



European
Ombudsman

Annual Report
2011

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.



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The Ombudsman's introduction

I am delighted to present you with the European Ombudsman's *Annual Report 2011*. I hope that it provides you with useful information regarding our efforts to promote good administration within the institutions, bodies, offices, and agencies of the European Union, and to deal effectively with complaints from citizens, businesses, and organisations.



The Report begins with this Overview, in which I draw attention to the institution's highlights from 2011. Chapter 1 offers a comprehensive account of the Ombudsman's work in handling complaints and in conducting inquiries, and includes an explanation of the Ombudsman's mandate and procedures. Chapter 2 concerns the Ombudsman's relations with other EU institutions, bodies, offices, and agencies,¹ with the community of national, regional, and local ombudsmen in Europe, and with other key stakeholders. Finally, Chapter 3 provides details concerning the Ombudsman's personnel and budget.

Over 22 000 individuals directly helped in 2011

One of the overarching aims of the European Ombudsman's strategy for the 2009-2014 mandate² is to ensure that European citizens enjoy their rights fully. The year 2011 was a successful one in this regard, with over 22 000 individuals helped directly by the Ombudsman. This includes individuals who complained to us (we dealt with 2 510 complaints during the year in question), those who received a reply to their request for information (1 284), and those who obtained advice through the interactive guide on our website (18 274). The decline in the total number of complaints submitted to the Ombudsman, for the third consecutive year, further reflects the guide's success. The figures have gone from a high of 3 406 complaints in 2008 to 2 510 in 2011, mainly

because fewer people are complaining to the Ombudsman for the wrong reason. They are instead finding the right means of redress the first time around.

Citizens helped by the European Ombudsman in 2011	
Complaints registered in 2011	2 510
Advice given through the Interactive Guide on the Ombudsman's website	18 274
Requests for information replied to by the Ombudsman's services	1 284

Where individuals do turn to us, when in fact they should have complained elsewhere, we endeavour to advise them or to transfer the case. In over 65% of complaints that we dealt with in 2011, we were able to give effect to citizens' rights by opening an inquiry into the case, by transferring it to a competent body, or by advising on where to turn. Over 50% of the complaints were within the competence of a member of the European Network of Ombudsmen³, just over half of which (27% of the total) fell within the European Ombudsman's mandate.

A special 2011 Eurobarometer on citizens' rights and the performance of the EU administration⁴ confirmed the value that citizens attach to their fundamental right to complain to the European Ombudsman. Only the right to move and reside freely in the Union and the new right to good administration laid down in the Charter of Fundamental Rights of the EU ranked

1. For brevity, this report uses the term 'institution' to refer to all the EU institutions, bodies, offices, and agencies.

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

3. The Network now comprises over 90 offices in 32 European countries. It includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, other countries in the European Economic Area and/or the Schengen area, as well as the European Ombudsman and the European Parliament Committee on Petitions.

4. For this special Eurobarometer, which the European Parliament and the Ombudsman commissioned, TNS Opinion & Social conducted face-to-face interviews with 27 000 citizens in the 27 EU Member States between February and March 2011. The Ombudsman's synthesis of the special Eurobarometer, the full special Eurobarometer, and fact sheets for each EU Member State are available at: <http://www.ombudsman.europa.eu/en/press/statistics.faces>

The Ombudsman's introduction

higher for citizens in terms of importance. The responses to the survey strengthen the Ombudsman's role as a crucial link between European citizens and the EU administration.

Reaching out to citizens and other stakeholders

A majority of respondents to the special Eurobarometer stated that the European Ombudsman should inform citizens about their rights and how to use them. In pursuit of this goal, we held in 2011 our biggest stakeholder event to date, entitled "Is the Lisbon Treaty delivering for citizens?".

We also intensified our efforts to inform, advise, and guide citizens by publishing a booklet entitled *Problems with the EU? Who can help you?* Demand for this publication, which provides information on the whole range of problem-solving mechanisms available to individuals who face problems with the EU, has been higher than for any other publication in the history of our institution. In line with the Ombudsman's efforts to promote the integration of persons with disabilities, as provided for in Article 26 of the Charter of Fundamental Rights, we made this, and other publications, available in audio and large print format upon request.



*Problems with the EU?
Who can help you?*

With a view to promoting awareness of our efforts to combat maladministration in the EU institutions, the Ombudsman began, starting in early 2011, to publish information on his website about the inquiries he opens. This new policy should make it easier for citizens, journalists, and other interested persons to follow inquiries right from the start. It is of the utmost importance that the Ombudsman take the lead in ensuring that his institution operates transparently. The Eurobarometer survey revealed that 42% of European citizens are not satisfied with the level of transparency in the EU administration, while only 9% are satisfied. With this in mind, I used the occasion of the "International Right to Know Day" on 28 September to call on the EU administration to be more pro-active as regards transparency. In that context,



Each year, the Ombudsman organises a range of event for citizens, associations, NGOs, companies, journalists, regional and national representations, and other interested persons. The main event in 2011 was entitled "Is the Lisbon Treaty delivering for citizens?" and took place in Brussels on 18 March 2011. The President of the European Council, Mr Herman Van Rompuy, was the keynote speaker. The discussion panel included the European Ombudsman, Mr P. Nikiforos Diamandouros, the Vice-President of the European Commission, Ms Viviane Reding, the Vice-President of the European Parliament, Ms Diana Wallis, and the Head of the European Policy Centre, Mr Hans Martens. Ms Ann Cahill, President of the International Press Association, chaired the event, which brought together more than 200 stakeholders.



The European Network of Ombudsmen plays an important role in helping European citizens make their EU rights an everyday reality. Members of the Network met in Copenhagen from 21 to 22 October 2011 for the Eighth Seminar of National Ombudsmen. The theme of the Seminar was “Law, politics, and ombudsmen in the Lisbon era”.



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I called for useful, citizen-friendly, online registers of documents. In December 2011, we adopted a decision to create a public register of documents to facilitate citizens’ exercise of their right of public access to documents held by the Ombudsman.

Cooperating with ombudsmen

The right of access to documents is a fundamental right, laid down in the Charter, alongside the right to complain to the Ombudsman and the right to good administration. The fact that 85% of respondents to the Eurobarometer survey claimed that they lack sufficient information about the Charter is therefore worrying. In addition to my own efforts to promote awareness of the Charter, I announced that I would encourage members of the European Network of Ombudsmen to spread information in the Member States. I had an opportunity to do just that at the Network’s Eighth National Seminar, which took place in Copenhagen in October 2011. Among the important decisions taken at the Seminar was the agreement to find ways, through the Network, better to inform citizens throughout Europe of their rights.

The Seminar also saw a discussion on public service principles for EU civil servants. Having previously consulted the national ombudsmen in the Network

in order to take account of best practice in the Member States, I prepared a draft consisting of five such principles, that is, commitment, integrity, objectivity, respect, and transparency. I launched a public consultation on the draft in February 2011, and in December, I published an analysis of the responses to the public consultation. In the first part of 2012, I will publish, in all 23 official EU languages, the final version of the principles, together with an explanatory introduction. I firmly believe that a straightforward and concise statement of the fundamental values that the behaviour of EU civil servants should reflect can effectively promote citizens’ trust in the European civil service and the EU institutions, which it serves.

Finally, with regard to cooperation with the Network in 2011, it is important to mention the record number of queries – 11 – submitted to the European Ombudsman during the year in question. Through this procedure, any member of the Network can turn to me for assistance and guidance regarding the EU law aspects of a case that they are handling. The Network’s new Extranet gives a whole new visibility to the query procedure for the benefit of members of the Network. It was further agreed in Copenhagen that information about these queries will be available to the general public on the European Ombudsman’s website.

The Ombudsman's introduction

More citizen-friendly procedures

In addition to the record number of queries, the European Ombudsman opened a record number of inquiries in 2011, namely, 396. The fact that we modified our procedures in 2011, with an eye to making them more citizen-friendly, can largely explain this increase of 61 inquiries compared to 2010. Accordingly, we introduced a new type of inquiry – a “clarificatory inquiry” – which enables complainants to clarify their complaint if the Ombudsman is, at first sight, disposed to consider that there are no grounds to ask the EU institution for its opinion on a case.

The Ombudsman also made improvements to the simplified procedure, which aims at rapidly resolving complaints about failure to answer correspondence. Previously, the Ombudsman normally considered a complaint concerning failure to reply to be settled as soon as the institution sent a reply. Upon reviewing this approach, he considered that it would be more citizen-friendly if complainants no longer had to make a new complaint if they were dissatisfied with the substance of the reply. He now, therefore, invites the complainant to make observations. As explained further in Chapter 1, the main statistical implications of this new approach are that the Ombudsman now closes fewer cases as settled by the institution, while he closes a greater number of cases with a finding of no maladministration or no further inquiries justified. A further consequence is that it took slightly longer, on average, to complete inquiries, namely, ten months in 2011, compared to nine months in 2010. To my mind, the substantial improvements we have introduced for complainants justify this slight increase. We continued to complete most inquiries, that is, 66%,

within one year (the same percentage as in 2010). We achieved all this with an establishment plan that totalled 64 posts in 2011, and budgeted appropriations of EUR 9 427 395.

The final improvement to our procedures, which the Ombudsman decided upon in 2011, involves a streamlining of the treatment of complaints falling outside the mandate. The intention here is to inform complainants as rapidly as possible if the European Ombudsman cannot deal with their complaint. The office's Registry will henceforth deal with these complaints. It will explain why the Ombudsman cannot deal with the complaint and, where possible, transfer it to a competent body, or advise the complainant on where to turn.

Promoting a culture of service in the institutions

As is the case each year, most inquiries that the Ombudsman opened in 2011 concerned the European Commission (231 inquiries or 58% 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 principal object of citizens' complaints. In my meeting in February with the College of Commissioners, I outlined measures designed to reinforce cooperation with the Commission in the interests of European citizens. I welcomed the cultural shift, which has occurred within the Commission in recent years, concerning the acknowledgment and rectification of mistakes. I went on to stress that offering compensation in appropriate cases should be the next step in deepening the culture of service within the Commission.



There were 42 inquiries (11%) in 2011 concerning the European Personnel Selection Office (EPSO), 16 (4%) concerning the European Parliament, 10 (3%) concerning the Council of the EU, and 3 (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 101 inquiries concerned 35 other EU institutions, bodies, offices, and agencies, thereby underlining the need for the Ombudsman to reach out across the EU administration. Taken together, agencies now account for over 10% of all the complaints that lead the Ombudsman to open an inquiry. Accordingly, in May 2011, I launched a programme of visits to EU agencies. The response of some agencies to the Ombudsman's work with complaints has been exemplary. It is therefore worth making the effort to identify and spread best practices, in order to help managers in the agencies who are trying to build and maintain a culture of service. I made six visits in total during the year and, on 1 June, met with the heads of all EU agencies, where I had occasion to explain this initiative in more detail.

The main types of maladministration alleged in 2011 in complaints against the EU institutions concerned: lawfulness (incorrect application of substantive and/or procedural rules (28% of inquiries), requests for information (16.2%), fairness (13.6%), the duty to state the grounds of decisions and the possibilities of appeal (8.1%), reasonable time limits for taking decisions (7.3%), requests for public access to documents (7.1%), absence of discrimination (6.8%), the obligation to reply to letters in the language of citizens, indicating the competent official (5.8%), and the duty of care (3.5%).

Obtaining results for complainants

Over the years, I have continuously emphasised that an institution in which a culture of service is embedded does not regard complaints as a threat, but as an opportunity to communicate more effectively and, if a mistake has been made, to put matters right and learn lessons for the future. Our most recent publication, *The European Ombudsman's guide to complaints*, which was distributed to staff in all EU institutions in November 2011, expresses this philosophy in greater detail. The willingness of both management and staff to cooperate with the Ombudsman to achieve a satisfactory resolution of complaints is an important expression of commitment to the principle of a culture of service. The ten star cases I have identified for this year best illustrate this willingness. They are highlighted in blue in this Report and serve as examples of best practice in terms of the EU institutions' response to complaints. Five of these cases concern the Commission, while the Parliament, the European Personnel Selection Office, the European Medicines Agency, the European Banking Authority, and the Office for Harmonisation in the Internal Market each have one star case. The issues and areas covered include transparency, fairness, the rights of persons with disabilities, contracts and tenders, and language policy.

These cases can be found in section 1.5 of this Report. A thematic analysis that follows outlines the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2011. In light of our efforts to promote the application of the Charter of Fundamental Rights, the analysis accords particular attention to cases which concern rights laid down in the Charter.

The Ombudsman's introduction

The analysis's main subject matters are: (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 matters, policy matters, and other.

Overall, the Ombudsman completed 318 inquiries in 2011, compared to 326 in 2010. Eight of these were inquiries that the Ombudsman conducted on his own initiative into issues ranging from EPSO's new policy in open competitions to problems linked to late payments by the Commission. He concluded that there was maladministration in 47 cases (up from 40 in 2010) and obtained a positive outcome for the complainant in 13 of these cases (compared to seven in 2010) by making draft recommendations that were accepted. The Ombudsman issued critical remarks in 35 cases in 2011, two more, that is, than in 2010. With a view to enhancing the quality of the administration, he made 37 further remarks in 2011. The Ombudsman will continue to monitor the institutions' follow-up action in response to his remarks, by publishing an annual study on his website. The relevant study for 2011 was published in November.

As already indicated, the number of cases that the institutions settled fell in 2011. Overall, the number of cases settled or of friendly solutions agreed fell to 84 (compared to 179 in 2010). In 128 cases (compared to 57 in 2010), the Ombudsman considered that no further inquiries were justified. He found no maladministration in 64 cases (compared with 55 in 2010).

Continuing our work on the Ombudsman's strategy

The year 2011 enabled us to fulfil many of the promises we made in the Ombudsman's strategy for the 2009-2014 mandate. Much remains to be done, however, and we expect to be just as busy in 2012, as we endeavour to enhance the quality of the EU administration and ensure that EU citizens enjoy their rights fully. In these straitened times, we will work towards these noble goals with renewed energy and determination.

Strasbourg, 13 February 2012



P. Nikiforos Diamandouros

A large, stylized number '1' is formed by several dark blue geometric shapes: a semi-circle at the top, a vertical bar on the right, a horizontal bar at the top of the vertical bar, and a semi-circle at the bottom. The background is a lighter blue with a faint grid pattern.

Complaints and inquiries

Chapter 1 explains the Ombudsman's mandate and procedures, gives an overview of the complaints dealt with in 2011, and provides an in-depth analysis of the inquiries completed. There is a section on star cases, as well as a thematic presentation. 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

The Maastricht Treaty established the office of European Ombudsman 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. The Charter of Fundamental Rights of the EU (Article 43) also includes this right. Possible instances of maladministration come to the Ombudsman's attention mainly through complaints, although he also conducts inquiries on his own initiative.

Article 228 TFEU, as well as the Statute of the Ombudsman¹ and the implementing provisions, which the Ombudsman adopted under Article 14 of the Statute², govern the Ombudsman's work. 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). 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 Centre for Disease Prevention and Control, and the European Institute for Gender Equality. 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 the Parliament welcomed in a resolution that the Commission also agreed to:

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

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

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

It is important to note that the aforementioned definition does not limit maladministration to cases where the rule or principle that is being violated is legally binding. The principles of good administration go further than the law, requiring the EU institutions not only to respect their legal obligations, but also to be service-minded and to ensure that members of the public are properly treated, and enjoy their rights fully. Thus while illegality in matters within the Ombudsman’s mandate necessarily implies maladministration, maladministration does not automatically entail illegality. The Ombudsman’s findings of maladministration do not therefore automatically imply that there is illegal behaviour that a court³ could sanction.

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* [2004] ECR-SC I-A-319 and II-1407 paragraph 101, and of 4 October 2006 in case T-193/04 *Hans-Martin Tillack v Commission* [2006] ECR II-3995, 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 articles 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)).
5. In the case of complaints concerning work relationships between the institutions and bodies, on the one hand, and their officials and servants, on the other, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Article 2(8)).

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, the Ombudsman's services carefully study all admissible complaints to check if there is a reasonable prospect that an inquiry will lead to a useful result.

In one exceptional case in 2011 (**268/2011/PB**), the Ombudsman found that there were no grounds to open an inquiry due to the unique circumstances of the complainant's relationship with the Commission. The Ombudsman concluded that there was no realistic prospect of his being able either to achieve a settlement of the problem in question that would be in accordance with the complainant's specific interests, or that could lead to a solution in the public interest. He informed the complainant that, in reaching his decision, he had taken into account that, as a citizen of the Union, the complainant has a fundamental right to address the Ombudsman. However, the Ombudsman regretted having to conclude that, despite his best efforts during the numerous inquiries he conducted into the complaints that the complainant submitted, it had not proved possible for him to achieve meaningful closure in relation to the complainant's disputes with the Commission.

In the course of 2011, the Ombudsman decided that, when he reaches the preliminary conclusion that there appear to be insufficient grounds to ask the institution concerned for an opinion on a complaint which is within his mandate and admissible, he may open a "clarificatory inquiry", and thereby provide the complainant with the opportunity to provide additional information, clarifications, supporting documents, or further argumentation to support his/her case. Where the Ombudsman still deems the information that the complainant supplies to be insufficient or unconvincing, he may close the inquiry with a finding of "no maladministration" or "no further



inquiries justified”, as appropriate. Where, on the other hand, the information or clarifications which the complainant supplies make it useful to ask the relevant institution to provide an opinion, the Ombudsman will do so.

By way of example, the complainant in case **358/2011/ANA** asked the Commission to inform him about the actions it had taken to ensure that the Irish auditing authority properly examined the auditing of certain Irish financial institutions so as to prevent corporate and financial malpractice. He then turned to the Ombudsman, alleging that the Commission failed properly to discharge its supervisory role in relation to the auditing of these financial institutions. The Ombudsman took the view that, on the basis of the information that the complainant provided, there were insufficient grounds to ask the Commission for an opinion. He therefore informed the complainant accordingly and invited him to clarify his allegation. After examining the complainant’s reply, the Ombudsman concluded that it was unnecessary to ask the Commission for an opinion because (i) it was clear that the Commission’s supervisory powers in the field of statutory audit are limited and (ii) on the basis of the arguments and evidence that the complainant put forward, no maladministration could be established as regards the Commission’s use of its powers in this case.

