ISSN 1680-3809

THE EUROPEAN OMBUDSMAN

annual report 2006

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The full text of the report is published on the internet at: http://www.ombudsman.europa.eu

Printed in Belgium
PRINTED ON WHITE CHLORINE-FREE PAPER

THE EUROPEAN OMBUDSMAN

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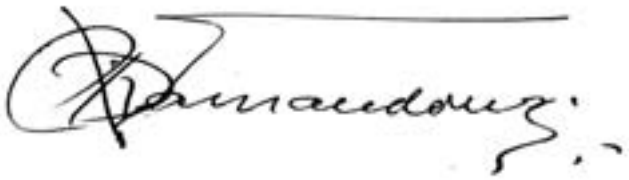
Prof. Dr. Hans-Gert PÖTTERING MEP
President
European Parliament
Rue Wiertz
1047 Brussels
BELGIQUE

Strasbourg, 12 March 2007

Mr President,

In accordance with Article 195(1) of the Treaty establishing the European Community and Article 3(8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my Report for the year 2006.

Yours sincerely,



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Introduction

INTRODUCTION

At the start of each year, I sit down to finalise the text of the European Ombudsman's most important publication — the Annual Report. The necessary uninterrupted focus required for the finalisation of such a manuscript is of inestimable value, allowing me not only to take stock of the achievements of the previous twelve months, but also to identify areas for improvement. My intention in the coming pages is to relay the results of that reflection to you.

The Ombudsman's primary role — Helping complainants

The number of complaints received by the European Ombudsman in 2006 remained close to the record high levels reached in 2005 and 2004, thus indicating that complaints to the Ombudsman have now stabilised at the previously unprecedented rate of 320 per month. In the vast majority of cases received in 2006, I was able to help the complainant by opening an inquiry, transferring the case to a competent body, or advising on where to turn for a prompt and effective solution to the problem. The Executive Summary of the Report gives an overview of the cases handled in 2006, while Chapters 2 and 3 of the Report itself analyse and present the cases in greater detail.

Many positive results — Best practice cases

The case summaries included in this Report contain many examples of how the EU institutions and bodies react positively to problems that I bring to their attention. For the first time in this Report, I have identified six star cases which constitute examples of best practice that I wish to highlight. These include a case in which the European Commission agreed to review its interpretation of the Data Protection Directive to take account of a citizen's concerns, a constructive response from the European Investment Bank to an access to documents case, and the decision of the European Parliament to abolish age limits in its traineeship programme. My intention in highlighting these cases is to present models of good administration for all EU institutions and bodies to take inspiration from and to measure their own practices against. More information on these cases can be found in the Executive Summary that follows. The six star cases are also indexed in Annex D of the full Report.

Some missed opportunities

Since I took up the position of European Ombudsman on 1 April 2003, I have been keen to promote a culture of service in the EU administration. Citizens deserve no less. The EU Charter of Fundamental Rights includes the right to good administration and we are duty-bound to respect this promise made to European citizens.

As I have often said, the way in which the public administration reacts to complaints is a key measure of how citizen-focused it is. While progress has been made in many areas, the year 2006 regrettably saw a rise in the proportion of cases that I closed with a critical remark and an equally significant fall in the number of cases in which a friendly solution was reached. The lower rate of acceptance and implementation of the Ombudsman's draft recommendations by the institutions is similarly regrettable.

This development should be a cause for concern for everyone who wants better relations between the European Union and its citizens. Complaints offer an opportunity to put things right and to demonstrate that the institution or body concerned is serious about respecting the citizen's fundamental right to good administration. I am not sure that the citizen can easily reconcile the

statements often made by the institutions that they want to get "closer to the citizen", with the fact that the very same institutions frequently fail to take up the opportunities offered by the Ombudsman to improve relations.

Part of the problem seems to be that the idea that the principles of good administration require more of institutions and of individual civil servants than merely avoiding unlawful behaviour is not yet fully understood and sufficiently internalised by some within the administration. I will continue to emphasise this key point in 2007. Also, with a view to ensuring that my inquiries have a concrete and lasting impact, I intend to carry out and publish studies in 2007 of the follow-up given to all further remarks and critical remarks made in 2006. This should provide further encouragement to the institutions concerned to improve their practices for the benefit of citizens.

Working with the institutions to promote a culture of service

Around 70% of the Ombudsman's inquiries concern the European Commission. It is, therefore, vital that the Commission take a leading role in promoting a service culture. With an eye to attaining this goal, I have embarked upon a cycle of bilateral meetings with each of the European Commissioners designed to underline the key principles of good administration that must be adhered to at every level in the Commission and to focus on areas where my inquiries into complaints have given me cause for concern. The openness and engagement of the 11 Commissioners I have met thus far clearly demonstrate that they appreciate the value of responding constructively to complaints. My meetings with the other EU institutions and bodies were similarly encouraging, and details of these are contained in Chapter 4 of this Report.

Promoting subsidiarity in remedies

Given the significant proportion of complaints that I receive each year which fall outside my mandate, I continued my efforts, throughout 2006, to promote subsidiarity in remedies. Many people who complain to me appear not to be aware of non-judicial remedies available to them within the Member States, or that national and regional ombudsmen may be competent to deal with their complaints, including in cases where EU law is involved. The European Network of Ombudsmen is a key resource in helping national and regional ombudsmen deal with cases involving EU law as effectively as possible. In 2006, over 75% of the complaints I received fell outside my mandate, mainly because they concerned national or regional administrations in the Member States. In the vast majority of such cases, another member of the European Network of Ombudsmen was competent to deal with the matter complained about. In all such cases and with the prior permission of the complainant, I either transferred the complaint directly to the appropriate ombudsman, or advised the complainant on where to turn. While such transfers and advice are undoubtedly of great help to the citizen, it would clearly be preferable for citizens to contact the appropriate ombudsman the first time around.

A better targeted communications strategy

We are therefore working hard, through the European Network of Ombudsmen, to direct citizens to the right ombudsman through the provision of clear and understandable information about the multiple means of redress available to them at the European, national and regional levels. This information is being provided to citizens through links to national and regional ombudsmen on my website, which were used over 44 000 times last year, by information about the Network contained in my publications, and by joint presentations with the relevant national or regional ombudsman during my information visits to Member States.

In addition to the activities being undertaken through the Network, we have been intensifying our communications efforts more generally. During the course of the year, we developed three key strategies for reaching out to the public — a comprehensive media strategy, a plan for radically overhauling the Ombudsman's Internet site, and a carefully-researched policy for better targeting and reaching out to potential complainants. This last strategy is vital if the current proportion of complaints outside my mandate is to be reduced. The intention behind all three actions is to ensure

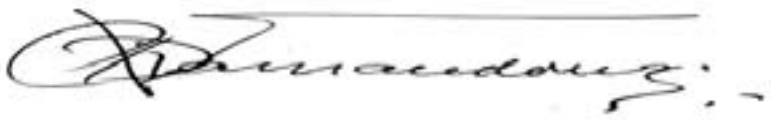
that all those who might have an admissible complaint to make to the European Ombudsman are aware of how to do so, and that those with a complaint falling outside my mandate know whom to turn to for help. Equally, these communications activities should help raise awareness among the general public about the role of the European Ombudsman in holding the EU administration to account.

Staff retreat

What is the meaning of good administration from both a conceptual and a procedural point of view, how to further enhance and promote a service culture within the Ombudsman's office, and how to reach out to citizens at large and to target particular, more specialised, audiences were some of the topics discussed in detail during the European Ombudsman's first-ever staff retreat that took place in October 2006. A retreat is an exercise in self-reflection, involving the whole staff of an institution, which aims at developing and strengthening understanding of the institution's values and mission, and at promoting their effective delivery. Every member of staff was encouraged to take an active part in the deliberations, and to express his/her views on the various themes for discussion. There was broad consensus after the retreat that it had clearly proved to be a very productive and worthwhile experience that deserved repeating.

All of the activities I have touched upon in this introduction are included in detail in the Annual Report, while a shorter account of the Ombudsman's work is provided in the Executive Summary and Statistics, which is also published as a separate publication. I hope that both publications will provide you with a full account of the work of the European Ombudsman in 2006 and encourage you to learn more about the institution I have the honour of leading. For my part, I look forward to another challenging year in 2007, with the dual aim of working with the institutions to promote good administration and refocusing my communications efforts so that all those who might need to make use of the European Ombudsman's services are properly and adequately informed of how to do so.

Strasbourg, 22 February 2007



P. Nikiforos DIAMANDOUROS

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Executive Summary

1 EXECUTIVE SUMMARY

The twelfth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2006. It is the fourth Annual Report to be presented by Mr P. Nikiforos DIAMANDOUROS, who began work as European Ombudsman on 1 April 2003.

STRUCTURE OF THE REPORT

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

Chapter 2 describes the Ombudsman's procedures for handling complaints and conducting inquiries. It gives an overview of the complaints dealt with during the year, including a thematic analysis of the results of cases closed after an inquiry. This analysis covers the most significant findings of law and fact contained in the Ombudsman's decisions in 2006.

Chapter 3 consists of a selection of summaries of the Ombudsman's decisions for 2006, covering the range of subjects and institutions involved in complaints and own-initiative inquiries. The summaries are organised first by the type of finding or outcome and then by the institution or body concerned. Summaries of decisions following own-initiative inquiries and examples of queries submitted by national and regional ombudsmen are presented at the end of the chapter.

Chapter 4 concerns relations with other institutions and bodies of the European Union. It begins by outlining the value of the Ombudsman's constructive working relations with the institutions and bodies, and goes on to list the various meetings and events that took place in this regard in 2006.

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

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

Annex A contains statistics on the work of the European Ombudsman in 2006. Annexes B and C provide details, respectively, of the Ombudsman's budget and personnel. Annex D indexes the decisions contained in Chapter 3 by case number, by subject matter, and by the type of maladministration alleged. It also lists the star cases and all cases closed with a critical remark in 2006.

SYNOPSIS

The mission of the European Ombudsman

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

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

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

Complaints and inquiries in 2006

During 2006, the Ombudsman received 3 830 complaints. This constitutes a slight decrease (2%) by comparison to 2005[1] but also confirms a stabilisation of complaints at the unprecedented high level attained in 2004. A total of 57% of all complaints received by the Ombudsman in 2006 were sent electronically, either by e-mail or using the complaint form on the Ombudsman's website. Complaints were sent directly by individual citizens in 3 619 cases, while 211 came from associations or companies.

In almost 70% of cases, the Ombudsman was able to help the complainant by opening an inquiry into the case, transferring it to a competent body, or giving advice on where to turn for a prompt and effective solution to the problem.

A total of 258 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began nine inquiries on his own initiative. He dealt with a total of 582 inquiries in 2006, 315 of which were carried over from 2005.

As in previous years, most of the inquiries, that is 387 or 66% of the total, concerned the European Commission. Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 74 inquiries (13% of the total) concerning the European Personnel Selection Office (EPSO), 49 (8%) concerning the European Parliament and 11 (2%) concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (in 25% of cases), unfairness or abuse of power (19%), unsatisfactory procedures (12%), avoidable delay (9%), discrimination (9%), negligence (8%), legal error (5%), and failure to ensure fulfilment of obligations, that is failure by the European Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (4%).

A total of 3 540 individual requests for information were received by e-mail, compared to around 3 200 in both 2005 and 2004. All received individual replies from an appropriate member of the Ombudsman's staff.

The results of the Ombudsman's inquiries

In 2006, the Ombudsman closed 250 inquiries, 247 of which were linked to complaints and three constituted own-initiatives. An overview of the findings can be found below.

