the Statute requires officials and other servants of the EU institutions to testify at the request of the Ombudsman, although they continue 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 2010.

The requirement for the Ombudsman to maintain the confidentiality of documents and information obtained during an inquiry was 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 1049/2001⁴, 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 treatment of classified information or documents and other information covered by the obligation of professional secrecy. In cases **523/2009/TS** and **944/2008/OV**, agreement was reached with the Council concerning the inspection of documents classified as "EU restricted".

4. 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.



1.2 Overview of complaints examined in 2010

The Ombudsman registered⁵ 2 667 complaints in 2010, compared to 3 098 in 2009. A total of 2 727 complaints were processed⁶ of which 27% (744 complaints) were 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.

In 2010, the main e-mail account of the Ombudsman was used to reply to over 1 000 e-mails requesting information. This compares with around 1 850 in 2009, 4 300 in 2008, and 4 100 in 2007. The significant sustained reduction in information requests received in 2009 and 2010 demonstrates the success of the Ombudsman's interactive guide, available on his website since 5 January 2009, which enables people to obtain information without having to submit a request. In total, the Ombudsman handled over 3 700 complaints and information requests in 2010.

Almost 58% of the complaints received in 2010 were submitted using the Internet.

Almost 58% of the complaints received in 2010 were submitted using the Internet. A large proportion of these (53%) was received through the electronic complaint form, which is available on the Ombudsman's website in 23 languages.

The European Ombudsman opened 323 inquiries on the basis of complaints, while an additional 12 inquiries were launched on the Ombudsman's own initiative (this compares with 335 and four, respectively, in 2009).

Table 1.1: Cases dealt with during 2010

Complaints registered in 2010	2 667
Complaints processed in 2010	2 727
Complaints within the competence of a member of the European Network of Ombudsmen	1 435
Complaints inside the mandate of the European Ombudsman Of which:	744 205 inadmissible 216 admissible but no grounds for opening an inquiry 323 inquiries opened on the basis of complaints
Own-initiative inquiries opened	12
Inquiries closed Of which:	326 (including 3 own-initiative inquiries) 175 from 2010 92 from 2009 59 from previous years

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

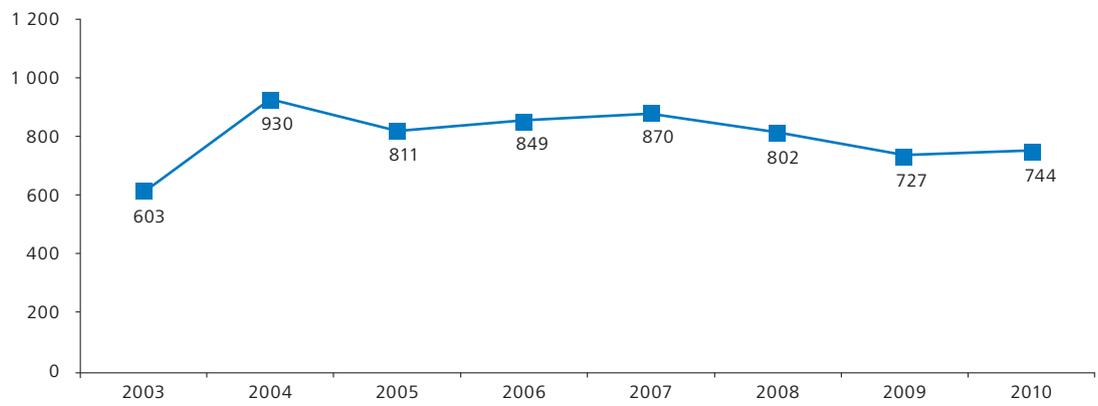
6. The statistical category "processed" means that the analysis designed to determine whether the complaint (i) falls within the Ombudsman's mandate, (ii) meets the criteria of admissibility, and (iii) provides grounds to open an inquiry has been completed. Because of the time required for this, the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

Complaints and inquiries

The Ombudsman closed 326 inquiries in 2010 (compared to 318 in 2009). Out of this total, 175 had been registered in 2010, while 92 dated from 2009, and 59 from previous years.

As Figure 1.1 reveals⁷, the number of complaints inside the Ombudsman’s mandate over the past seven years has gone from a low of 603 in 2003 to 744 in 2010. It peaked in 2004 at 930, with the second highest level reached in 2007 at 870.

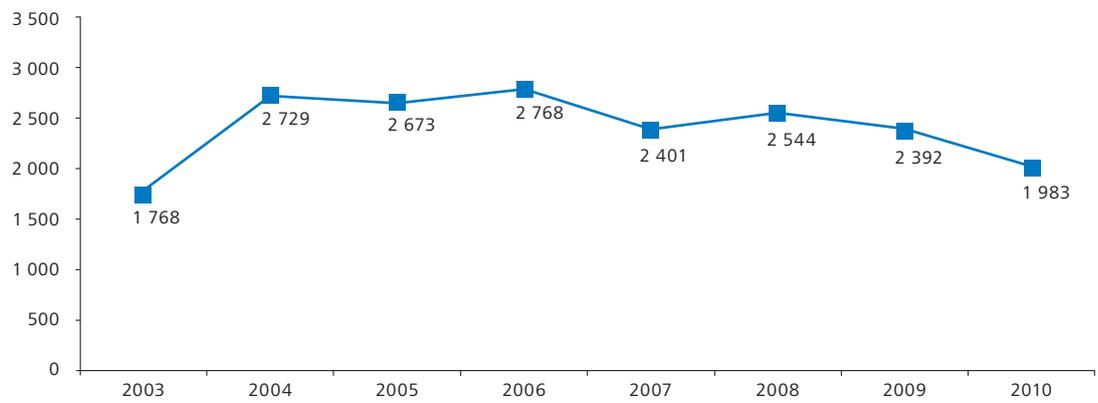
Figure 1.1: Number of complaints inside the mandate 2003-2010



As Figure 1.2 shows⁸, the number of complaints outside the Ombudsman’s mandate fell to 1 983 in 2010, 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 by helping guide complainants to the right address first time around.

Figure 1.2: Number of complaints outside the mandate 2003-2010



⁷ 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 1.1 only up to and including the eleventh complaint.

⁸ 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 1.2 only up to and including the eleventh complaint.



Table 1.2 gives an overview of the geographical origin of complaints registered in 2010. Germany, the EU's most populous country, submitted the greatest number of complaints, followed

by Spain, Poland, and Belgium. However, relative to the size of their population, most complaints came from Luxembourg, Cyprus, Belgium, and Malta.

Country	Number of Complaints	% of Complaints	% of EU Population	Ratio
Luxembourg	34	1.3	0.1	12.7
Cyprus	22	0.8	0.2	4.1
Belgium	207	7.8	2.1	3.7
Malta	9	0.3	0.1	3.4
Slovenia	34	1.3	0.4	3.2
Latvia	21	0.8	0.5	1.6
Bulgaria	63	2.4	1.6	1.5
Slovakia	43	1.6	1.1	1.5
Spain	349	13.1	9.0	1.5
Ireland	32	1.2	0.9	1.3
Finland	39	1.5	1.1	1.3
Portugal	71	2.7	2.1	1.3
Estonia	9	0.3	0.3	1.1
Czech Republic	63	2.4	2.1	1.1
Lithuania	20	0.7	0.7	1.1
Greece	65	2.4	2.3	1.1
Austria	48	1.8	1.7	1.1
Poland	214	8.0	7.7	1.0
Hungary	51	1.9	2.0	1.0
Germany	375	14.1	16.6	0.8
The Netherlands	60	2.2	3.3	0.7
Sweden	32	1.2	1.8	0.7
Romania	73	2.7	4.4	0.6
Denmark	16	0.6	1.1	0.5
France	171	6.4	12.8	0.5
Italy	132	4.9	11.9	0.4
United Kingdom	132	4.9	12.3	0.4
Others	131	4.9		
Not known	151	5.7		

Note: The ratio figure has been calculated by dividing the percentage of complaints by the percentage of population. Where it is greater than 1, this indicates that the country in question submitted more complaints to the Ombudsman than might be expected given the size of its population. All percentages in the above table have been rounded to one decimal place.

In 2010, 17 Member States submitted more complaints than might have been expected given the size of their population, eight

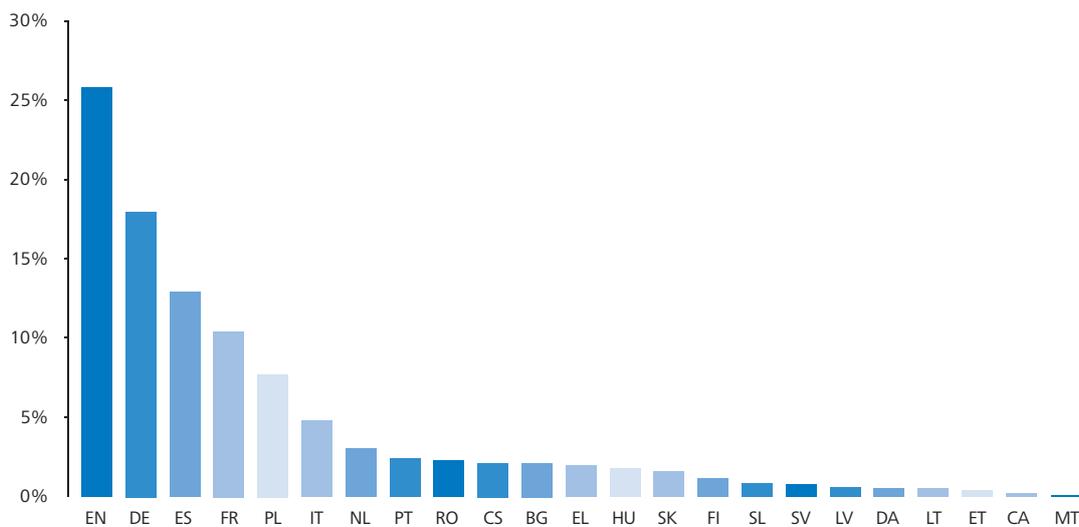
submitted fewer, while two submitted a number of complaints reflecting the size of their population.



Complaints can be submitted to the European Ombudsman in any of the 23 EU Treaty languages⁹. As Figure 1.3 shows, in 2010 most complainants chose

to submit their complaint to the Ombudsman in English, followed by German, Spanish, and French.

Figure 1.3: Language distribution of complaints



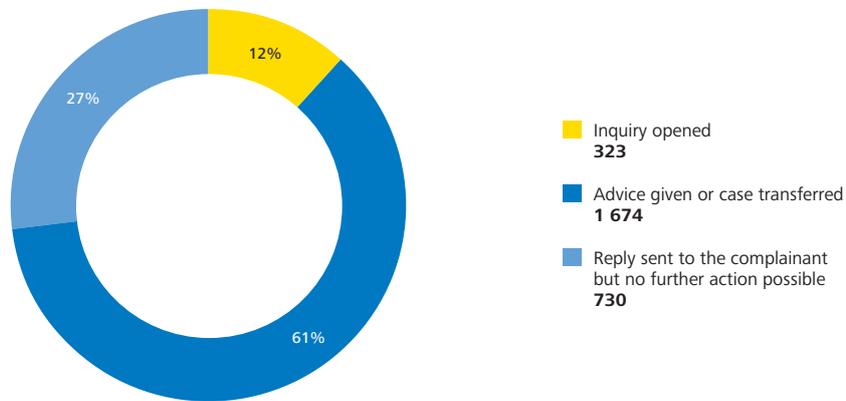
As Figure 1.4 reveals, in over 70% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case (12% of cases), by transferring it to a competent body, or by giving advice on where to turn (61%). Section 1.7 below provides an overview of the cases which were transferred or where advice was

given to the complainant. In 27% of cases dealt with in 2010, 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.

⁹ Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, and Swedish. Following an agreement signed in November 2006 between the European Ombudsman and the Spanish government, citizens may also complain to the Ombudsman in any of the co-official languages in Spain (Catalan/Valencian, Galician and Basque). 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.

Complaints and inquiries

Figure 1.4: Type of action taken by the European Ombudsman following complaints received



Note: The above includes 187 complaints registered towards the end of 2009, which were processed in 2010 and excludes 46 complaints registered towards the end of 2010, which were still being processed at the end of the year to determine what action to take.



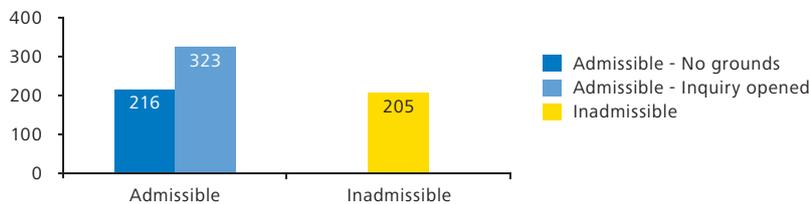
1.3 Analysis of inquiries opened¹⁰

All of the complaints which fell inside the Ombudsman’s mandate were further analysed to determine admissibility. Out of 744 complaints falling within the mandate, 205 were inadmissible; and in a further 216, which were admissible,

the Ombudsman found no grounds for opening an inquiry.

A total of 323 new inquiries were opened during the year on the basis of complaints. This constitutes a decrease of 3.5% compared with 2009. The Ombudsman also began 12 inquiries on his own initiative.