As a result of this change in procedure, the percentage of admissible cases in which the Ombudsman concluded that there were no grounds to open an inquiry fell from 40% in 2010 to 24% in 2011. These “no grounds” cases were largely limited

to those that another body was already dealing with, or where the complainant failed to provide documentary evidence necessary to support his/her complaint.

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 of the Union. 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 that a person who is not entitled to make a complaint brings to his attention. He approaches the question of whether to use the own-initiative power in this way on a case-by-case basis.⁴ His practice in such cases is to give the person concerned the same procedural opportunities during the inquiry as if he had dealt with the matter as a complaint. The Ombudsman opened two such own-initiative inquiries in 2011.

The Ombudsman may also use his own-initiative power to tackle what appear to be systemic problems in the institutions. He did so on six occasions in 2011.⁵ Case **OI/5/2011/BEH** concerned maximum permitted levels of radioactive contamination of foodstuffs in the EU before and after the Fukushima nuclear accident. It followed several complaints from citizens suggesting lack of information from the Commission concerning the changes made to the maximum levels. Another inquiry concerned practices in relation to

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⁴ 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 (EIB) is that the complainant is not a citizen or resident of the Union. He agreed a Memorandum of Understanding with the EIB, which includes this specific undertaking.

⁵ One of the two aforementioned own-initiative inquiries, **OI/4/2011/AN**, also concerned systemic issues, namely, the Commission’s failure to ensure that subcontractors are paid the amounts due to them and which the Commission has paid to the main contractor.

Complaints and inquiries

unconsumed food in the institutions' canteens. This inquiry, **OI/14/2011/BEH**, was addressed to the European Commission, the European Parliament, the Council of the EU, the Court of Justice of the EU, the European Court of Auditors, the European Economic and Social Committee, the European Central Bank, and the Committee of the Regions. Case **OI/2/2011/OV**, meanwhile, concerned the relationship between the EU Pilot method of dealing with infringement complaints and the Commission's 2002 Communication on relations with the complainant in respect of infringement complaints. Case **OI/7/2011/EIS** also concerned the Commission and infringement complaints – this time its decision to interrupt correspondence with a complainant who had submitted 57 infringement complaints over the course of two years. Case **OI/3/2011/KM** related to the Council's ability to comply with the deadlines foreseen in Regulation 1049/2001 on public access to documents. Finally, case **OI/6/2011/VL** concerning the Commission was based on a complaint from a participant in a selection panel regarding the part of the complaint that would have otherwise been time-barred. With the exception of **OI/5/2011/BEH**, all of these inquiries were ongoing at the end of 2011.

In 2011, the Ombudsman launched a programme of visits to the EU agencies, with the aim of promoting good administration and sharing best practice among these EU entities. On the basis of the initial experiences, it was decided that the visits should be formally carried out on the basis of the Ombudsman's competence to conduct inquiries on his own initiative. The usual procedural guarantees relating to

inquiries therefore apply.⁶ Following each visit, the Ombudsman informs the agency involved of his findings in writing. If he makes any specific suggestions, he will normally ask the agency to inform him of any corresponding follow-up action. Depending on the agency's response, he will either consider closing the inquiry, or take further steps, for instance, by issuing formal recommendations. The Ombudsman's own-initiative inquiries in this context concerned six agencies in 2011: the European Environment Agency (EEA) in Copenhagen; the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), as well as the European Maritime Safety Agency (EMSA), both in Lisbon; and the European Banking Authority (EBA), the European Medicines Agency (EMA), and the European Police College (CEPOL), whose representatives the Ombudsman met in London. Comprehensive information regarding these inquiries is available at: <http://www.ombudsman.europa.eu/activities/visits.faces>

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 dealing with the complaint.

The complaint is initially analysed to determine whether an inquiry should be opened and the complainant is informed of the results of the analysis, normally

6. These include, among others, the agency's right to request that the Ombudsman treat information and documents relating to the visit on a confidential basis. See Articles 5.1, 5.2, and 14.2 of the Ombudsman's Implementing Provisions.



within one month. If no inquiry is opened, the complainant is informed of the reason. Where a complaint does not fall within the Ombudsman's mandate, the complaint is transferred, whenever possible, or the complainant is given appropriate advice about a competent body to which s/he could turn. With a view to informing complainants as rapidly as possible that he cannot deal with their complaint, the Ombudsman decided in 2011 to streamline the treatment of complaints falling outside his mandate. Henceforth, the office's Registry will deal with these complaints, and will explain to the complainants concerned why the Ombudsman cannot deal with their complaint and, where possible, transfer it to a competent body, or advise them where to turn.

During an inquiry, the Ombudsman informs the complainant of each new step that he takes. 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.

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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 cooperation of the institution concerned. During 2011, 47 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 five cases were settled after the Ombudsman secured for the complainant a more substantive reply to his/her correspondence.

The above figures are significantly lower than the corresponding figures for 2010 (91 and 73 respectively). This is due to procedural changes made in early 2011. Previously, the Ombudsman normally considered a complaint concerning failure to reply to be settled as soon as the institution sent a reply. Upon reviewing this approach, he considered that it would be more citizen-friendly if complainants no longer had to make a new complaint if they were dissatisfied with the substance of the reply. He now, therefore, invites the complainant to make observations. Many complainants choose not to do so. In such cases, the Ombudsman normally closes his examination with a finding that no further inquiries are needed. On the other hand, some complainants give reasons why they are not satisfied with the institution's reply. If the Ombudsman considers that the complainant's reasons could be justified, he pursues his inquiry

and asks the institution for an opinion. If, however, he regards the institution's reply to be satisfactory, he closes the case either with a finding of no maladministration, or with the conclusion that no further inquiries are needed, as appropriate. The main statistical implications of the new approach are that the Ombudsman now closes fewer cases as settled by the

Complaints and inquiries

institution, while he closes a greater number of cases with a finding of no maladministration or no further inquiries justified.

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 that the EU institution in question supplies. Accordingly, the Ombudsman's capacity to conduct a thorough and complete investigation constitutes an important guarantee to the complainant and to the public. The Ombudsman's power to inspect the institution's files is used increasingly and was used in 38 cases in 2011, compared to 26 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 did not use his power to hear witnesses in 2011.

The 2008 Statute revision clarified and strengthened the requirement for the Ombudsman to maintain the confidentiality of documents and information obtained during an inquiry. 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 1049/2001⁷, 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 the 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.

⁷ 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 2011

The Ombudsman registered⁸ 2 510 complaints in 2011, compared to 2 667 in 2010. Of the 2 544 complaints processed⁹, 27% (698 complaints) were inside the European Ombudsman's mandate.

Almost 61% of the complaints received in 2011 were submitted using the Internet. A large proportion of these (53%) was received through the electronic complaint form which is available on the

e-mail account remains the main medium of correspondence, 50 requests were made and replied to through ordinary mail and fax. The significant sustained reduction in requests for information received over the last few years (1 000 in 2010, 1 850 in 2009, 4 300 in 2008, and 4 100 in 2007) demonstrates the success of the Ombudsman's interactive guide, available on his website since the start of January 2009. It enables interested parties to obtain information without having to submit a request. In total, the Ombudsman handled over 3 800 complaints and information requests in 2011.

The significant sustained reduction in requests for information received over the last few years demonstrates the success of the Ombudsman's interactive guide, available on his website since the start of January 2009.

Almost 61% of the complaints received in 2011 were submitted using the Internet.

Ombudsman's website in the 23 official EU languages. In 2011, the Ombudsman received and replied to over 1 200 requests for information, compared to around 1 000 in 2010. Although the Ombudsman's

The European Ombudsman opened 382 inquiries on the basis of complaints, and launched 14 additional inquiries on his own initiative. This compares with 323 and 12, respectively, in 2010.

Table 1.1: Cases dealt with during 2011

Complaints registered in 2011	2 510
Complaints processed in 2011	2 544
Complaints within the competence of a member of the European Network of Ombudsmen	1 321
Complaints inside the mandate of the European Ombudsman	698
Of which:	198 inadmissible
	118 admissible but no grounds for opening an inquiry
	382 inquiries opened on the basis of complaints
Own-initiative inquiries opened	14
Inquiries closed	318 (including 8 own-initiative inquiries)
Of which:	171 from 2011
	89 from 2010
	58 from previous years

8. Complaints "registered" during a given calendar year, as opposed to complaints "received" during the same period, but registered in the following year.

9. The statistical category "processed" means that the Ombudsman has concluded his analysis to determine whether the complaint (i) falls within his mandate or not, (ii) meets the criteria of admissibility or not, and (iii) provides grounds to open an inquiry or not, and has informed the complainant accordingly. Because of the time required for such an analysis, the number of complaints "processed" in a given year is different from the number of complaints "registered" in that same year. The number of complaints processed in a given year includes complaints registered at the end of the previous year and processed at the start of the year in question. It does not include the number of complaints registered at the end of the year in question and processed at the start of the following year.

Complaints and inquiries

As Figure 1.1 reveals¹⁰, the number of complaints inside the Ombudsman's mandate rose over the past nine years. From a low of 603 in 2003, it peaked at 930 in 2004, averaged between 800 and 900 between 2005 and 2008, and has dropped slightly since then.

As Figure 1.2 shows¹¹, the number of complaints outside the Ombudsman's mandate fell to 1 846 in 2011, the lowest figure recorded since 2003. The Ombudsman is continuing his efforts further to reduce the number of complaints outside the mandate. He does so by providing clear information about what he can and cannot do, and by helping guide complainants to the right address first time around.

Figure 1.1: Number of complaints inside the mandate 2003-2011

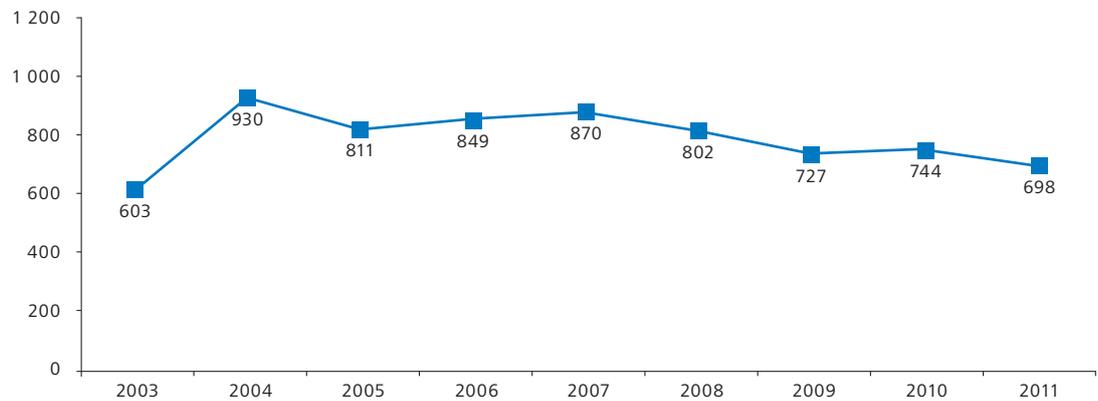
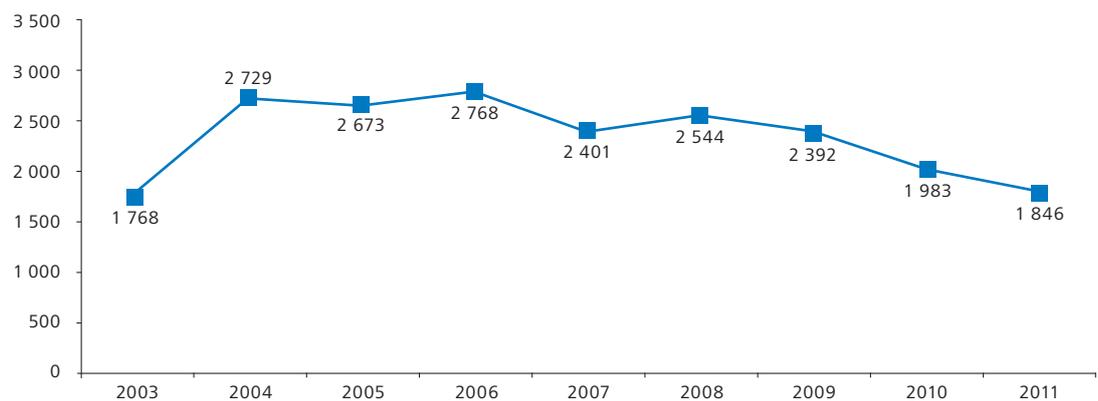


Figure 1.2: Number of complaints outside the mandate 2003-2011



¹⁰. In 2005, 335 of the complaints submitted, which were inside the Ombudsman's mandate, concerned the same issue. To allow for a more accurate comparison over the years, only 11 of these complaints have been taken into account in Figure 1.1.

¹¹. In 2006, 281 of the complaints submitted, which were outside the Ombudsman's mandate, concerned the same issue. To allow for a more accurate comparison over the years, only 11 of these complaints have been taken into account in Figure 1.2.



Table 1.2 outlines the national origin of complaints registered in 2011. Traditionally, complainants from Germany, the EU's most populous country, have submitted the largest number of complaints, followed by Spain. In 2011, however,

that trend changed, with Spain moving from second to top position, followed by Germany, Poland, and Belgium. Relative to the size of their population, most complaints came from Luxembourg, Cyprus, Belgium, Malta, and Slovenia.

Table 1.2: National origin of complaints registered in 2011

Country	Number of Complaints	% of Complaints	% of EU Population	Ratio
Luxembourg	29	1.2	0.1	11.6
Cyprus	26	1.0	0.2	5.2
Belgium	190	7.6	2.1	3.6
Malta	7	0.3	0.1	2.8
Slovenia	28	1.1	0.4	2.8
Bulgaria	71	2.8	1.6	1.8
Ireland	38	1.5	0.9	1.7
Spain	361	14.4	9	1.6
Portugal	71	2.8	2.1	1.3
Austria	52	2.1	1.7	1.2
Czech Republic	64	2.5	2.1	1.2
Poland	233	9.3	7.7	1.2
Finland	31	1.2	1.1	1.1
Slovakia	29	1.2	1.1	1.1
Lithuania	18	0.7	0.7	1.0
Hungary	47	1.9	2	0.9
Greece	53	2.1	2.3	0.9
Sweden	41	1.6	1.8	0.9
Denmark	23	0.9	1.1	0.8
Germany	308	12.3	16.6	0.7
Latvia	9	0.4	0.5	0.7
The Netherlands	44	1.8	3.3	0.5
France	167	6.7	12.8	0.5
United Kingdom	141	5.6	12.3	0.5
Estonia	3	0.1	0.3	0.4
Romania	42	1.7	4.4	0.4
Italy	97	3.9	11.9	0.3
Other	137	5.5		
Not known	150	6.0		

Note: The ratio figure is the result of the percentage of complaints divided by the percentage of the population. The ratio figure is greater than 1 if the country in question submitted more complaints than might be expected, given the size of its population. Percentages have been rounded to one decimal place.

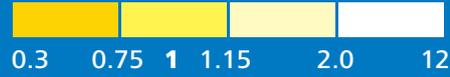
In 2011, 14 Member States accounted for more complaints than might have been expected, given the size of their population; 12 accounted for less, while

the number of complaints from one Member State (Lithuania) reflected the actual size of its population.

Complaints and inquiries

The map below is based on the number of complaints that the Ombudsman received from each Member State relative to the size of its population (see note accompanying Table 1.2 above regarding the ratio calculation).

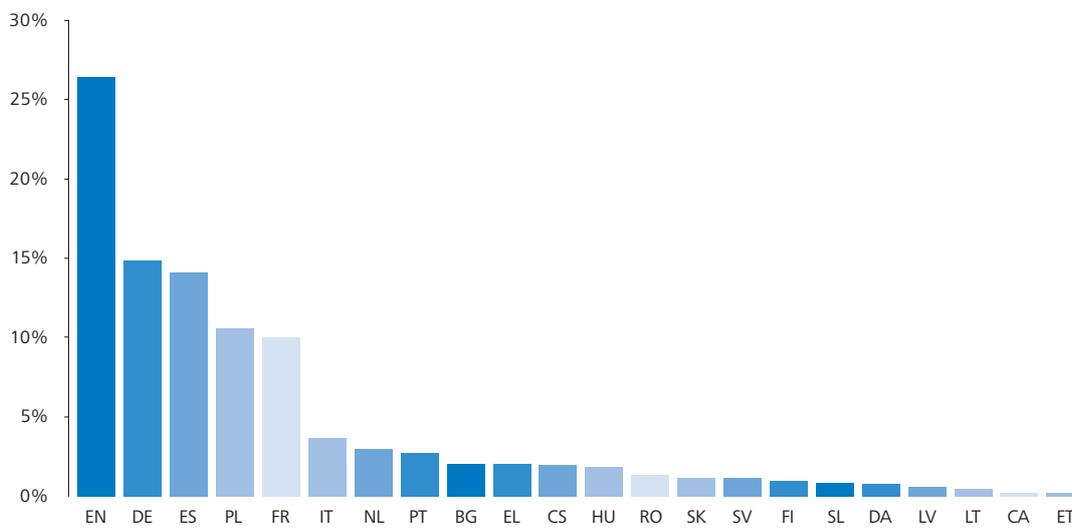
Ratio (% complaints / % population)





A complainant may submit a complaint to the Ombudsman in any of the 23 EU official languages¹². As Figure 1.3 shows, in 2011 most complainants chose to complain to the Ombudsman in English, followed by German and Spanish.