No maladministration

In 95 cases, the Ombudsman's inquiry revealed no maladministration. This is not necessarily a negative outcome for the complainant, who at least receives the benefit of a full explanation from the institution or body concerned of what it has done, as well as the Ombudsman's view of the case. Among the examples of cases in which no maladministration was found in 2006 are the following:

1 It should be noted that, in 2006, 281 complaints were received on the same subject matter, while in 2005, 335 complaints concerned the same subject matter.

- The Ombudsman received a complaint concerning the European Investment Bank's (EIB) handling of requests for information about its possible financing of a project in the Czech Republic. In its initial reaction to the requests for information, the EIB had observed, in general terms, that its refusal to give access complied with its policy and rules in force at the time. During the course of the Ombudsman's inquiry, it proceeded to provide a more specific explanation, referring to the public interest as regards international relations. The Ombudsman concluded that the EIB had not breached its own rules on access to information and closed the case with a finding of no maladministration. For future purposes, however, he encouraged the EIB to complement an eventual refusal to provide information with an adequate explanation of the reasons for doing so, addressed to the person requesting the information before the problem reaches the stage of becoming a complaint to the Ombudsman. (3501/2004/PB)

- A participant in an open competition organised by the European Personnel Selection Office (EPSO) complained to the Ombudsman that the competition had not been sufficiently transparent and well organised, and that the time-limits for registration for the selection tests had not been respected. Following his inquiry, the Ombudsman found that EPSO had provided the candidates, on a regular basis and in compliance with the call for expression of interest, with information concerning the successive stages of the selection procedure. He concluded that the information provided by EPSO had been clear and adequate and there was no instance of maladministration. (472/2006/DK)

- A Swedish translation bureau complained to the Ombudsman about an invitation to submit a tender issued by the Court of Justice. The invitation contained a requirement not mentioned in the original contract notice, which the bureau could not fulfil. The Ombudsman found that, according to the relevant rules, it was sufficient for certain requirements to be specified only in the invitation to tender and not in the contract notice as well. He concluded that the Court had not, as the complainant alleged, changed the conditions during the procedure, and therefore found no maladministration. (2523/2005/TN)

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

- The Ombudsman found no maladministration with regard to Parliament's decision to reject the complainant's bid following a call for tenders. However, he drew Parliament's attention to a statement it had made with regard to its discretion in call for tender procedures. The Ombudsman pointed out that the statement did not seem to be consonant with the call for tenders in this case, or with the principles of good administration concerning the exercise of discretionary powers. (1315/2005/BB)

- The Ombudsman suggested to the European Personnel Selection Office (EPSO) that, whenever the Appointing Authority expects its response to an appeal, made under Article 90(2) of the Staff Regulations, to be sent after the expiry of the four-month deadline foreseen, it should send a holding reply. This followed an inquiry into a complaint from a candidate who had not succeeded in an open competition. EPSO expressed its regret for the delay in this particular case. The Ombudsman profited from the opportunity provided by this complaint to clarify that he is authorised to examine the legality of a Selection Board's decision. EPSO had contested the Ombudsman's power to do so in this case. (1217/2004/OV)

Cases settled by the institution and friendly solutions

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

During 2006, 64 cases were settled by the institution or body itself, after a complaint to the Ombudsman. Among them were the following:

- The Commission settled a late payment case concerning an exchange programme for pupils between Berlin, Germany, and Halton, United Kingdom, after a local authority in Berlin lodged a complaint with the Ombudsman. The Commission also announced that it had taken steps to improve its administration in the area of town twinning. The Ombudsman welcomed this response but added that it would be appropriate also to pay interest in such cases. (3172/2005/WP)

- The Commission agreed to pay an outstanding salary amount to an official after the Ombudsman investigated the case. The official had fallen ill soon after taking up her duties, and was finally granted a disability pension. The Commission refused to pay her for an extended period, arguing that she had not provided any evidence to indicate that her absence was due to medical reasons. As a result of the Ombudsman's inquiry, the Commission agreed to pay the outstanding salary, plus the interest claimed by the complainant. (106/2005/TN)

- The Committee of the Regions reimbursed travel expenses to a candidate for a job interview and agreed to pay interest, after the Ombudsman looked into the case. In response to the complainant's claim that its reimbursement procedure should be improved, the Committee submitted that the delay had been due to exceptional circumstances and that its procedures did not require revision. In a further remark, the Ombudsman suggested that the Committee's administrative standards would be further improved if it were systematically to follow-up on payment files such as the one at hand. This could be done by contacting applicants if certain necessary documents were missing and, in case of delays, by keeping applicants informed about the delays and their reasons. (800/2006/WP)

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

During 2006, 28 friendly solutions were proposed. Three cases, including two cases where the proposal had been made in 2005, were closed in the course of the year after a friendly solution had been achieved. At the end of 2006, 27 proposals for friendly solutions were still under consideration. Among the friendly solutions achieved in 2006 were the following:

- The European Investment Bank (EIB) gave partial public access to an audit report, after a complaint was made to the Ombudsman. In addition, it agreed to give the relevant company private access to sections of the report that specifically concerned the group to which the company belonged. The report concerned an EU-funded project in Africa in which the group had participated. The EIB had initially refused access to the report. The Ombudsman welcomed the constructive approach of the EIB as a model for future access to document cases. (1776/2005/GG)

- Following a complaint by a German citizen, the Commission agreed to review its interpretation of the European Data Protection Directive[2]. According to the complainant, the public authorities of the State of Hamburg had unlawfully handed over personal data to enterprises, in knowledge of the fact that the latter would use the data for direct marketing purposes. The Commission had initially stated that the Data Protection Directive did not provide any protection against such an eventuality. After the Ombudsman's intervention, it agreed to review its assessment. (2467/2004/PB)

- After the Ombudsman intervened in the case, the European Aviation Safety Agency (EASA) agreed to cancel the scheduled recovery of allowances paid to the complainant. The Ombudsman

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

found that EASA had provided the complainant with incomplete information that was liable to mislead him, and proposed as a friendly solution that EASA consider cancelling the recovery of at least part of the allowances. EASA maintained its opinion that no maladministration had taken place, but, "having regard to the unique nature of this case and having the highest regard towards the opinion of the Ombudsman", it cancelled the recovery in full. (1729/2005/(PB)JF)

Critical remarks, draft recommendations and special reports

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 or body concerned or makes a draft recommendation.

A critical remark is normally made if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2006, the Ombudsman closed 41 inquiries with critical remarks. For example:

- The Ombudsman criticised the Commission for not taking further steps to make Germany comply with a judgment of the European Court of Justice concerning the German Packaging Regulation. This followed a complaint from several European beverage companies about the inactivity of the Commission on this matter. The Court had ruled that the German Packaging Regulation for certain drinks constituted a barrier to intra-Community trade. In view of the fact that one of the infringement procedures concerning the German Regulation was still ongoing, the Ombudsman considered that his views, expressed in the critical remark, could usefully be taken into consideration by the Commission in the context of that procedure. (1037/2005/GG)

- The Ombudsman criticised EPSO for failing to give information requested by a candidate in an open competition to help him understand his marks in a translation test he had not passed. EPSO neither argued that the provision of the information would entail an unreasonable administrative burden nor indicated any other valid reasons for its failure to provide the complainant with this information. (674/2004/PB)

- The Ombudsman criticised the Commission for refusing to grant access to documents to the environmental NGO, Friends of the Earth. The documents concerned the scientific matters regarding the safety of genetically modified (GM) foods that the Commission had submitted to the World Trade Organisation. Recalling that the exceptions to public access must be construed and applied strictly, the Ombudsman found that, in this case, the Commission had adopted an impermissibly extensive interpretation of the relevant provisions. (582/2005/PB)

It is important for the institutions and bodies to follow up critical remarks from the Ombudsman, taking action to resolve outstanding problems and thus to avoid maladministration in the future. During 2007, the Ombudsman intends to carry out and publish a study of the follow-up to all critical remarks made in 2006, undertaken by the institutions involved. A similar study on the follow-up given to the 38 cases involving a further remark made in 2006 will also be carried out.

In cases where follow-up action by the Ombudsman does appear necessary, that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution or body concerned, which must respond to the Ombudsman with a detailed opinion within three months.

During 2006, 13 draft recommendations were made. In addition, ten draft recommendations from 2005 led to decisions in 2006. Four cases were closed during the year when a draft recommendation was accepted by the institution. Two cases led to a special report to the European Parliament. Nine cases were closed for other reasons. At the end of 2006, nine draft recommendations were still under

consideration, including one made in 2004. The draft recommendations made in 2006 included the following:

- The Ombudsman urged the Commission to deal as rapidly as possible with a complaint about the European Working Time Directive. A German doctor had complained that Germany was in breach of the Directive, as far as the work of doctors in hospitals and their time spent on call was concerned. The Commission argued that changes to the Directive were under way. The Ombudsman, however, considered that the Commission was not entitled to indefinitely postpone dealing with the complaint on the grounds that the Directive may be amended some time in the future. (3453/2005/GG)

- The Ombudsman called on the Commission to correct inaccurate and misleading information contained in leaflets, posters and a video presentation on air passenger rights. This followed complaints from two airline associations. They criticised the information provided by the Commission on the rights of travellers to compensation and assistance in the event of denied boarding, cancellation of flights or long delays. Although the Ombudsman did not find all the complainants' allegations to be justified, he identified certain inaccurate and misleading statements in the information material and asked the Commission to correct them. (1475/2005/(IP)GG and 1476/2005/(BB)GG)

The Commission's detailed opinion on the Ombudsman's draft recommendation in case 3453/2005/GG was due to be delivered in December 2006, and in cases 1475/2005/(IP)GG and 1476/2005/(BB)GG, in March 2007. Given that these inquiries were still open at the end of 2006, they do not appear in Chapter 3 of the Report.

Among the draft recommendations accepted in 2006 were the following:

- The Commission accepted the Ombudsman's finding that good administrative practice would have required it to seek clarification of statements made at a German Regional Parliament Committee meeting and confirmed that it would endeavour to do so. This followed a draft recommendation in which the Ombudsman urged the Commission to take appropriate steps in order to ascertain whether the sale of a state-owned company in Germany entailed elements of state aid. According to the complainant, this would require a clarification of statements made at the Regional Parliament Committee meeting which suggested that there had been state aid. (642/2004/GG)

- The Commission accepted a draft recommendation in which the Ombudsman called on it to adopt a decision on the complainant's infringement complaint as quickly as possible and communicate its decision to the complainant. A Danish car dealer had turned to the Ombudsman alleging that the Commission had failed to honour its commitment to reach a conclusion on his infringement complaint concerning Denmark's taxation of imported cars. (956/2004/PB)

If a Community institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament. This constitutes the Ombudsman's ultimate weapon and is the last substantive step he takes in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgment of the Parliament. Two special reports were made in 2006:

- The Ombudsman called on the Council to reconsider the choice of languages used in the websites of the EU Presidencies. This followed a complaint from a German association which claimed that these websites should be available not only in English and French, but also in German. The Council argued that the Member State holding the Presidency is solely responsible for its website. The Ombudsman disagreed and, following the Council's rejection of his draft recommendation, brought the matter before the European Parliament. (1487/2005/GG)

- In a special report to the Parliament, the Ombudsman argued that the Commission's claim that it was unable to reach a political consensus on how to proceed did not relieve it of its duty to deal properly with an infringement complaint. A German provider of sports betting services

had complained to the Commission after the German authorities ordered him to stop offering his services, thus forcing him to close his business. In the complainant's view, this constituted a violation of the freedom to provide services. Folllowing the submission of the special report, the Commission informed Parliament and the Ombudsman that it had taken a decision on the infringement complaint. (289/2005/GG)