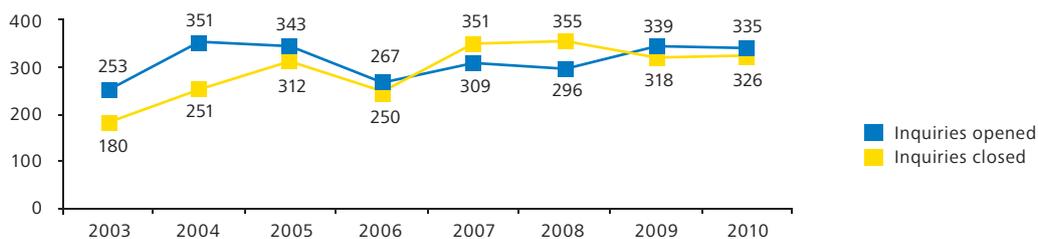
Figure 1.5: Complaints within the mandate of the European Ombudsman



As Figure 1.6 reveals, the number of inquiries opened in 2010 is slightly lower than the high levels reached in 2004 (351)

and 2005 (343). Inquiries closed will be analysed in section 1.4 below.

Figure 1.6: Evolution in the number of inquiries



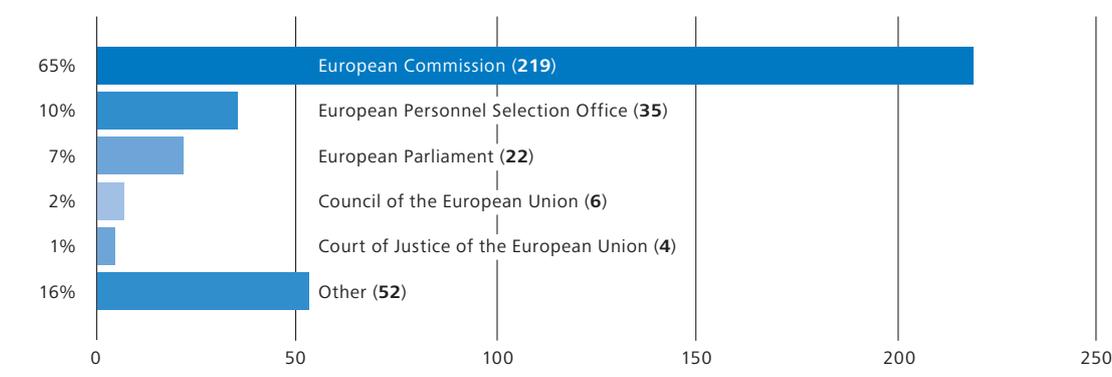
Most inquiries opened by the Ombudsman in 2010 (219 cases) concerned the European Commission (65%). The comparable figure for 2009 was 191. Since the Commission is the main EU institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens’ complaints. Next came the

European Personnel Selection Office (EPSO) with 35 (30 in 2009). The number of inquiries opened concerning the European Parliament, the Council, and the Court of Justice of the European Union dropped by around half compared to 2009. With regard to the Court, it is important to mention that the Ombudsman can only open inquiries into its non-judicial work.

¹⁰ As with the *Annual Report 2009*, the analysis in this section is based on the number of inquiries opened in 2010, 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.

Complaints and inquiries

Figure 1.7: Institutions and bodies subject to inquiry



Note: Two inquiries opened in 2010 were own-initiative inquiries addressed to more than one institution. The above percentages therefore total more than 100%.

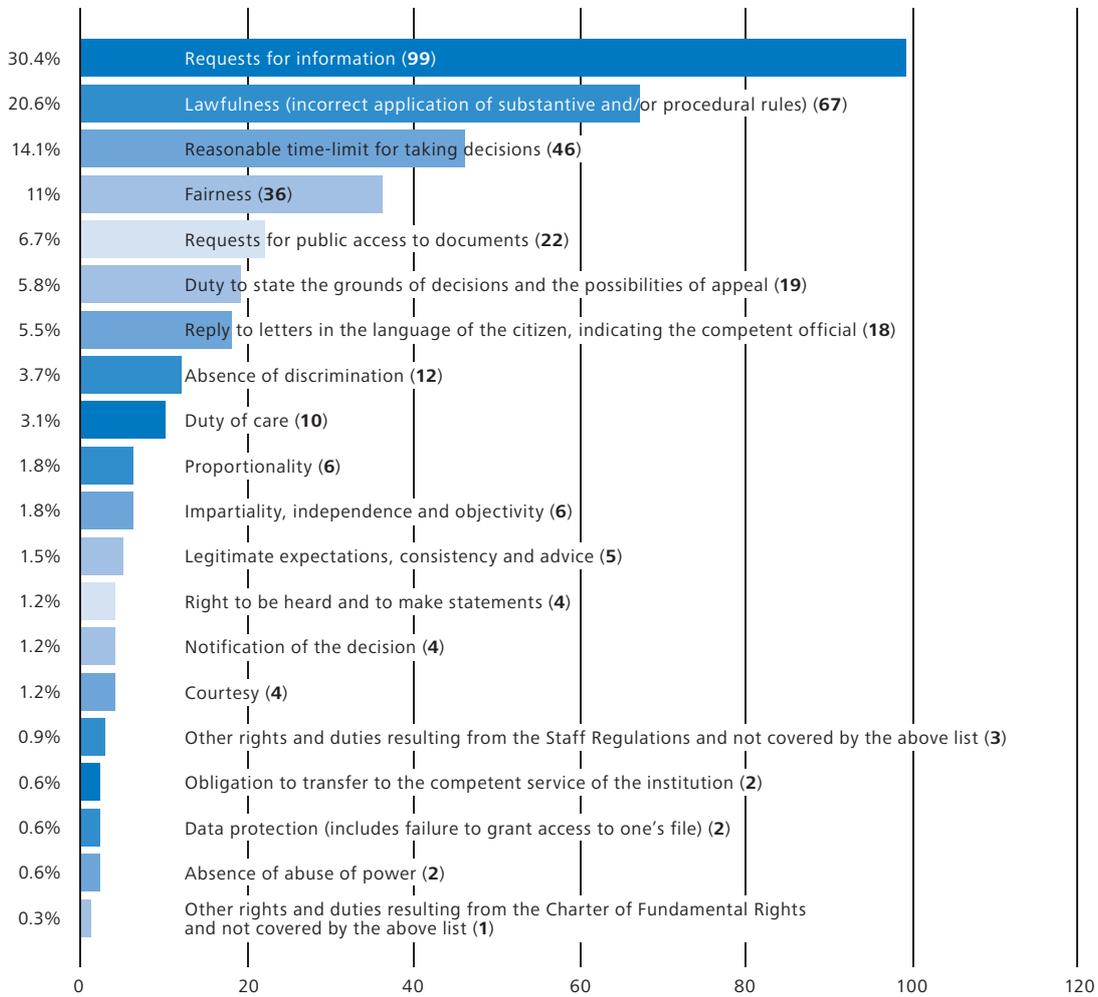
Twenty-five other EU institutions, bodies, offices, and agencies were the subject of a further 52 inquiries¹¹.

The main types of alleged maladministration investigated by the Ombudsman in 2010 were (i) breaches of: lawfulness (incorrect application of substantive and/or procedural rules (20.6% of inquiries), reasonable time limits for taking decisions (14.1%), fairness (11%), the duty to state the grounds of decisions and the possibilities of appeal (5.8%), the obligation to reply to letters in the language of citizens, indicating the competent official (5.5%), and the duty of care (3.1%); (ii) breaches of duties relating to: requests for information (30.4% of inquiries), requests for public access to documents (6.7%), and ensuring the absence of discrimination (3.7%).

¹¹ European Centre for the Development of Vocational Training (1), Committee of the Regions of the European Union (1), Education, Audiovisual and Culture Executive Agency (5), Executive Agency for Health and Consumers (2), European Aviation Safety Agency (2), European Banking Authority (1), European Centre for Disease Prevention and Control (1), European Chemicals Agency (1), European Defence Agency (1), European Data Protection Supervisor (1), European Economic and Social Committee (3), European Food Safety Authority (4), European Investment Bank (2), European Institute of Innovation and Technology (1), European Medicines Agency (2), European Network and Information Security Agency (2), European Research Council Executive Agency (3), European Foundation for the Improvement of Living and Working Conditions (1), Eurojust (2), Europol (2), European Union Agency for Fundamental Rights (2), Office for Harmonisation in the Internal Market (1), European Anti-Fraud Office (7), Publications Office of the European Union (3), and Research Executive Agency (1).



Figure 1.8: Types of maladministration alleged – (i) breach of, or (ii) breach of duties relating to:



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

Complaints and inquiries

1.4 Findings of the Ombudsman's inquiries

As Figure 1.6 above shows, the Ombudsman closed 326 inquiries in 2010. Of these, 323 were linked to complaints and three were own-initiative inquiries.

A total of 78% of complaints leading to inquiries closed (254) were submitted by individual citizens, whereas 22% (72) were submitted by companies and associations.

Table 1.3: Source of complaints leading to inquiries closed in 2010

Companies and associations	22% (72)
Individual citizens	78% (254)

Most of the inquiries closed by the Ombudsman in 2010 were completed within one year (66%). Over half (52%) were completed within three months.

Most of the inquiries closed by the Ombudsman in 2010 were completed within one year (66%). Over half (52%) 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 solution¹² (see "Written and simplified inquiry procedures" above). Over 80% of inquiries were completed within 18 months. On average, as in 2009, cases took nine months to close, compared with the 13-month average in 2008. This trend reflects the aim set out in the *Annual Report 2008* to improve further the institution's performance by taking even less time to close cases, while maintaining or improving quality standards.

Table 1.4: Cases closed in 2010 following inquiries

Average length of inquiry	9 months
Cases closed within 3 months	52%
Cases closed within 12 months	66%
Cases closed within 18 months	82%

Note: Based on 30 days per month.

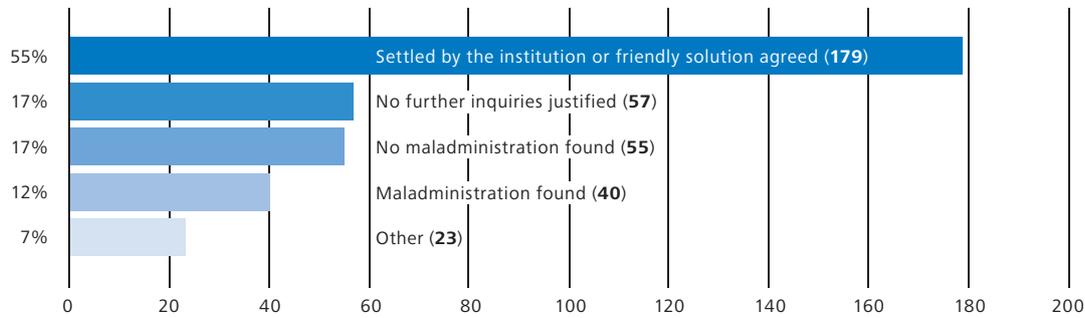
As can be seen from Figure 1.9, in 179 cases closed in 2010, a positive outcome was achieved when the institution concerned accepted a friendly solution or settled the matter. No maladministration was found in 55 cases. Maladministration was found in 40 cases: the institution accepted a draft recommendation in seven of these (compared to two in 2009), while 33 cases were closed with critical remarks (see Figure 1.10), including one that resulted in a special report to Parliament. In 14 cases, the Ombudsman made further remarks to help improve future performance. These findings are further detailed below¹³.

¹². 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.

¹³. The analysis that follows is based on inquiries completed during 2010. If an inquiry dealt with more than one allegation or claim, these may have given rise to several findings by the Ombudsman.



Figure 1.9: Results of inquiries closed



Note: In some cases, inquiries were closed on two or more grounds. The above percentages therefore total more than 100%.

No maladministration

In 2010, 55 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 from 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.

Council: right to refuse access to documents

The complainant requested public access to a note from the Council Presidency on allegations that the United States Central Intelligence Agency (CIA) used European countries to transport and illegally detain prisoners. The Council argued that disclosure would be detrimental to relations between the EU and the United States and would hinder diplomatic efforts to find constructive solutions in sensitive political areas. It was not possible to grant partial access to the document because the information

contained therein formed an inseparable whole. The Ombudsman inquired into the alleged failure to provide sufficient reasoning for the refusal to grant partial access. The Council stated that it was not possible to give more extensive reasons without disclosing the content of the document. After inspecting the document, the Ombudsman concluded that the Council was entitled to refuse access to it for the reasons it had given.

523/2009/TS

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 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 14 cases in 2010, including the following:

Complaints and inquiries

Alleged failure to ensure anonymity and equal treatment

In a case involving EPSO, the complainant alleged that one of her written tests, sent to the markers, bore both her application and secret numbers, instead of just the latter. She argued that the markers and the Selection Board thus discovered her identity. EPSO explained that the version the complainant received, by mistake, was not the version sent to the markers. It duly apologised. The Ombudsman found that the complainant had failed to demonstrate that she was treated differently. He suggested, however, in a further remark, that EPSO could further increase the clarity of its selection procedures by considering using only scanned copies of test papers for the markers' assessment, as well as when granting candidates access to their test papers.

2831/2009/RT

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.

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 2010, 179 cases were either settled by the institution, or a friendly solution was agreed, following a complaint to the Ombudsman¹⁴.

Alleged language discrimination

A number of documents on the Commission website for a call for proposals on civil protection were only available in English. In its response to a complaint from a German MEP, the Commission stated that: English was recognised as the standard language for such communication in the area of civil protection; applicants could request translations; applicants could submit their proposals in any EU official language; the Commission never interfered in the choice of language; the Commission could provide translations within ten days; and it could consider extending the deadline for submitting proposals. However, the Commission also promised that, in future calls in this area, it would make it clearer to applicants that they can request a different language version of the documents. The complainant was satisfied with this response and the Ombudsman closed the case.