Figure 1.3: Language distribution of complaints

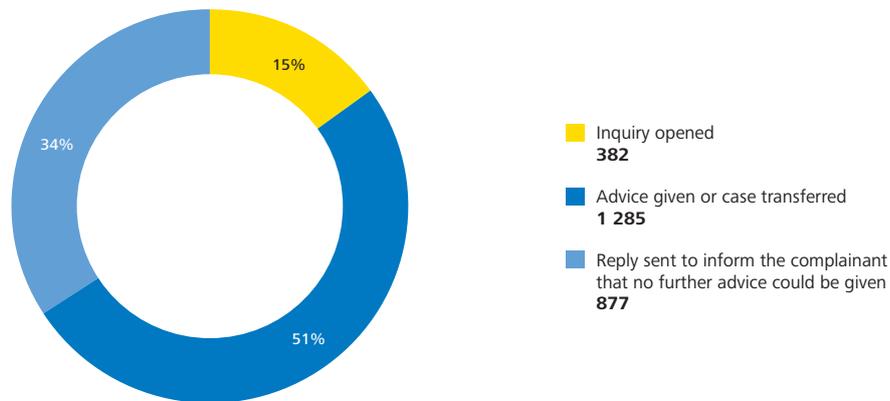


¹² Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, and Swedish. Following an agreement that the European Ombudsman and the Spanish government signed in November 2006, 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

As Figure 1.4 reveals, in over 65% of cases, the Ombudsman was able to help the complainant. He either opened an inquiry (15% of cases), transferred the case to a competent body, or advised the complainant on where to turn (51%). Section 1.7 of this Report deals with the cases that the Ombudsman transferred, or where he advised the complainant on where to turn. In 34% of the cases that the Ombudsman dealt with in 2011, he concluded that no further advice could be given and informed the complainant accordingly. In some cases, this was because the complainant failed to identify whom or what he/she wished to complain against.

Figure 1.4: Action taken on complaints received



Note: The figures in the table above include 124 complaints that were registered towards the end of 2010 and were processed in 2011. They do not include 38 complaints that were registered towards the end of 2011, and that were still under consideration at the end of the year, with an eye to determining what action to take.



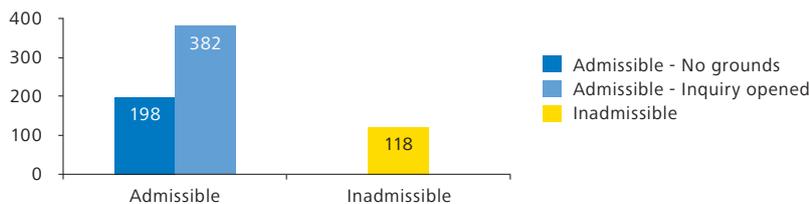
1.3 Analysis of inquiries opened¹³

As already noted, in 2011, the Ombudsman modified his simplified procedures in order to render them more citizen-friendly. This largely explains why he opened a higher number of inquiries than in 2010, and why it took him slightly longer, on average, to complete inquiries in 2011. The modification also meant that the Ombudsman closed fewer cases as

settled by the institution than in 2010, while he closed a greater number of cases with a finding of no further inquiries justified.

All the complaints which fell inside the Ombudsman's mandate were further analysed to determine admissibility. Out of 698 complaints falling within the mandate, 198 were deemed to be inadmissible, while, in a further 118, which were admissible, the Ombudsman found no grounds for opening an inquiry.

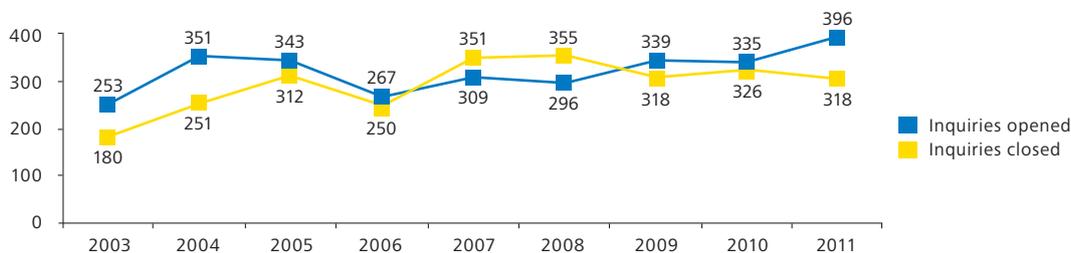
Figure 1.5: Complaints within the mandate of the European Ombudsman



The Ombudsman opened a total of 382 inquiries during the year on the basis of complaints. This constitutes an increase of 15.5% compared with 2010. The Ombudsman also began 14 inquiries on his own initiative.

As Figure 1.6 shows, the number of inquiries that the Ombudsman opened in 2011 was the highest ever, exceeding the levels attained in 2004 (351) and 2005 (343).

Figure 1.6: Evolution in the number of inquiries



13. The analysis in this section refers to the number of inquiries opened in 2011, rather than to the total number of inquiries dealt with during the year.

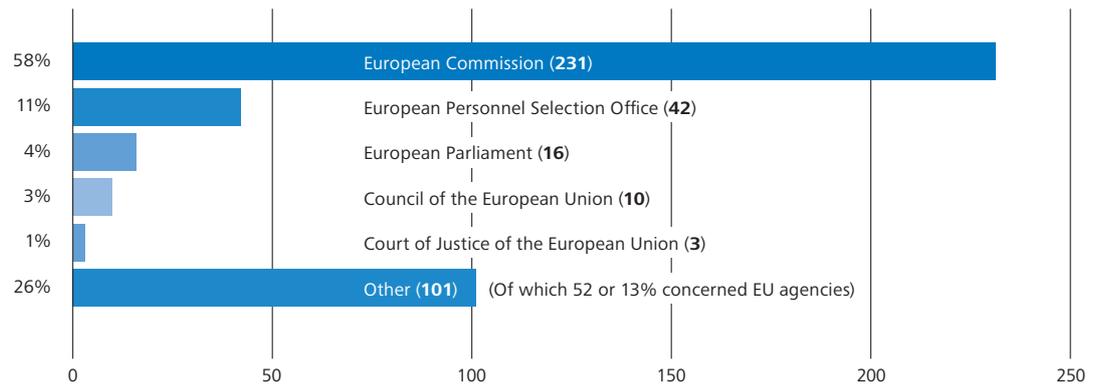
Complaints and inquiries

Most inquiries which the Ombudsman opened in 2011 concerned the European Commission.

Most inquiries which the Ombudsman opened in 2011 concerned the European Commission (based on 231 complaints or 58%). The comparable figure for 2010 was 219. Since the Commission is the main EU institution whose decisions have a direct impact on citizens, it is logical that it should be the main object of citizens' complaints. The European Personnel Selection Office (EPSO) was in second position with 42 (35 in 2010). The number of inquiries that the Ombudsman opened with regard to the European Parliament

dropped by more than half compared to 2010. On the other hand, he opened one third more inquiries concerning the Council of the EU than in the previous year, while the number of those relating to the Court of Justice of the EU remained stable. It is important to note that the Ombudsman can only open inquiries into the Court's non-judicial work. Thirty-five other EU institutions, bodies, offices, and agencies were the subject of a further 101 inquiries¹⁴.

Figure 1.7: Institutions and bodies concerned by inquiry



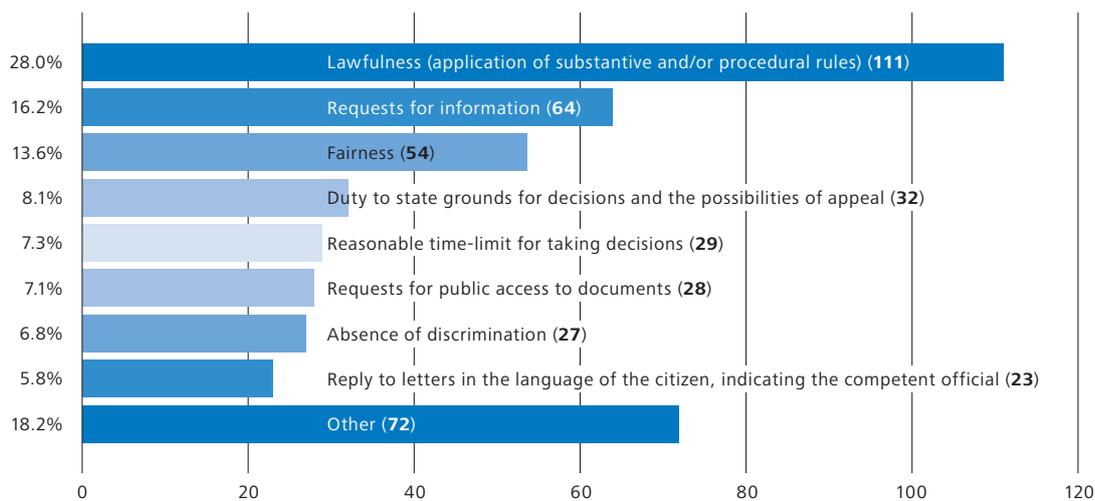
Note: The Ombudsman opened one inquiry in 2011 on his own initiative in connection with more than one institution. The above percentages therefore total more than 100%.

14. European Anti-Fraud Office (16), European External Action Service (11), European Medicines Agency (8), European Banking Authority (5), Eurojust (4), European Education, Audiovisual and Culture Executive Agency (4), European Investment Bank (4), European Union Agency for Fundamental Rights (3), European Foundation for the Improvement of Living and Working Conditions (3), European Central Bank (3), European Court of Auditors (3), European Aviation Safety Agency (3), Trans-European Transport Network Executive Agency (2), European Economic and Social Committee (2), European Insurance and Occupational Pensions Authority (2), European Council (2), Europol (2), Research Executive Agency (2), European Network and Information Security Agency (2), European Research Council Executive Agency (2), European Securities and Markets Authority (2), Office for Harmonisation in the Internal Market (2), European Joint Undertaking for ITER and the Development of Fusion Energy (2), Committee of the Regions of the European Union (1), Executive Agency for Competitiveness and Innovation (1), Publications Office of the European Union (1), Frontex (1), European Institute for Gender Equality (1), European Chemicals Agency (1), European Monitoring Centre for Drugs and Drug Addiction (1), European Environment Agency (1), European Food Safety Authority (1), European Police College (1), European Maritime Safety Agency (1), and European Centre for Disease Prevention and Control (1).



The main types of alleged maladministration which the Ombudsman investigated in 2011 concerned lawfulness (28% of inquiries), requests for information (16.2%), fairness (13.6%), stating the grounds of decisions and the possibilities of appeal (8.1%), reasonable time limits for taking decisions (7.3%), requests for public access to documents (7.1%), absence of discrimination (6.8%), as well as replying to letters in the language of citizens and indicating the competent official (5.8%).

Figure 1.8: Alleged maladministration concerning:



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

Complaints and inquiries

1.4 Findings of the Ombudsman's inquiries

Individual citizens submitted a total of 82% of complaints leading to inquiries (253), whereas companies, associations, and other legal persons submitted 18% (57).

As Figure 1.6 above shows, the Ombudsman closed 318 inquiries in 2011. He opened 310 of these on the basis of complaints and eight on his own initiative.

Individual citizens submitted a total of 82% of complaints leading to inquiries (253), whereas companies, associations, and other legal persons submitted 18% (57).

Table 1.3: Source of complaints leading to inquiries closed in 2011

Companies, associations, and other legal persons	18% (57)
Individual citizens	82% (253)

Most of the inquiries that the Ombudsman closed in 2011 were completed within one year (66%). He closed over a third, that is, 36%, within three months. Among this latter category figured cases which the Ombudsman was able to resolve very quickly, for example, by telephoning the institution concerned to propose a solution¹⁵. The Ombudsman completed over 80% of inquiries within 18 months. The average length of inquiry was ten months, compared with a nine-month average in 2010.

Table 1.4: Length of inquiry of cases closed in 2011

Average length of inquiry	10 months
Cases closed within 3 months	36%
Cases closed within 12 months	66%
Cases closed within 18 months	80%

Note: Based on 30 days per month.

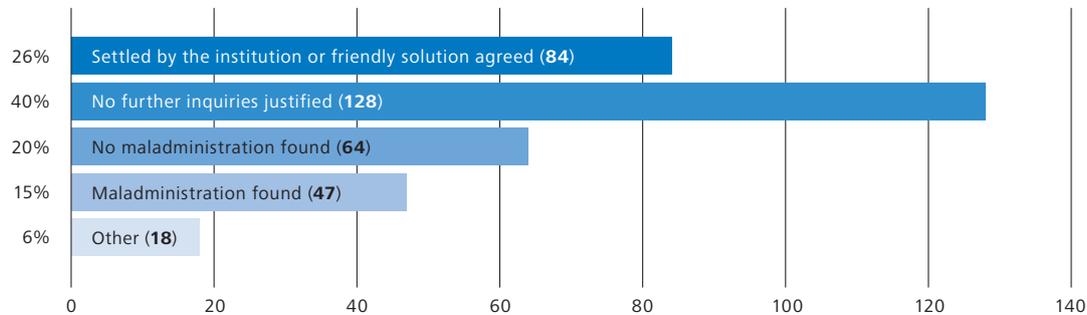
As Figure 1.9 shows, in 84 of the cases which the Ombudsman closed in 2011, a positive outcome was attained when the institution concerned accepted a friendly solution or settled the matter. The Ombudsman found no maladministration in 64 cases and maladministration in 47 others. In 13 of these (compared to seven in 2010), the institution in question either fully or partially accepted a draft recommendation. The Ombudsman closed 35 cases with critical remarks (see Figure 1.10). In 39 cases, the Ombudsman issued further remarks designed to help improve the relevant institutions' future performance. These findings are further detailed below¹⁶.

¹⁵. This figure includes cases where the Ombudsman would have conducted a full inquiry if the complainant had not withdrawn the complaint. It also includes cases where the Ombudsman undertook an inquiry which he then closed because the complainant decided to go to court.

¹⁶. The analysis that follows is based on inquiries completed during 2011. The Ombudsman may have issued several findings, if an inquiry dealt with more than one allegation or claim.



Figure 1.9: Results of inquiries closed in 2011



Note 1: In some cases, the Ombudsman closed inquiries on two or more grounds. The above percentages therefore total more than 100%.

Note 2: In one case where the Ombudsman found maladministration, he closed the inquiry with both a critical remark and a draft recommendation which the institution fully accepted.

No maladministration

In 2011, the Ombudsman closed 64 cases in which he found no maladministration. A finding of no maladministration is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution concerned with regard to what it has done. The complainant also benefits from the Ombudsman's independent analysis of the case. At the same time, and as the case below illustrates, such a finding serves as tangible evidence that the institution concerned has acted in conformity with the principles of good administration.

A finding of no maladministration is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution concerned with regard to what it has done.

Right to move freely in the EU

An Irish citizen living in the Netherlands was diagnosed with a degenerative disease, and was prescribed palliative medical products containing cannabis. He made several attempts to gain permission to make a short visit to his family in Ireland. However, the Irish authorities stated that he would be arrested upon entry for possession of illegal drugs. He submitted an infringement complaint to the Commission, which found that Ireland had not infringed EU law. He turned to the Ombudsman who, after an inquiry (case **2062/2010/JF**), found no maladministration by the Commission. This case concerned provisions of the Schengen *acquis* that were not yet binding on Ireland, which could therefore legally apply its drugs legislation without regard to the said law.

Notwithstanding this finding, the Ombudsman was deeply touched by the case. Accordingly, he informed the Irish Ombudsman and the President of the Irish Human Rights Commission about it, and invited them to take any action that they considered useful.

Complaints and inquiries

Further remarks

Even when the Ombudsman finds 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 of the institution concerned. A further remark should not be understood as implying criticism of the institution to which it is addressed. Rather, its aim is to advise the institution on how it can improve a particular practice, in order to enhance the quality of service that it provides to citizens. The Ombudsman made further remarks in 39 cases in 2011, including the following:

Alleged failure to grant full access to a document

The Commissioner for Trade met representatives of a business organisation in 2008. A civil society organisation sought access to the minutes of this meeting and obtained them only in part. It complained to the Ombudsman (case **1633/2008/DK**), who found that the Commission did not adequately reason its decision to refuse access to certain parts of the document, and to delete a section from it. In reply, the Commission provided revised grounds for its decision and granted access to the part which it had previously deleted. The Ombudsman took the view that the Commission's reply to his proposal for a friendly solution was largely satisfactory. However, he made a further remark in which he recalled that the institutions cannot decide that a certain part of an existing document constitutes a 'sub-document' or another document simply because it contains a different kind or type of information. Furthermore, institutions should treat references to attachments as forming part of the document concerned, and should not exclude them from their analysis when dealing with a request for access to documents.

Cases settled by the institution and friendly solutions

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

During 2011, in 84 cases, the institution either settled the matter, or a friendly solution was reached. Below is an illustrative example of one such case.

Lack of information

The March 2011 earthquake and tsunami in Japan damaged the country's nuclear power plant in Fukushima, leading to increased radioactive contamination in the surrounding area. The Ombudsman received several complaints from citizens, suggesting that there was a lack of information about changes made to the maximum permitted levels of radioactive contamination for foodstuffs which the EU imported from Japan. When the Ombudsman put the question to the Commission (in his own-initiative inquiry **OI/5/2011/BEH**), it explained that immediately after the accident, the EU activated the emergency mechanisms it had adopted in the wake of the Chernobyl accident. These included maximum permitted levels of radioactive contamination for foodstuffs that were higher than the Japanese levels. In April 2011, the Commission decreased the maximum permitted levels to bring them into line with the Japanese levels.



If an inquiry leads to a preliminary finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. He closed ten cases during the year, including the case below, in which a friendly solution had been achieved. At the end of 2011, 28 proposals for friendly solutions were still under consideration.

policy. The complainant was fully satisfied with OHIM's change of language policy. The Ombudsman applauded OHIM's response and considered the matter settled.