Own-initiative inquiries

The Ombudsman makes use of his power to launch own-initiative inquiries in two main instances. Firstly, he may use it to investigate a possible case of maladministration when a complaint has been submitted by a non-authorised person (i.e., when the complainant is not a citizen or resident of the Union or a legal person with a registered office in a Member State). Five such own-initiative inquiries were opened in 2006. The Ombudsman may also use his own-initiative power to tackle what appears to be a systemic problem in the institutions. He did this on four occasions in 2006, including the following two instances:

- The Ombudsman asked the Commission to investigate the possibility of increased use of mediation to deal with disputes arising under the contracts it funds. The Commission responded positively, by making a commitment to encourage alternative methods of dispute resolution in the future, by inserting an optional mediation clause in its standard procurement contracts. In closing the inquiry, the Ombudsman asked the Commission to provide him with follow-up information by 30 June 2007 concerning both the mediation clause and the institution's efforts to extend the use of mediation to include disputes about grants. The Ombudsman also underlined the importance of recommending the use of mediation in conflicts between contractors and sub-contractors. (OI/1/2006/TN)

- In January 2006, the Ombudsman opened an own-initiative inquiry concerning the European Parliament's rules and policies on upper age limits in its traineeship programme. In his recommendations, the Ombudsman referred to (i) Article 21, on non-discrimination, of the Charter of Fundamental Rights of the European Union, (ii) recent case-law of the Court of Justice, according to which the principle of non-discrimination on grounds of age is a general principle of Community law, and (iii) the Commission's decision, following a recommendation made by the Ombudsman, to abolish age limits in its traineeship programme. The Parliament informed the Ombudsman that, from 15 February 2006, it no longer applied an upper age limit with regard to its traineeship programme. (OI/3/2006/BB)

Star cases exemplifying best practice

The aforementioned responses of the **European Commission** to the Ombudsman's own-initiative inquiry on mediation (**OI/1/2006/TN**) and of the **European Parliament** to the own-initiative inquiry into possible age discrimination (**OI/3/2006/BB**) constitute illustrative examples of best practice that warrant inclusion among the "star cases" featured in the Ombudsman's 2006 Annual Report. They also serve as a model for the other EU institutions and bodies, in terms of how best to react to issues that the Ombudsman raises. The Commission further demonstrated its willingness to work constructively with the Ombudsman in the above mentioned case, by agreeing to review its interpretation of the European Data Protection Directive (**2467/2004/PB**). In taking on board the Ombudsman's arguments and the complainant's concerns, it showed that it is willing to put the citizen at the centre of its activities. The Ombudsman applauds this behaviour.

A further example of a constructive response from the institutions in 2006 came in case **106/2005/TN**, cited above, where the Commission agreed to settle the outstanding amount due to an official as part of her salary, as well as pay interest. The **European Aviation Safety Agency** (EASA) provided an example of a true service culture when, despite maintaining its opinion that no maladministration had taken place, it agreed to the Ombudsman's friendly solution (see **1729/2005/JF** above). Finally, the innovative way in which the **European Investment Bank** (EIB) complied with the complainant's request for access to an audit report, in case **1776/2005/GG**, whilst

at the same time protecting the legitimate interests of third parties, constituted an example of responding to a complaint that could serve as a model for future access to documents cases.

Further analysis

The final section of Chapter 2 of the Annual Report contains reviews of these and other cases from the perspective of the following thematic categories: (i) openness, including access to documents and information, as well as data protection; (ii) the Commission as guardian of the Treaty; (iii) tenders, contracts and grants; and (iv) personnel matters, including recruitment.

Chapter 3 of the Report contains summaries of 59 out of a total of 250 decisions closing cases in 2006. The summaries reflect the range of subjects and institutions covered by the Ombudsman's inquiries and the different types of finding.

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

Relations with EU institutions and bodies

Constructive relations with EU institutions and bodies are essential for the Ombudsman effectively to carry out his work for citizens. Co-operation takes the form of regular meetings and joint events. The Ombudsman uses the opportunities offered by these meetings to explain his role in promoting good administration within the institutions and bodies.

Of particular importance in 2006 were the bilateral meetings held with European Commissioners to discuss the operation of the Commission's new procedure for dealing with the Ombudsman's inquiries, introduced in November 2005. In June, the Ombudsman also had a highly productive meeting with the Commission staff responsible for co-ordinating the handling of the Ombudsman's inquiries. Key to facilitating all of these meetings were Commission Vice-President Margot WALLSTRÖM, responsible, *inter alia*, for relations with the Ombudsman, and Commission Secretary-General Catherine DAY. Ms WALLSTRÖM also addressed the Ombudsman's staff in Strasbourg in December, where she gave an overview of the efforts the Commission has been making to improve its relations with the citizen.

The Ombudsman continued to build on his constructive working relations with MEPs in 2006. In addition to a series of individual meetings with Members, Mr DIAMANDOUROS participated, in the course of the year, in four meetings of the Committee on Petitions in 2006, during which he presented his Annual Report and Special Reports, which covered a range of subjects. At the Committee's request, the Ombudsman was also represented by a member of his staff at each of the meetings held by the Committee during the year in question.

The Ombudsman continued to reach out to the other institutions and bodies in 2006. In March, he met with the Presidents of the Court of Justice, the Court of First Instance and the Civil Service Tribunal, the President of the Court of Auditors, and the President of the European Investment Bank, in Luxembourg. In October, he met with the Directors of the European Agency for Reconstruction and the European Centre for the Development of Vocational Training in Greece. Throughout the year, he also made presentations about his work to various groups of staff members of European institutions in Brussels, Luxembourg, and Strasbourg.

With a view to ensuring the best possible service to citizens, the Ombudsman signed a number of important agreements during 2006.

In March, he signed a new agreement with the Parliament, which covers co-operation in areas such as buildings policy, information technology and communications. The new agreement should enable the Ombudsman to make the most judicious use of the resources granted to his Office, while ensuring him absolute autonomy in his work.

Another important agreement signed in 2006 was the Memorandum of Understanding with the European Data Protection Supervisor. The purpose of the agreement is to ensure the consistent

treatment of complaints concerning data protection and to avoid unnecessary duplication. The Ombudsman and the Data Protection Supervisor, Mr Peter HUSTINX, signed the Memorandum of Understanding in Brussels on 30 November[3].

Earlier that day, the Ombudsman signed an agreement with the Spanish government to enable citizens to complain to the European Ombudsman in any of the co-official languages in Spain (Basque, Catalan/Valencian, and Galician). In signing the agreement, the Ombudsman aligned his practice with the June 2005 conclusions of the Council of the EU which provide for the use of these languages to facilitate Spanish citizens' communications with EU institutions. The Permanent Representative of Spain to the EU, Ambassador Carlos BASTARRECHE SAGÜES, signed the agreement on behalf of the Spanish government.

Relations with ombudsmen and similar bodies

The European Ombudsman co-operates closely with his counterparts at the national, regional and local levels to ensure that citizens' complaints about EU law are dealt with promptly and effectively. This is particularly important given that many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. In many cases, an ombudsman in the country concerned can provide an effective remedy. This co-operation is equally vital for tracking important developments in the world of ombudsmen, exchanging information about EU law and sharing best practice. For the most part, this co-operation takes place under the aegis of the European Network of Ombudsmen, although the European Ombudsman also participates in conferences, seminars and meetings outside of the Network.

The European Network of Ombudsmen

The European Network of Ombudsmen now comprises almost 90 offices in 31 countries, covering the national and regional levels within the Union, as well as the national level in the applicant countries for EU membership plus Norway and Iceland. The Network serves as an effective mechanism for co-operation on case handling. When possible, the European Ombudsman transfers cases directly to national and regional ombudsmen or gives suitable advice to the complainant. During 2006, the Ombudsman advised 828 complainants to turn to a national or regional ombudsman and transferred 363 complaints (of which 270 on the same subject) directly to the competent ombudsman.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or, if more appropriate, channels the query to another EU institution or body for response. In 2006, two such queries were received (one from a national and one from a regional ombudsman) and three were closed (including two brought forward from 2005). Details of the queries are provided in Chapter 3.

The Network is equally active in sharing experiences and best practice — goals which it endeavours to achieve via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service.

Seminars for national and regional ombudsmen are held in alternate years and organised jointly by the European Ombudsman and a national or regional counterpart. The Fifth Seminar of Regional Ombudsmen of EU Member States, organised by the Local Government Ombudsman for England, Mr Tony REDMOND, and the European Ombudsman, took place in London from 19 to 21 November. Around 80 participants, from each of the six countries in which there are ombudsmen at the regional level (namely Belgium, Germany, Spain, Italy, Austria and the United

3 Memorandum of Understanding between the European Ombudsman and the European Data Protection Supervisor; OJ 2007 C 27, p. 21.

Kingdom[4]), attended the event. The theme of the Seminar was "Working together to promote good administration and defend citizens' rights in the EU". The programme included sessions on EU law, promoting good administration, complaint-handling and ombudsmen working together.

Liaison officers, who act as the first point of contact for the Network within the offices of the national ombudsmen, also meet every two years. The fifth Seminar of the liaison officers took place from 18 to 20 June in Strasbourg. Entitled "Upholding fundamental rights — Sharing best practice", the Seminar aimed to provide a forum for an exchange of views among liaison officers on best practice within their institutions, as well as for discussion on their work in promoting fundamental rights. The Seminar equally provided an opportunity for the liaison officers to review the functioning of the Network and to suggest ways to improve it. All in all, 28 participants from 26 European countries attended the Seminar, including, for the first time, representatives from the national ombudsman institutions of Bulgaria, Croatia and Romania.

The European Ombudsmen — Newsletter continued to serve as an extremely valuable tool for exchanging information about EU law and best practice in 2006. The two issues, published in April and October, included articles on the supremacy of EU law, the mutual recognition of qualifications in the EU, European environmental law and access to environmental information, the role of ombudsmen in supervising prisons, universal access to broadband internet, discrimination in access to employment, freedom of expression, children's rights, and migration and asylum problems. The Ombudsman's Internet discussion and document-sharing fora continued to develop during the year, enabling offices to share information through the posting of questions and answers. Several major discussions were initiated, on issues as diverse as the independent monitoring of prisons, permanent resident status for immigrant children born in the EU, combating discrimination and promoting equal treatment, and the right to vote in local elections in the EU. In addition, the Ombudsman's electronic news service — *Ombudsman Daily News* — was published every working day, and contained articles, press releases and announcements from offices throughout the Network.

Information visits to ombudsmen in the Member States and applicant countries have also proved highly effective in terms of developing the Network and constitute an excellent means of raising awareness of the range of communications tools it makes available. In the course of 2006, the European Ombudsman visited his ombudsman colleagues in Luxembourg (March), Spain (May), Northern Ireland (November), and Bulgaria (November).

Meetings

During the year, the Ombudsman's efforts to collaborate with his counterparts stretched beyond the activities of the European Network of Ombudsmen. With a view to promoting ombudsmanship, discussing interinstitutional relations and exchanging best practice, he attended 28 events organised by national and regional ombudsmen and met with a wide range of ombudsmen and representatives of ombudsman institutions from within the EU and further afield.

Communications activities

Reaching out to citizens is an activity central to the Ombudsman's function. Efforts to spread information concerning the right to complain about maladministration were further intensified in 2006. Around 120 presentations were made by the Ombudsman and his staff during conferences, seminars and meetings that took place during the year. The Ombudsman's visits to Luxembourg, Spain, Northern Ireland, and Bulgaria, gave him a further opportunity to promote awareness among citizens in these countries.

Media activities were stepped up in 2006, with 22 press releases distributed to journalists all over Europe. Among the issues covered were the choice of languages for EU Presidency websites, transparency in the area of lobbying and subsidies, a complaint about failure to implement the

[4] The countries are listed in the EU's protocol order; that is, alphabetically, based on the name of each country in its own language. This protocol order is used throughout this publication.