1266/2009/KM

If an inquiry leads to a preliminary finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. Eight cases were closed during the year after a friendly solution had been achieved. At the end of 2010, 18 proposals for friendly solutions were still under consideration.

¹⁴. As outlined above, 91 of these were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence.



Staff case alleging unfair treatment

The Commission accepted the Ombudsman's proposal for a friendly solution to compensate a complainant for late reinstatement in a post. The official had been placed on invalidity leave as of 1 April 2004 and declared able to resume work on 1 April 2005. However, the Commission took two years to offer him a suitable post and this was in the Directorate-General where he worked before and where circumstances had caused his illness. The Commission offered to compensate him only from 15 February 2006. The Ombudsman reminded the Commission that the Staff Regulations obliged it to reinstate the complainant as from 1 April 2005 in the first post corresponding to his profile, provided he satisfied the relevant requirements. Good administration also required the Commission to look actively for a suitable post for the complainant.

1131/2009/MF

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 2010. In 33 such cases, the case was closed with critical remarks to the institution concerned (35 cases in 2009). Seven cases were closed when the institution concerned accepted a draft recommendation made by the Ombudsman. These findings are analysed in more detail below.

Figure 1.10: Inquiries where maladministration was found



Note: In one case where maladministration was found, the inquiry was closed with both a special report and a critical remark. The above percentages therefore total more than 100%.

Complaints and inquiries

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 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 that it can avoid similar maladministration in the future.

Dispute concerning importation of beef from Brazil

An organisation representing farmers complained to the Ombudsman that the Commission refrained from banning beef imports into the EU from Brazil, despite evidence obtained in March 2007 that such imports posed risks, due, in particular, to foot and mouth disease. The organisation further alleged that the Commission, having received the report of a November 2007 mission to Brazil by its Food and Veterinary Office, failed to act reasonably and proportionately to deal with the threat to animal and public health posed by these imports. The Ombudsman found no maladministration with

regard to the allegation that the Commission should have imposed a complete ban. He found, however, that the Commission failed to justify adequately why, between 1 February 2008 and 15 March 2008, it permitted imports of consignments of beef from Brazil despite the fact that all the holdings from which such beef emanated had not been audited and inspected in accordance with the requirements which the Commission deemed necessary in order to eliminate risks to animal health. He made a critical remark. He also made a further remark that the Commission should continue to conduct regular missions to third countries for the purposes of conducting systematic checks.

2115/2007/FOR

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 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 2009¹⁵

The Ombudsman invited the institutions concerned to respond, within a period of six months, to the critical and further remarks he made in 2009. He received responses to all the remarks made, except in four cases where the replies from the Commission arrived too late to be taken into account.

Taking critical and further remarks made in 2009 together, the rate of satisfactory follow-up was 81%. The follow-up to further remarks was satisfactory in 94% of

The Ombudsman's study on the follow-up given to critical and further remarks gave him an opportunity to monitor progress made by the institutions in terms of respecting fundamental rights. Among the issues examined in the study are rights of defence and the presumption of innocence, the rights of persons with disabilities, and the fundamental rights to good administration and of public access to documents.

| Taking critical and further remarks made in 2009 together, the rate of satisfactory follow-up was 81%.

cases, while the rate of satisfactory follow-up of critical remarks was significantly lower at 70%. 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.

Seven 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 (2350/2007/RT)**, the **Commission (791/2005/FOR, 834/2007/TN, and 1342/2007/FOR)**, the Education, Audiovisual and Culture Executive Agency (**2576/2008/GG**), the European Data Protection Supervisor (**491/2008/PB**), and the European Investment Bank (**244/2006/JMA**). 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 concerned. In accordance with Article 3(6) of the Statute of the Ombudsman, the institution must send a detailed opinion within three months. During 2010, 16 draft recommendations were issued. In addition, 11 draft recommendations from 2009 led to decisions in 2010, while three further cases were closed following draft recommendations made in 2008. Seven cases were closed during the year when a draft recommendation was accepted by the institution, while in a further case no further inquiries were justified. Ten cases were closed with critical remarks. At the end of 2010, 15 draft recommendations were still under consideration, including three made in 2009 and 12 made in 2010.

¹⁵ The Ombudsman's follow-up study is available at: <http://www.ombudsman.europa.eu/en/cases/followup.faces/en/5482/html.bookmark>

Complaints and inquiries

Investigation of alleged irregularities

A journalist alerted the Commission to certain alleged irregularities concerning the financing of a Parliament building in Brussels. The European Anti-Fraud Office (OLAF) closed the case without recommending any follow-up. The journalist turned to the Ombudsman, alleging that OLAF failed to examine seriously and objectively the applicability of a public procurement directive. OLAF submitted that it did in fact examine the directive's applicability. However, since no clear-cut irregularity capable of giving rise to disciplinary or criminal proceedings had been established, the question as to whether the directive was applicable was not subject to further in-depth investigation. The Ombudsman stated that such a narrow understanding of OLAF's mandate could effectively limit its ability fully to live up to its task of fighting fraud, corruption, and any other illegal activity affecting the EU's financial interests. In a draft recommendation, he called on OLAF to reconsider the results of its investigation. While OLAF insisted that it carried out its investigation properly and with due diligence, it confirmed that it appointed an investigator to carry out a new evaluation of the case.

1450/2007/BEH

Special reports

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

As was pointed out in the 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.

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 205(3) of Parliament's Rules of Procedure, to appear before the Committee at his own request, whenever he presents a special report to Parliament.

One special report was submitted to Parliament in 2010:

Failure to co-operate sincerely and in good faith with the Ombudsman

The Ombudsman submitted a special report to Parliament during an inquiry into a complaint about access to documents relating to CO₂ emissions from cars. The Commission refused to grant access to three letters that Porsche AG sent to former Commission Vice-President Verheugen, arguing that their disclosure would undermine protection of Porsche AG's commercial interests. The Ombudsman inspected the documents and made a draft recommendation to the Commission to grant access to the three letters in their entirety, or consider partial disclosure. The Commission failed to reply to the draft recommendation for almost 15 months, although the deadline established by the Treaty is three months. The Commission also failed to implement an undertaking to notify Porsche AG of its intention to disclose. These failures constituted a breach of the Commission's duty of sincere co-operation with the Ombudsman.

676/2008/RT



1.5 Star cases exemplifying best practice

Ten star cases closed in 2010 illustrate best practice. They serve as a model for all EU institutions in terms of how best to react to issues that the Ombudsman raises, and are highlighted in blue in this Report.

Ten star cases closed in 2010 illustrate best practice.

In the area of transparency, the European Medicines Agency (EMA) gave public access to clinical study reports and corresponding trial protocols for two anti-obesity drugs and proceeded to adopt and publish a new access to documents policy aimed at giving the public much broader access to documents in its possession (2560/2007/BEH)¹⁶. In case 793/2007/BEH, Parliament agreed to grant access to documents relating to the financing of its acquisition of certain buildings in Brussels. In response to further allegations from the complainant, Parliament clarified statements it had made and gave additional information on the procedure it had followed to secure external financing. In case 2145/2009/RT, the European Investment Bank (EIB) contacted the national authorities of Tajikistan with a view to providing access to a Framework Agreement that had been requested by an NGO. The agreement was published on the website of the Embassy of Tajikistan to Belgium and, the following day, the EIB provided the complainant with the web link.

In the area of tenders and contracts, the Commission paid the complainant EUR 6 025, plus EUR 1 586 in interest, after the Ombudsman asked it to reconsider the association's claim that

the Commission had wrongly reduced the final payment (3249/2008/KM). In response to the Ombudsman's inquiry in case 255/2009/JF, the Education, Audiovisual and Culture Executive Agency (EACEA) re-examined its files and cancelled its reimbursement claim for EUR 2 364. Moreover, EACEA paid the complainant an additional EUR 2 722 after the Ombudsman pointed out that the

NGO had made an obvious error when it filled in the grant application form, which resulted in its not being paid the correct amount for participants' travel costs. The Ombudsman included this case among the star cases in 2010 to illustrate how the institutions can apply the principle of fairness in their work.

Two cases concern the rights of persons with disabilities. In case 1226/2008/OV, the Commission agreed to provide a reserved parking space to a Commission official who was left with disabilities following a serious accident. In case 129/2009/VL, concerning support to the disabled dependents of Council officials, the Ombudsman concluded that the Council had fully implemented the relevant statutory rights, provided for appropriate internal measures to allow for these rights to be exercised, and adopted additional measures which went beyond the rights guaranteed by the Staff Regulations.

In a case (906/2009/JF) that illustrates how compliance with good administration requires more than just respect for legality, the Ombudsman invited the Commission to take responsibility for its repeated administrative mistakes concerning payment to an auxiliary agent.

¹⁶. Case 2493/2008/TS is also relevant in this regard. Inquiries in that case are ongoing.

Complaints and inquiries

The Commission agreed to cancel its claim for reimbursement, even though it was legally entitled to recover the amount. In case [2924/2007/TS](#), the European Economic and Social Committee (EESC) agreed to pay the complainant EUR 3 965 as a financial settlement for the material expenses she suffered as a result of its actions. The Committee had wrongly informed the complainant that she had been selected before its Appointing Authority had made a formal decision concerning her recruitment. Two weeks before she was due to start work, it informed her that she could not be

This section does not endeavour to cover as large a number of cases as in previous years, but rather to present the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2010.

recruited. By then, the complainant had already resigned from her job in Finland and rented an apartment in Brussels.

In response to a friendly solution proposal in case [1182/2009/JF](#), the European Aviation Safety Agency (EASA) apologised to the complainant and revised its formal warnings. The Ombudsman's inquiry revealed that, when claiming a fee, EASA had issued a formal warning that provided for the possibility of, among other things, cancelling the complainant's existing certificates. The Ombudsman found this warning to be disproportionate, abusive, and even potentially illegal. EASA further informed the Ombudsman that it envisaged proposing changes to the applicable legislation.

1.6 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. Summaries of selected cases are published on the website in all 23 official EU languages. The summaries reflect the range of subjects and of Union institutions covered by the 326 decisions closing cases in 2010, as well as the different reasons for closing cases.

This section does not endeavour to cover as large a number of cases as in previous years, but rather to present the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2010. It includes cases which had a significant impact in terms of promoting transparency and good administration in the EU institutions, cases which resulted in a particularly positive outcome for the complainant, and cases which allowed the Ombudsman to clarify important points of law or to deal with an issue that had not previously been presented to him. In light of the Ombudsman's efforts to promote the application of the Charter of Fundamental Rights of the EU, cases which concern rights laid down in the Charter are also highlighted.



The analysis is organised in terms of a thematic classification of the main subject matter of inquiries, constructed around the following seven 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;
- Institutional, policy matters, and other.

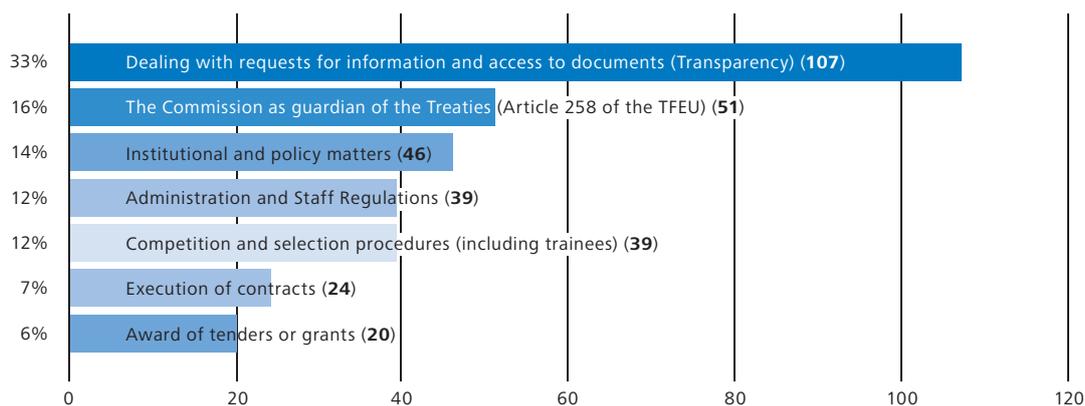
It should be noted that there is substantial overlap among the above categories. For example, issues of openness are often raised in complaints concerning recruitment or the Commission's role as guardian of the Treaties. It should also be noted that the categories are not listed in the order in which they appear in Figure 1.11¹⁷.

Openness, public access, and personal data

Public access to documents

Article 10(3) TEU refers to decisions in the Union being taken "as openly and as closely as possible to citizens", whilst Article 15(1) 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 provides for a right of access to documents of the Union's institutions, bodies, offices, and agencies. The same right is also laid down in Article 42 of the Charter. Regulation 1049/2001 governs this fundamental right of access to documents¹⁸.

Figure 1.11: Subject matter of closed inquiries



¹⁷ Figure 1.11 provides information on all inquiries completed in 2010 based on subject matter. The graph is meant to give the reader an indication of the significance of the subject matter discussed in terms of the Ombudsman's overall caseload.

¹⁸ 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. On 30 April 2008, the Commission put forward a proposal (COM(2008)229 final) to amend and replace Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. Discussions on this legislative revision continued in 2010.

Complaints and inquiries

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, or by complaining to the Ombudsman. During 2010, the Ombudsman completed inquiries into 22 complaints concerning the application of Regulation 1049/2001, 14 of which concerned the Commission. These inquiries covered both procedural issues and the application of the exceptions to public access provided for in the Regulation.