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

Unlawful language policy

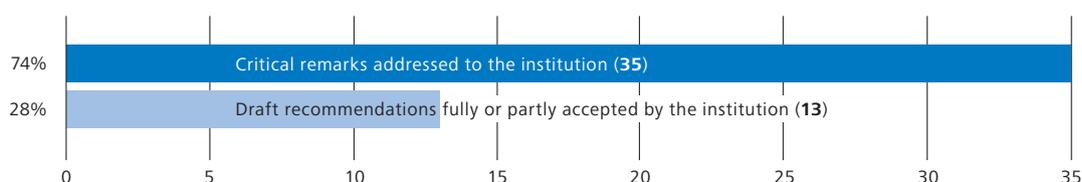
A Polish citizen noted that the website of the Office for Harmonisation in the Internal Market (OHIM) was only available in English, French, German, Italian, and Spanish. He e-mailed OHIM in Polish, pointing out that its website was not available in Polish and asking it to rectify this situation, which he considered unlawful. OHIM replied in English, stating that it could only reply to e-mails in one of the five above-mentioned working languages. It advised the complainant to submit further queries in one of these languages. The complainant then approached the Ombudsman (case **2413/2010/MHZ**), who opened an inquiry into his claims. OHIM changed its practice following the Ombudsman's inquiry, so as to reply to queries in any of the 23 official EU languages. It also announced that it would make the homepage of its website available in all those languages and would explain its language

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 15% of the cases closed in 2011. He closed 35 such cases with critical remarks to the institution concerned (33 cases in 2010). In addition, he closed 13 cases when the institution complained against accepted a draft recommendation from him.

Figure 1.10: Inquiries where maladministration was found



Note: In one case where the Ombudsman found maladministration, the draft recommendation was partly accepted by the institution, but the Ombudsman also issued 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 involved 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. He likewise proceeds in this manner in cases where the institution concerned fails to accept a draft recommendation, and where he does not deem it appropriate to submit a special report to Parliament.

the document wrongly implied that passengers had an automatic right to compensation in all cases involving delayed luggage. It took the Commission two weeks to conclude that part of the information in the document was indeed misleading, and more than a month to remove it from the relevant website. In case **1301/2010/GG**, the Ombudsman criticised the Commission for publishing misleading information. He also concluded that the length of time it took the Commission to withdraw it from the website was unacceptable. The Ombudsman felt that much swifter action was necessary because the relevance of the information diminished as the situation at European airports began to return to normal.

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 2010¹⁷

The Ombudsman invited the institutions concerned to respond, within a period of six months, to the critical and further remarks he made in 2010. He received responses to all the remarks made, albeit with a delay in some cases.

In certain cases, the follow-up to critical and further remarks was exemplary, clearly showing that those responsible recognise the value of this exercise in improving the service they provide to citizens. In others, the response was defensive and disappointing, indicating

A critical remark confirms to the complainant that his/her complaint is justified. It also indicates to the institution concerned what it has done wrong, so that it can avoid similar maladministration in the future.

A critical remark confirms to the complainant that his/her complaint is justified. It also indicates to the institution concerned what it has done wrong, so that it can avoid similar maladministration in the future. The following example illustrates circumstances which may lead the Ombudsman to issue a critical remark.

Misleading information

When an Icelandic volcano erupted in April 2010, thousands of flights in Europe were cancelled. On 4 May 2010, the Commission published, on different websites, information for affected air passengers, including a question and answer document. The next day, the European Regions Airline Association sent an e-mail to the Commission, drawing its attention to what it considered to be misleading information. In particular, it pointed out that

¹⁷ The Ombudsman's follow-up study is available at: <http://www.ombudsman.europa.eu/en/cases/followup.faces/en/11058/html.bookmark>



that further work remains to be done, by the Ombudsman and the institutions themselves, to ensure a top class EU administration. Taking critical and further remarks made in 2010 together, the rate of satisfactory follow-up was 78%. The follow-up to further remarks was satisfactory in 95% of cases, while the rate of satisfactory follow-up of critical remarks was significantly lower at 68%.

| Taking critical and further remarks made in 2010 together, the rate of satisfactory follow-up was 78%.

Seven of the follow-ups warrant special mention as cases that should serve as a model for other institutions of how best to react to critical and further remarks. They concern the Parliament (1825/2009/IP), the Commission (485/2008/PB, 1039/2008/FOR, 1658/2008/PB, and 1302/2009/TS), the European Anti-Fraud Office (OLAF) (182/2010/MHZ), and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (923/2009/FOR).

Draft recommendations

Where it is possible for the institution concerned to eliminate the instance of maladministration, or where the maladministration is particularly serious or has general implications, the Ombudsman normally issues a draft recommendation to the institution involved or complained against. In accordance with Article 3(6) of the Statute of the Ombudsman, the institution must send a detailed opinion within three months.

During 2011, the Ombudsman issued 25 draft recommendations, including the case below. In addition, 10 draft recommendations from 2010 led to decisions in 2011, while three further cases were closed, following draft recommendations made in 2009. The Ombudsman closed 13 cases during the year when an institution accepted a draft recommendation either fully or partly.

The Ombudsman closed eight cases with critical remarks. At the end of 2011, 21 draft recommendations were still under consideration, including three made in 2010 and 18 in 2011.

Openness, good administration, and non-discrimination

The Commission regularly conducts public consultations so that citizens, associations, and other stakeholders can participate in the making of EU decisions. In 2010, a Spanish lawyer complained to the Ombudsman (case 640/2011/AN) that the Commission had published a consultation on financial sector taxation only in English, French, and German. The Commission acknowledged that the language barrier could hinder citizens from participating in its consultations. However, it argued that time and resources could constrain multilingualism, and that it was not required to publish consultations in all EU languages. The Ombudsman concluded that the Commission's restrictive language policy constituted maladministration and called on it to publish its consultations in all 23 EU languages or to provide translations upon request. The deadline for the Commission to submit a detailed opinion on the recommendation was 29 February 2012.

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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 the Ombudsman's *Annual Report 1998* points out, 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. This is because 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 the Parliament may require when dealing with a special report.

In accordance with the Rules of the European Parliament, the Committee on Petitions is 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 whenever he presents a special report to Parliament.

The Ombudsman did not submit any special reports to Parliament in 2011.



1.5 Star cases exemplifying best practice

Ten star cases closed in 2011 illustrate best practice. The institutions' willingness to cooperate with the Ombudsman to achieve a satisfactory resolution of complaints is an important expression of their commitment to the principle of a culture of service. In some of the cases, the complainants' constructive engagement also proved crucial to obtaining a win-win outcome.

| Ten star cases closed in 2011 illustrate best practice.

Case [3264/2008/GG](#) constitutes such a case. The Ombudsman commended the Commission, and, in particular, its Information Society and Media Directorate-General, for its constructive approach to this case. The Commission had communicated to the complainant's employer assumptions concerning the complainant and his wife that went beyond the mere assumption that a conflict of interest might exist in this case. In its reply, the Commission submitted a draft letter that it intended to send to the complainant's employer in order to clarify matters. Following further contacts between the complainant, the Ombudsman, and the Commission, the latter accepted to modify the said letter. In the letter finally sent, the Commission acknowledged that it went further than its duties strictly required when it communicated assumptions concerning both the complainant and his wife. The Commission further stated that these assumptions subsequently proved to be unfounded.

A further example of useful cooperation between the Ombudsman, the complainant, and the institution is case [2533/2009/VIK](#),

which concerned alleged language discrimination on the EPSO website. The complainant contested EPSO's statement on its website that, for operational reasons, it was only able to respond to questions submitted in English, French, or German. EPSO explained that its website addressed two different audiences, namely, (i) candidates in competition and selection procedures, and (ii) the general public. As regards the first group, EPSO explained its reasons for considering that correspondence with candidates in selection procedures could be limited to English, French, and German. The

complainant did not object to this. As regards the second group, EPSO pointed out that it treated all requests for information from citizens equally, the only difference being that, given the possible need for translation, it may take longer to provide a reply to a request made in a language other than English, French, or German. The complainant accepted EPSO's explanations, but considered that this information should be published on EPSO's website. He made precise and constructive proposals in this regard, to which EPSO responded positively.

Given the many cases concerning transparency that the Ombudsman deals with every year, star cases in this area are particularly welcome. Case [2497/2010/FOR](#) concerned a refusal to grant public access to the list of participants at a public hearing organised by the Committee of European Banking Supervisors (CEBS). Given that, as of 1 January 2011, CEBS became the European Banking Authority (EBA), the Ombudsman's inquiry was directed at EBA. The latter stated that it had taken immediate measures to conform to all the requirements

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relating to transparency. As a sign of its commitment, it agreed to share CEBS' list of participants with the complainant.

In response to a draft recommendation by the Ombudsman, the European Medicines Agency (EMA) agreed to provide public access to suspected serious adverse reaction reports relating to a pharmaceutical product. In closing case [3106/2007/FOR](#), the Ombudsman recognised the important progress that the Agency has made in rendering its work more transparent.

Shortly after the Ombudsman opened an inquiry into case [2609/2010/BEH](#), the complainant informed him that the Commission had granted him unlimited access to all the documents requested. The documents related to the Commission's "Interpretative communication on the application of Article 296 of the Treaty in the field of defence procurement". The Commission had initially argued that the requested documents fell in their entirety within the scope of the exception provided for in Article 4(1)(a), second indent, of Regulation 1049/2001, relating to "defence and military matters".

Finally on transparency, case [3072/2009/MHZ](#) concerned the Commission's failure to deal diligently with a complaint about its Register of Interest Representatives (the "transparency register"). An NGO complained about the data concerning the lobbying budget of a specific interest group, which the Commission included in its Register. The Ombudsman made a proposal for a friendly solution, stating that the Commission could ask the interest group in question to explain its lobbying costs. He also suggested that the Commission could establish, and make public, general rules concerning (i) its

procedures for dealing with Register complaints, (ii) how interest groups should calculate their lobbying budgets, and (iii) how these groups should report their eligible activities for the purposes of the Register. The Commission accepted all of these proposals.

The Office for Harmonisation in the Internal Market (OHIM) agreed to change its language policy in response to the Ombudsman's inquiry in case [2413/2010/MHZ](#). The Ombudsman argued that good administrative practice requires that, as far as possible, the institutions, bodies, offices, and agencies of the EU provide information to citizens in their own language. As a result, OHIM agreed to accept written queries from any citizen of the Union, in any one of the languages mentioned in Article 55(1) TEU, and to provide an answer in the same language. It also announced that it would make the homepage of its website available in all EU languages and explain its language policy thereon.

Cases [1804/2009/MHZ](#) and [899/2011/TN](#) concerned two provisions of the Charter of Fundamental Rights, namely, the integration of persons with disabilities and the principle of fairness¹⁸. Specifically, the cases concerned a provision in the EU 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. In the former case, Parliament agreed to take into account its staff members' decisions to work part-time, when deciding on cases where the official concerned finds it difficult to prove the existence of heavy expenditure resulting from his/her child's disability. In the latter case, the Commission agreed that it should have paid the complainant

18. Articles 26 and 41(1) respectively of the Charter.



the double allowance from the date on which he commenced working as an EU official and not from the date on which he applied for it. This case was closed quickly after the Commission responded positively to a series of questions the Ombudsman had put to it in his letter opening the inquiry.

Finally, the Ombudsman welcomed the steps that the Commission took in case **1786/2010/PB**, with an eye to making EU research funding less bureaucratic. The case concerned the so-called ‘pre-financing’ funds paid by the Commission in the framework of the EU’s 7th Research Framework Programme. The complainant objected to the fact that the Commission required recipients of EU funding to ensure that the funds received generate interest for the benefit of the EU budget. This obligation was bureaucratic and disproportionate, it said. The Ombudsman found that the relevant provisions in the Financial Regulation and the related implementing provisions could be interpreted as supporting the complainant’s position, notably in light of the general principle of fairness. He further took the view that it was not consistent with the principle of sound financial management to impose obligations that create disproportionate burdens for beneficiaries. In reply, the Commission announced new rules and practices intended to implement the Ombudsman’s draft recommendation in this case. The Commission introduced these changes with immediate effect. More generally, the Commission expressed its agreement with the Ombudsman that the principle of sound financial management should be contextually applied in light of the policies pursued and of their context. It expressed its intention to pursue this approach at the legislative level as well.

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. A summary in English of each decision is also produced. Summaries of selected cases are published on the website in all 23 official EU languages. These summaries reflect the range of subjects and of Union institutions covered by the 318 decisions closing cases, which the Ombudsman adopted in 2011, as well as the different reasons for closing them.

This section presents the most significant findings of law and fact contained in the Ombudsman’s decisions closing inquiries in 2011. 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, important cases which concern rights laid down in the Charter are also highlighted.

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The section analyses the following main subject matters of inquiries:

- 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 matters, policy matters, and other.

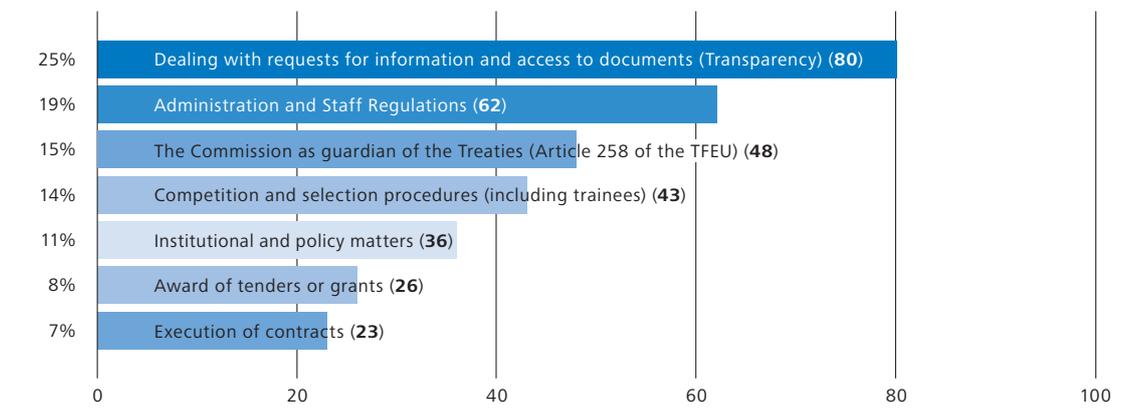
There is substantial overlap among the above subject matters. For example, issues of openness are often raised in complaints concerning recruitment or the Commission's role as guardian of the Treaties. It should be noted that the categories are not listed in the order in which they appear in Figure 1.11¹⁹.

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 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 documents²⁰.

Figure 1.11: Subject matter of closed inquiries



¹⁹ Figure 1.11 provides information by subject matter on all inquiries completed in 2011. The figure aims to indicate the significance of the subject matters discussed in terms of the Ombudsman's overall caseload. Despite the overlap, cases only appear under one heading in this figure.

²⁰ 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. On 15 December 2011, the European Parliament voted on the *Cashman Report* which deals with the Commission's proposal.



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 2011, the Ombudsman completed inquiries into 20 complaints concerning the application of Regulation 1049/2001, 14 of which were against the Commission. These inquiries covered both procedural issues and the application of the exceptions to public access provided for in Article 4 of the Regulation. With regard to the former, late registration and late answers to requests appear to be relatively common occurrences²¹. With regard to the latter, the same exceptions tend to be invoked again and again, and are highlighted below²².

Exception concerning international relations

In case **1051/2010/BEH**, the Commission²³ refused to grant access to a section on visa matters contained in a report on meetings held between EU and Russian representatives. It invoked Article 4(1)(a), third indent, of Regulation 1049/2001, explaining that: (i) disclosure would put in the public domain assessments concerning the visa issue, which were not shared with the Russian delegation. Moreover, (ii) disclosure would weaken the EU's negotiating position. The Ombudsman took into account the fact that, according to the case-law of the EU Courts, the interests protected by Article 4(1)(a) are of a particularly

sensitive nature. Institutions therefore enjoy a wide discretion in determining whether disclosure could undermine the protected public interest. He considered the argument that disclosure would weaken the EU's negotiating position to be borne out by the results of his inspection of the document. Moreover, the relevant section of the document related to ongoing negotiations and allowed for conclusions to be drawn on the EU's assessment of the approach taken by the Russian Federation. The institution's argument that disclosure would jeopardise the mutual trust that exists between the Russian Federation and the EU was therefore plausible.

Exception concerning legal advice

In case **1170/2009/KM**, a German citizen requested that the Council grant him access to an opinion by its Legal Service discussing the legal basis for a regulation on genetically modified food and feed. The Council granted access only to the introductory paragraphs of the opinion, arguing that the body of the document fell within the exception in Regulation 1049/2001 relating to the protection of legal advice. Having inspected the document, the Ombudsman came to the preliminary conclusion that, based on a proper reading of the *Turco* judgment²⁴, the Council had not shown that access had to be denied in order to protect its interest in receiving useful legal advice from its Legal Service. He suggested that the Council grant full

²¹. The Ombudsman therefore welcomed the statement that the Commission made in its follow-up to a critical remark he made in 2010, that the system in place is adequately organised to handle requests for access to documents in general within the time-limits established by Regulation 1049/2001. He understands this statement to imply that the Commission regards the said time-limits as realistic and achievable.

²². In many cases, more than one exception is invoked.

²³. Before the Ombudsman's services proceeded to carry out an inspection of the document at issue, the Commission informed the Ombudsman that, following the establishment of the European External Action Service (EEAS), responsibility for the case was now with that service.

²⁴. Joined cases C-39/05 P and C-52/05 P, *Sweden and Turco v Council* [2008] ECR I-4723.

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access to the document in question. In relation to the procedural points that the complainant raised, the Ombudsman proposed that the Council inform applicants of the date on which a decision is due under Regulation 1049/2001 and of the remedies available to them before this date. The Council disagreed with the Ombudsman's analysis but, given the time which had meanwhile elapsed, decided nonetheless to grant access to the document. It also agreed to inform applicants of the date by which it must decide on their application. However, it rejected the proposal to inform applicants in advance of the remedies available to them.