Working Time Directive properly, and lack of openness in the functioning of the Council. The Ombudsman gave over 40 interviews to journalists from the print, broadcast, and electronic media in Brussels, Strasbourg, and further afield. He also presented his work and responded to questions during press conferences and meetings.

Material about the work of the Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament in May. New editions of two important communications tools were published in 2006: the complaint guide and form entitled *The European Ombudsman: Could he help you?* became available in 23 languages, and *The European Ombudsman: At a glance* brochure in 25 languages. A French edition of the Ombudsman's commemorative volume entitled *The European Ombudsman: Origins, Establishment, Evolution*, was produced in both hardback and softback editions in November. The Ombudsman continued to distribute copies of his other publications during the year, most notably *The European Code of Good Administrative Behaviour* in 25 languages. The Code was produced in Macedonian in 2006 to help promote good administration in the Former Yugoslav Republic of Macedonia.

The Ombudsman's website was regularly updated with decisions, press releases, and details of his communications activities. In May, the website, together with those of the other EU institutions, bodies and agencies, migrated to the new dot.EU top-level domain. The official address is now: http://www.ombudsman.europa.eu

From 1 January to 31 December 2006, the Ombudsman's website received 416 533 unique visitors. The English-language pages of the site were the most consulted, followed by the French, Spanish, German and Italian pages. In terms of the geographical origin of visits, the greatest number of visitors came from Italy, followed by Sweden, the United Kingdom, Spain and Germany. The links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 44 000 visits were made to the links pages during 2006, clearly demonstrating the added value for citizens of the European Ombudsman's work in co-ordinating the European Network of Ombudsmen.

Internal developments

The Ombudsman continued his efforts in 2006 to ensure that the institution was equipped to deal with complaints from citizens of 25 Member States in 21 Treaty languages. Preparations were equally made in anticipation of Bulgaria's and Romania's accession on 1 January 2007.

On the staff front, the Ombudsman appointed his first Secretary-General on 1 August 2006, following an open recruitment procedure. A third principal legal supervisor was also recruited for the Legal Department to help further strengthen the procedures for case-management and quality control.

The establishment plan of the Ombudsman showed a total of 57 posts in 2006, compared to 51 posts for 2005. This increase was mainly due to the preparations for accession of Bulgaria and Romania and to the implementation of the decision to achieve full autonomy from Parliament's services with regard to the Ombudsman's staff management. No increase is foreseen in the 2007 budget adopted by the budgetary authorities in December 2006.

With a view to developing and strengthening understanding of the institution's values and mission, and to promoting their effective delivery, the Ombudsman organised a staff retreat in October 2006. This was the first time in its brief history that the institution undertook such an activity.

As part of the preparation for the retreat, members of staff were invited to express their views on the overall functioning of the office and on the broader impact of the Ombudsman's work so far, by participating in a self-assessment exercise. This took the form of a questionnaire in which staff members evaluated different aspects of the European Ombudsman's work procedures and methods in the various sectors of the institution's activities, as well as the Ombudsman's achievements for citizens at large. An additional aim of this important activity was to provide for enhanced risk management within the institution, as required under the EU's internal control standards.

The results of the questionnaire, along with other background materials, served as a foundation upon which to frame discussions during the event, which focused on (i) the meaning of good administration both from a conceptual and a procedural point of view, (ii) how to reach out to citizens at large and how to target particular, more specialised, audiences, and (iii) how to further enhance and promote a service culture within the Ombudsman's office. Every member of staff was encouraged to take an active part in the deliberations. There was broad consensus after the retreat that it had clearly proved to be a very productive and worthwhile experience that deserved repeating.

The Ombudsman adopted a new budget structure for the year 2007. Total appropriations for 2007 are EUR 8 152 800 (compared to EUR 7 682 538 in 2006).

Complaints and inquiries

2 COMPLAINTS AND INQUIRIES

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

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

The Ombudsman also conducts inquiries on his own initiative, thereby taking a proactive role in combating maladministration.

2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is governed by Article 195 of the EC Treaty, the Statute of the Ombudsman (which is a decision of the European Parliament[1]) and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute. The current implementing provisions came into effect on 1 January 2003. They are available on the Ombudsman's website (http://www.ombudsman.europa.eu) and in hard copy from the Ombudsman's Office.

The Statute continues to provide a good framework for the Ombudsman's activities. However, after a careful review, the Ombudsman identified certain limited changes that could enhance his capacity to work more effectively for the benefit of European citizens. On 11 July 2006, he therefore wrote to the President of the European Parliament, requesting initiation of the procedure for amending the Statute.

2.2 THE MANDATE OF THE EUROPEAN OMBUDSMAN

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

1. the complainant is not a person entitled to make a complaint;

2. the complaint is not against a Community institution or body;

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

3. the complaint is against the Court of Justice or the Court of First Instance acting in their judicial role; or

4. the complaint does not concern a possible instance of maladministration.

Each of these items is further discussed below.

2.2.1 Complaints and own-initiative inquiries

Although the right to complain to the European Ombudsman is limited to citizens, residents and legal persons with a registered office in a Member State, the Ombudsman also has the power to open inquiries on his own initiative. Using the own-initiative power, the Ombudsman may investigate a possible case of maladministration brought to his attention by a person who is not entitled to make a complaint. The Ombudsman's practice in such cases is to give the person concerned the same procedural opportunities during the inquiry as if the matter had been dealt with as a complaint.

Five such own-initiative inquiries were opened in 2006.

The Ombudsman normally approaches on a case-by-case basis the question of whether to use the own-initiative power in this way. In response, for example, to concerns expressed by civil society organisations regarding the accountability of the European Investment Bank (EIB), the Ombudsman has made clear that he does have the power to inquire into possible maladministration in the EIB's lending activities outside the European Union (external lending). Moreover, subject to possible future resource constraints, the Ombudsman envisages using the own-initiative power whenever the only reason not to inquire into a complaint alleging maladministration by the EIB in its external lending is that the complainant is not a citizen or resident of the Union.

2.2.2 Community institutions and bodies

The European Ombudsman's mandate covers the Community institutions and bodies. The institutions are listed in Article 7 of the Treaty but there is no definition or authoritative list of Community bodies. The term includes bodies established by the Treaties, such as the Economic and Social Committee and the European Central Bank, as well as bodies set up by legislation under the Treaties, including agencies such as the European Environment Agency and the European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX).

Complaints against public authorities of the Member States are not within the European Ombudsman's mandate, even if they concern matters within the scope of EU law. However, many such complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen (see further below section 2.5).

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

In February 2006, the Ombudsman received a number of complaints concerning Opinion N 4-2005 of the EU Network of Independent Experts on Fundamental Rights. According to the complainants, the Opinion implied that doctors may be forced to perform abortions, whatever their beliefs.

The Network is funded through a service contract between the Commission and the University of Louvain, which was awarded following a tender procedure. Both the Network's own publications and those of the Commission describe the Network as completely independent and the Commission expressly disclaims responsibility for its views. In these circumstances, the Ombudsman considered that he was not empowered to deal with the complaints.

Complaint 530/2006/KW

Complaint against the European Defence Agency

The European Defence Agency (EDA) was established by Council Joint Action 2004/551/CFSP of 12 July 2004, in the framework of the European Union's Common Foreign and Security Policy.

The Ombudsman received a complaint from a person who had applied for a job at the EDA. He invited the EDA and the Council to give an opinion and they both did so.

In his decision on the case, the Ombudsman noted that the EDA operates under the authority of the Council, that the complaint concerned procedures for recruitment and that the Council had adopted the EDA's Staff Regulations as a Community legal instrument. In these circumstances, the Ombudsman took the view that the complaint fell within his mandate.

Confidential case

2.2.3 "Maladministration"

The European Ombudsman has consistently taken the view that maladministration is a broad concept and that good administration requires, among other things, compliance with legal rules and principles, including fundamental rights. However, the principles of good administration go further, requiring Community institutions and bodies not only to respect their legal obligations but also to be service-minded and ensure that members of the public are properly treated and enjoy their rights fully. Thus while illegality necessarily implies maladministration, maladministration does not automatically entail illegality. Findings of maladministration by the Ombudsman do not therefore automatically imply that there is illegal behaviour that could be sanctioned by a court.[2]

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

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

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

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

Article 43 of the Charter contains the right to complain to the European Ombudsman, who provides an external mechanism through which Community institutions and bodies can be called to account for maladministration. It is important to recognise that a culture of service to citizens forms an integral part of good administration. It should not be confused with a culture of blame that encourages defensiveness. In this context, it should be noted that the Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure (see the summary of case 163/2006/MHZ in Chapter 3).

The Ombudsman strategy for promoting a service culture includes not only various proactive initiatives, but extends also to the handling of complaints. An important part of a service culture is the need to acknowledge mistakes when they occur and to put matters right if possible. The Ombudsman encourages the institutions and bodies to act in this way by seeking a solution, if possible, with the institution or body involved to satisfy the complainant. It is important to note,

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

however, that the relevant provisions of the Statute (Article 3.5[3]) and the Implementing Provisions (Article 6.1[4]) apply only if there appears to be maladministration and if it appears possible that it can be eliminated.

Maladministration and mediation

Certain language versions of "European Ombudsman" (e.g. French *Médiateur européen*, Italian *Mediatore europeo*) could give rise to the misunderstanding that the Ombudsman's functions include mediation in the sense of assisting the parties involved in a dispute to settle their differences, without examining the merits of the dispute.

In fact, the Ombudsman can only propose a friendly solution for the purpose of eliminating an instance of maladministration.

The Ombudsman does, however, actively seek to encourage the Community institutions and bodies to use mediation to resolve disputes: see, for example, the summaries in Chapter 3 of own-initiative inquiry OI/1/2006/TN and of case 2601/2005/ID. In 2006, the Ombudsman also asked the Commission for information about the mediation services available to its staff and how their work relates to the procedures of Article 90(1) and (2) of the Staff Regulations. The Commission's reply mentioned its staff mediator, the harassment team and confidential counsellors within DG ADMIN, as well as an internal facilitator within DG TREN. To allow him to evaluate the possibility of intervention, the staff mediator receives a copy of all Article 90(2) complaints.[5]

As several of the summaries in Chapter 3 demonstrate, one of the most effective ways of defusing tension and reducing conflict is to apologise for mistakes. A prompt apology may settle the matter rapidly (3297/2006/BU and 3684/2006/BU), or at least avoid the need for the Ombudsman to make any formal criticism of the institution concerned (1841/2005/BM and 242/2006/BM). A mere expression of regret, however, is not an apology (163/2006/MHZ). It should be noted that an apology can be offered in a way that does not imply an admission of fault, or of legal liability (2312/2004/MHZ).

2.2.4 The European Code of Good Administrative Behaviour

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

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

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

5 Letter from the Ombudsman to the President of the Commission dated 15 February 2006; reply from the President to the Ombudsman dated 15 April 2006.

2.3 ADMISSIBILITY AND GROUNDS FOR INQUIRIES

Before the Ombudsman can open an inquiry, a complaint from an authorised complainant about maladministration by a Community institution or body must meet further criteria of admissibility. These criteria, as set out in the pertinent articles of the Statute, specify that:

1. the author and the object of the complaint must be identified (Article 2(3) of the Statute);
2. the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Article 1(3) of the Statute);
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) of the Statute);
4. the complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Article 2(4) of the Statute); and
5. in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Article 2(8) of the Statute).

Article 195 of the EC Treaty provides for the Ombudsman to "conduct inquiries for which he finds grounds". In some cases, there may not be sufficient grounds for the Ombudsman to begin an inquiry, even though the complaint is admissible.