Delays and procedural problems

Several complaints involved allegations of delay. For example, in case **1438/2008/DK**, the Ombudsman criticised the Commission for taking five months to reach a decision on a request for public access and for failing to put forward any valid or adequate explanations. In case **1302/2009/TS**, the complainant alleged that, notwithstanding the fact that the Commission finally gave partial access to the documents concerned, it unnecessarily delayed replying to the complainant's initial applications¹⁹. Since the complainant had chosen not to make a confirmatory application, even though it was entitled to do so, the Ombudsman did not consider further inquiries justified. He noted, however, that the Commission did not give the complainant an indication of how long it would take to deal with the initial application. The Ombudsman considered that it would

be appropriate for the Commission to provide such an indication in future cases, in order to allow an applicant to make an informed decision regarding the merits of immediately making a confirmatory application.

In case **355/2007/FOR** (see also below), the Ombudsman took note of the complainant's argument that late registration and late answers to requests by the Commission are relatively common occurrences. He pointed out that he had addressed this issue in the past²⁰ and announced that he would continue to monitor, on the basis of complaints submitted to him, the Commission's commitment to respect the deadlines stipulated in Regulation 1049/2001. If provided with indications of a systemic problem within the Commission services, the Ombudsman will consider opening an own-initiative inquiry into the matter.

The Ombudsman made two critical remarks as regards the procedural aspects of case **3163/2007/KM**. He found that the Commission failed to provide a valid reason for extending the time-limit for dealing with the complainant's confirmatory application and that it should have forwarded the complainant's initial request for access to its Secretariat-General, or at least have informed the complainant where he should submit his application.

¹⁹. Regulation 1049/2001 establishes a two-step procedure for processing applications. If the institution does not reply to an initial application within 15 working days, the applicant is entitled to make a confirmatory application. If the confirmatory application is refused, or if no reply is received within 15 working days, the applicant has the right to bring the issue before the General Court, or to submit a complaint to the Ombudsman.

²⁰. In his decision in case **3697/2006/PB**, the Ombudsman made the following further remark: "The Ombudsman recalls that, according to Articles 7(1) and 8(1) of Regulation 1049/2001, applications for access to documents and confirmatory applications shall be handled promptly and a reply to an access application or a confirmatory application shall be given within 15 working days as from the date of registration of such an application. The Ombudsman takes the view that the obligation to handle applications promptly implies that the Commission should organise its administrative services so as to ensure that registration normally takes place, at the latest, on the first working day following receipt of an application."



Disputes regarding the application of the exceptions

Many of the Ombudsman's other inquiries in this area dealt with the exceptions to public access foreseen in Article 4 of Regulation 1049/2001.

Three cases concerned requests for access to documents relating to EU competition law. Case **1039/2008/FOR** concerned the Commission's refusal to provide access in an anti-dumping investigation. In light of the case-law of the Court of Justice²¹, the Ombudsman took the view that, when interpreting how the exceptions laid down by Article 4 of Regulation 1049/2001 apply to documents used in investigatory procedures, account must be taken of the specific rules governing such procedures. He noted that the Basic Anti-Dumping Regulation expressly excludes the party being investigated from having the right to consult confidential documents submitted by third parties, as well as internal documents of the institutions or the Member States. It is not the intention of Regulation 1049/2001 to modify the nature of the Commission's investigatory procedure under the Basic Anti-Dumping Regulation by allowing public access to documents which the party being investigated has no right to obtain, he said. The Ombudsman also pointed out that the investigation in question had not been definitively concluded when the decision on public access was made. In light of these considerations, the Commission was entitled to rely on the exception pertaining to the protection of the purpose of investigations (Article 4(2) third indent of the Regulation) to refuse access to the internal documents. He also found that the Commission had made a concrete and individual assessment of the third party documents to confirm their classification as confidential and

that the passing of time had not rendered these documents any less commercially sensitive. Case **2953/2008/FOR** also concerned the exception for protection of the purpose of investigations. The Commission refused to grant public access to a preliminary assessment, aimed at obtaining commitments from German energy supplier E.ON, which would put an end to a suspected infringement of EU competition law. The Ombudsman noted that the commitments procedure relies on the willingness of both the Commission and the party under investigation to demonstrate flexibility, a co-operative attitude, and trust in each other. He agreed that disclosing the preliminary assessment before a binding final agreement had been reached could have impacted negatively on E.ON's willingness to co-operate. This, in turn, could have endangered the completion of the investigation. The Ombudsman also took the view that there was no overriding public interest in disclosure. In case **3699/2006/ELB**, the complainants wanted to use documents referred to in an EU competition law decision in an action for damages brought before a national court against a company which the Commission had found to be in breach of EU competition law. Again, the Commission relied on the exception to protect the purpose of the investigation, as well as the exception concerning commercial interests (Article 4(2), first indent). After inspecting the documents, the Ombudsman concluded that they contained commercially sensitive information. He asked the Commission to balance the public interest in disclosure against protecting the purpose of an investigation and commercial interests. More specifically, he asked it to consider whether it would be in the public interest for documents to be disclosed

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

Complaints and inquiries

if, as a result, the deterrent effect of EU competition law would be increased by making it easier to bring actions for damages before national courts. While the Commission disagreed, in principle, that disclosing the documents in this case could be in the public interest, it carried out the requested balancing exercise. The Ombudsman made a further remark concerning how the Commission could promote the public interest in private enforcement.

A further two cases concerning, *inter alia*, documents originating from Member States, led the Ombudsman to remind the Commission of its obligations in line with the Court of Justice's judgment in *Sweden v Commission*²². In case 355/2007/FOR, a federation of environmental organisations asked the Commission for access to a number of documents relating to the Commission's decision to consider that an industrial port project in Granadilla, Tenerife (Spain), complied with EU environmental rules. The Commission replied that the release of certain internal documents would undermine its decision-making process (Article 4(3), first and second subparagraphs). It also stated that it had been asked by Spain not to release documents in its possession that originated from that country (Article 4(5)). The Ombudsman found that only one of the internal documents should not be disclosed. He also concluded, as regards the documents originating from Spain, that the Commission should enter into a dialogue with the Spanish authorities to make sure that there were indeed valid arguments against disclosure. In response to his draft recommendation, the Commission released the internal documents. In closing the case, the Ombudsman criticised the Commission's failure to verify, through a genuine

dialogue with the Spanish authorities, that adequate reasons existed for refusing to grant public access to the documents emanating from Spain. Case 2219/2008/MHZ concerned the Commission's refusal to provide access to a document related to infringement proceedings against Germany. The German authorities invoked various exceptions to access set out in Regulation 1049/2001 and the complainant alleged that the Commission did not make its own assessment of whether the exceptions applied. The Ombudsman found that only two of the exceptions mentioned in the Commission's reasoning appeared to be justified. Moreover, the Commission did not carry out an assessment to determine if there was an overriding public interest in disclosure. He invited the Commission to reconsider its refusal in light of *Sweden v Commission*. In response, the Commission made its own assessment of the applicability of the exception concerning the protection of the purpose of investigations, and distanced itself from the German authorities' reliance on the exception relating to the protection of international relations (Article 4(1)(a) third indent). The Ombudsman welcomed this response and agreed that, as the exceptions for the protection of commercial interests and for the protection of economic policy (Article 4(1)(a) fourth indent) applied, disclosure of the letter was not possible.

Case 1195/2010/OV concerned the Commission's refusal to grant access to its internal manual for the management of staff career development reviews. It argued that it contained opinions for internal use and that its release would seriously undermine the institution's decision-making process (Article 4(3)), as well as the protection of legal advice (Article 4(2), second indent). In response

22. Case C-64/05 P, *Sweden (IFAW) v Commission* [2007] ECR I-11389.



to the Ombudsman's inquiry, the Commission decided to grant the complainant full access to the document and apologised for not replying within the deadlines prescribed by Regulation 1049/2001.

The Commission was not the only institution concerned by access to documents inquiries in 2010. Case [793/2007/BEH](#) concerned Parliament's refusal to grant access to documents relating to the financing of its acquisition of certain buildings in Brussels. The complainant also alleged that Parliament may have made incorrect and misleading statements concerning whether EU directives for the award of public contracts applied to the acquisition in question. The Ombudsman called on Parliament to disclose the documents requested. He also asked it to correct or clarify its statements, in particular regarding the relevance of a Court of Justice judgment for the financial arrangement chosen. Parliament agreed to grant access since disclosure of the economic information contained in the documents was unlikely to undermine commercial interests. With regard to the statements it had made, Parliament, while insisting that they were by no means incorrect or misleading, provided further detailed comments on the relevance of the said judgment, clarifying why it considered it to be inapplicable. Parliament also gave additional information on the procedure it had followed to secure external financing.

A further two cases, case [523/2009/TS](#)²³ and case [944/2008/OV](#), concerned the Council's refusal to provide access to terrorism-related documents on the basis of the exception covering the protection of the public interest with regard to international relations. Following an inspection of the documents, the Ombudsman concluded that the Council's position was justified²⁴.

The Ombudsman dealt with two important access to documents cases in 2010 concerning the European Medicines Agency (EMA). EMA approves and monitors medicines placed on the EU market, with a view to protecting public health. Case [2560/2007/BEH](#) concerned a request for access to clinical study reports and corresponding trial protocols for two anti-obesity drugs. The complainants wanted to conduct an independent analysis of the relevant data, given that, in their view, biased reporting on drug trials was common. EMA initially refused access on the grounds that disclosure would undermine the drug producers' commercial interests. The Ombudsman inspected the documents and found that they did not contain information on the composition of the anti-obesity drugs involved. Nor did they contain commercially confidential information. He concluded that their disclosure would not undermine commercial interests. In response, EMA announced the release of the study reports and protocols. In case [2493/2008/TS](#), the Ombudsman recommended that EMA disclose reports concerning suspected adverse reactions to a drug used to treat severe forms of acne. EMA gave access to the reports²⁵.

The Ombudsman dealt with two important access to documents cases in 2010 concerning the European Medicines Agency (EMA). EMA approves and monitors medicines placed on the EU market, with a view to protecting public health.

²³. A more detailed account of this case is provided in section 1.4 above under "No maladministration found".

²⁴. As outlined in section 1.1 above on the Ombudsman's procedures, these inquiries led to a Council decision regarding the application of its security rules in the context of an Ombudsman inspection of classified documents.

²⁵. Further inquiries in this case are ongoing concerning the specific content of data to be given out as regards reports on serious adverse reactions to drugs. The inquiry should be completed early in 2011 and this case will be covered in full in the *Annual Report 2011*.

Complaints and inquiries

Finally, in case [2145/2009/RT](#), an NGO asked the European Investment Bank (EIB) for access to a Framework Agreement ('the Agreement') concluded between the EIB and the Republic of Tajikistan. The EIB refused access on the grounds that the Agreement had not yet been ratified by the national authorities. The complainant noted that this exception was not referred to in the EIB's Public Disclosure Policy. The EIB replied that, following its additional contacts with the national authorities of Tajikistan, the Agreement had been published on the website of the Embassy of Tajikistan to Belgium. It provided the complainant with a web link.

Public access to information

Article 41 of the Charter recognises the right to have one's affairs dealt with impartially, fairly, and within a reasonable time by the EU institutions, bodies, offices, and agencies. It also includes the right to receive a reply. The Ombudsman dealt with 164 cases in 2010 where the citizen alleged that the administration failed to reply adequately or at all. These cases were dealt with rapidly through simplified procedures. Case [3364/2008/IP](#) constitutes an example of a fully fledged inquiry in which the complainant alleged failure to provide information. More specifically, the complainant alleged that the Education, Audiovisual and Culture Executive Agency (EACEA) failed to reply to his request for clarification regarding the use of negative scores in the evaluation procedure for the project he was co-ordinating. In the course of the inquiry, EACEA recognised its failure and provided the complainant with the information he had requested.

Data protection

The Charter of Fundamental Rights includes, in its Articles 7 and 8, the fundamental rights to privacy and to the protection of personal data. These rights were relevant to case [2682/2008/ELB](#), where an Italian journalist complained to the Ombudsman against Parliament's refusal to provide him with statistics on absences of MEPs from different Member States due to medical grounds. The Ombudsman consulted the European Data Protection Supervisor, who considered that, in specific circumstances, individual MEPs might be identified from the statistics requested. Taking into account the provisions of Regulation 45/2001 on data protection²⁶, the Ombudsman concluded that Parliament's refusal of the complainant's request did not constitute maladministration.

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 Treaties²⁷. Article 258 TFEU 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. Other procedures apply in relation to specific matters, such as illegal state aids.

²⁶. Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

²⁷. Article 17 TEU requires the Commission to "ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them".



It is important to mention in this context the “EU Pilot”²⁸, a working method developed between the Commission and the Member States, with a view to correcting infringements of EU law at the earliest possible stage without having recourse to infringement proceedings. This project aims to ensure that EU law is implemented more effectively by the Member States and that complaints made by citizens and business are resolved more quickly. The Ombudsman has closely followed developments in EU Pilot since its launch in 2007, with a view to ensuring that it operates in the most transparent way possible for complainants.

Procedural obligations

As regards the Commission’s procedural obligations towards complainants, the Ombudsman’s main point of reference is a communication issued by the Commission in 2002²⁹. The Communication provides for an obligation to register complaints and for certain exceptions to this obligation, and also establishes deadlines for dealing with complaints and for informing complainants. This Communication was issued as a response to the Ombudsman’s previous inquiries and criticisms in relation to these matters. The Ombudsman considers this Communication as an important basis

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

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 to make clear 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.

for citizens’ trust in the Commission as guardian of the Treaties.

As the example below illustrates, the Ombudsman’s inquiries in 2010 revealed a number of shortcomings. It is important to mention, however, that in the course of two inquiries (cases **219/2009/PB** and **294/2009/PB**), the Commission informed the Ombudsman that it had introduced measures which were intended significantly to improve the handling of infringement complaints. The Ombudsman welcomed the Commission’s initiative, and stated that he wished to receive concrete information on the implementation of the new measures and on their specific impact on the handling of complaints.