Exception concerning inspections, investigations, and audits

The following three cases concerned requests for access to documents relating to EU competition law. Case **297/2010/GG** concerned the refusal by the Commission's Directorate-General Competition (DG Competition) to grant access to its manual of procedures (Antitrust ManProc) for handling competition cases under Articles 101 and 102 TFEU. The Commission argued that disclosure would be highly detrimental to its decision-making process and would also undermine the purpose of its inspections and investigations in the area concerned. However, it also explained that it was selecting and adapting excerpts of the documentation on its proceedings in antitrust cases, with a view to publishing them on its website in the form of best practices. The complainant was not satisfied by this approach and turned to the Ombudsman. The latter inspected the Antitrust ManProc and concluded that the Commission was entitled to refuse to disclose certain parts of it, but not the document in its entirety. He called on the Commission to grant partial access to the

modules (the most important part of the Antitrust ManProc) and to confer with the complainant informally in order to find a fair solution as regards access to the other documents which formed part of the Antitrust ManProc. The Commission welcomed the Ombudsman's proposal and took steps with a view to implementing it.

Case **1403/2010/GG** concerned an alleged failure by DG Competition to deal in time and correctly with a request for access to documents relating to a state aid investigation. The Commission replied to the complainant during the course of the Ombudsman's inquiry and apologised for the delay that had occurred. As regards substance, the Commission referred to the judgment of the Court of Justice in *Technische Glaswerke*²⁵, according to which there was "a general presumption that disclosure of documents in the administrative file in principle undermines protection of the objectives of investigation activities". The Ombudsman noted that the approach that the Commission adopted was in conformity with EU law, as interpreted by the Court. He further considered that the complainant had not shown that there were documents in the Commission's file that were not covered by that presumption and that had not been disclosed, or that there was an overriding public interest in disclosure. He noted, however, that it was unlikely that an applicant would ever be in a position to rebut the above-mentioned presumption unless he knew what documents are contained in the file. The Ombudsman was therefore pleased to note that the Commission provided the complainant with a list of the documents contained in its file concerning the present case. He made a further remark in which he invited the Commission to do likewise in all cases in which it intended to invoke the said presumption.

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



The Ombudsman also agreed with DG Competition's view in case **1735/2010/MHZ** that it should refuse to provide access to the Commission's administrative file in another state aid investigation, once again in light of the Court's judgment in *Technische Glaswerke*. He did not agree, however, with the Commission's reliance on the exception relating to the protection of its decision-making process (Article 4(3) first subparagraph of Regulation 1049/2001), since he trusts that the Commission's experienced decision-makers are not susceptible to being unduly influenced by external pressure.

In case **1581/2010/GG**, the Commission again referred to the exception concerning the protection of the purpose of inspections, investigations, and audits, when refusing to grant access to replies that Member States and professional organisations had sent it in the context of its inquiry into an infringement complaint. After inspecting the documents, the Ombudsman was not convinced that the exception invoked by the Commission allowed it to refuse to grant access to those parts of the documents that contain purely factual information. The Commission replied that it would reconsider the complainant's request, with a view to granting full or partial access after having consulted the Member States concerned.

Case **2073/2010/AN** also concerned access to documents relating to an infringement procedure, this time as regards environmental issues in Spain. After the Ombudsman opened his inquiry, the Commission granted the complainant access to some of the requested documents, while refusing access to others. The Ombudsman found that, in light of the exceptions that the Spanish authorities invoked, the Commission's refusal to grant access to

certain documents originating from these authorities was justified. As regards the handling of the request for access to the remaining documents, the Ombudsman criticised the Commission for wrongly refusing to disclose some of its internal documents to the complainant, for failing to assess the possibility of granting the complainant partial access, and for failing duly to assess the existence of an overriding public interest in disclosure. He also criticised the delay which occurred in handling the complainant's confirmatory application.

Exception concerning the institution's decision-making process

Case **1294/2009/DK** concerned a failure to grant full access to a report on the impact assessment of a proposal for a Council Regulation. During the Ombudsman's inquiry, the Commission submitted its legislative proposal to the Council and Parliament, which was, in part, formulated on the basis of the content of the report in question. Although it finally gave full access to the report, the Ombudsman carried out an analysis of its initial decision not to grant full access. He found that, in its original decision, the Commission did not sufficiently demonstrate (i) why full disclosure at that time would have seriously undermined its decision-making process and (ii) that there was no overriding public interest in disclosure.

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 many cases in 2011 where the citizen alleged that the administration

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failed to reply adequately or at all. These cases were dealt with through simplified procedures in order to ensure a timely response for the complainant. Case **1711/2010/BEH** constitutes an example of a fully-fledged inquiry in which the complainant alleged failure to provide information. Specifically, it concerned the Commission's refusal to indicate the amount of pension entitlements acquired by a former temporary agent. While the Commission stated that it was up to the complainant to make the relevant calculation on his own, it explained the formula to be used for this purpose, as well as all the amounts to be entered into that formula in this particular case. The complainant thanked the Ombudsman for his vigorous efforts to resolve the matter.

Case **2470/2009/TN** also concerned the handling of a request for information, this time by the European Personnel Selection Office (EPSO). After finding that EPSO had not, at the relevant time, provided the complainant with a sufficiently clear explanation, in accordance with Article 18 of the *European Code of Good Administrative Behaviour*, as to why the information could not be provided, the Ombudsman closed the case with a critical remark.

Data protection

Articles 7 and 8 of the Charter of Fundamental Rights cover, respectively, the fundamental rights to privacy and to the protection of personal data. Among the exceptions laid down in Article 4 of Regulation 1049/2001, Article 4(1)(b) pertains to these rights. This exception was relevant to case **3106/2007/FOR**, in which the European Medicines Agency refused to provide public access to

suspected serious adverse reaction reports relating to a pharmaceutical product. The Agency finally agreed to provide the complainant with access to the requested documents, after removing personal data concerning patients and reporting doctors.

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 serve as the guardian of the Treaties²⁶. 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.

It is important to mention in this context the EU Pilot²⁷, a working method developed in 2007 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 the Member States implement EU law more effectively and that the complaints that citizens and businesses make are resolved more quickly.

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

²⁶. Article 17 TEU requires the Commission to "ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them".

²⁷. See the Commission Communication entitled "A Europe of Results – Applying Community Law, COM(2007)502".



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

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. This is 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.

Procedural obligations

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a communication that the Commission issued in 2002²⁸. The Communication provides for an obligation to register complaints, for certain exceptions to this obligation, and also establishes deadlines for dealing with complaints and for informing complainants. The Commission issued this Communication in response to the Ombudsman's previous inquiries and criticisms in relation to these matters. The Ombudsman considers this Communication as an important basis for citizens' trust in the Commission as guardian of the Treaties.

As the examples below illustrate, the Ombudsman's inquiries in 2011 revealed a number of procedural shortcomings.

Failure to register complaints and to hear the complainant

Case **2403/2008/OV** constitutes one such case in which the Commission failed to abide by the provisions of its 2002 Communication. The Commission acknowledged that it failed to respect certain points, including point 3 on registration, and apologised for this. However, it did not explicitly acknowledge that it failed to respect point 10 of the Communication, which provides that the complainant should be heard before a complaint is rejected. The Ombudsman closed his inquiry, noting that he had, in the meantime, opened an inquiry, on his own initiative, into the relationship between the new EU Pilot and the procedural guarantees set out in the Communication²⁹.

The complainant in case **2587/2009/JF** alleged that the Commission failed properly to deal with his concerns relating to EU environmental and energy legislation in Ireland. During the Ombudsman's inquiry, the Commission explained that it had, in the meantime, registered some of the complainant's subsequent correspondence as a complaint and was investigating it. The Commission further organised a meeting where the complainant was able personally to explain his concerns. The Commission insisted that it was committed to pursuing its task of monitoring the correct implementation of EU environmental legislation and that it would examine all documented breaches of the relevant legislation.

²⁸. 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.

²⁹. In light of the follow-up provided by the Commission to a critical remark made in 2010, the Ombudsman opened an own-initiative inquiry (**OI/2/2011/OV**) into the relationship between the EU Pilot method of dealing with infringement complaints and the Commission's 2002 Communication. Specifically, he asked the Commission whether it intends (i) to proceed to a revision of the Communication and (ii) if so, to consult the Ombudsman in this context. The inquiry is on-going.

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Delay

Case 489/2011/MHZ concerned a seven-month delay, which the Commission was not able to justify, in reacting to the complainant's observations in an infringement case. The Ombudsman found, however, that, in letters sent directly to the complainant, the Commission provided an exemplary statement of the reasons underpinning its decision to close the case. The Ombudsman made a further remark to the effect that the Commission would comply with principles of good administration if, after complainants submit comments on its announcement that it intends to close the infringement file, it would come to the final decision within a reasonable time. If delays occur, the Commission should explain why and, if appropriate, apologise.

Substantive issues

When investigating infringement complaints, the Ombudsman may also review the substance of the analyses and conclusions reached by the Commission. He may, for example, check whether such analyses and conclusions 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.³⁰ If the Ombudsman were fundamentally to disagree with the Commission's assessment, he would state so, while also pointing out that the highest authority in interpreting EU law is the Court of Justice. Disagreements of this kind are exceptional, however.

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.

Rights of defence

Case 705/2010/ANA concerned the rights of a third party, who intervened in support of Greece in an infringement complaint concerning that country. The Commission maintained that it ensured respect for the complainant's rights of defence by providing him with the opportunity to express his views in the course of the procedure and by taking into consideration and evaluating all the information submitted. It added that, throughout the process, it sought to act objectively in the assessment of the complaint and on the basis of a balanced and thorough investigation. The Commission finally decided to close the infringement case. In his decision, the Ombudsman found that the Commission had taken steps to settle the matter and, in so doing, satisfied the complainant.

Dispute concerning the exercise of the Commission's discretionary powers

Case 1561/2010/FOR concerned the Commission's alleged failure properly to investigate whether Spain respected EU environmental rules. A Spanish citizen argued that a large scale building project had damaged the natural habitat of *Picris Willkommii*, a rare plant found only near the mouth of the Guadiana River in Spain. The Ombudsman found the Commission's justification for its decision to exercise its discretion to close the case to be adequate. Essentially, the Commission explained that the continuation of the infringement procedure would not ensure better protection measures for *Picris Willkommii* than those already taken or planned by the Spanish authorities which had agreed to take various conservation measures. The Ombudsman made a further remark,

³⁰ The Ombudsman notes, in this regard, that the fact that there is an infringement of EU law does not automatically imply that the Commission should pursue infringement proceedings. The Commission must, however, justify how it exercises its wide margin of discretion.



however, calling on the Commission to bring all possible national remedies to the attention of complainants in future similar cases.

Disagreement with the Commission's assessment

Two cases involved the Schengen *acquis*³¹. Case **2267/2009/KM** concerned the Commission's alleged failure to start infringement proceedings in relation to the Schengen visa rules. Specifically, the complainant alleged that Germany was applying excessively strict criteria to host guarantees, which visa applicants can use to show that they have sufficient means to cover the costs of their stay in the country. The Ombudsman agreed with the Commission's assessment that the rules on determining the creditworthiness of guarantors fall under national law. He also considered reasonable the Commission's statements that (i) these rules must not be applied arbitrarily, and (ii) the German practice was not arbitrary. Finally, he considered that the Commission's decision to examine the practices of all Member States was not unreasonable. Taking into account the Commission's apology for its initial failure to reply to the complainant, the Ombudsman closed the case.

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.

Among the issues that the Ombudsman examined in 2011 in the area of tenders and grants were alleged unfairness and incorrect application of the relevant rules. With regard to the former, it is important to underline that fairness is mentioned in Article 41(1) of the Charter as forming part of the 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 equitable balance between conflicting rights and interests and, as the following case examples under "Unfairness" illustrate, to help others to do so as well.

Unfairness

Case **2605/2009/MF** concerned an attempt by the Commission to recover a grant from a not-for-profit organisation following an audit. The Ombudsman asked the Commission to explain why it could not modify the conclusions it had drawn from the audit report, by taking into account documents that the complainant submitted, albeit late. The Commission replied that it was prepared to carry out a complete analysis of the documents in question, and review the sum originally claimed in its recovery order.

Case **1992/2010/RT** also concerned an allegedly unfair request for reimbursement, this time by the Education, Audiovisual and Culture Executive Agency (EACEA). The complainant claimed that the Agency should suspend the recovery order and organise an audit of the project. The

The Ombudsman has long regarded fairness as a key principle of good administration.

³¹. Case **2062/2010/JF**, which concerned provisions of the Schengen *acquis* that are not yet binding on Ireland, is included in section 1.4 above. In this case as well, the Ombudsman agreed with the Commission's assessment of the infringement complaint.

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Agency explained that two independent experts found weaknesses in the project's implementation and underlined that the project failed to achieve its main objectives. The Ombudsman found the experts' comments to be detailed and reasonable. He also considered that the complainant's counter arguments were not sufficient to prove that the experts committed a manifest error of assessment when carrying out the evaluation of the grant agreement's implementation.

In case **258/2009/GG**, which also concerned the EACEA, the Ombudsman called on the Agency to make an *ex gratia* payment to the complainant to try to offset the negative consequences resulting from the way the Agency handled the complainant's application for a town-twinning project grant of around EUR 10 500. The Ombudsman found that EACEA failed to comply with the deadlines it had itself set and did not do all it could to avoid the delay that occurred. In its reply to the Ombudsman's draft recommendation, EACEA explained that it was ready to pay the complainant EUR 3 150. The complainant explained that it would have hoped for a higher sum, but was nevertheless satisfied. It added that the Ombudsman's way of proceeding had restored its faith in the EU's administrative action.

In case **413/2010/BEH**, the Executive Agency for Health and Consumers (EAHC) rejected the complainant's request for financial support for a conference, on the grounds that it was not scheduled to take place within the time frame set out in the call for proposals. In one section of the proposal, the complainant had erroneously indicated that the conference would take place in September 2009, whereas it was, in fact, to take place in September 2010. The correct date was

mentioned in other parts of the proposal. The Ombudsman found that it was not obvious why an applicant would invest a significant amount of time and resources into drafting a proposal for a conference that was outside the relevant time frame. The EAHC should therefore have had doubts as to the correctness of the information that the complainant provided in the relevant field and could easily have verified that information. At the same time, the Ombudsman applauded the fact that the EAHC had taken steps designed to rule out a repetition, in future calls, of the problem the complainant had encountered.

Finally, the Ombudsman concluded, in case **3018/2009/TN**, that the relevant tender procedure that the Court of Justice of the EU launched respected the principles of sound financial management, equal treatment, and fairness. With a view to improving further the Court's tender procedures, he suggested that the Court could consider providing more information to tenderers about the type of tender procedure it has chosen to use.

Breach of the presumption of innocence

The Ombudsman found, in case **1348/2009/RT**, that, by not providing proof to underpin its statements concerning the complainant's breach of the confidentiality of the procurement procedure, the Commission infringed the principle of the presumption of innocence. With regard to the complainant's other allegations, the Ombudsman concluded that, on the basis of the evidence obtained during his inspection of documents, there was no reason to doubt that the chairman of the selection committee acted independently and impartially. Furthermore, the Commission's explanation for rejecting the complainant's tender was reasonable.



Inconsistent, inaccurate, or misleading information

Following his inquiry into case **920/2010/VIK**, the Ombudsman invited the Commission to review the documentation it provides in the context of its procurement procedures, with an eye to eliminating lack of precision and terminological inconsistency, and to ensuring that tenderers are clearly and unambiguously informed of the relevant eligibility conditions. The Ombudsman noted that it would also be useful if, in the context of this review, the Commission could ensure that key terms in the procurement process are clearly defined, either in the procurement notice itself, or in a document to which it makes clear reference and which is easily accessible.

The Ombudsman welcomed the Commission's decision in case **1574/2010/MMN** to amend its guidelines in order to avoid misleading future applicants for a scholarship programme. The Commission had argued that the application form and the guidelines it provided to candidates accurately reflected its decision to limit the EU scholarship to applicants who did not receive any scholarships from other sources. While the Ombudsman agreed that the application form did not contain misleading information, the question as to whether or not a candidate had also 'applied' for another scholarship was referred to as being part of the eligibility criteria in an annex to the guidelines. The wording of this annex was thus misleading, he said.

Delay

The Ombudsman made two findings of maladministration in case **703/2010/MHZ**, in which the complainant alleged that the Commission committed various administrative irregularities when

handling its grant. One related to the Commission's delays and, in particular, its provision of pre-financing at a point in time when the sums paid could no longer be used for the project. The other concerned the failure to inform the complainant, as coordinator of the project, of the Commission's direct correspondence with the rector of the university that had been awarded the grant. The Commission accepted the essential part of the Ombudsman's draft recommendation, while also recognising that the complainant and the university had been able to complete the Project with very good results and with a lower level of EU funding than originally foreseen.

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. Only a court of competent jurisdiction can effectively deal with this question. It would have the possibility to hear the arguments of the parties concerning the relevant law and to evaluate conflicting evidence on any disputed issues of fact.

In cases concerning contractual disputes, the Ombudsman therefore considers it justified to limit his inquiry to

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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.

The year 2011 allowed the Ombudsman to look again at the issue of the timeliness of payments by the Commission. As always, he also dealt with contractual disputes relating to eligible costs and audit actions. Finally, the area of contracts offers ample opportunity for the Ombudsman to examine the principle of fairness and how the institutions take this into account in their contractual relations.

Late payment

In 2009, and following two earlier inquiries (OI/5/99/GG and OI/5/2007/GG), the Ombudsman opened a further inquiry (OI/1/2009/GG) on his own initiative concerning the issue of timeliness of payments by the Commission. He concluded that the Commission's responses to the issues raised during the public consultation carried out as part of this inquiry were largely convincing. The number of late payments decreased considerably from 2008, when it amounted to 22.67% of all payments, to 2009, when this percentage went down to 14.42%. The overall sums of money affected by delays, in percentage terms, more than halved between 2008 (13.95%) and 2009 (6.63%). The average delay also decreased considerably from 47.45 to 40.43 days. The Ombudsman noted, however, that problems persisted and announced that he would keep this issue under consideration.