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

2.4 ANALYSIS OF COMPLAINTS EXAMINED IN 2006

During 2006, the Ombudsman received 3 830 new complaints, compared to 3 920 in 2005[6]. In accordance with established practice, all complaints that give rise to an inquiry are counted in the statistics produced by the Ombudsman. To avoid distortion, however, inadmissible mass complaints sent by e-mail, which often number several thousand, are only counted separately in the statistics up to and including the eleventh complaint.

Complaints were sent directly by individual citizens in 3 619 cases and 211 came from associations or companies.

During 2006, the process of examining complaints to see if they are within the mandate, meet the criteria of admissibility, and provide grounds to open an inquiry was completed in 95% of cases. Of all the complaints examined, just over 21.5% were within the mandate of the Ombudsman. Of these, 449 met the criteria of admissibility but 191 did not provide grounds for an inquiry.

A total of 258 new inquiries were opened during the year on the basis of complaints. The Ombudsman also began nine inquiries on his own initiative. A statistical analysis of these inquiries is provided in Annex A.

6 It should be noted that, in 2006, 281 complaints were received on the same subject matter, while in 2005, 335 complaints concerned the same subject matter.

Overall, the European Ombudsman dealt with a total of 582 inquiries in 2006, 315 of which were carried over from 2005.

As in previous years, most of the inquiries concerned the Commission (66% of the total). Given that the Commission is the main Community institution that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 74 inquiries concerning the European Personnel Selection Office (EPSO), 49 concerning the European Parliament and 11 concerning the Council of the European Union.

The main types of maladministration alleged were lack of transparency, including refusal of information (190 cases), unfairness or abuse of power (141 cases), unsatisfactory procedures (91 cases), avoidable delay (71 cases), discrimination (65 cases), negligence (59 cases), legal error (36 cases), and failure to ensure fulfilment of obligations, that is, failure by the European Commission to carry out its role as "guardian of the Treaty" vis-à-vis the Member States (28 cases).

2.5 TRANSFERS AND ADVICE

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

An Austrian citizen complained about her daughter's imprisonment in Kosovo. The European Ombudsman's services telephoned the office of the Kosovo Ombudsman, which looked into the matter and very shortly thereafter informed the European Ombudsman, by telephone, that the complainant's daughter had been released from prison. This information was promptly given to the complainant, with advice to contact the Kosovo Ombudsman either for more information or if she wanted to pursue the matter through a complaint.

Case 3353/2006/RF

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

During 2006, 399 complaints were transferred. Of these, 363, including 270 dealing with the same subject, were forwarded to a national or regional ombudsman, 22 to the European Parliament to be dealt with as petitions, nine to SOLVIT[7], four to the European Commission and one to a banking association in Germany.

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

Examples of cases transferred to SOLVIT

A Spanish national hired a car in The Netherlands for a day. After returning to Spain, he received notification from the Dutch police of a fine for a traffic offence in Rotterdam. According to the complainant, he had never been to Rotterdam. Since he was not living in The Netherlands and was not familiar with the Dutch language or Dutch administrative proceedings, he was not in a position to contest the fine.

The Ombudsman transferred the complaint to the Spanish SOLVIT centre, which contacted its Dutch counterpart.

In April 2006, the complainant received a letter from the Dutch authorities recognising that his allegations were well-founded and informing him that he therefore did not have to pay the fine.

Case 3713/2005/BM

The Spanish national railway company (RENFE) provided a card (the "Golden Card") to people over the age of 60, entitling them to discounts on train fares on its network. The Golden Card was only available to Spanish citizens or residents. Non-Spanish EU citizens residing elsewhere in the EU were not eligible. This was the case for the complainant's wife, who was English and lived in the United Kingdom. By contrast, the complainant, a Spanish national, who also lived in the United Kingdom, had easily obtained a Golden Card.

Since the case was not within his mandate, the Ombudsman transferred the complaint to the Spanish SOLVIT centre, which asked RENFE to modify the conditions for obtaining a Golden Card, so as to avoid discrimination against EU citizens. In November 2006, RENFE informed the Spanish SOLVIT centre that the requirement of residence in Spain had been eliminated.

Case 862/2006/BM

Examples of cases dealt with through the European Network of Ombudsmen

A Swiss citizen living in Uruguay had worked and paid social security contributions in Spain for twelve years, but the Spanish Social Security authorities did not recognise his right to a pension.

The European Ombudsman transferred the case to the Spanish Ombudsman, who opened an inquiry. The Spanish Social Security authorities then agreed to pay the pension that was due.

Case 2162/2006/BM

The Regional Ombudsman of Aragón, Spain, transferred to the European Ombudsman two complaints concerning transport links between France and Spain. The first complaint concerned the Somport tunnel, which had been closed for more than a week. The complaint alleged that by failing to ensure free access to the tunnel, the French authorities had breached the conditions attached to Community financial assistance for its construction. The second complaint concerned the railway connection between Canfranc, Spain, and Oloron, France. The complainant argued that the railway project had received EU financial assistance and that the French authorities must re-open it to ensure freedom of movement of goods and citizens between the two regions.

The European Ombudsman transferred the complaints to the Commission, in its role as guardian of the Treaty.

In April 2006, the Regional Ombudsman of Aragón provided additional information, stressing that there were no effective rail or road connections between the two countries and criticising the attitude of the French authorities.

The Commission kept the European Ombudsman informed of the progress of its investigations and of its final decision not to begin infringement proceedings. The closure of the Somport tunnel, the Commission explained, had been due to unfavourable weather conditions and to works. Although France had scheduled further works, they would not interrupt lorry traffic. The Commission concluded that there was no risk to free movement. As regards the railway connection between Canfranc and Olorón, the Commission explained that the decision regarding its reopening lay with the relevant national authorities and that the project was not financed by the EU.

The Regional Ombudsman of Aragón was not satisfied with the Commission's reply. The European Ombudsman informed him of the conditions under which a complaint could be made against the Commission in relation to the matter.

Cases 483/2003/JMA and 1510/2005/BM

The complainant, a German citizen, wished to receive EU funding for a project to promote sea trout fishing in the Flensburg area of northern Germany. He alleged that a regional public business development company had given him contradictory information on the availability of such funding and had refused to accept his application. The European Ombudsman transferred the complaint to the Committee on Petitions of the *Landtag* of Schleswig-Holstein.

Subsequently, the Committee informed the Ombudsman that, following consultation with the competent ministry, it had concluded that the complainant had not been disadvantaged deliberately and that he had now been given the opportunity to present his project to a team of experts, including representatives of the regional government and the leading associations and marketing organisations in the field.

Case 3399/2005/WP

An Italian citizen complained that the National Institute of Social Welfare in Italy had reduced her retirement pension without justifying its decision.

The European Ombudsman advised the complainant to turn to the Ombudsman of the Italian region of Friuli-Venezia Giulia.

Subsequently, the Regional Ombudsman informed the European Ombudsman that the National Institute of Social Welfare had reconsidered its decision and awarded the complainant over EUR 20 000, plus interest.

The European Ombudsman thanked the Regional Ombudsman for her effective action.

Confidential case

Advice was given in 2 363 cases. In 828 of these, complainants were advised to turn to a national or regional ombudsman and in 166 cases to petition the European Parliament. In 383 cases, the recommendation was to contact the European Commission. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches to the institution had not been made before the complaint was lodged. In 109 cases, the suggestion was to contact SOLVIT, while 877 complainants were advised to contact other bodies, mostly specialised ombudsmen or complaints-handling bodies in a Member State.

2.6 THE OMBUDSMAN'S PROCEDURES

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

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

2.6.1 Starting an inquiry

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

2.6.2 Fair procedure

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

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

Neither the Treaty nor the Statute provides for appeal or other remedies against the Ombudsman's decisions concerning the handling or outcome of a complaint. However, like all other Community institutions and bodies, the Ombudsman is subject to actions for damages based on Article 288 of the EC Treaty. It is possible, in principle, to bring such an action based on the Ombudsman's alleged mishandling of a complaint.

2.6.3 Inspection of the files and hearing of witnesses

Article 3(2) of the Statute of the Ombudsman requires the Community institutions and bodies to supply the Ombudsman with any information that he requests of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of secrecy.

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

Article 3(2) of the Statute also requires officials and other servants of the Community institutions and bodies to testify at the request of the Ombudsman.

During 2006, the Ombudsman's power to inspect the institution's files was used in 15 cases. The power to hear witnesses was used in one case.

2.6.4 Open procedure

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

Article 13 of the implementing provisions provides for the complainant to have access to the Ombudsman's file on his or her complaint. Article 14 provides for public access to documents held by the Ombudsman, subject to the same conditions and limits as those laid down by Regulation 1049/2001[8]. However, where the Ombudsman inspects the file of the institution or body concerned or takes evidence from a witness, neither the complainant nor the public may have access to any confidential documents or confidential information obtained as a result of the inspection or hearing (Articles 13.3 and 14.2). The purpose of this exclusion is to facilitate the Ombudsman in the exercise of his powers of investigation.

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

2.7 THE OUTCOMES OF INQUIRIES

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

In 2006, the Ombudsman closed 250 inquiries, of which 247 were linked to complaints and three were own-initiatives.

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

2.7.1 No maladministration

In 2006, 95 cases, including two own-initiative inquiries, were closed with a finding of no maladministration. This is not necessarily a negative outcome for the complainant, who at least receives the benefit of a full explanation from the institution or body concerned of what it has done. Furthermore, even if the Ombudsman does not find maladministration, he may identify an opportunity for the institution or body to improve the quality of its administration in the future. In such cases, the Ombudsman makes a further remark.

2.7.2 Cases settled by the institution and friendly solutions

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

During 2006, 64 cases were settled by the institution or body itself following a complaint to the Ombudsman. Of this number, 52 were cases in which the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence (see section 2.9 of the *Annual Report 1998* for details of the procedure used in such cases).

If an inquiry leads to a finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. During 2006, 28 friendly solutions were proposed. Three cases, including two where the proposal had been made in 2005, were closed during the year after a friendly solution had been achieved. At the end of 2006, 27 proposals for friendly solutions were still under consideration.

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

2.7.3 Critical remarks and draft recommendations

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 or body concerned or makes a draft recommendation.

A critical remark is normally made if (i) it is no longer possible for the institution concerned to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. A critical remark is also made if the Ombudsman considers that a draft recommendation would serve no useful purpose

or that it does not seem appropriate to submit a special report in a case where the institution or body concerned fails to accept a draft recommendation.

A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2006, the Ombudsman closed 41 inquiries with critical remarks. A full list of these cases is provided in Annex D.

During 2007, the Ombudsman intends to carry out and publish a study of the follow-up undertaken by the institutions involved to all critical remarks made in 2006. A similar study will also be carried out on the follow-up given to the 38 cases in which a further remark was made in 2006.

In cases where follow-up action by the Ombudsman does appear necessary, that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution or body concerned. In accordance with Article 3(6) of the Statute of the Ombudsman, the institution or body must send a detailed opinion within three months. During 2006, 13 draft recommendations were made. In addition, ten draft recommendations from 2005 led to decisions in 2006. Four cases were closed during the year when a draft recommendation was accepted by the institution. Two cases led to a special report to the European Parliament. Nine cases were closed for other reasons. At the end of 2006, nine draft recommendations were still under consideration, including one made in 2004.

2.7.4 Special reports to the European Parliament

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

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

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

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

Two special reports were submitted to Parliament in 2006. They involve cases 289/2005/GG and 1487/2005/GG.

2.8 DECISIONS CLOSING CASES IN 2006

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 complainant. Chapter 3 contains summaries of 59 decisions closing inquiries. The summaries reflect the range of subjects and of Community institutions and bodies covered by the total of 250 decisions closing inquiries in 2006, as well as the different reasons for closure. They are indexed by case reference, general subject

matter in terms of the field of Community competence involved, and the type of maladministration alleged by the complainant.