²⁸. See the Communication from the Commission: A Europe of Results – Applying Community Law, COM(2007)502.

²⁹. 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.

Complaints and inquiries

Failure to register complaints

A recurrent problem in this area relates to the registration of complaints. Point 3 of the Commission's 2002 Communication foresees an obligation for the Commission to register the complaints it receives in the central registry. Six exceptions to this obligation are provided for. In case **1009/2009/KM**, the Ombudsman noted that the Commission neither acknowledged receipt of the complaint in question nor registered it as an infringement complaint, even though the complainant used the complaint form and clearly marked his submission as an infringement complaint. The Commission's failure to register the complaint could not be justified by the mere fact that there had been previous correspondence between it and the complainant, given that this is not one of the exceptions provided for in point 3. The Ombudsman criticised this procedural shortcoming, pointing out that the Commission must register all complaints unless one of the reasons set out in point 3 of the Communication applies.

In 2009, the Ombudsman launched an own-initiative inquiry into the Commission's practices concerning the registration of correspondence and complaints alleging infringements of EU environmental law (**OI/3/2009/MHZ**). This followed an allegation by a Spanish NGO that the Commission did not appear to register such correspondence

the mechanism for redress under national law has yet to be exhausted. These exceptions are not provided for in point 3. The Commission replied, by clarifying that "prioritisation" does not concern the registration of correspondence as a complaint, but the subsequent administrative stage, after the complaint has been registered. As regards correspondence on access to environmental information, the Commission first took the view that "it fail[ed] to set out a grievance", which is one of the exceptions in point 3 of the 2002 Communication. The Commission subsequently accepted the Ombudsman's invitation to narrow its interpretation of the exception.

Substantive issues

The Ombudsman may also review the substance of the analyses and conclusions reached by the Commission when investigating infringement complaints, for example, to check whether they are reasonable, well-argued, and thoroughly explained to complainants. The Ombudsman's inquiries and conclusions fully respect the Commission's discretionary power, recognised by the Treaties and the case-law of the Court of Justice, to decide whether or not to refer an infringement to the Court. If the Ombudsman were fundamentally to disagree with the Commission's

The Ombudsman's inquiries and conclusions fully respect the Commission's discretionary power, recognised by the Treaties and the case-law of the Court of Justice, to decide whether or not to refer an infringement to the Court.

as a complaint if it considered that (i) the subject of the complaint does not deserve priority treatment, and (ii) the correspondence relates to access to environmental information where

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.



Disputes concerning the exercise of the Commission's discretionary powers³⁰

Case **3307/2006/JMA** concerned the Commission's handling of an infringement complaint against Austria regarding the total ban on the keeping of wild animals in circuses. In a draft recommendation, the Ombudsman urged the Commission to provide the complainant with a clear and unequivocal statement of its views as regards whether Austria had or had not demonstrated that its rules were in compliance with the Treaty. The Commission replied by stating that, in closing the infringement proceedings, it had made use of its discretionary powers. It further argued that animal welfare questions should not be decided at EU level but should rather be left to the Member States. The Ombudsman accepted that the Commission has discretion to drop an investigation before it has been completed and before it has taken a decision about whether a Member State is in breach of EU law. However, he closed the case with a critical remark as regards the Commission's reasoning in this case. In his view, its statement that "animal welfare questions are better left to Member States" seemed tantamount to an abdication by the Commission from its role as guardian of the Treaties in all matters concerning animal welfare and not merely to those pertaining to the present case. As such, it failed to provide a correct, clear, and understandable reasoning for the exercise of its discretionary powers.

Case **1528/2006/VL** followed an earlier infringement complaint, which had led the Court of Justice to condemn Germany for failing to take the necessary measures to give priority to the processing of waste oils by regeneration. Although Germany subsequently adopted certain

measures to comply with its duties under the relevant directive, the complainant considered them insufficient and lodged a new infringement complaint, which was rejected by the Commission. The Ombudsman examined the case, concluded that the Commission had not provided a satisfactory explanation for its view, and called on it to reconsider its position. The Commission maintained its position and referred to its discretionary powers in this field, pointing to a new directive, which Member States must implement by December 2010. The Ombudsman pointed out that the reason put forward by the Commission for rejecting the infringement complaint was that Germany had properly implemented the former directive. It could not, therefore, rely on a subsequent change in legislation. The Ombudsman also stressed that the Commission's discretionary powers do not entitle it to abstain from carrying out its role as guardian of the Treaties – in this case, not enforcing a specific legal obligation long before the latter's validity had come to an end and the obligation itself had been repealed. He closed the case with a critical remark.

Failure to provide adequate reasons

In case **953/2009/MHZ**, the Ombudsman found that the Commission had not taken a reasoned position on whether the Spanish authorities had adequately implemented the relevant directive. In particular, it failed to refer properly to an interpretation given in a judgment of the Court of Justice³¹. The Ombudsman issued a critical remark and also criticised the Commission's unjustified delay in dealing with the complaint.

³⁰. A further relevant case is **2115/2007/FOR**, which is included in section 1.4 above under "Critical remarks".

³¹. C-278/05, *Carol Marilyn Robins and Others v Secretary of State for Work and Pensions* [2007] ECR I-1053.

Complaints and inquiries

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 awarding authorities in tenders, have a broad discretion and 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 has long regarded fairness as a key principle of good administration.

Among the issues examined by the Ombudsman in the area of tenders and grants in 2010 were alleged discrimination³², incorrect application of the relevant rules, failure to provide adequate reasons, and unfairness. With regard to the latter, it is important to underline that fairness is mentioned in Article 41(1) of the Charter's fundamental right to good administration. The Ombudsman has long regarded fairness as a key principle of good administration. He aims to strike a reasonable and fair balance between conflicting rights and interests and, as the following case examples under "Unfairness" illustrate, to help others to do so as well.

Unfairness

Two cases concerned the Education, Audiovisual and Culture Executive Agency (EACEA). In case **1598/2008/MHZ**, EACEA decided not to accept the costs for a conference because it perceived the links between the local partner and the NGO in question to constitute a possible conflict of interest. It also refused to accept (i) the costs of another conference, which had

already been covered by another grant, and (ii) costs which were claimed twice. The NGO alleged that EACEA's decision was unfair and disproportionate. The Ombudsman took the view that, when interpreting a contractual provision concerning conflicts of interest, regard should be paid to the good faith and fair dealing of the parties involved and to the nature and purpose of the contract. He pointed out that there was no actual conflict of interest and that there was no personal profit involved at any stage. EACEA accepted the Ombudsman's approach and agreed not to claim back the relevant sums. As regards the remaining costs, the Ombudsman underlined that the complainant risked bankruptcy. EACEA argued that the relevant provision of the Financial Regulation effectively prevented it from exercising its administrative discretion in this instance. The Ombudsman accepted this explanation. Case **255/2009/JF** concerned a request by EACEA for an NGO to reimburse EUR 2 364 of the costs of a seminar it had organised. In response to the Ombudsman's inquiry, EACEA re-examined its files and found that costs, which it had initially found to be ineligible, were in fact eligible. It cancelled its reimbursement claim. The Ombudsman's inquiry also revealed that the complainant had made an obvious error when it filled in the grant application form. As a result, the complainant was not paid the correct amount for participants' travel costs. In light of the fact that, at the relevant time, EACEA's attention had been duly drawn to this mistake, the Ombudsman considered that it would be unfair and disproportionate not to reimburse the complainant for the real costs incurred. EACEA accepted the Ombudsman's friendly solution proposal and paid the complainant EUR 2 722.

³². See case **1266/2009/KM** described in section 1.4 above under "Cases settled by the institution and friendly solutions".



Incorrect application of the rules

Case 485/2008/IP was submitted by an Italian researcher who was unhappy with the handling of his appeal against a decision to reject his research proposal. This was one of the first calls for proposals launched by the European Research Council (ERC). The complainant considered that the Redress Committee failed to address his argument that the reviewers applied certain criteria incorrectly, or applied criteria that were irrelevant. The Ombudsman found the complainant's allegation to be justified and made a critical remark. However, he welcomed the fact that, in the new procedures, applicants were given access to the individual assessments of the independent reviewers. This set an important new standard of transparency for EU calls for proposals, which the Ombudsman applauded.

Alleged failure to provide adequate reasons

Case 1793/2009/MHZ was submitted by a consortium whose grant proposal had been rejected by the Commission. The proposal was assessed by a panel of independent experts and their assessment was part of the Commission's reasoning for rejection. The consortium's representative alleged that the rejection was not well-founded. In its opinion on the complaint, the Commission explained the main lines of the experts' assessment. The Ombudsman found the explanation to be satisfactory. He took the view that, given that the Commission takes the final decision and needs to provide adequate reasons for such a decision, it can and should take appropriate action in case any manifest errors come to its attention. It did so in the present case by modifying and clarifying its original reasoning for rejecting the complainant's proposal.

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 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.

Complaints and inquiries

All of the full written inquiries carried out by the Ombudsman in the area of contracts in 2010 concerned the Commission.

All of the full written inquiries carried out by the Ombudsman in the area of contracts in 2010 concerned the Commission. Among the issues examined were late payment, disputes over eligible costs, and problems relating to sub-contracting. Four cases³³ concerned the principle of fairness, which the Ombudsman has worked hard to promote, in line with Article 41(1) of the fundamental right to good administration.

Late payment

In 2009, the Ombudsman opened a follow-up to his previous own-initiative inquiry (OI/5/2007/GG) into the timeliness of payments by the Commission. This inquiry (OI/1/2009/GG) should reveal whether progress has been made in this area. In the context of this own-initiative inquiry, the Ombudsman became aware of a case in which a delay of 754 days had occurred before payment was made. At first sight, it appeared fair to assume that this case constituted an exception. The Ombudsman also noted that interest for late payment had been paid and that no complaint had been submitted concerning this matter. He decided to examine this case separately from the general own-initiative inquiry and opened own-initiative inquiry OI/2/2010/GG. The substantial delay was explained by a serious lack of staff at the time, which itself was caused by a high turnover of staff. It was stressed that the timeliness of payments within the relevant Directorate had improved significantly since then. After inspecting the file, the Ombudsman agreed that the case did not indicate a systemic problem. He also noted that this case, and the problems to which it had given rise, had already been examined by the Court of Auditors.

Disputes over eligible costs or audit actions

In case 1962/2009/KM, the complainant alleged that the Commission's Directorate-General for Transport and Energy (DG TREN) had miscalculated the EU contribution to the costs of a project and applied contribution rates which were not provided for in the relevant contract. It also alleged that DG TREN had been slow in dealing with the project. The Commission reassessed the matter and reimbursed the project partners EUR 38 000. As regards the alleged delay, the Commission underlined that the process leading up to its payment decision was long, but that it was always followed up actively.

Case 3249/2008/KM concerned the partial rejection of a payment claim in a contractual case. In August 2005, the association in question requested a change to the budget because its exhibition was shown in more cities than was originally foreseen. A Commission official agreed to the proposed changes. The Commission, however, reduced its final payment to the association by more than EUR 6 000, arguing that it had not been properly notified about the budget change. After investigating the case, the Ombudsman concluded that the Commission failed to provide a coherent and reasonable account of how it dealt with the complainant's claim for payment. The Commission then reconsidered the claim and agreed to pay the complainant the outstanding EUR 6 025, plus EUR 1 586 in interest.

Case 2834/2007/BEH concerned an audit launched by the Commission. The Ombudsman concluded that the Commission had failed to launch the

33. Cases 173/2009/RT, 2945/2008/FOR, 2509/2008/ELB, and 2486/2008/MF.



audit within a reasonable period of time. He also took the view that the Commission failed to ensure that the complainant was provided with a German translation of the preliminary audit report. Finally, he identified a further instance of maladministration in the Commission's failure to provide sufficient explanations as to why a four-day audit was proportionate in a case such as the present one.

Unfairness

In case **2509/2008/ELB**, a non-profit association signed a grant contract with the Commission to carry out a project aimed at providing assistance to women who had been victims of terrorist violence in Algeria. Problems arose when the association sold a vehicle it had bought at the start of the project. According to the Commission, the grant contract did not allow for this, so it issued an order seeking to recover money from the association. The Ombudsman noted that the complainant had made a mistake but concluded that the Commission's decision to declare the entire cost of the vehicle as ineligible was disproportionate. He proposed a friendly solution. The Commission decided to waive the recovery order for reasons of cost-efficiency.

Issues relating to sub-contracting

In using contracts to carry out EU-funded actions or programmes, the Commission normally 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. In many cases, the Commission enjoys 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. The Ombudsman's contribution to the public consultation concerning the revision of the Financial Regulation contained concrete proposals to tackle this kind of problem³⁴. An interesting case from 2010 in which the Commission's responsibility for its contractor was invoked is the following:

The complainants in case **760/2009/JMA** alleged that the Commission had failed properly to supervise a Dutch private recruitment agency, which organises tests on its behalf. After examining the contract between the agency and the Commission, the Ombudsman concluded that the candidates did not have the power to request the Commission directly to verify whether their selection by the agency was fair and transparent, precisely because the contract excluded any such possibility. He made a further remark, however, inviting the Commission to consider contacting the agency again in order to obtain appropriate explanations as to why the agency first informed the complainants that they had been successful, and then, six months later, informed them that they had failed the tests.