Disputes over eligible costs and audit actions

Many cases in this area concern disputes over eligible costs, which often arise in light of audit findings. Case 1512/2010/KM is one such case in which the complainant alleged that the Commission wrongfully deducted costs from an EU contribution following an audit. The Commission accepted the argument that costs which are found to be ineligible during an audit have to be deducted from the total of eligible costs that a contractor declares, rather than from the EU contribution. After a second audit concerning the balance of costs and receipts of the member of the consortium in question, the Commission decided that no recovery was necessary. It had already accepted the other argument that the complainant had put forward, namely, that the auditors had wrongly reallocated certain costs.

Case 1663/2009/DK also arose after an audit report identified certain costs as ineligible. The Ombudsman found that the Commission gave a detailed description of its reasons for declaring certain costs ineligible, and that the reasons were based on the relevant rules. He also found that the Commission respected the principles of good administrative behaviour in its correspondence with the complainant in this case. With regard to the complainant's claim that the Commission should refrain from making threats to call in the complainant's bank guarantee, the Ombudsman found that the Commission was legally entitled to take the relevant steps for the recovery of amounts owed to it, and that it did not threaten, but rather simply informed the complainant that it intended to initiate the relevant procedure for the recovery of the amounts.



Case **651/2010/KM** against the Education, Audiovisual and Culture Executive Agency (EACEA) concerned an alleged failure to recognise certain costs incurred by new partners in a project. In its opinion, EACEA explained that it had reviewed its decision and agreed to consider the costs of the new project partners as eligible from the date on which the changes in the partnership were first communicated to it. It had originally stated that the costs incurred by the new partners would only be eligible from the date on which the amendment to the agreement was signed.

Unfairness

The complainant in case **1733/2009/JF** found the Commission's claim for reimbursement to be unfair and turned to the Ombudsman. The Commission explained that the complainant had failed to submit the necessary reports and deliverables in due time, as required by the contract. It further referred to a proposal it had made to the coordinator of the project that the complainant provide the relevant documents even after the contractual deadline. Since the complainant appeared not to have been aware of that proposal, the Ombudsman asked the Commission to consider accepting a belated report from the complainant. The Commission agreed and stated that, if justified, it could also reduce the amounts claimed.

Case **784/2009/IP** concerned a failure to pay for the work a freelance consultant carried out for the European Police College (CEPOL). Due to several administrative problems, the complainant carried out her work without having signed a contract. CEPOL subsequently asked her to stop working because, contrary to its previous belief, the relevant rules did not allow it to sign

a contract with her. The Ombudsman made a proposal for a friendly solution inviting CEPOL to consider paying the complainant, in addition to the sum of EUR 1 000 it had already offered her, the sum of EUR 600. This sum corresponded to the preparatory and follow-up work for the two meetings CEPOL explicitly authorised her to participate in. CEPOL agreed.

The complainant in case **2610/2009/MF** – a subcontractor in external aid projects – alleged that, as a result of problems she encountered with the Commission in the framework of projects in Sudan and Chad, she could no longer find employment in EU funded projects. She felt that she was the victim of blacklisting and discrimination. The Ombudsman concluded that, by (i) failing to inform the complainant in writing of its reasons for asking for her dismissal from the EU project in Sudan and (ii) failing to check whether, before being dismissed, the complainant was given the opportunity to present her views on the request for her dismissal which the Commission addressed to her employer, the Commission did not act fairly³².

Finally, case **2170/2010/RT** was closed after the Commission agreed to make the outstanding payment, including interest, of EUR 15 727.68 to a company that had delivered a carpet for one of the Commission's buildings. The complainant alleged that the Commission acted unfairly by refusing to make the payment.

Duty of care

Case **1181/2008/KM** concerned the enforcement of a claim of over EUR 40 000 arising out of an agreement the Commission erroneously believed it had concluded with the complainant, a German university. A professor at the

³². In his 2010 follow-up study concerning critical and further remarks, the Ombudsman mentioned that he would keep under review the use of contracting out by the Commission, with a view to ensuring that this practice does not weaken the citizens' fundamental right to good administration.

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university applied for a grant in the name of the complainant, using the latter's stationery which bore its letterhead. A subsequent audit of the project expenses found that EUR 39 989.94 had to be repaid. The Commission sent the complainant a debit note, to which the latter replied that it had no information about the project. The Commission then sent a reminder, requesting payment. The complainant emphasised that the professor was not authorised to enter into contracts on its behalf. The Commission then informed the complainant that it would set off its claim and accrued interest against a payment due to the complainant. During the course of his inquiry, the Ombudsman noted that the Commission had not established which substantive law applied to the agreement and thus had not provided a convincing explanation of why the complainant should be considered bound by the agreement. The Commission finally accepted that there was no evidence to establish the claim that the university was bound by the agreement and proceeded to repay the sum it had previously set off.

Administration and staff regulations

Every year, the Ombudsman receives a number of complaints concerning the administrative activities of the institutions (62 inquiries or 19% of the total closed in 2011). These activities relate to the application of the Staff Regulations for officials, and other relevant texts. At times, fundamental rights are at stake, thereby allowing the Ombudsman to promote correct application of the Charter by the institutions. In other cases, the manner in which the EU institutions choose to interpret the Staff Regulations

becomes a contentious issue. In these cases, the Ombudsman tries to at least ensure that the institutions take account of, and correctly apply, the Court's case-law.

Fundamental right to be heard

During his handling of a complaint, the Ombudsman became aware of possible shortcomings in the Commission's practices which manifest themselves when it implements recovery measures under Article 85 of the Staff Regulations. He opened an own-initiative inquiry, **OI/4/2009/PB**, into the fundamental right of officials to be heard when the Commission decides to recover undue payments. The Commission fully agreed that the right to be heard must be respected in this context and referred to measures it was taking to that end. The Ombudsman noted that the procedural changes that the Commission implemented constituted a compromise. He concluded, however, that, in light of the specific context and the relevant procedural safeguards, this was an acceptable compromise.

Complaint **3800/2006/JF** concerned a Commission decision to suspend the United Kingdom weighting factor applied to the complainant's pension, and to ask the European Anti-Fraud Office (OLAF) to investigate the case. This followed an anonymous letter, which gave rise to doubts as to whether the complainant's real place of residence was Brussels or the United Kingdom. The complainant alleged that the Commission did not give him an opportunity to defend himself before it adopted the above decision, which, in his view, was unwarranted. Despite initial reservations, the Commission finally offered the complainant EUR 1 000 in compensation for non-material damage, and a letter of apology signed by the



Commissioner for Inter-Institutional Relations and Administration. The Ombudsman emphasised that the Commission's initial actions damaged the complainant's honour and reputation. Notwithstanding this fact, he warmly welcomed the Commission's and, in particular, the competent Commissioner's willingness to bring the complaint to a satisfactory end. Similarly, he applauded the complainant's good will in accepting the Commission's proposal.

Duty of care

Case **OI/4/2010/ELB** illustrates how good administration goes beyond legality. This own-initiative inquiry concerned the way EU institutions, notably, the Parliament, Council, and Commission, deal with requests, submitted under the Staff Regulations, to replace decisions which are incompatible with evolving case-law. The institutions took the view that they had no obligation to review such decisions. They pointed out that if a decision has not been challenged within the legal time-limit, it becomes definitive. They further recalled that the effects of a court ruling are limited to the parties to the case and stated that they apply a court ruling to other parties in exceptional circumstances only. In his conclusion, the Ombudsman underlined that institutions are not prevented from choosing to review a request from an official to replace a definitive decision with a new decision taking due account of evolving case-law. He also took the view that, using their margin of discretion, institutions can decide to consider a request to take a new decision. In accordance with principles of good administration, an institution should draw all reasonable conclusions from rulings of the Union Courts, he said.

Unfairness

Three cases concerned Parliament's interpretation of particular provisions of the Staff Regulations. The complainants in cases **2986/2008/MF** and **2987/2008/MF** alleged that Parliament's practice, whereby the "multiplication factor"³³ for its officials would automatically increase to one two years after their first promotion under the new system inaugurated by the 2004 reform of the Staff Regulations was incompatible with the Staff Regulations because it was automatic and thus arbitrary. The Ombudsman agreed and called on Parliament to change its practice. Parliament refused, saying that its interpretation had not been called into question by any court judgment. It maintained its position despite the Ombudsman's drawing its attention to the General Court's interpretation of the relevant provision in its judgment of 2 July 2010 (the *Lafili* case). The Ombudsman criticised Parliament for this serious instance of maladministration. He pointed out that Parliament's practice differed from that of all other EU institutions and, in some cases, resulted in a considerable financial advantage for its officials over those working for other institutions.

Case **1329/2010/MF** also concerned, among other things, Parliament's method of calculating the multiplication factor applicable to officials who were recruited before 1 May 2004 and promoted after that date. The complainant alleged that Parliament used a method of calculation of his salary which was different from that used by all other EU institutions. The Ombudsman found that Parliament's method of calculation was not based on a clearly erroneous interpretation of

³³. On 1 May 2004, the reform of the EU Staff Regulations introduced a new career structure and new salary scales. Transitional provisions included a "multiplication factor" which was designed to determine the proportion of the new salary scale that was to be paid to officials recruited before 1 May 2004.

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the relevant provision. He pointed out, however, that the principle of the unity of the European Civil Service implies that all the institutions should interpret and apply the Staff Regulations in a consistent manner. He found that the different methods of calculation led to differences in salaries which were unacceptable and which, contrary to Parliament's view, could not be considered minimal. The Ombudsman closed the case with the suggestion that the EU institutions should agree on a common methodology to calculate officials' new basic salaries after promotion. He also suggested that before the next revision of the Staff Regulations, the EU institutions should (i) put in place a mechanism designed to identify difficulties in the interpretation of the revised provisions and (ii) reach a common position at an early enough stage to avoid divergences from occurring in practice.

Case **1944/2009/MHZ** concerned incorrect information provided to the complainant regarding her conditions of employment in an EU delegation. The Ombudsman found that, even if the complainant could not rely on the principle of legitimate expectations as regards the information in question, it would be unfair if the Commission did not accept any responsibility for the serious consequences that an administrative mistake caused. In addition to the financial implications, the complainant stressed that the location of her new post had a detrimental impact on her husband's health. The Ombudsman proposed that the complainant be transferred to another country. At the same time, the complainant contacted the Commission's services concerning this matter. As a result, she was transferred to Brussels.

Alleged failure to respect the rules concerning special advisers

Case **476/2010/ANA** concerned the Commission's handling of conflict of interest issues in relation to the appointment of an unpaid special adviser to a Commissioner. The Ombudsman found a number of instances of maladministration and made corresponding critical remarks, as well as two further remarks. In particular, he suggested that the Commission could consider modifying the declaration of activities of a prospective special adviser so as to obtain sufficient information about the special adviser's outside activities. This would enable it to examine any potential conflict of interest between the special adviser's tasks and these outside activities. In addition, the Commission could require the prospective special adviser to certify that the declaration is complete and that, as far as he/she is aware, there is no conflict of interest with his/her prospective functions as a special adviser.

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. Many problems detected in competitions organised by EPSO have been solved through accelerated procedures. This has shown EPSO's openness to finding rapid and fair solutions to problems. As some of the following cases illustrate, the issue of equal treatment comes up again and



again. The Ombudsman also had the opportunity in 2011 to draw conclusions as regards EPSO's new policy on open competitions.

Problems relating to EPSO's new policy concerning open competitions

The Ombudsman opened an own-initiative inquiry (OI/9/2010/RT) into EPSO's new policy regarding the booking of admission tests, its communication with candidates, and the conditions prevailing in the various test centres. In reply to a series of questions put by the Ombudsman, EPSO explained that (i) the measure to reduce by a considerable amount the booking period for the computer based admission tests (CBTs) was proportionate and necessary to achieve the general objective of reducing the length of the whole selection procedure, (ii) it was reflecting on whether to reintroduce its former practice of sending e-mail notifications in the 2011 competition for administrators, (iii) every test centre complies with minimum standard conditions, and (iv) it would make public, on a yearly basis, the global results obtained from different surveys indicating candidates' levels of satisfaction. The Ombudsman welcomed this information and made two further remarks as regards, firstly, e-mail notifications, and, secondly, situations where candidates are not able to access the Internet during the short booking period.

Alleged failure to ensure equal treatment

The complainant in case **1933/2010/BEH** alleged that, by failing to reschedule the test date for her assessment centre test, EPSO failed to take into account her specific situation – namely, that she was pregnant – and to comply with the

principle of equal treatment. In view of the exceptional nature of the case, the Ombudsman asked EPSO to send its opinion as a matter of urgency. EPSO complied with this request. In its opinion, EPSO expressed its readiness to take a number of measures to accommodate the complainant's special needs. Although it did not appear to be possible to find a solution for the complainant in this particular case, the Ombudsman found no grounds for further inquiries, in view of EPSO's constructive attitude in this case. He nevertheless invited EPSO to look beyond the measures proposed in its opinion into possible ways of accommodating the needs of prospective young mothers who are in a situation similar to that of the complainant.

In case **1299/2010/MHZ**, the Ombudsman found that EPSO failed to ensure proper conditions for the complainant to sit the CBTs and that it would have been fair for EPSO to have allowed him to sit the tests again. However, EPSO did not react to the complaint quickly enough to remedy the situation when there were still no technical or organisational constraints. Moreover, neither in its opinion on the complaint nor in its reply to the Ombudsman's draft recommendation did EPSO admit its wrongdoings and apologise to the complainant. The Ombudsman made a critical remark.

Finally, case **1220/2010/BEH** concerned allegedly incorrect information on an online application form, according to which applicants could use up to 4 000 characters when answering each of the sub-sections on their reasons for applying. The Ombudsman found that the information given on the German version of the form was indeed incorrect and

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likely to mislead candidates. At the same time, he concluded that, by providing possibilities for candidates to report on problems encountered and publishing updated information on its website concerning the maximum number of characters, EPSO took appropriate action to correct the error.

Inadequate reasoning

Case **14/2010/ANA** allowed the Ombudsman to examine EPSO's apparently contradictory obligations, that is, on the one hand, to provide reasons for its decisions and, on the other hand, to protect the confidentiality of Selection Board proceedings. The Ombudsman recalled that these obligations find a balanced compromise in EPSO's decision, undertaken following his own-initiative inquiry on transparency in EU recruitment procedures, to provide, on the evaluation sheet, a breakdown of the marks against the evaluation criteria and sub-criteria used by the Selection Board. The Ombudsman regretted the fact that the Selection Board did not provide such a breakdown in the present case.

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.

Case **696/2008/0V** concerned alleged errors in the selection procedure for the Executive Director of the European Chemicals Agency (ECHA). The Ombudsman criticised the Commission for failing to document the reasoning

underpinning the establishment of a shortlist containing two candidates. This made it impossible to verify that the Commission had not unduly and arbitrarily restricted the range of candidates. In a further remark, the Ombudsman stated that the Commission should, in accordance with Regulation 1049/2001 on public access to documents, make public upon request the shortlists in selection procedures for high level posts in the Commission and in the EU agencies.

In case **2755/2009/JF**, concerning the recruitment of family members of staff, the Ombudsman recommended that the Commission's Joint Research Centre (JRC) apologise to the complainant and ensure that the selection of candidates for posts with the JRC is not influenced, either positively or negatively, by family ties or relationships. The complainant had applied for a vacancy within a unit at the JRC where his wife was working. The Ombudsman also stated that the JRC should further ensure that its staff enjoy working conditions which are conducive to combining their professional and family lives, and that it should make public its internal rules on recruitment of family members. The Commission accepted the Ombudsman's draft recommendation without any reservations.

Institutional matters, policy matters, and other activities

This residual heading covers a range of complaints made against the institutions regarding their policy-making activities or their general operation³⁴. Among the allegations covered are misuse of power,

³⁴. See also case **1301/2010/GG** concerning the publication of incorrect or misleading information on air passengers' rights and the Commission's alleged failure speedily to correct this information, which is described in section 1.4 above.



misleading or inappropriate statements, and failure to fulfil obligations.

Misuse of power

The complainant in case **856/2008/BEH** contacted the Commission in 2002 regarding certain irregularities which he believed to have occurred in relation to Parliament's acquisition of a building in Brussels. The European Anti-Fraud Office (OLAF) opened an investigation, in the course of which it considered the complainant to be a 'person concerned', within the meaning of the Regulation governing OLAF's work, and invited him to be heard as a witness, on the basis of Article 4(3)(2) of that Regulation. After analysing the powers which OLAF enjoys in its inquiries, the Ombudsman found that, by inviting the complainant in this case for an interview on the basis of the aforementioned provision, OLAF exceeded the limits of its powers. OLAF acknowledged that its practice in this case could have given rise to misunderstanding. Persons in the complainant's situation could only be asked to provide information in the course of an interview if they so wished, it said. OLAF thus essentially acknowledged that it had acted incorrectly. While it failed to apologise to the complainant, the Ombudsman concluded that it had accepted significant parts of his draft recommendation, including the section that referred to other points raised by the complainant.

Misleading or inappropriate statements or information

Case **715/2009/ANA** concerned the Commission's statements, published in a report under the Cooperation and Verification Mechanism, according to which (i) the Bulgarian government

continues to tolerate duty-free shops at Bulgaria's external borders, (ii) these shops have seen a substantial increase in turnover in 2007, and (iii) they are a focal point for local corruption and organised crime. Following an inspection of the file, the Ombudsman made draft recommendations in which he asked the Commission to acknowledge that statements (ii) and (iii) were not substantiated by concrete evidence in its possession, and that statement (i) was misleading. He closed the case with a critical remark and made a further remark to the effect that the Commission should ensure that the reports it issues under the Cooperation and Verification Mechanism comply with the principles of good administration.