The rest of this section of Chapter 2 analyses the most significant findings of law and fact contained in the decisions. It is organised in terms of a horizontal classification of the main subject matter of inquiries, constructed around five main categories:

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

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

2.8.1 Openness, public access and the protection of personal data

A high proportion (25%) of the inquiries conducted in 2006 concerned allegations of lack of openness. Article 1 of the Treaty on European Union refers to decisions in the Union being taken "as openly as possible", while Article 255 of the EC Treaty provides for a right of access to European Parliament, Council, and Commission documents. This right is governed by Regulation 1049/2001[9]. Following own-initiative inquiries by the Ombudsman in 1996 and 1999, many other Community institutions and bodies have also adopted rules on access to documents.

Access to documents

Regulation 1049/2001 gives applicants a choice of remedy: they may challenge a refusal either in court proceedings under Article 230 of the EC Treaty, or by complaining to the Ombudsman. During 2006, the Ombudsman closed inquiries into eleven complaints concerning the application of Regulation 1049/2001, nine of which were against the Commission, one against the Council, and one against the European Parliament. In one further case (1845/2004/GG), the Commission's detailed opinion on a draft recommendation was still awaited at the end of the year.

Two inquiries were closed into complaints concerning access to documents and information, which were directed against the European Investment Bank (EIB).

Summaries of nine of the above cases are included in Chapter 3.

As regards exceptions to access, the Ombudsman pointed out in case 617/2003/IP that Regulation 1049/2001 does not contain an exception that would oblige the European Union to refuse access to documents purely because the disclosure of the documents in a Member State is not free of charge. In case 582/2005/PB, the Ombudsman did not accept the Commission's argument that the dispute settlement procedure of the World Trade Organisation should be assimilated to "court proceedings" for the purpose of Article 4(2), second indent of the Regulation. In case 1463/2005/TN, the Ombudsman considered that the first sub-paragraph of Article 4(3) of the Regulation, concerning documents drawn up by an institution for internal use, does not apply to documents that the Commission has sent to, or received from, the authorities of Member States. Nor could the Commission rely on the third indent of Article 4(2), regarding protection for the purpose of investigations, since it had not established that disclosure would undermine the purpose of the relevant investigations, which was to make sure that the Member States' national plans for

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

the allocation of greenhouse gas emission allowances were in conformity with Community law. In case 1919/2005/GG, the Ombudsman took the view that Article 4(1)(b) of the Regulation did not justify the European Parliament's refusal of access to a list of applicants in a selection procedure. The Ombudsman found it difficult to imagine how disclosure of the fact that a certain Community official has applied for another post in the Community service could undermine his or her privacy.

Article 11 of Regulation 1049/2001 requires each institution to provide public access to a register of documents in which references to documents shall be recorded without delay. In case 1764/2003/ELB, the Ombudsman found that the Commission's register was inadequate as regards documents related to an audit carried out by the Commission. The Ombudsman pointed out that sound financial management is of great concern to the public and that audit reports are valuable sources of information on the way Community funds are used.

In case 1776/2005/GG, the European Investment Bank (EIB) responded to a suggestion from the Ombudsman by agreeing to disclose parts of an audit report, under its own rules on public access. In addition, it allowed the complainant's company to have private access to sections of the report that specifically concerned the group of companies to which the complainant belonged. The Ombudsman publicly welcomed the EIB's constructive approach in this case, pointing out that although privacy and commercial confidentiality are legitimate interests that may limit public access, the very person whose privacy or commercial interests are concerned should not be denied access on that ground.

Access to information

In case 3436/2004/ELB, the complainants had made a complaint to the European Anti-Fraud Office (OLAF), alleging that they were victims of fraud. The Ombudsman considered that they were entitled to expect OLAF to pay special attention to their interest in obtaining information on relevant inquiries carried out by OLAF. However, he also pointed out that, in order to avoid imposing an unreasonable administrative burden on an institution, the duty to respond to requests for information under the European Code of Good Administrative Behaviour is subject to limits.

In case 3501/2004/PB, the Ombudsman found that, during the course of his inquiry, the EIB had given valid reasons for refusing to provide the information requested by an NGO. For future purposes, however, he invited the EIB, to complement an eventual refusal to provide information with an adequate explanation of the reasons for doing so, addressed to the person requesting the information before the problem reaches the stage of becoming a complaint to the Ombudsman.

Data protection

Case 2467/2004/PB concerned the Commission's handling of a complaint that had been made to it against the legislation of the German State of Hamburg. The complaint had alleged an infringement of Article 14(1)(b) of the Data Protection Directive[10], which concerns personal data to be used for direct marketing. The Ombudsman found that the Commission had failed to provide valid and convincing arguments for its position that the Directive did not apply to the specific circumstances mentioned by the complainant. In reply to a proposal for a friendly solution, the Commission accepted that a broader interpretation of Article 14(1)(b) was possible and undertook to address the issue with the Member States and to address the specific case of Hamburg's legislation in this context.

10 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31. Article 14(1)(b) of the Directive provides: *"Member States shall grant the data subject the right: (a) ... (b) to object, ... to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or to be informed before personal data are disclosed for the first time to third parties ... for the purposes of direct marketing, and to be expressly offered the right to object ... to such disclosures ... "*

2.8.2 The Commission as guardian of the Treaty

The rule of law is a founding principle of the European Union. One of the Commission's most important duties is to be the guardian of the Treaty[11]. Article 226 of the EC Treaty creates a general procedure under which the Commission may investigate and refer to the Court of Justice possible infringements of Community law by Member States. The Commission may open investigations on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions addressed to it under Article 194 of the EC Treaty. Other procedures apply in relation to specific matters such as illegal state aids.

Complaints that are outside the mandate of the European Ombudsman often concern alleged infringements of Community law by Member States. Many such cases can best be handled by another member of the European Network of Ombudsmen. In some cases, however, the Ombudsman considers it appropriate to transfer the complaint to the Commission. Section 2.5 above gives examples of both approaches.

The European Ombudsman receives and deals with complaints against the Commission in its role as guardian of the Treaty. When the Ombudsman opens an inquiry into such a complaint, he is always careful to make clear to the complainant, where necessary, that the inquiry will not examine whether there is an infringement, because the European Ombudsman has no mandate to investigate the actions of authorities of the Member States.

Chapter 3 contains summaries of nine decisions that illustrate how the Ombudsman deals with complaints against the Commission in its role as guardian of the Treaty. Eight of the cases, plus one case that remained open at the end of 2006, are mentioned here.

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a Communication issued by the Commission in 2002[12], in response to criticisms from the Ombudsman. The Communication states that, as a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice, or to close the case, within not more than one year from the date the complaint was registered by the Secretariat-General. Point 3 of the Communication defines the circumstances in which the Secretariat-General is entitled not to register correspondence as a complaint. In response to a further remark in case 3369/2004/JMA, the Commission acknowledged that the requirements of the Communication also apply in the period after it has sent a letter of formal notice to the Member State concerned.

Two cases were closed after the Commission accepted draft recommendations from the Ombudsman. In case 642/2004/GG, the Ombudsman recommended that the Commission should re-examine whether the sale of a particular enterprise involved state aid. The recommendation was made in the light of suggestions that the government of Lower Saxony shared the view that the price paid had been below the market price. The Commission accepted the Ombudsman's findings on the matter and addressed itself to the German authorities in order to clarify the relevant statements. The Commission also accepted a draft recommendation in case 956/2004/PB that it should adopt a decision on the complainant's infringement complaint as quickly as possible and communicate its decision to the complainant. The complainant, a Danish car dealer, had complained that the Commission had failed to honour a commitment to reach a conclusion on his infringement complaint, which concerned Denmark's taxation of imported cars.

In case 289/2005/GG, the Ombudsman made a draft recommendation that the Commission should deal diligently and without undue delay with the complainant's infringement complaint concerning restrictions on sports betting services. The Commission's detailed opinion expressed regret that, in the absence of political consensus, it had not been able to take a decision on this sensitive issue.

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11 Article 211 of the EC Treaty requires the Commission to "ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied".

12 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.

Since he considered that this did not constitute a valid reason for not dealing with the infringement complaint within a reasonable period of time, the Ombudsman made a special report to the European Parliament. The Commission subsequently informed Parliament and the Ombudsman that it had sent a letter of formal notice to Germany.

The Ombudsman did not consider it necessary to make a draft recommendation in case 1037/2005/GG, in which he found that the Commission had failed to provide convincing arguments to show that no further steps were necessary to make Germany comply with a judgment of the Court of Justice. In the judgment concerned, the Court had ruled that the German Packaging Regulation for certain drinks constituted a barrier to intra-Community trade. The Ombudsman closed the case with a critical remark, noting that the Commission could rectify its failure in the context of a second infringement procedure concerning the Regulation that was ongoing.

Two cases concerned the enforcement of European law about working time. In case 2944/2004/ID, the Commission explained to the Ombudsman, in February 2005, that it had postponed a decision on whether to proceed with the complainant's infringement complaint, submitted in August 2003, because such a decision depended on the further course of its proposal to amend the relevant Community legislation. The Ombudsman accepted the Commission's explanation for its failure to respect the normal one-year deadline, but also noted that the complainant could make a new complaint to the Ombudsman, if she was not satisfied with the Commission's further handling of her infringement complaint. In case 3453/2005/GG, a doctor complained in November 2005 that the Commission had failed to take action on the complaint he had made against Germany more than 3½ years earlier. The Commission's opinion on the complaint again referred to its proposal to amend the relevant Community legislation. The Ombudsman took the view that the Commission is not entitled to postpone indefinitely reaching a conclusion on a complaint on the grounds that the applicable law may be amended at some time in the future and made a draft recommendation calling on the Commission to deal with the complaint as rapidly as possible. The case remained open at the end of 2006.

The Ombudsman received more than 5 000 complaints and other communications criticising the Commission in relation to the development of an industrial harbour at Granadilla, on the island of Tenerife, Spain. According to the complainants, the Commission had decided that the development would not be contrary to Community law, in particular Article 6(4) of the Habitats Directive[13]. The Ombudsman considered that it would be useful to open an own-initiative inquiry (OI/2/2006/JMA) in order for the Commission to explain the situation. Since the Commission's opinion made clear that, in fact, it had not yet taken a decision on the matter, the Ombudsman closed his inquiry.

Case 3133/2004/JMA concerned an infringement complaint to the Commission about the Spanish legislation implementing a directive on television broadcasting. The complainant challenged the Commission's conclusion that the directive had been correctly transposed. In view of the case-law of the Court regarding transposition of directives and the wording and scope of relevant Spanish legislative provisions, the Ombudsman considered the Commission's analysis of the adequacy of transposition to be reasonable. He therefore found no maladministration.

2.8.3 Tenders, contracts and grants

Community institutions and bodies use contracts both to obtain the goods and services needed to perform their functions and as an instrument to govern grants and subsidies that they provide under a variety of EU programmes[14].

The Ombudsman can deal with complaints about the award, non-award, and management of contracts. However, where a question of possible breach of contract arises, the Ombudsman limits

13 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1996 L 59, p. 63.

14 Complaints relating to employment contracts are dealt with in sub-section 2.8.4.

his inquiry to examining whether the Community institution or body has provided a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified.

Chapter 3 contains summaries of eight decisions that illustrate how the Ombudsman deals with complaints of this kind, as well as one decision closing an own-initiative inquiry. Six of these cases will be mentioned further here.

In case 1252/2005/GG, a sub-contractor alleged that the Commission's decision to terminate the agreement under which it provided financial support to the *Comité Européen de Normalisation* (CEN) was illegal and unfair. After a reminder to the Commission that it should also answer the allegation of unfairness, the Ombudsman eventually found no maladministration. The Commission's explanation of why it was not required to give prior warning of its decision appeared reasonable and the Commission could not be held responsible for CEN's decision not to submit a payment request as regards the complainant's work.