Administration and staff regulations

Every year, the Ombudsman receives a number of complaints concerning the administrative activities of the

³⁴. This contribution is available on the Ombudsman's website at: <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/4592/html.bookmark>

Complaints and inquiries

The rights of persons with disabilities were also at stake in a number of cases, in which the Ombudsman aimed to ensure respect for Article 26 of the Charter on the integration of persons with disabilities.

institutions (39 inquiries or 12% of the total closed in 2010). These activities relate to the application of the Staff Regulations for officials and other relevant texts. Cases concern almost all institutions, as the examples below illustrate, their nature varies considerably although, once again, the principle of fairness features regularly. The rights of persons with disabilities were also at stake in a number of cases, in which the Ombudsman aimed to ensure respect for Article 26 of the Charter on the integration of persons with disabilities. The Ombudsman welcomes the proactive attitude of the administration in many of these cases which allowed for a positive outcome³⁵.

Failure to respect the rights of persons with disabilities

In case **1226/2008/OV**, the Commission agreed to grant a reserved parking space to the complainant for the remaining two years of her career. The official in question had had a serious accident, as a result of which a permanent invalidity of 4% was recognised. She alleged that the Commission failed to handle her application for a reserved parking space fairly and properly. The complainant in case **2710/2009/RT** alleged that the Commission had failed to pay him the amount corresponding to his permanent invalidity rate, although it informed him that it had done so. It also provided him with misleading information. The complainant subsequently informed the Ombudsman that, in the meantime, the Commission had paid the amount due, together with interest for late payment.

Two cases concerning a provision in the Staff Regulations, whereby a staff member's dependent child allowance may be doubled if his/her child suffers from a serious illness which involves heavy expenditure, led to very different outcomes. In case **1963/2009/ELB**, the Commission accepted the Ombudsman's friendly solution proposal to grant the complainant the double allowance from 2006, when his son's illness was diagnosed, rather than 2008, when it said the request was submitted. Parliament's response in case **1953/2008/MF** was quite different. The complainant alleged that Parliament had failed to act fairly and in accordance with the principle of equal treatment when it refused to backdate the double dependent child allowance. It also failed to take sufficient account of a Court of Justice judgment, he said. The Ombudsman considered that, although Parliament was not legally obliged to implement the judgment in relation to officials in similar circumstances, it would be perfectly legal and in conformity with principles of good administration for it to do so. He noted that Parliament's refusal was aggravated by the fact that the complainant specifically asked it to wait for the Court's judgment before making the deduction, but Parliament failed to do so. Parliament refused the Ombudsman's call to pay the complainant the sum in question, that is, EUR 5 500. The Ombudsman emphasised the social importance of allowances paid to parents of disabled children. He closed the case with a critical remark and informed Parliament's Committee on Petitions about the position of its administrative services in relation to the fundamental rights of children and of disabled persons.

³⁵. See, for example, case **1131/2009/MF** described in section 1.4 above under "Cases settled by the institution and friendly solutions".



Finally, a Council official whose son suffers from a severe illness alleged, in case [129/2009/VL](#), that the Council failed to reply to his questions and to provide sufficient support to the dependent, disabled family members of Council officials. The Council informed the Ombudsman that it had decided to grant the complainant's son the relevant allowance for an indefinite period, while reserving the right to carry out any checks that might become necessary. The Council also gave the complainant an explicit assurance that it would comply with its duty of care towards him, even after his death, with regard to his son. The Ombudsman concluded that the Council had fully implemented the relevant statutory rights for its officials, provided for appropriate internal measures to allow for these rights to be exercised, and adopted additional measures which went beyond the rights guaranteed by the Staff Regulations.

Unfairness

In a further case ([906/2009/JF](#)) that illustrates how good administration goes beyond legality, the Commission showed that it was ready to co-operate with the Ombudsman in seeking a favourable outcome. After committing a number of mistakes when paying an auxiliary agent, it recovered part of the overall amount overpaid. The complainant contested the recovery of the remaining part of that amount. She supported her case by highlighting the Commission's numerous mistakes and her difficult financial situation at that time. The Ombudsman noted that the Commission was legally entitled to recover the amount. However, in a proposal for a friendly solution, he

invited it to take responsibility for its repeated administrative mistakes by waiving the recovery. The Commission cancelled its claim for reimbursement.

Failure to ensure impartiality

Case [3289/2008/BEH](#) concerned a Parliament official who lodged an Article 90(2) complaint concerning the number of merit points he was awarded in 2005. In his complaint to the Ombudsman, he alleged that, contrary to principles of good administration, the decision on his Article 90(2) complaint was made by the Secretary-General of Parliament. Since the Secretary-General had played a decisive role in making the challenged decision, he should have left the decision to the President of Parliament. The Ombudsman pointed out that the aim of Parliament's internal rules is to vest, as far as it is possible, the competence to make a decision on an Article 90(2) complaint in an authority other than the one which took the challenged decision. This purpose would not be fulfilled if an authority, closely involved in making a decision, although not formally adopting it, makes a decision on the Article 90(2) complaint. Given the Secretary-General's degree of involvement in the decision which awarded two merit points to the complainant, the Ombudsman concluded that the former was not in a position to provide sufficient guarantees that there could be no legitimate doubt regarding his impartiality. He closed the case with a critical remark.

Complaints and inquiries

Competitions and selection procedures

EPSO

The European Personnel Selection Office (EPSO) is the subject of most of the Ombudsman's inquiries concerning open competitions and other selection procedures. Given EPSO's role as a prominent point of contact with a significant number of EU citizens, it is particularly important that it should adhere firmly to a culture of service towards citizens and operate transparently.

Many problems detected in competitions organised by EPSO have been solved through accelerated procedures, which have shown EPSO's openness to finding rapid and fair solutions to problems. Of the nine fully-fledged Ombudsman inquiries involving EPSO in 2010, seven found no maladministration, while no further inquiries were justified in the eighth case and the final case was dropped by the complainant. This constitutes a significant improvement compared with 2009.

Alleged failure to ensure equal treatment

Case **1994/2008/IP³⁶** was among the cases concerning EPSO and closed with a finding of no maladministration, in which the Ombudsman considered that EPSO had provided valid and adequate reasons to justify its decision to correspond with candidates for the open competition in question in one of only three languages – English, French, or German. EPSO explained that the aim of this policy was to ensure efficient communication during the application procedure. It was also a condition of the competition that candidates should have a good knowledge of at least one of the three languages.

Other institutions, bodies, offices, and agencies

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.

Failure to ensure respect for the right to appeal

In case **923/2009/FOR** concerning the European Agency for the Management of Operational Co-operation at External Borders (FRONTEX), the complainant alleged that the behaviour of FRONTEX was unfair, non-transparent, discourteous, and unprofessional. Moreover, it undermined his rights of appeal, which he could not exercise because of the failure of FRONTEX to communicate with him. The complainant had applied for three positions at FRONTEX. The Ombudsman found that FRONTEX did not respect principles of good administration in the case. This failure was particularly serious, since it hindered the complainant's fundamental right to appeal against a decision adversely affecting him. In his decision, the Ombudsman referred to the Charter and, more specifically, to Article 47 which provides for the right to an effective remedy and a fair trial. The Ombudsman closed the case with a critical remark.

Alleged breach of legitimate expectations

In case **2924/2007/TS**, the European Economic and Social Committee (EESC) informed the complainant that she had been selected for a post. Two weeks before she was due to start work, it informed her that she could not be recruited because she had not completed three

Of the nine fully-fledged Ombudsman inquiries involving EPSO in 2010, seven found no maladministration, while no further inquiries were justified in the eighth case and the final case was dropped by the complainant.

³⁶. See also case **2831/2009/RT** described in section 1.4 above under "Further remarks".



years of post-secondary studies. The complainant had already resigned from her job in Finland, rented an apartment in Brussels, and rented out her apartment in Finland. The Ombudsman considered that the EESC had failed adequately to review the complainant's application and CV. Furthermore, it wrongly informed her that she had been selected before its Appointing Authority had made a formal decision concerning her recruitment. Following the Ombudsman's friendly solution proposal³⁷, the EESC agreed to pay the complainant EUR 3 965 as a financial settlement for the material losses she suffered as a result of its actions.

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. Among the allegations covered are – once again – unfairness, administrative errors, abuse of power, and failure to fulfil obligations³⁸.

Unfairness

In case **3272/2008/BEH** concerning access of MEPs to the Council's press area during European Council meetings, the Ombudsman considered that the complainant did not establish that the Council acted arbitrarily by allocating to the Parliament delegation the same number of badges as it allocates to other delegations. He considered, moreover, that the Council's decision to adopt generally applicable restrictions, rather than to decide what the restrictions should be on a case-by-case basis, did not constitute

maladministration. In this respect, he took into account the degree of discretion which the Council enjoys. Regarding the claim that MEPs should be granted unrestricted access, the Ombudsman found that, in view of the fact that there are currently more than 700 MEPs, and that the Council building is limited in its capacity, there was nothing to criticise in the Council's refusal to comply with the complainant's views.

In case **2905/2008/GG** concerning an entry ban imposed on a scientist on the grounds of alleged harassment of EU staff, the Ombudsman explained that he wholeheartedly applauded the Commission's 'zero tolerance' policy concerning harassment but stressed that the presumption of innocence also needs to be respected. He further found that the complainant was not given the possibility to present his observations before the entry ban was adopted, and that failure to do so constituted a flagrant breach of the right to be heard. He further noted that the Commission had failed to inform the complainant of its decision and that it had not provided a valid reason for copying a letter containing negative remarks about him to a third party. The Ombudsman called on the Commission to lift the entry ban, apologise for the mistakes it had made, and inform the third party that the entry ban had been lifted. The Commission apologised for the fact that it had not informed the complainant of the entry ban but rejected the Ombudsman's conclusions and recommendations concerning the remainder of the case. The Ombudsman made a number of critical remarks.

³⁷. The friendly solution proposal was made on the grounds that the EESC had caused damage to the complainant. The Ombudsman did not make an analysis on the basis of the conditions laid down by the EU courts as regards breach of legitimate expectations.

³⁸. See case **1450/2007/BEH** described in section 1.4 above under "Draft recommendations".

Complaints and inquiries

Case **647/2010/RT** concerned the Commission's alleged failure to make the balance payment for a twinning programme in Serbia. The complainant alleged that the Commission acted unfairly and disproportionately by refusing to pay for certain expenses incurred in connection with the project. During the course of the inquiry, the complainant informed the Ombudsman that the Commission had agreed to make the balance payment, accepting to pay nearly the entire amount claimed.

In case **296/2009/OV** concerning Council conclusions on the protection of savings, a citizen alleged that the Council had failed to stand by its word, deceived European citizens, and infringed the principle of legitimate expectations. The Council insisted to the Ombudsman that the complaint did not concern maladministration. It also argued that the conclusions were not legally binding. The Ombudsman recalled that the complainant alleged that the Council's failure to implement its political decision constituted maladministration. He therefore felt competent to deal with this allegation, but underlined that a complaint concerning this matter would only be well-founded if the Council had entered into precise commitments and then failed to comply with them. The Ombudsman noted that the Directive in question had, in the meantime, been amended and that Member States had been obliged to provide the level of protection foreseen in the conclusions as from 1 July 2009 at the latest. He concluded that the issue had become devoid of relevance and that no further inquiries were justified.

Administrative errors

Case **865/2008/OV** concerned an alleged administrative error regarding fishing quotas for the West of Scotland. According to the complainant, the Commission

mistakenly interchanged the relevant columns concerning the West of Scotland and the North Sea in a table setting out proposed reductions. The Ombudsman confirmed the error but the Commission rejected the Ombudsman's draft recommendation to acknowledge it and, as far as was still possible, to take rectifying measures. It reiterated its argument that the relevant proposal had been made deliberately and was based on scientific evidence which showed that cod in the West of Scotland was in a critical state. Moreover, even if an error had occurred, it would no longer be possible to take rectifying measures, it said. The Ombudsman closed the case with a critical remark. The Commission subsequently acknowledged the error in a letter to the Ombudsman, thereby reversing the position it had adopted during the inquiry.

Abuse of power

In case **1182/2009/(BU)JF**, a small light aircraft maintenance company complained to the Ombudsman about the fee charged by the European Aviation Safety Agency (EASA) for carrying out works on its application for a minor safety modification on an aircraft. The Ombudsman's inquiry revealed that, in light of the applicable legal provisions in force and the information available to the complainant, EASA was correct to charge the fee. Nevertheless, during the inquiry it also became apparent that, when claiming the said fee, EASA issued a formal warning that provided for the possibility of, among other things, cancelling the complainant's existing certificates. The Ombudsman considered that this warning was disproportionate, abusive, and even potentially illegal, and that EASA should apologise to the complainant. EASA apologised and revised its formal warnings. It further informed the Ombudsman that it envisaged proposing changes to the applicable legislation.



1.7 Transfers and advice

In over 70% of all cases processed in 2010 (1 997), 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 advice on where to turn. Complaints which 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

seen from Figure 1.12, in 691 cases, the complaint was transferred³⁹ to a member of the Network or the complainant was advised to contact a member of the Network (546 were referred to a national or regional ombudsman or similar body, while 145 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

Complaints which are outside the Ombudsman's mandate often concern alleged infringements of EU law by Member States.

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.

In total, 53% (1 435) of the complaints processed by the European Ombudsman in 2010 were found to be within the mandate of a member of the European Network of Ombudsmen. Of these, 744 cases were within the mandate of the European Ombudsman. As can be

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 2010, 176 complainants were referred to the Commission⁴⁰, while 601 were referred to other institutions and bodies, including SOLVIT and specialised ombudsmen or complaint-handling bodies in the Member States.