Case **884/2010/VIK** concerned alleged lack of transparency in the Commission's selection of election observers and an allegedly unprofessional tone in the Commission's correspondence with the complainant. When the complainant, whose application had not been retained, insisted on receiving further information concerning the criteria used to select short-term observers, the Commission official dealing with the matter replied: "See you in court". The Commission apologised to the complainant for the tone of the e-mail and provided a detailed reply to his request for information. The Ombudsman concluded that the Commission had taken steps to settle the matter but made two further remarks with a view to improving the institution's performance in the future.

The Ombudsman concluded in case **3031/2007/VL** that (i) the information that the Commission provided regarding the Erasmus Mundus programme led students

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from outside the EU to believe that their scholarship would enable them to enjoy a decent standard of living by European standards; and (ii) the amount available was not sufficient for that purpose. In the Ombudsman's view, the information published by the Commission did not provide students with correct and reliable information. In a draft recommendation, the Ombudsman proposed that the Commission make an *ex gratia* payment of EUR 1 500 to each of the students concerned for the inconvenience they had experienced. He closed the case with a critical remark after the Commission rejected the draft recommendation.

Finally, case **260/2011/GG** concerned the *Europa Diary*, a homework tool for students in secondary schools which the Commission produces every year. In January 2011, an Irish priest complained to the Ombudsman that the Commission had omitted from the 2010/2011 edition Christian holidays, such as Easter and Christmas, while including holidays of other religions. The Commission had distributed more than three million copies of the diary, and the priest wanted it to apologise and recall them. In February 2011, the Ombudsman informed the complainant that the Commission had published on its website an apology for the error. It also sent a corrigendum to all the teachers who had ordered the 2010/2011 edition. The Ombudsman considered that the Commission's actions were reasonable, and that it would be disproportionate to reprint the 2010/2011 edition.

Alleged failure to fulfil obligations

In case **2139/2010/AN**, which concerned new provisions for development cooperation strictly forbidding the financing of local taxes from EU funds, the Ombudsman considered that the Commission duly explained the actions it had taken in order to solve the problems arising from the ineligibility of taxes as project costs within the current legal framework. Moreover, the intermediate measures that the Commission took were appropriate, he said. The Ombudsman, however, criticised the Commission in case **427/2011/MHZ** for failing to demonstrate that it was objectively impossible for it to discharge itself of the legal obligation to ensure that, by 1 January 2008, a scientific assessment of the effects of using certain nets on cetaceans, such as whales, dolphins, and porpoises, had been carried out.



1.7 Transfers and advice

In over 65% of all cases that the European Ombudsman processed in 2011 (1 667), he was able to help the complainant by opening an inquiry into the case, by transferring it to a competent body, or by advising the complainant on where to turn. Complaints which fall outside the Ombudsman's mandate often concern alleged infringements of EU law by Member States. National or regional ombudsmen within the European Network of Ombudsmen are best placed to handle many such cases. The European Parliament Committee on Petitions is also a full member of the Network. One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent national or regional ombudsman, or similar body.

In total, 52% (1 321) of the complaints that the European Ombudsman processed in 2011 fell within the mandate of a member of the European Network of Ombudsmen. Of these, 698 cases were within the mandate of the European Ombudsman.

In total, 52% (1 321) of the complaints that the European Ombudsman processed in 2011 fell within the mandate of a member of the European Network of Ombudsmen.

As Figure 1.12 shows, in 609 cases, the Ombudsman transferred the complaint³⁵ to a member of the Network or advised the complainant to contact a member of the Network. Accordingly, 550 complaints were transferred or referred to a national or regional ombudsman or similar body, while 59 were transferred or referred to the European Parliament Committee on Petitions.

In some cases, the Ombudsman may consider it appropriate to transfer the complaint to the European Commission, to SOLVIT, or to Your Europe Advice. SOLVIT is a network that the Commission set up to help people who face obstacles when trying to exercise their rights in the Union's internal market. Your Europe Advice is another EU-wide network that the Commission set up to help and advise citizens on their life, work, and travel in the EU. Before transferring a complaint or advising the complainant, the Ombudsman's services make every effort to determine which other institution or body could best help him or her. In 2011, the Ombudsman referred 147 complainants to the Commission³⁶, and 591 to other institutions and bodies, including SOLVIT and Your Europe Advice, as well as to specialised ombudsmen or complaint-handling bodies in the Member States.

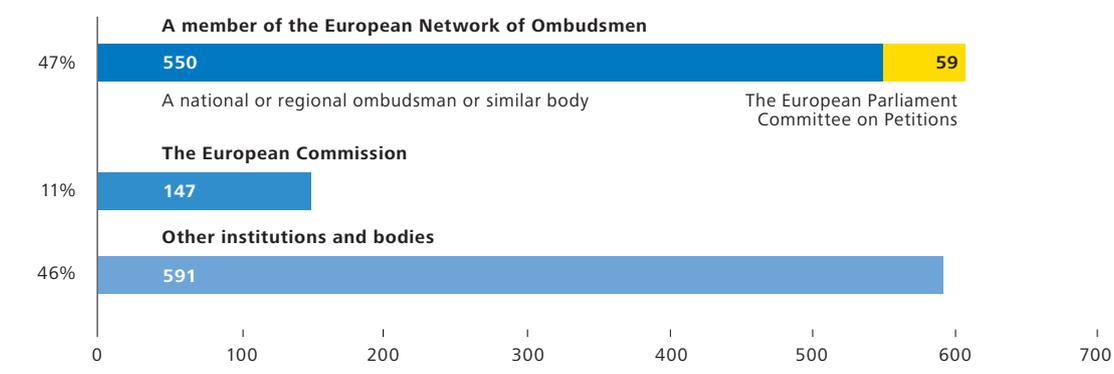
In total, as the examples below show, in over 51% of all cases that the Ombudsman processed in 2011, he either advised the complainant or transferred the case.

³⁵. A complaint is transferred only with the prior consent of the complainant.

³⁶. 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 figures above include 124 complaints registered towards the end of 2010 that were processed in 2011. They do not include 38 complaints registered towards the end of 2011 that were still being processed at the end of the year, to determine what action to take.

Note 2: As the Ombudsman gave the complainant more than one type of advice in some cases, the above percentages total more than 100%.

Complaint transferred to the European Parliament

In case **2304/2011/MMN**, a Spanish citizen participating in an EPSO (European Personnel Selection Office) competition requested that the Commission establish separate selection procedures for applicants with a disability. The Commission forwarded the letter to EPSO, which informed the complainant that, depending on the disability, it made special arrangements during selection tests. EPSO also said that it did not organise separate competitions for applicants with disabilities because the existing legal framework did not allow for it. EPSO advised the complainant to turn to the human resources departments of EU institutions if he wished to obtain the percentage of people with disabilities working for the institutions. Not satisfied with this reply, the complainant turned to the Ombudsman. The latter took the view that the complainant was really requesting a change in the applicable law rather than complaining about maladministration. With the complainant's consent, therefore, the Ombudsman transferred the complaint to the European Parliament to be dealt with as a petition.

In case **2293/2011/KRW**, the complainant, a German citizen, alleged that Regulation 889/2002³⁷ of the European Parliament and of the Council of 13 May 2002, amending Council Regulation (EC) 2027/97, on air carrier liability in the event of accidents, left a regulatory gap concerning claims for damages. He also said that the EU had failed to provide for an appropriate enforcement mechanism concerning Regulation 889/2002, since the national enforcement bodies would not be competent to intervene in issues raised under the Regulation. He claimed that the EU should remedy this regulatory gap. Since the complainant wanted a change in the relevant law, the Ombudsman, with the permission of the complainant, transferred the complaint to the European Parliament, to be dealt with as a petition.

37. OJ 2002 L 140, pp. 2-5.



Complainant advised to contact the European Commission

In February 2011, a citizen took a Spanish translation agency to court for failing to pay him EUR 618. He applied for the implementation of the European small claims procedure for cases where the value of a claim does not exceed EUR 2 000³⁸. In view of the fact that he had not received any reply to his application for the implementation of the procedure, the citizen complained to the Ombudsman that the Spanish court did not comply with the Regulation (case **2123/2011/MF**). Since the complaint was not against an EU institution, and, in addition, questioned the soundness of a court ruling, the Ombudsman advised the complainant to turn to the Commission on the grounds of potential infringement of EU law.

Complainant advised to contact SOLVIT and Your Europe Advice

In case **2239/2011/PMC**, a citizen who intended to study in the United Kingdom complained to the Ombudsman that the United Kingdom Border Agency had refused her an EU registration certificate because she allegedly lacked comprehensive sickness insurance. In her view, her Bulgarian insurance cover and her European Health Insurance Card should have sufficed. The complainant had already addressed the competent national ombudsman (the Parliamentary and Health Service Ombudsman in the United Kingdom) concerning this matter. Because the grievance concerned a cross-border matter, the European Ombudsman suggested that she could also consider contacting SOLVIT and Your Europe Advice.

In the era of the Lisbon Treaty, it is essential that the institutions develop and nurture a culture of service to citizens and of respect for their rights. The preceding thematic analysis seeks to capture the breadth and richness of the Ombudsman's inquiries during 2011. It also presents the various means through which the Ombudsman endeavours 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 may visit the Ombudsman's website for more comprehensive summaries of his decisions, as well as for decisions, draft recommendations, and special reports.

³⁸. Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007; OJ 2007 L 199, pp. 1-22.



Relations with institutions, ombudsmen, and other stakeholders

This Chapter gives an account of the European Ombudsman's relations with the EU institutions, his ombudsman colleagues, and other key stakeholders in 2011. It outlines the meetings and seminars in which the Ombudsman participated, and other activities that he undertook with a view to ensuring that complaints are dealt with effectively, best practice is shared as widely as possible, and that awareness about his 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.

The European Commission

Given that the European Commission accounts for the highest proportion of inquiries that the Ombudsman carries out each year, his services make considerable efforts to liaise systematically with Members and officials of the Commission.

Given that the European Commission accounts for the highest proportion of inquiries that the Ombudsman carries out each year, his services make considerable efforts to liaise systematically with Members and officials of the Commission. On 15 February, Mr Diamandouros exchanged views with the College of Commissioners. During the year, the Ombudsman met with the Commissioner for Financial Programming and Budget, Mr Janusz Lewandowski, as well as with Mr Dominique Ristori, Director-General of the Joint Research Centre (JRC), Mr Hervé Jouanjean, Director-General, Budget, Ms Irène Souka, Director-General, Human Resources and Security, and with Mr Karl Falkenberg, Director-General, Environment.

Furthermore, during the European Commission's Green Week, Mr Diamandouros made a presentation, on 25 May, on the "role of ombudsmen in monitoring our impact on the environment". He also addressed a meeting of the Directors of the JRC on 14 December, where he spoke on the role of the European Ombudsman in promoting a culture of service in the EU

institutions. In addition, the Ombudsman met with Ms Mercedes de Sola, Commission Staff Mediator, Mr Cristian Sebastiani, President of the Central Staff Committee of the Commission, and with Mr Jens Nymand-Christensen, Director in the Commission's Secretariat-General responsible for relations with the European Ombudsman.

During 2011, the European Ombudsman met with the Deputy Head of the Bureau of European Policy Advisers, Mr Margaritis Schinas, and the Director of the European Commission's Office for the Administration and Payment of Individual Entitlements (PMO), Mr Stephen Quest.

In order to follow up on inquiries, the Head of the Ombudsman's Legal Department met, on a monthly basis, with the Commission director responsible for relations with the European Ombudsman. Members of his staff continued to liaise with SOLVIT, the Enterprise Europe Network, and with the Directorate-General for Communication.

The European Parliament

With respect to relations with the European Parliament, the various activities surrounding the Ombudsman's *Annual Report 2010* were, as always, of particular importance for the institution. The Ombudsman presented his Report to Mr Jerzy Buzek, MEP, President of the European Parliament, on 4 May, to Ms Erminia Mazzoni, MEP, Chair of the European Parliament Committee on Petitions, on 5 May, and to the Committee on Petitions on 23 May. Parliament debated the Report in its plenary on 27 October, led by its Rapporteur, Ms Iliana Malinova Iotova, MEP.

1. For brevity, this Report uses the term 'institutions' to refer to all the EU institutions, bodies, offices, and agencies.



The European Ombudsman presented his *Annual Report 2010* to the President of the European Parliament, Mr Jerzy Buzek, MEP, on 4 May and to the Parliament Committee on Petitions on 23 May.



In 2011, Mr Diamandouros made various presentations to the European Parliament. One was to the Legal Affairs Committee and concerned the relationship between the powers of Parliament and data protection, while another, made to the Civil Liberties Committee, focused on public access to EU documents. The Ombudsman also made a presentation on EU administrative law to a seminar in León, Spain, organised by the European Parliament's Legal Affairs Committee and the University of León. An invitation from the European Parliament's Bureau Working Group gave Mr Diamandouros the opportunity to present his thoughts on Codes of Conduct for Members of Parliament and for Lobbyists. The Ombudsman also made a presentation to the Committee on Budgetary Control on whistleblowing and disciplinary proceedings against officials, and another to Parliament's Legal Service on the role of the European Ombudsman in promoting good administration. In addition, he made a presentation to the Directorate-General for Infrastructure and Logistics on good administration in the field of contracts and tenders, and to Parliament's Staff Committee on the European

Ombudsman's strategy and on the handling of complaints from members of staff. Mr Diamandouros also met with the Jurisconsult of the European Parliament, Mr Christian Pennera, and with the Director-General for Infrastructure and Logistics, Mr Constantin Stratigakis.

Other institutions

During 2011, the European Ombudsman met with Mr Herman Van Rompuy, President of the European Council, and with Mr Reijo Kemppinen, Director-General for Press, Communications and Transparency in the Secretariat-General of the Council of Ministers. He also met with Mr Staffan Nilsson, President of the European Economic and Social Committee (EESC), and with Mr Martin Westlake, Secretary-General of the EESC.

In December, Mr Diamandouros visited the European institutions based in Luxembourg and met with Mr Vassilios Skouris, President of the Court of Justice, Mr Marc Jaeger, President of the General Court, Mr Sean Van Raepenbusch, President of the Civil Service Tribunal,

Relations with institutions, ombudsmen, and other stakeholders

Mr Dimitrios Gratsias, Judge of the General Court, Mr Vítor Manuel Da Silva Caldeira, President of the European Court of Auditors (ECA), Mr Ioannis Sarmas, Member of the ECA, Mr Philippe Maystadt, President of the European Investment Bank (EIB), and Mr Alfonso Querejeta, Secretary-General of the EIB. Mr Diamandouros also made a presentation to the staff of the EIB.

In 2011, the Ombudsman met with the European Data Protection Supervisor, Mr Peter Hustinx, the Director-General of the European Anti-Fraud Office, Mr Giovanni Kessler, and the Head of the European Personnel Selection Office, Mr David Bearfield. In addition, he made two presentations to participants in the Erasmus for Public Administration programme, which the European Administrative School organised.

Agencies

Throughout 2011, Mr Diamandouros reached out to the various agencies of the European Union. In June, he made a presentation to the Heads of Agencies network in Brussels on good administration and the generation and maintenance of a culture of service. During the year, the Ombudsman visited or met with the Directors and staff committees of the European Banking Authority, the European Medicines Agency, the European Police College, the European Defence Agency, the European Environment Agency, the European Maritime Safety Agency, and the European Monitoring Centre for Drugs and Drug Addiction. For further information on the Ombudsman's programme of visits to the EU agencies during 2011, which aim to promote good administration and share best practice among the agencies, see the sub-section entitled "Complaints and own-initiative inquiries" in section 1.1 of this Report.



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 cooperates closely with his counterparts in the Member States to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This cooperation takes place for the most part under the aegis of the European Network of Ombudsmen. The Network now comprises over 90 offices in 32 European countries. It includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and other countries in the European Economic Area and/or the Schengen area, as well as the European Ombudsman and the European Parliament Committee on Petitions.

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

The new visual identity for the Network, which was launched in September 2010, was progressively implemented throughout 2011, in publications, websites, events, and other media. Many offices in the Network incorporated the Network logo into their respective websites and some redesigned their stationery to include the logo. As a result, the visibility of the Network increased significantly during 2011.

One of the main purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. In 2011, in 609 cases, the European Ombudsman transferred the

complaint to a member of the Network or advised the complainant to contact a member of the Network. Further details of this cooperation are provided in Chapter 1.

Also of direct relevance to complaint-handling is the special procedure, 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 2011, the Ombudsman received a record number of 11 queries. This compares to three queries in 2010. National ombudsmen submitted five of the queries and regional ombudsmen submitted the other six. The most common issues raised concerned free movement, with queries from the Ombudsmen of Denmark, Ireland, Vorarlberg (Austria), Emilia-Romagna (Italy), Tuscany (Italy), and the Canary Islands (Spain), all concerning this important EU citizens' right. The query from the Ombudsman of Vorarlberg concerned differentiated

During 2011, the Ombudsman received a record number of 11 queries.

tuition fees for residents and non-residents at communal music schools. For his part, the Ombudsman of Emilia-Romagna contacted the European Ombudsman after the Italian healthcare authorities refused to reimburse medical expenses that a pregnant patient had incurred in Germany.

Queries from the Ombudsmen of Denmark and Piedmont (Italy) concerned environmental matters, while agricultural issues were the subject of queries that the Ombudsman of Northern Ireland (United Kingdom) and Andalucía (Spain) submitted. The latter query concerned the measures taken following the E.coli

Relations with institutions, ombudsmen, and other stakeholders



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The European Network of Ombudsmen held its Eighth National Seminar in Copenhagen, from 20 to 22 October 2011. After 25 years as Danish National Ombudsman, Mr Gammeltoft-Hansen retired on 31 January 2012. The Seminar was thus a perfect opportunity for the European community of ombudsmen to pay tribute to the world's longest-serving ombudsman.

bacteria outbreak in Germany. Finally, the Ombudsman of France submitted a query concerning the EU programme of food distribution to deprived persons.

With an eye to helping his national or regional ombudsman colleagues resolve the issues raised in all these cases, the European Ombudsman either directly replied to the query, or asked the European Commission to respond.