In case 786/2006/JF, the Committee of the Regions rejected the complainant's final report five days after the contractual deadline for it to do so. The Ombudsman understood the Committee's position to be that, despite its delay in informing the complainant, it was justified in not paying the full amount because the report was not of the quality which it was entitled to receive under the contract. The Ombudsman took the view that if the Committee was unable to meet the contractual deadline, it should, as a matter of good administration, have informed the complainant accordingly before the deadline expired. Its failure to do so was maladministration. However, the Committee had provided a coherent and reasonable account of the legal basis for its actions and why it believed that its view of the contractual position was justified. The Ombudsman did not seek to determine whether there had been a breach of contract, or whether the Committee was contractually entitled to refuse to pay the full amount.

The complainant in case 866/2006/SAB contested the Commission's rejection of its pre-proposals under the Socrates programme. According to the Commission, the pre-proposals had been sent after the deadline. The Ombudsman's inquiry revealed documentary evidence, which had been available to the Commission at the time of its decision, that the pre-proposals had, in fact, been dispatched on the day of the deadline. The Ombudsman therefore found maladministration.

Case 3172/2005 concerned delay by the Commission in paying a grant for certain town twinning activities. In its opinion on the complaint, the Commission apologised for the delay and explained the administrative problems it had experienced and the improvements it had introduced to the payment system in response. The complainant informed the Ombudsman that it had received payment and considered the case to be settled. In a further remark, the Ombudsman asked the Commission to consider paying interest for late payment in such cases.

Case 2523/2005/TN concerned an invitation to tender procedure organised by the Court of Justice for framework contracts for the translation of legal texts. The invitation to tender contained a requirement to deliver a test translation. The complainant contested this requirement on the grounds that it had not been mentioned in the original contract notice. The Ombudsman considered that there was no maladministration since a test translation constituted supplementary information of a kind which, according to Directive 92/50[15], could be specified at the stage of inviting tenders.

In own-initiative inquiry OI/1/2006/TN, the Ombudsman asked the Commission to investigate the possibility of increased use of mediation to deal with disputes arising under the contracts it funds. The Commission responded positively, by making a commitment to encourage alternative methods of dispute resolution in future, through the insertion of an optional mediation clause in its standard procurement contracts. In closing the inquiry, the Ombudsman asked the Commission to provide him by 30 June 2007 with follow-up information concerning the mediation clause and

15 Council Directive 92/50/EEC of 18 June 1992 relating to the co-ordination of procedures for the award of public service contracts, OJ 1992 L 209, p. 1. This Directive is no longer in force but was in force at the time of publication of the notice.

the efforts it has undertaken to extend the use of mediation to include disputes about grants. The Ombudsman also underlined the importance of recommending the use of mediation in conflicts between contractors and sub-contractors.

2.8.4 Personnel matters

Chapter 3 contains 18 summaries of decisions on complaints that relate to personnel matters. Of these, nine concern recruitment procedures organised by the European Personnel Selection Office (EPSO) and six others concern work relationships with the institutions and bodies. Two summaries relate to decisions on complaints from seconded national experts and one to an own-initiative inquiry (OI/3/2006/BB). In the latter case, the European Parliament followed the example set by the Commission in 2005, by abolishing the upper age limit for traineeships, with effect from 15 February 2006.

No complaint that concerns work relationships with the Community institutions and bodies may be made to the Ombudsman unless the complainant has first exhausted the procedures of Article 90(1) and (2) of the Staff Regulations and the time limits for replies have expired. In cases 1217/2004/OV and 2227/2004/MF, the Ombudsman emphasised that failure to reply to a complaint made under Article 90(2) is maladministration. Although the Staff Regulations deem failure to reply within the four months time limit to constitute an implied negative decision, the purpose of this provision is to allow the person concerned to appeal to the Civil Service Tribunal, not to relieve the administration of its obligation to reply.

Two complaints concerning work relationships had very positive outcomes for the complainants and demonstrated excellent co-operation with the Ombudsman by the Institution and the body concerned.

In case 106/2005/TN, the Commission had refused to pay the salary of the complainant's daughter, a former Commission official, who fell ill soon after taking up her duties. In response to the complaint, the Commission changed its position and agreed to pay the salary concerned with interest.

Case 1729/2005/JF concerned the recovery of allowances paid to the complainant by the European Aviation Safety Agency (EASA). The Ombudsman found that EASA had provided incomplete information, which had been liable to mislead the complainant, and proposed as a friendly solution that EASA could consider cancelling the recovery of at least part of the allowances. In reply, EASA maintained its opinion that no maladministration had taken place. However, "having regard to the unique nature of this case and having the highest regard towards the opinion of the Ombudsman", it cancelled the recovery in full. A friendly solution was therefore achieved.

In three other cases, however, the Commission rejected not only the Ombudsman's proposals for friendly solutions, but also his further efforts to achieve a satisfactory outcome. Two of these cases concerned seconded national experts (SNEs).

In case 760/2005/GG, the Ombudsman suggested, first as a friendly solution and then as a draft recommendation, that the Commission consider amending or clarifying the rules about special leave for SNEs who have to appear as witnesses before a court. In its detailed opinion, the Commission stated that it would study the Ombudsman's proposal within the context of a future, more comprehensive examination of the situation of SNEs, but regretted that it was unable to provide more detailed information as to when this examination would take place.

Case 495/2003/ELB concerned a dispute about the allowances due to an SNE. After the Commission rejected a proposal for a friendly solution, the Ombudsman wrote to the responsible Commissioner asking for his personal involvement in seeking a satisfactory outcome to the complaint, which could take the form of an *ex gratia* payment to the complainants. Although the Commission had subsequently changed the applicable rules, the Commissioner's reply took the view that the Commission had correctly interpreted the former rules and rejected the Ombudsman's proposal. In the Ombudsman's view, the Commission acted unfairly towards the complainants, by, in

substance, treating the matter as if the rules subsequently adopted had been in force at the time of its determining the allowances to be paid.

Case 1537/2003/ELB concerned a former temporary agent of the Commission, who had been acquitted of a disciplinary charge after a lengthy delay, which the Ombudsman had earlier found to constitute maladministration. The Ombudsman proposed as a friendly solution that the Commission consider reimbursing the complainant for the expenses he had reasonably incurred for his defence during the disciplinary procedure. The Commission took the view that the Staff Regulations prevented it from doing so. In this case as well, the Ombudsman wrote to the responsible Commissioner. The Ombudsman expressed the view that the Staff Regulations did not prevent the Commission from making an *ex gratia* payment. The Commissioner, however, rejected the Ombudsman's approach.

In all three cases the Ombudsman's closing decision expressed regret that the Commission had failed to use an opportunity to demonstrate its commitment to principles of good administration. The Ombudsman announced his intention to examine, with the responsible Commissioner, how best to promote a culture of service in the Directorate-General concerned.

2.8.5 Other matters

Chapter 3 also contains a number of summaries that fall outside the categories dealt with in the preceding sub-sections. Four of the cases will be mentioned here.

In case 2601/2005/ID, the complainant company alleged that the Commission had violated its intellectual property rights to an automatic translation programme. The Commission did not contest that the complainant had such rights, but expressed doubts concerning their scope and extent. The Ombudsman took the view that it was for the complainant to specify and establish the legal basis of the rights that had allegedly been violated. Since the complainant had not done so, no maladministration by the Commission was found. However, the Ombudsman invited the complainant and the Commission to consider the possibility of using a mediation procedure to try to find a mutually acceptable solution.

Two cases concern the extent of the Council's responsibility for its Presidency.

In case 1487/2005/GG, an association for the defence of the German language complained that EU Presidency websites are not available in German. The Council did not address the complainant's substantive arguments concerning the number of EU citizens who speak German as their first or second language. While accepting that the Presidency forms part of the Council as an institution, the Council maintained that it bears no responsibility for the Presidency websites, arguing that they fall under the authority of the Member States holding the Presidency. The Ombudsman, however, considered that the Council is indeed responsible for the languages used on Presidency websites and that information on those websites should ideally be available in all official Community languages. He went on to argue that, if fewer languages are to be used, the choice must be based on objective and reasonable considerations. The Council's failure to consider the substance of the complainant's request therefore constituted maladministration. Following the Council's rejection of a draft recommendation on the matter, the Ombudsman made a special report to the European Parliament.

In case 2172/2005/MHZ, the complainant expressed concern about commercial sponsorship of a particular Presidency. The Council took the view that commercial sponsorship of its Presidency is not a matter falling within its responsibility as a Community institution. The Ombudsman suggested, as a friendly solution, that the Council could accept responsibility for the matter and indicate its willingness, within an appropriate time-frame, to take measures to prevent such sponsorship, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed. The Council rejected the proposal. Since the special report in case 1487/2005/GG had already put the general question of the Council's responsibility for its Presidency before the European Parliament, the Ombudsman did not pursue that issue. The Ombudsman remained concerned, however, that citizens' trust in the Union and its functioning could be adversely

affected by the Council's failure to respond to the substantive issue of commercial sponsorship of its Presidency. The Ombudsman therefore wrote individually to the Permanent Representatives of the Member States about the matter.

Case 3403/2004/GG concerned the Commission's responsibility as regards the availability of an appeals procedure in the European Schools. Although the present Convention governing the Schools came into force in 2002, the provision which envisaged an appeals procedure was not implemented until 2005. This delay led the Complaints Board to consider that it was not competent to deal with the complainants' case, which concerned marks awarded in 2004 and which the complainants had been attempting to contest ever since. The Ombudsman urged the Commission to persuade the Board of Governors to adopt provisions that would enable the Complaints Board to hear the complainant's appeal. Despite constructive and sustained efforts by the Commission to assist the complainants, the Board of Governors failed to act. The Ombudsman considered that, given the clear-cut nature of the deficiency and the importance of the issue, the Commission should have insisted that the Board of Governors discuss the proposal. Given the importance of the issue, the Commission asked the Secretary-General of the European Schools to put the Ombudsman's decision on the agenda of the Board of Governors.

Decisions following an inquiry

3 DECISIONS FOLLOWING AN INQUIRY

This chapter consists of a selection of summaries of the Ombudsman's decisions in 2006, illustrating the range of subjects and institutions involved in complaints and own-initiative inquiries. It includes summaries of all the decisions mentioned in the thematic analysis of Chapter 2. Summaries of decisions on complaints are organised first by the type of finding or outcome and then by the institution or body concerned. Summaries of decisions following own-initiative inquiries and examples of queries submitted by national and regional ombudsmen are covered at the end of the chapter.

Within each sub-section of this chapter, cases are presented in case number order. For example, in sub-section 3.1.2, case 2944/2004/ID precedes case 3133/2004/JMA. The full decision in each of the cases can be found in the decisions section of the Ombudsman's website (http://www.ombudsman.europa.eu). The relevant decision can be accessed using the case number. Full decisions are included on the website in English and in the language of the complaint, if different. A printout of the full decision, as it appears on the website, may be requested from the Ombudsman's Office.

3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND

3.1.1 The European Parliament

FAILURE OF PARLIAMENT TO REQUEST CLARIFICATIONS REGARDING A TENDER SUBMISSION

Summary of decision on complaint 1315/2005/BB against the European Parliament

Parliament rejected the complainant's bid, following a call for tenders ("the Call"), because a particular certificate had not been submitted as an original, in accordance with the Call's requirements, but as a photocopy.

After determining that the above flaw in the tender was essential, in that it constituted a ground for exclusion of the bid, on the basis of an explicit provision of the Call, the Ombudsman noted that the possibility for the contracting authority to contact a tenderer, pursuant to the Call, should be strictly interpreted as a "*special exception*" to the Call's prohibition of "*[a]ny contact between the tenderers and the contracting authorities*" after the opening of the tenders. The Ombudsman also took into account the need to ensure the equal treatment of tenderers. In light of the above, the correction of this flaw was to be considered neither as a "*clarification*" of the tender nor as a correction of an "*obvious clerical erro[r]*", within the meaning of the relevant exception provided for in the Call. Hence, the decision rejecting the bid did not constitute an instance of maladministration.