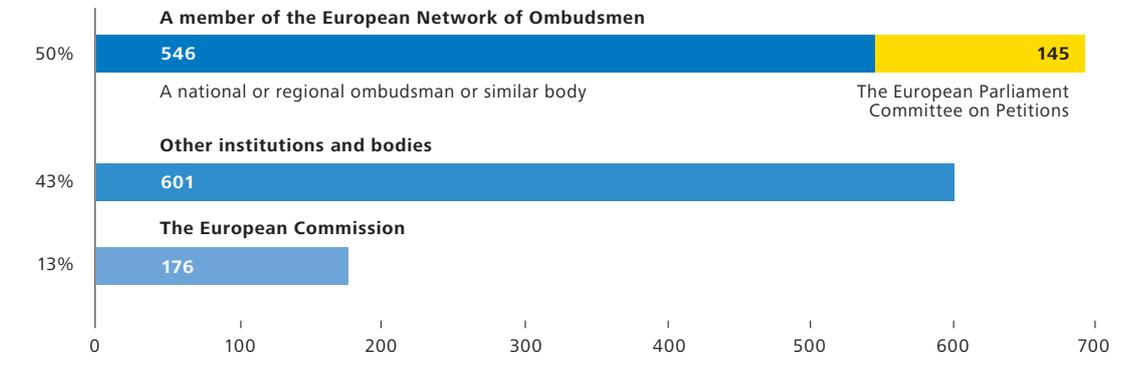
In total, in 61% of all cases examined in 2010, advice was given or the case was transferred. Examples are given below.

³⁹. A complaint is transferred only with the prior consent of the complainant and provided there appear to be grounds for the complaint.

⁴⁰. 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.

Complaints and inquiries

Figure 1.12: Complaints transferred to other institutions and bodies
Complainants advised to contact other institutions and bodies



Note 1: The above figures include 187 complaints registered towards the end of 2009 but processed in 2010, and excludes 46 complaints registered towards the end of 2010, 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. The above percentages therefore total more than 100%.

The role of members of the European Network of Ombudsmen

The mayor of a locality in Zamora complained about the poor condition of the roads there, which are the responsibility of the regional government of Castilla y León (Spain). The complainant informed the Ombudsman that the town council had complained on several occasions to the regional government but had not received a satisfactory reply. With the consent of the complainant, the Ombudsman transferred the case to the Regional Ombudsman of Castilla y León.

3071/2009/PL

An Algerian national asked the French authorities in Strasbourg to provide him with the certificate of marriage of his grandfather who had fought in France during World War I. He alleged that the local authorities had failed to reply to his request. With the complainant’s agreement, the Ombudsman transferred the case to the French Ombudsman.

1785/2010/PF

Complainant advised to contact the European Commission

An individual alleged that the German Federal Office for Migration and Refugees discriminated against the spouses of non-German EU citizens by obliging them to wait for three months before admitting them to integration courses sponsored by the federal government. The complainant wished to inform the European Commission of the discrimination, and to seek an injunction against the Office or against Germany. The complainant authorised the Ombudsman to transfer the complaint to the Commission.

2313/2010/NF

A German citizen who had been living in Bonaire (Dutch Antilles) with his wife since 1994 alleged that foreigners had to give a cash deposit to be granted resident status in Bonaire at the time that he moved there. The government was to reimburse the deposit after ten years of residence. He complained that the local authorities had, however, only reimbursed Dutch citizens and officially refused to reimburse other Union citizens. The complainant alleged that this practice violated EU law. Feeling discriminated against, the complainant sought the Ombudsman’s help. With the complainant’s authorisation, the Ombudsman transferred the complaint to the Commission.

2476/2010/NF



Complaint transferred to SOLVIT

A Spanish citizen complained to the Ombudsman against the General Directorate of Traffic (Ministry of the Interior, Spain) for not recognising his British D1 licence, and possibly contravening EU law on driving licences. Two weeks after submitting the complaint, the person contacted the Ombudsman to say that he had complained to SOLVIT, which had notified him that it would open an inquiry. The Ombudsman transferred the case to SOLVIT Spain.

1769/2010/PL

In the era of the Lisbon Treaty, it is essential that the institutions create and nourish a culture of service to citizens and of respect for their rights. The preceding thematic analysis has sought to capture the breadth and richness of the Ombudsman's inquiries during 2010 and to convey the various means through which the Ombudsman has endeavoured to promote the principles of a culture of service and to help make the Charter of Fundamental Rights a living reality. Readers who wish to study the Ombudsman's inquiries in greater depth are invited to use the search facilities on the Ombudsman's website to access the more comprehensive collection of summaries of decisions, draft recommendations, and special reports, which are available online.

2

Relations with institutions, ombudsmen, and other stakeholders

This Chapter gives an account of the European Ombudsman's relations in 2010 with the EU institutions, his ombudsman colleagues, and other key stakeholders. It outlines the meetings, seminars, and other activities undertaken with a view to ensuring that complaints are dealt with effectively, best practice is shared as widely as possible, and awareness about the Ombudsman's role is raised among his various stakeholders.

Relations with institutions, ombudsmen, and other stakeholders

2.1 Relations with EU institutions, bodies, offices, and agencies¹

The European Ombudsman meets regularly with Members and officials of the EU institutions to discuss ways of raising the quality of the administration, to emphasise the importance of good complaint-handling, and to ensure appropriate follow-up to his remarks, recommendations, and reports.

Given that the European Commission accounts for the highest proportion of inquiries carried out by the Ombudsman each year, considerable efforts are made to liaise systematically with its Members and officials.

Given that the European Commission accounts for the highest proportion of inquiries carried out by the Ombudsman each year, considerable efforts are made to liaise systematically with its Members and officials. In 2010, Mr Diamandouros met with the President of the European Commission, Mr José Manuel Durão Barroso, with the Commission Vice-President responsible for Inter-Institutional Relations and Administration, Mr Maroš Šefčovič, with the Commission Vice-President responsible for Justice, Fundamental Rights and Citizenship, Ms Viviane Reding, and with the Commissioner responsible for the Internal Market and Services, Mr Michel Barnier. He also met with Commission Secretary-General, Ms Catherine Day, the Director-General of the Legal Service, Mr Luis Romero, and the Commission Staff Mediator, Ms Mercedes de Sola. In order to follow-up on inquiries, the Head of the Ombudsman's Legal Department met, on a monthly basis, with the Director responsible for Inter-Institutional Relations in the Commission's Secretariat-General and, in November, made a presentation to the Commission co-ordinators responsible for Ombudsman inquiries.

The Ombudsman's relations with the Commission extend beyond his inquiry-related work: in 2010, Mr Diamandouros met with Commission officials responsible for the Eurobarometer and, for the first time, made a presentation on access to information to the European Documentation Centres. Members of his staff continued to liaise with SOLVIT, the Enterprise Europe Network, and with the Directorate-General for Communication.

In terms of relations with the European Parliament, of particular importance in 2010 was the election of the Ombudsman (see below) and, as always, the plenary debate on the Ombudsman's activities in the preceding year. This took place on 25 November 2010 and was based on the report drafted by Ms Mariya Nedelcheva, MEP. The Ombudsman presented his *Annual Report 2009* to Parliament's Committee on Petitions on 4 May, where he also had the opportunity to present his special report concerning the Commission's lack of co-operation in an inquiry (see section 1.4 above). This Report was also discussed during Parliament's 25 November plenary debate. Other events of interest in 2010 were a presentation to the Committee on Petitions on the revision of Regulation 1049/2001 on public access to documents, a presentation to the Committee for Constitutional Affairs on the European Citizens' Initiative, and a meeting with the Legal Affairs Committee's Working Group on Administrative Law.

In October, Mr Diamandouros travelled to the Court of Justice of the EU in Luxembourg to take his oath of office for the new mandate. This was followed by meetings with the President of the Court of Justice, Mr Vassilios Skouris, the

¹ For brevity, the term 'institutions' is used to refer to all the EU Institutions, bodies, offices, and agencies.



The Ombudsman presented his *Annual Report 2009* to the President of Parliament, Mr Jerzy Buzek, MEP, on 21 April and to Parliament's Committee on Petitions on 4 May. The plenary debate on the Ombudsman's activities in 2009 took place on 25 November 2010 and was based on the report drafted by Ms Mariya Nedelcheva, MEP.



President of the General Court, Mr Marc Jaeger, and the President of the Civil Service Tribunal, Mr Paul Mahoney. Earlier that month, the Ombudsman attended a conference to mark the Tribunal's fifth anniversary. While in Luxembourg for the oath ceremony, the Ombudsman also met with the President of the European Investment Bank (EIB), Mr Philippe Maystadt, and spoke on "Ethics and the Ombudsman" at the 27th Plenary Meeting of the European Research Council Scientific Council.

Further highlights from the year in question included a presentation to the Directors-General, Directors, and Heads of Unit of the General Secretariat of the Council of the EU, a meeting with the management of the European Anti-Fraud Office (OLAF), and a speech at the European Union Agency for Fundamental Rights Symposium on "Strengthening the fundamental rights architecture in the EU". In addition, 2010 saw meetings with the European Data Protection Supervisor (EDPS), Mr Peter Hustinx; the Head of the European Personnel Selection Office (EPSO), Mr David Bearfield; the Director-

General for Administration in the Council, Mr William Shapcott; the Deputy Director of the European Environment Agency, Mr Gordon McInnes; the Deputy Head of the Bureau of European Policy Advisers (BEPA), Mr Margaritis Schinas, and the Director of the European Commission's Office for the administration and payment of individual entitlements (PMO), Mr Stephen Quest. The Ombudsman also made two presentations to participants in the Erasmus for Public Administration programme organised by the European Administrative School.

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. Parliament's Rules of Procedure set out details of the election procedure.

Parliament published a call for nominations for the post of Ombudsman in the Official Journal of 10 September

Relations with institutions, ombudsmen, and other stakeholders

2009², setting 9 October 2009 as the deadline for submission of nominations. The vote to elect the European Ombudsman was held in plenary session in Strasbourg on 20 January 2010. Mr Diamandouros was re-elected European Ombudsman on the first ballot with 340 votes. Mr Pierre-Yves Monette received 289 votes and Mr Vittorio Bottoli received 19 votes. The number of valid votes cast was 648. Upon his re-election, Mr Diamandouros announced that his priorities would be: to ensure that citizens profit fully from the Treaty of Lisbon and the Charter of Fundamental Rights; to strengthen a culture of service to citizens within the EU administration; and to further improve the efficiency of the Ombudsman's office.

Detailed information on the election of the European Ombudsman can be found on Parliament's website at: <http://www.europarl.europa.eu/electionombudsman/>

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.

2.2 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 counterparts 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 over 90 offices in 32 countries, and includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and certain other European countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament.

Of particular importance to the Network in 2010 was the launch of a new visual identity for the Network, alongside a new visual identity for the European Ombudsman (see below). Ombudsmen and members of their staff from Austria, Belgium, Denmark, France, Hungary, Italy, Norway, Portugal, Slovenia, and the United Kingdom attended the launch event in Brussels on 27 September. The Network's new logo is designed to evoke the Network's identity and values, while emphasising its members' efforts to reach out to a wide range of audiences.

2. OJ 2009 C 216, p. 7.



On 27 September 2010, an event was held in Brussels to launch the new visual identities of the European Ombudsman and the European Network of Ombudsmen. Over 150 people attended the launch, including ombudsmen and their staff from ten countries.



One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. During 2010, 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. Further details of this co-operation are provided in Chapter 1.

Also of direct relevance to complaint-handling is the special procedure that exists, whereby national or 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. During 2010, three queries were submitted by national ombudsmen: one from the Austrian Ombudsman Board concerning EU rules on the co-ordination of social security systems, one by the Estonian Ombudsman on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and one by the Belgian Federal Ombudsmen on the issue of double value added taxation at the European level.

More generally, the Network serves as a useful mechanism for exchanging information on EU law and best practice through seminars, a biannual newsletter, an electronic discussion and document-sharing forum (the EUOMB Summit and website), and an electronic daily news service. Among the issues discussed via these tools in 2010 were the right of citizens to free movement, the implementation of EU law in the area of state aids, vehicle taxation, migration and asylum issues, discrimination, the environment, and the rights of persons with disabilities. In addition in 2010, the European Ombudsman informed the national ombudsmen within the Network of his intention to draft a statement of ethical principles for EU officials. He asked for their help in ensuring that the future statement take full account of best practice in the Member States. National ombudsmen within the Network responded positively to this request for information on national statements of ethical principles in public life and agreed to discuss the subject at the next biennial seminar in Copenhagen in 2011.

Relations with institutions, ombudsmen, and other stakeholders



The Seventh Regional Seminar of the European Network of Ombudsmen took place in Innsbruck, Austria, in November 2010. Regional ombudsmen and similar bodies from Austria, Belgium, Germany, Italy, Spain, Switzerland, and the United Kingdom, were represented at the Seminar.

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 Regional Seminar of the European Network of Ombudsmen was organised jointly by the European Ombudsman and the Ombudsman of Tyrol, Mr Josef Hauser. It took place in Innsbruck, Austria, from 7 to 9 November 2010. Ombudsmen offices from the six EU Member States in which regional ombudsmen or similar bodies exist (Belgium, Germany, Spain, Italy, Austria, and the United Kingdom) were represented at the Seminar. The Swiss regional ombudsmen were, for the first time, also present, having become full members of the European Network of Ombudsmen in summer 2009. The Seminar provided an opportunity to explore a variety of topics including the role of regional ombudsmen, sharing knowledge about European Union law, the work of both the European Union and regional ombudsmen in the environmental field, and the development of a new Extranet for the European Network of Ombudsmen.