The Network serves as a useful mechanism for exchanging information on EU law and best practice through seminars, a biannual newsletter, and an electronic discussion and document-sharing forum, which incorporates an electronic daily news service. In October 2011, a new Extranet was launched for the Network, replacing the forum that had been in operation since 2001. The Extranet, which includes all the features of its predecessor and several new ones, has been designed to be as interactive and user-friendly as possible.

Among the issues discussed via the forum and the Extranet in 2011 were the handling of complaints concerning the award and implementation of

contracts, the Convention on the Rights of Persons with Disabilities, regulations regarding blood donation, the inclusion of professional bodies in the Ombudsman's mandate, the role of ombudsmen in protecting and promoting human and fundamental rights, access to voting for visually impaired persons, and how public bodies handle citizens' requests for financial compensation.

The Network holds seminars for national and regional ombudsmen in alternate years, which the European Ombudsman and a national or regional counterpart jointly organise. The European Ombudsman and the Ombudsman of Denmark, Mr Hans Gammeltoft-Hansen, jointly organised the Eighth National Seminar of the European Network of Ombudsmen. Entitled "Law, politics, and ombudsmen in the Lisbon era", it took place in Copenhagen from 20 to 22 October 2011. Ombudsmen offices from 30 countries were represented at the Seminar, including national ombudsmen from almost all EU Member States, and regional representatives from the seven countries in the Network where such bodies exist.



The European Commission increasingly recognises the importance of networks in bridging the gap between Europe and its citizens. The Commission invited the European Network of Ombudsmen to have a stand at its Single Market Fair, which took place in Krakow, Poland, in October. This was the first invitation of its kind.



After 25 years as National Ombudsman, Mr Gammeltoft-Hansen retired on 31 January 2012. The Seminar provided a perfect opportunity for the European community of ombudsmen to pay tribute to the longest-serving ombudsman in the world.

The Seminar discussed a variety of topics focusing on the role of ombudsmen between politics and law, and on bridging the gap between the EU and its citizens. For the first time, the Presidency of the European Union was represented at a Network Seminar. Mr Maciej Szpunar, Under-Secretary of State for Legal and Treaty Affairs of Poland, delivered a keynote speech on the second of these themes. The President of the Supreme Administrative Court of Sweden, Mr Mats Melin, addressed the first topic.

The Network members took several important decisions at the Seminar. These included making the Network Newsletter available free of charge to the public through the European Ombudsman's website and the EU Bookshop; providing information through the website about queries submitted to the European Ombudsman; and finding ways, through

the Network, better to inform citizens throughout Europe of their rights. In addition, the European Commission's Director-General for Environment, Mr Karl Falkenberg, attended the Seminar to discuss how to improve collaboration between the Commission and the Member States on environmental issues.

The European Commission increasingly recognises the importance of networks in bridging the gap between Europe and its citizens. In October 2011, the Commission, together with the Polish Presidency, organised a Single Market Fair in Krakow, Poland, to inform citizens of how to make use of their EU rights. The Commission invited the European Network of Ombudsmen to have a stand at the Fair. This was the first invitation of its kind. Thanks to excellent cooperation between the Polish and the European Ombudsman's offices, colleagues from both institutions staffed a stand provided by the organisers and spoke to over 5 000 citizens during three days, providing them with information on a variety of problem-solving mechanisms available at the national and European levels.

Relations with institutions, ombudsmen, and other stakeholders

The European Ombudsman used the occasion of his visits to the EU Member States in 2011 to meet with his ombudsman colleagues. Mr Diamandouros met with the Greek Ombudsman (March and November), the United Kingdom Parliamentary and Health Service Ombudsman (May), the Ombudsman of Bulgaria (July), the Ombudsman of Portugal (November). He also met with the Ombudsman of Catalonia, Spain, in Barcelona (April), the Belgian Regional Ombudsmen in Brussels (March), and the Ombudsman of Bolzano (South Tyrol), Italy, in Strasbourg (March).

In 2011, the Ombudsman held several meetings with high-ranking officials from Turkey to support the Turkish government's ongoing efforts to establish a national ombudsman in that country. In this context, he met with the Minister for EU Affairs and Chief Negotiator for Turkey's accession to the EU in January in Brussels and in March in Istanbul. He also met in Strasbourg with the acting Minister of Justice in May, and with the Minister of Justice in December. A delegation from the Turkish Ministry of Justice visited him in Strasbourg in February, and he participated in an international ombudsman symposium at Doğuş University, held in Istanbul in March.

During the year, Mr Diamandouros also met with the President of Mexico's National Commission on Human Rights in Strasbourg (May), the United Nations Ombudsman in New York (June), the Ontario Ombudsman and Deputy Ombudsman in Toronto (October), and the Quebec Ombudsperson in Montreal (October).

Finally, staff members of the European Ombudsman's office made presentations at two training sessions that took place in Rabat in May and in December. The Association des Ombudsmans et Médiateurs de la Francophonie (AOMF) and the Moroccan Ombudsman Institution jointly organised the first session. The second event was organised by the Moroccan Ombudsman Institution in collaboration with the Association of Mediterranean Ombudsmen. The sessions were respectively entitled "Inquiry and investigation methods in case-handling" and "Powers of the mediator and ombudsman in the defence of human rights".



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.

More than a year after the Treaty of Lisbon came into force, the Ombudsman was keen to encourage debate on its successes and the challenges that lie ahead.

Indeed, the dialogue with stakeholders is a key priority in the Ombudsman's strategy for the 2009-2014 mandate. In 2011, the Ombudsman organised a high-level seminar entitled "Is the Lisbon Treaty delivering for citizens?". More than a year after the Treaty of Lisbon came into force, the Ombudsman was keen to encourage debate on its successes and the challenges that lie ahead. This event, which constituted the Ombudsman's communication highlight of the year, took place on 18 March and attracted more than 200 stakeholder representatives. It was the third annual March event which the Ombudsman has organised in

Brussels for citizens, associations, NGOs, companies, civil society organisations, journalists, regional and national representations, and other interested persons. The President of the European Council, Mr Herman Van Rompuy, was the keynote speaker at the seminar. The discussion panel included the European Ombudsman, Mr P. Nikiforos Diamandouros, Ms Viviane Reding, Vice-President of the European Commission, Ms Diana Wallis, Vice-President of the European Parliament, and the Head of the European Policy Centre, Mr Hans

Martens. Ms Ann Cahill, President of the International Press Association, chaired the event. The event was webstreamed live and several European Parliament, European Commission, Europe Direct, and other offices across the EU helped to publicise the link.

On 28 September – the International Right to Know Day – the Ombudsman hosted another seminar in Brussels. This event sought to explore various dimensions of the right of access to information, by focusing on best practices in Europe and beyond. It discussed lessons concerning the right to know that the EU could learn

The European Ombudsman's communication highlight of 2011 was a seminar entitled "Is the Lisbon Treaty delivering for citizens?". It took place on 18 March and brought together over 200 participants. This was the third annual March event which the European Ombudsman has organised in Brussels for citizens, associations, NGOs, companies, civil society organisations, journalists, regional and national representations, and other interested persons. The President of the European Council, Mr Herman Van Rompuy, pictured here with Mr P. Nikiforos Diamandouros, was the keynote speaker at the seminar.



Relations with institutions, ombudsmen, and other stakeholders



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During his visit to Portugal in November, the European Ombudsman met with the President of the Republic, Mr Aníbal António Cavaco Silva.

from others in Europe and beyond, and practices in other countries which should serve as models for its institutions in the future. The discussion panel included the European Ombudsman, Mr P. Nikiforos Diamandouros, Ms Heidi Hautala, Finnish Minister for International Development and former MEP, Mr Thomas J. White, Chargé d’Affaires of the Mission of the United States of America to the EU, and Ms Helen Darbishire, Director of Access Info Europe. Mr Geoff Meade, Europe Editor of the Press Association, chaired the discussions. Over 100 representatives of associations, NGOs, companies, civil society organisations, journalists, regional and national representations, and representatives of other EU institutions attended the event. The International Right to Know Day was established in 2003 by advocates of access to information from around the world. Its aim is to raise awareness of every individual’s right of access to information.

In addition to meeting with high-level policy-makers in the Member States, the Ombudsman used the opportunities provided by his information visits to reach out to target groups and to the media. As well as meeting with the Prime

Minister, Mr Boyko Borissov, and with other high-ranking state officials, while in Bulgaria from 18 to 24 July, the Ombudsman also met with NGOs, university students, and former interns of the Ombudsman of Bulgaria. On a similar visit to Portugal from 19 to 22 November, Mr Diamandouros met with the President of the Republic, Mr Aníbal António Cavaco Silva, with the Prime Minister, Mr Pedro Passos Coelho, and with other high-level officials. The visit to Portugal also included meetings with civil society representatives.

Just before the 8th National Seminar of the European Network of Ombudsmen, which took place in Copenhagen from 20 to 22 October, the Ombudsman took advantage of his presence in the city to meet with Danish stakeholders. The European Parliament Information Office and the Commission Representation in Copenhagen helped organise these meetings. The Ombudsman held two press briefings with journalists and academics specialising in the field of media. He also gave a lecture to some 70 students, professors, civil servants, and practising lawyers at Copenhagen University, on the possible adoption



of an administrative law for the EU administration. The Ombudsman finally met with representatives of civil society organisations interested in learning about the services of his office.

In order further to promote the institution's activities, the European Ombudsman's Secretary-General, Mr Ian Harden, represented the office at a roundtable that took place in Geneva, alongside the 18th session of the UN Human Rights Council, held on 26 September. The roundtable was entitled "Actions taken by the various mediation bodies and perspectives, in view of the implementation of the United Nation's resolution on the role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights". The UN High Commissioner for Human Rights, Ms Navanethem Pillay, attended the event, which brought together around 200 participants, including mediators, ombudsmen, ambassadors accredited to the UN, NGO representatives, and UN organisations.

All in all, during 2011, the Ombudsman presented his work at approximately 40 events and bilateral meetings with major stakeholders, such as 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 took place in Brussels, Strasbourg, and in the Member States.

In the course of 2011, members of the European Ombudsman's staff made approximately 85 presentations to 2 478 citizens from throughout the EU and beyond. Germany alone supplied around 55% of the visitors, followed by Austria, France, Italy, and the Netherlands. Twenty percent of the visitors came from EU institutions, while others came from as far afield as the United States of America, China, and Russia. 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 held a range of thematic events in 2011 to draw attention to his work in particular areas. Among these was a seminar that took place on 28 September, on the occasion of the International Right to Know Day. It sought to explore various dimensions of the right of access to information by focusing on best practices in Europe and beyond. The seminar brought together over 100 participants. Its discussion panel included Ms Heidi Hautala, Finnish Minister for International Development and former MEP, Mr Thomas J. White, Chargé d'Affaires to the EU, and Ms Helen Darbishire, Executive Director of Access Info Europe.



Relations with institutions, ombudsmen, and other stakeholders



The European Ombudsman gave over 30 interviews to journalists throughout 2011, including to France 24 television in November.

During the year, the Ombudsman held seven press conferences and briefings in Brussels, Strasbourg, and several Member States. His main media activities included the press conference on his *Annual Report 2010*, which took place in Brussels in May. Mr Diamandouros also gave more than 30 interviews to journalists from the print, broadcast, and electronic media. The Ombudsman's office issued 20 press releases during the year, covering, inter alia, late payment; provision of misleading information to air passengers; food contamination levels after the Fukushima accident; the special Eurobarometer 75.1, entitled *The European Ombudsman and Citizens' Rights*, which focused on citizens' rights and the performance of the EU administration; multilingualism; conflicts of interest when staff join or leave an EU institution; and pro-active transparency. Over 1 500 articles covering the work of the European Ombudsman appeared in print and online media.

Of particular importance for the work of the European Ombudsman were the results of the special Eurobarometer 75.1, which the European Parliament and the Ombudsman commissioned in 2011. TNS Opinion & Social, which conducted the survey, interviewed 27 000 citizens in the

27 Member States. The results revealed that most people considered the right to move and to reside freely in the EU and the right to good administration at the EU level as the most important of citizens' rights. The Ombudsman is encouraged to see that citizens consider the right to good administration and the right to lodge complaints with the European Ombudsman as very important. He will use the results of the survey to enhance the quality of his own services, encourage the EU administration to improve its performance, and will invite members of the European Network of Ombudsmen to spread information about citizens' rights in the Member States.

The Ombudsman's 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. Several new sections were created, among others, for opened cases, visits to agencies, and for statistics and surveys, featuring the special Eurobarometer 75.1: *The European*

Of particular importance for the work of the European Ombudsman were the results of the special Eurobarometer 75.1, which the European Parliament and the Ombudsman commissioned in 2011.



Ombudsman and Citizens' Rights. A section was also created for the new publication that the European Ombudsman launched in October 2011 entitled *Problems with the EU? Who can help you?*

| From 1 January to 31 December 2011, the Ombudsman's website received over 295 000 unique visitors, who, altogether, viewed over 6.2 million pages.

From 1 January to 31 December 2011, the Ombudsman's website received over 295 000 unique visitors, who, altogether, viewed over 6.2 million pages. The greatest number of visitors came from Luxembourg, followed by the United Kingdom, Spain, Germany, Italy, and France. The most popular feature of the Ombudsman's website was again the interactive guide. This important tool aims to help individuals identify the most appropriate body to turn to with their complaint. In 2011, more than 18 000 people sought and received advice from the Ombudsman through the interactive guide.

Resources

3

This Chapter gives an overview of the resources that were at the disposal of the Ombudsman institution in 2011. 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, while the final part concerns the use of the institution's resources.

Resources

3.1 Personnel

The institution has a highly qualified, multilingual staff. This ensures that it can properly carry out the tasks assigned to it by the Treaty on the Functioning of the European Union, that is, to deal with complaints about maladministration in the 23 official EU languages, and to raise awareness about the Ombudsman's work. 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 as set out in its mission statement.

Staff retreat and staff meetings

The European Ombudsman's staff retreats form an integral part of the institution's strategic planning, and serve as a forum providing inspiration and useful guidance for policy-making. They form part of 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. Their objective is to help strengthen and deepen the staff's reflective capacity better to understand and internalise the institution's values and mission and to contribute towards their effective delivery.

The 2011 staff retreat took place from 4 to 6 April in Bad Herrenalb, Germany. For the first time, the Ombudsman invited staff from other offices in the European Network of Ombudsmen to the retreat. These guests shared their experience and knowledge with the European Ombudsman's staff members, with an eye to identifying best practices in policy areas of potential interest to the

Ombudsman's operations. Participants in the retreat reflected on these practices, with a view to determining which among them would best be able to help the Ombudsman improve the performance of his office.

The Ombudsman also convenes regular staff meetings to ensure that information flows smoothly among the members of his staff. In addition, staff members participate in both external and internal training sessions designed to further their professional development. On 31 January, Judge Koen Lenaerts from the Court of Justice of the European Union made a presentation to the Ombudsman's Legal Officers on the Charter of Fundamental Rights, and, in particular, Article 41 which provides for a legally binding right to good administration. He also addressed the relationship in this context between the Courts in Luxembourg and the European Ombudsman. On 18 February, Mr Freddy Dezeure, Head of the External Audit Unit of the European Commission's DG INFSO (Information Society and Media) and Ms Ingrid Mariën-Dusak, Deputy-Head of Unit for Legal Aspects of the same Directorate-General, gave a presentation about the audit activities of DG INFSO, in particular concerning risk-based auditing. They also talked about successful new methods they have developed for identifying and auditing beneficiaries that exhibit a higher risk of fraud. In terms of internal training, staff participated in, among others, sessions on public speaking, access to documents following the entry into force of the Lisbon Treaty, and plain English.

For the first time, the Ombudsman invited staff from other offices in the European Network of Ombudsmen to the retreat.



The European Ombudsman convenes regular staff meetings with a view to ensuring a smooth flow of information among staff, and to enhancing 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.

The Ombudsman and his staff

In 2011, the European Ombudsman's establishment plan contained 64 posts. At the end of the year, the structure of the Ombudsman's office 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

Directors

Mr Gerhard Grill
Mr João Sant'Anna

Legal Department

Legal Unit A
Acting Head of Unit:
Mr Gerhard Grill

Legal Unit B
Head of Unit:
Mr Peter Bonnor

Legal Unit C
Head of Unit:
Ms Marta Hirsch-Ziemińska

Legal Unit D
Head of Unit:
Mr Fergal Ó Regan

Resources

Registry

Head of Unit:
Mr Peter Bonnor

Administration and Finance Department

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

Acting Head of Unit:
Mr Ben Hagard

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 the 23 official EU 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 2011

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.

In 2011, budgeted appropriations amounted to EUR 9 427 395.

Interinstitutional cooperation

To ensure the best possible use of resources, and to avoid unnecessary duplication of staff, the Ombudsman cooperates with other EU institutions, where possible. While services thus provided are, of course, invoiced to the European Ombudsman, this cooperation has allowed for considerable efficiency savings to the EU budget. In particular, the Ombudsman cooperates 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;

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.



- the Paymaster's Office (PMO) of the European Union as regards pensions and other aspects relating to the termination of services of officials and agents;
- the Translation Centre for the Bodies of the EU, which provides many of the translations required by the Ombudsman in his work for citizens.

Budgetary control

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

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

3.3 Use of resources

Every year, the Ombudsman adopts an Annual Management Plan (AMP), which identifies concrete actions that his office needs to take in order to implement the institution's priorities. The AMP contains key performance indicators (KPIs) for measuring progress in the achievement of these objectives. The Ombudsman also adopts an Annual Activity Report (AAR) on a yearly basis. The AAR reports on the results of operations with regard to the objectives set out in the AMP, the risks associated with the operations, the use made of the resources at the Ombudsman's disposal, and the efficiency and effectiveness of the institution's internal control system.

In early 2012, the Ombudsman will publish on his website the AMP, the AAR, and the yearly scoreboard on the results achieved in relation to the KPIs for 2011.



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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.

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