Liaison officers act as the first point of contact for other offices in the European Network of Ombudsmen. They met for the seventh time in Strasbourg from 6 to 8 June 2010. Discussions focused on the implications of the Treaty of Lisbon for the work of ombudsmen, cross-border healthcare and patients' rights, as well as the language used in notifying foreign citizens of traffic offences committed. As with the Seventh Regional Seminar, the European Ombudsman's office presented the Network Extranet project that will replace the EUOMB Summit and website in 2011. Finally, for the first time, a joint session was held with SOLVIT, to discuss issues of common interest and to increase co-operation. This joint session saw the launch of a project to map the competences of the national ombudsmen within the Network. The purpose of this project is to gather clear and comprehensive information about the types of complaints that national ombudsmen can and cannot deal with. The results should be extremely useful for anyone who needs to give rapid and accurate advice to complainants as to who is competent to help them.



During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. Among the events that Mr Diamandouros attended in 2010 was the European Conference of the International Ombudsman Institute in Barcelona in October. The theme of this conference was "Europe as an open society", with discussions focusing on the rights of immigrants.



© ARAG, 2010

In addition to the aforementioned seminars, the European Ombudsman used the occasion of his visits to the EU Member States in 2010 to meet with his ombudsman colleagues. Mr Diamandouros did this when he travelled to Denmark (January), the United Kingdom (March), Belgium (November), and Greece (November). The Ombudsman visited his counterpart in Serbia in June for the formal presentation of the Serbian Code of Good Administrative Behaviour to the Serbian Parliament. The Serbian Code is modelled largely on the European Code. He received a delegation from the office of the Serbian Ombudsman in October. Finally, the Ombudsman was represented at the fourth meeting of the Association of Mediterranean Ombudsmen, which was held in Madrid in June.

2.3 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. 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.

The communication highlight of the year was the 27 September launch of new visual identities for the European Ombudsman and the European Network of Ombudsmen (see above). This event coincided with the institution's fifteenth anniversary and gathered representatives from the EU institutions, ombudsmen, NGOs, interest groups, and journalists. The keynote speaker was Mr Rainer Wieland, Vice-President of the European Parliament, while Mr Philippe Apeloig, creator of the new visual identities, presented the thinking behind the two

Relations with institutions, ombudsmen, and other stakeholders



The communication highlight of 2010 was the 27 September launch of new visual identities for the European Ombudsman and the European Network of Ombudsmen. This event coincided with the institution's fifteenth anniversary and gathered over 150 people. The keynote speaker was Mr Rainer Wieland, Vice-President of the European Parliament, who is pictured here with Mr Diamandouros. This photo also features the European Ombudsman's new logo.

new logos. The blue and yellow colours of the European Ombudsman's new logo serve as a reminder of the European flag, while the circular shape represents unity and consensus. Within this circle, bidirectional arrows represent exchange and dialogue, which are key features of the European Ombudsman's methodology. The design of the layered arrows creates an equals sign, symbolising equality and fairness.

The Ombudsman also held a series of thematic events in 2010 to draw attention to his work in particular areas. On 12 March, he hosted an event in Brussels entitled "The European Ombudsman's new mandate – What to expect?" The purpose of this event was to discuss, with interested parties, the Ombudsman's priorities for 2009-2014. Following a range of presentations, including from Commission Vice-President, Mr Maroš Šefčovič, and former European Parliament President, Mr Pat Cox, citizens, NGOs, business associations, interest groups, journalists, and regional offices participated in the discussions and put forward many useful ideas designed to assist the Ombudsman in implementing his strategy. On 28 September – the International Right to Know Day – the

Ombudsman co-organised an event with Transparency International, entitled "Transparency at the EU level and in the Member States". The International Right to Know Day was established in 2003 by access to information advocates from around the globe. The Ombudsman also convened a workshop on transparency in Brussels in April 2010, with an eye to generating useful ideas and strategies on how he can promote the principle of transparency within the EU administration. Participants included retired high-level officials from the main EU institutions and members of the academic community. The workshop saw a lively exchange of views on how the Ombudsman can help make the principle of transparency a reality and brought forward many stimulating and innovative ideas for the years ahead. Finally, on 10 June, the Ombudsman held a seminar on the EU's financial rules. Mr Diamandouros' suggestions for the reform of the EU's Financial Regulation covered the following areas: reducing administrative burdens; late payments; the rights of sub-contractors and staff; waiver of recovery of sums unduly paid; *ex gratia* payments in exceptional cases of maladministration; and provision of information about remedies.



The Ombudsman held a range of thematic events in 2010 to draw attention to his work in particular areas.

These included events on the Ombudsman's new mandate, the Financial Regulation, and transparency. Around 100 people attended this latter event on the occasion of the International Right to Know Day. Ms Diana Wallis, MEP, Vice-President of the European Parliament, chaired the event, which was co-organised with Transparency International.



For the first time, the Ombudsman was invited to attend the Annual Meeting of Independent Accountability Mechanisms (IAMs), which took place in Tokyo in June. Representatives of IAMs from various international financial institutions were present, among them the European Investment Bank (EIB). The topics discussed included outreach activities and environmental dispute resolution. Also in the area of accountability and financial institutions, the Ombudsman's Secretary-General, Mr Ian Harden, represented the office at a meeting in Budapest, Hungary, organised by the NGO, CEE Bankwatch. The aim of this conference was to bring together accountability mechanisms of international financial institutions and the EU with representatives of civil society organisations.

All in all in 2010, the Ombudsman presented his work at around 40 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, Strasbourg, and in the Member States. Of particular

interest in 2010 was a visit to the United Kingdom to deliver a series of lectures on the role of the Ombudsman post-Lisbon. Mr Diamandouros spoke at the University of Manchester, the University of Hull, and at University College London. He also participated in an event organised by the European Parliament's Information Office in Edinburgh on the European Citizens' Initiative and at an event organised by the European Commission's Representation in London.

During 2010, staff made over 60 presentations to around 1 800 citizens from throughout the EU. Most visitors came from Germany, followed by Belgium and the Netherlands. While resource constraints limit the number of presentations that can be made each year, the Ombudsman tries, as far as possible, to accept invitations and requests from interested parties.

The Ombudsman's main media activities in 2010 included his Annual Report press conference in Brussels in April and a meeting with journalists in June to discuss his strategy for the new mandate. Mr Diamandouros also gave around 40 interviews to journalists from the print, broadcast, and electronic

Relations with institutions, ombudsmen, and other stakeholders

media. 24 press releases were issued during the year, covering such issues as the Ombudsman's strategy for the new mandate, transparency issues in the European Parliament, the European Anti-Fraud Office (OLAF), the European Medicines Agency, the European Citizens' Initiative, payment disputes concerning

Finally, on 12 March, after being nominated by the late Polish Commissioner for Civil Rights Protection, Mr Janusz Kochanowski, Mr Diamandouros received the Officer's Cross of the Order of Merit of the Republic of Poland from the Polish Permanent Representative to the European Union,

The Officer's Cross of the Order of Merit of the Republic of Poland was awarded to Mr Diamandouros for his efforts in promoting human rights in the EU and beyond.

the Commission, and the Commission's failure to co-operate sincerely with the Ombudsman. Over 1 400 articles covering the work of the European Ombudsman appeared in print and online media.

Mr Jan Tombinski, who hosted the ceremony in Brussels. The Officer's Cross of the Order of Merit of the Republic of Poland was awarded to Mr Diamandouros for his efforts in promoting human rights in the EU and beyond. The Cross is granted by the President of the Republic of Poland to non-Polish personalities or to Poles residing outside Poland for their outstanding contributions to the co-operation between Poland and other countries and nations.

The Ombudsman's new website, launched on 5 January 2009, was redesigned in September 2010 to reflect the institution's new visual identity. The website was regularly updated throughout the year with decisions, case summaries, press releases, details of upcoming events, audiovisual content, publications, and other documents. SSL encryption was integrated into the online complaint form for greater security, and social networking buttons were incorporated into most of the website's pages. From 1 January to 31 December 2010, the Ombudsman's website received over 305 000 unique visitors, who, combined, viewed over 6.5 million pages. The greatest number of visitors came from Luxembourg, followed by France, Poland, Spain, and Italy. Of particular interest on the Ombudsman's website is the interactive guide, which aims to help individuals identify the most appropriate body to turn to with their complaint. In 2010, more than 19 000 people sought and received advice from the Ombudsman through the interactive guide.

From 1 January to 31 December 2010, the Ombudsman's website received over 305 000 unique visitors, who, combined, viewed over 6.5 million pages.

3

Resources

This Chapter gives an overview of the resources that were made available to the Ombudsman institution in 2010. It outlines the structure of the office and describes 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.

Resources

3.1 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 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.

an annual cycle of events that provide staff and trainees with an opportunity to reflect and share their views on chosen subjects that are directly linked to the work and activities of the institution. The objective is to develop and strengthen understanding of the institution's values and mission and to contribute towards their effective delivery.

The 2010 staff retreat took place from 24 to 26 February and centred on the theme "The European Ombudsman's vision for the next five years". The aim was for discussions at the retreat to

The 2010 staff retreat took place from 24 to 26 February and centred on the theme "The European Ombudsman's vision for the next five years".

Staff retreat and staff meetings

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. They form part of

contribute towards the establishment of the European Ombudsman's strategy for the new mandate.

Regular staff meetings are also convened with a view to ensuring a smooth flow of information among staff, and to promote professional development opportunities.



Regular staff meetings are convened with a view to ensuring a smooth flow of information among staff, and to promote professional development opportunities. The Ombudsman's staff met in Strasbourg in July and December to hear about the latest administrative, legal, and policy developments affecting the institution. In 2010, this latter meeting was preceded by a presentation to the staff of the Commission's Single Market Assistance Services Action Plan.



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 April, Mr Jens Nymand-Christensen, Director responsible for Better Regulation and Institutional Issues in the Commission's Secretariat-General, updated the Ombudsman's Legal Department on developments with EU Pilot, a project aimed at ensuring that EU law is implemented effectively by the Member States and that complaints are resolved quickly. On 9 December, the Ombudsman's staff enjoyed a presentation of the Commission's Single Market Assistance Services Action Plan by the Director for Internal Market Policy in the Directorate-General for the Internal Market and Services, Ms Emer Daly, and the Project Officer of the SMAS Task force, Ms Cristina Giménez-Estol. Finally in 2010, to further promote professional development opportunities, training sessions were organised in Strasbourg on the Lisbon Treaty, clear-speaking, and mind-mapping.

The Ombudsman and his staff

The establishment plan of the Ombudsman contained 63 posts in 2010. The structure of the Ombudsman's office at the end of 2010 was as follows:

European Ombudsman: Mr P. Nikiforos Diamandouros

The Ombudsman's Cabinet

Head of Cabinet:
Ms Zina Assimakopoulou

Secretariat-General

Secretary-General:
Mr Ian Harden

Legal Department

Head of the Legal Department:
Mr João Sant'Anna

Legal Unit A

Head of Unit:
Mr Gerhard Grill

Legal Unit B

Head of Unit:
Mr Peter Bonnor

Legal Unit C

Head of Unit:
Ms Marta Hirsch-Ziembińska

Legal Unit D

Head of Unit:
Mr Fergal Ó Regan

Resources

Registry

Head of the Registry:
Mr Peter Bonnor

Administration and Finance Department

Head of the Administration and Finance
Department (*ad interim*):
Mr João Sant'Anna

Administration and Personnel Unit

Head of Unit:
Mr Alessandro Del Bon

Budgetary and Financial Unit

Head of Unit:
Mr Loïc Julien

Communication Unit

Head of Unit:
Mr Ben Hagard

Media, Enterprise, and Civil Society Unit

Head of Unit:
Ms Rosita Agnew

The European Ombudsman's Data
Protection Officer is Mr Loïc Julien.

A full and regularly-updated staff list, including detailed information on the structure of the Ombudsman's office and the tasks of each section, is available on the Ombudsman's website (<http://www.ombudsman.europa.eu>) in 23 languages. If you would like to receive a print-out of the list, please contact the Ombudsman's office.

3.2 Budget

The budget in 2010

Since 1 January 2000, the Ombudsman's budget has been an independent section of the budget of the European Union (currently section VIII)¹. 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 2010 amounted to EUR 9 332 275.

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 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:

- 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;
- the Publications Office of the European Union on various aspects of publications;
- the Translation Centre for the Bodies of the EU, which provides many of the translations required by the Ombudsman in his work for citizens.

¹ Council Regulation (EC, ECSC, Euratom) 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.



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

European Ombudsman
1 avenue du Président Robert Schuman
CS 30403
F - 67001 Strasbourg Cedex

By telephone

+33 (0)3 88 17 23 13

By fax

+33 (0)3 88 17 90 62

By e-mail

eo@ombudsman.europa.eu

Website

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

If you require a large print version of this publication, please contact the European Ombudsman's office. We shall also endeavour to provide an audio version upon request.

This *Annual Report* is published on the Internet at:
<http://www.ombudsman.europa.eu>

© European Union, 2011
All photographs © European Union, unless otherwise indicated.
Reproduction for educational and non-commercial purposes is authorised, provided the source is acknowledged.
Design and layout by Rosendahls - Schultz Grafisk, Albertslund, Denmark, and EntenEller A/S, Valby, Denmark.
Set in FrutigerNext and Palatino.
Printed in Luxembourg
ISBN 978-92-9212-257-7 . ISSN 1680-3809 . doi:10.2869/31481 . QK-AA-11-001-EN-C



Publications Office



Mixed Sources
Product group from well-managed
forests and other controlled sources

Cert no. EUB-COC-051203
www.fsc.org
© 1996 Forest Stewardship Council