The Ombudsman also made a further remark concerning Parliament's statement that in the present case it "*did not make use of its liberty to ask for supplementary documentation or certification when missing*". The further remark pointed out that the above statement does not seem to be consonant with the Call itself and the principles of good administration concerning the exercise of discretionary powers.

3.1.2 The European Commission

DELAY IN DEALING WITH THE MERITS OF AN ARTICLE 226 COMPLAINT

Summary of decision on complaint 2944/2004/ID against the European Commission

The complainant lodged an infringement complaint with the Commission in August 2003. In September 2004, she argued in a complaint to the Ombudsman that the Commission had failed to inform her of its assessment of the merits of her allegation concerning national regulations on working hours and on-call time that were allegedly in violation of Community Directives.

In his decision on the complaint, the Ombudsman first noted that, pursuant to the undertaking given by the Commission in point 8 of its Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law[1], the one-year deadline provided for in that point may not be complied with only in special cases, and that the Commission must adequately explain the reasons for the delay.

In the present case, the Commission explained that it had postponed a decision on whether to proceed with the complainant's Article 226 complaint because such an eventual course of action depended on the further course of its proposal of 22 September 2004 to amend the Community legislation regarding working time, including on-call time. In this regard, the Commission noted that the proposal had been adopted after extensive consultation across Europe, following the decisions of the Court of Justice in cases C-303/98 and C-151/02, which had a deep impact on Member States, especially on their public health systems. In his decision (given in January 2006), the Ombudsman found that the Commission had provided reasonable and adequate explanations for its failure to assess the merits of the complainant's Article 226 complaint within the above-mentioned one-year deadline. Nevertheless, the Ombudsman made a further remark, in which he reiterated that it is good administrative practice for the Commission to keep the complainants informed about the status of complaints that they lodge with the Commission, and encouraged the Commission to regularly inform the complainant about the status of her complaint. He also noted that the complainant could file a new complaint with the Ombudsman, if she was not satisfied with the Commission's further handling of her infringement complaint.

THE COMMISSION'S ASSESSMENT OF THE SPANISH LEGISLATION REGARDING THE BROADCASTING OF BULL FIGHTING SHOWS

Summary of decision on complaint 3133/2004/JMA against the European Commission

The complaint concerned the Commission's decision to close a formal complaint in which the complainant alleged that the Spanish law for the implementation of Directive 89/552/EEC[2], namely,

1 COM(2002) 141 final, OJ 2002 C 244, p. 5.

2 Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ 1989 L 298, p. 23.

Statute 22/1999, did not contain the obligation set out in Article 22 of the Directive whereby television broadcasts should not include any programme which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve gratuitous violence, such as, in the opinion of the complainant, bull fighting shows.

The Commission argued that all the obligations of the Directive had been correctly transposed by Statute 22/1999, and that Article 17 of the Statute fully reflected the obligations set out in Article 22 of the Directive. It considered that, even though the Spanish legislation did not include a reference to gratuitous violence, this concept, as well as that of pornography, were mentioned in the Directive only to illustrate the contents of a television programme which might seriously impair the development of minors. In the Commission's view, however, the scope of this provision is not limited to these two specific aspects, but could also encompass other situations.

The Ombudsman noted that Article 22 of the Directive explicitly prohibits Member States from allowing broadcasters under their jurisdiction to broadcast television programmes that might seriously impair the development of minors. The Directive does not, however, contain a definition of the specific types of programmes which Member States ought to consider as impairing the development of minors, even though it mentions those involving pornography or gratuitous violence as examples to be included in that category. Recalling Article 249(3) of the EC Treaty and the case-law of the Community courts, the Ombudsman stated that transposing a directive into national law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific express legal provision of national law, since the general legal context may be sufficient if it actually ensures the full application of the directive in a clear and precise manner.

The Ombudsman noted that Article 22 of the Directive and its implementing provision into Spanish law, namely, Article 17 of Statute 22/1999, were almost identical, except that the Spanish law does not specifically mention programmes that involve pornography or gratuitous violence. As set out in the Commission's analysis of the adequacy of this transposition, any programme involving pornography or gratuitous violence would certainly impair the development of minors and would therefore fall within the scope of the Spanish implementing provision. Taking into account the wording and scope of the above-mentioned provisions, the Ombudsman considered that the Commission's position appeared to be reasonable. The Ombudsman therefore concluded that the Commission's decision not to pursue infringement proceedings against the Spanish authorities and, accordingly, to close the formal complaint submitted by the complainant appeared to be reasonable.

TERMINATION OF CO-OPERATION BASED ON LONG-STANDING ARRANGEMENTS

Summary of decision on complaint 191/2005/BB against the European Commission

EuronAid ("EA"), a non-profit association of NGOs, had for 20 years been mobilising food aid in kind in the framework of the Commission's NGO Food Aid and Food Security Programmes. In September 2004, the Commission sent a letter to EA confirming that, in view of the new Financial Regulation[3], it could not enter into new contractual relations with EA on the basis of its long-standing arrangements with it.

The Commission based its decision on (i) Articles 54 and 57 of the Financial Regulation and (ii) Articles 110 and 89 of the Financial Regulation and the principles of transparency and free competition. The complainant contested the propriety of this reasoning. However, he argued only against ground (i) and did not specifically challenge ground (ii). The Ombudsman observed that

3 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities; OJ 2002 L 248, p. 1.

the Community principles and rules governing the award of grants or public contract services constituted a separate, self-sufficient and independent basis for the challenged decision, taking into account that the co-operation which the Commission and EA had prior to the entry into force of the Financial Regulation seemed to have been based on the *direct* award of grants and service contracts. Indeed, even assuming that, as EA had argued, the tasks carried out by EA in the context of its previous co-operation with the Commission were "*technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement*" in the sense of Article 57(2) of the Financial Regulation, such tasks could not, in any event, be assigned to EA in disregard of the Community principles and rules governing the award of grants or public contract services. The Ombudsman therefore found no maladministration.

SELECTION OF EXPERTS UNDER THE SIXTH FRAMEWORK PROGRAMME

Summary of decision on complaint 552/2005/SAB against the European Commission

The complainant alleged that the Commission's Directorate-General for Research had violated the principles of good administration by choosing the same experts to assist it in the evaluation of proposals under the Sixth Framework Programme as those previously employed by it. After the Commission had explained, in its opinion, that it used a special rotation principle for the selection of experts, which had been set out in the Commission's Guidelines on Proposal Evaluation and Selection Procedures[4] and provided that a minimum of 25% of the experts must be replaced each calendar year, the complainant challenged the propriety of this quota.

The Ombudsman observed that, according to the Commission's Guidelines, the proposed evaluation procedures were designed to be as rapid as possible, while maintaining quality evaluation. The Commission had established a quota with the intention of striking an appropriate balance between the selection of new experts and the legitimate interest in retaining experienced, highly qualified experts. The Ombudsman also noted that the previous practice of replacing one third of experts appeared to have caused significant problems in finding enough experts and that the Commission had, following extensive consultations and several years of relevant experience, adopted the challenged quota. The Ombudsman held that the above objective justifications for the quota in question were pertinent and legitimate, and concluded that it had not been shown that the Commission had exceeded the margins of its discretion. The Ombudsman, therefore, found no maladministration.

CANCELLATION OF FUNDING FOR STANDARDISATION WORK

Summary of decision on complaint 1252/2005/GG against the European Commission

In an agreement signed in 1991, the Commission committed itself to providing financial support to the *Comité Européen de Normalisation* ("CEN") for the drawing up of certain European standards. The complainant, a German expert, was appointed as project leader by one of CEN's sub-contractors to carry out certain tests for a European standard.

In May/June 2002, the Commission and CEN signed an addendum to the agreement, terminating the financing of the project.

The complainant alleged that the Commission's decision to cancel its funding was incorrect and unfair. He claimed that the Commission should forward the outstanding amount to CEN in order to allow the bodies and persons involved to be paid for their work.

4 COM C/2003/883.

The Commission pointed out that there had been slow and unsatisfactory progress of the standardisation work in a number of agreements. In accordance with the principle of sound financial management, it had therefore terminated these agreements in consultation with the contractors. The Commission was not responsible for any sub-contracting agreements. CEN had been in a position to inform each actor involved about the planned termination and address any remaining payment requests to the Commission before the termination of the agreement. The Commission considered that it had fully honoured its legal obligations.

The Ombudsman also invited the Commission to provide him with an opinion on the complainant's allegation that the decision was unfair. In this context, the Ombudsman noted that the relevant correspondence did not mention whether the Commission had given prior warning of its intention to terminate the agreement.

The Commission stated that the minutes of meetings it had held with the contractors made it clear that the Commission could cancel the funding at any time if the agreed timetables were not respected. There was no reason why any further warning should have been issued to CEN. As to the question of whether the decision was unfair towards the complainant, the Commission stressed that it had never been in a contractual relationship with him.

As regards the complainant's allegation that the Commission's decision was illegal, the Ombudsman noted that the complainant had not disputed the Commission's argument that the agreement was terminated by CEN and the Commission by common agreement. He took the view that the complainant had not established his allegation.

As regards alleged unfairness, the Ombudsman noted that the complainant had completed his work by the time the decision to cancel the funding was taken. It was therefore understandable that he was displeased with the Commission's decision. However, the Commission's argument that there was no reason for a further warning appeared to be reasonable. The Ombudsman considered that the Commission could not be held responsible for CEN's decision not to submit a payment request as regards the complainant's work. He closed the case with a finding of no maladministration.

ALLEGED VIOLATION OF INTELLECTUAL PROPERTY RIGHTS TO A TRANSLATION PROGRAM

Summary of decision on complaint 2601/2005/ID against the European Commission

The complainant, a company called SYSTRAN, alleged that the Commission was violating its property rights to an automatic translation program. According to the complainant, these rights required the Commission to obtain its authorisation before making certain changes to the program, which had been developed on the basis of several contracts with the Commission.

The Commission did not contest the *existence* of SYSTRAN's intellectual property rights to the program, but rather expressed doubts concerning the *scope* and *extent* of these rights. It argued, in essence, that the burden of proof that there was indeed a violation of the relevant intellectual property rights lay with the complainant and that the complainant should first establish the legal and contractual bases of those rights.

The Ombudsman noted that the legal aspects of the protection of a right, such as the one invoked by the complainant, may depend on the applicable legislation and on the content of the contractual relationships established between the parties concerned, in accordance with this legislation. In the present case, the complainant had merely stated that his right was recognised by Directive 91/250/EEC on the legal protection of computer programs[5] and by the totality of Member States' national legislation, in particular that of France, Belgium and Luxembourg. However, he had not referred to any specific provisions either of the Directive (which is addressed to the Member States,

5 Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ 1991 L 122, p. 42.

not to the Community or its institutions) or of the relevant applicable national legislation, and had failed even to clarify which national legislation should apply and why. Moreover, the complainant bore the burden of specifying and establishing the legal basis of the right that had allegedly been infringed, which it had failed to do. The Ombudsman thus concluded that the complainant had not established the alleged violation.

The Ombudsman concluded by inviting the complainant and the Commission to consider the possibility of submitting their dispute to a mediation procedure, through which the parties might together reach, with the help of a mediator(s), an acceptable solution to the problem, or, at least, identify, with sufficient precision and clarity, the legal, factual and technical issues in dispute, before submitting the case to a court of law or arbitration body.

3.1.3 The Court of Justice of the European Communities

CONTRACT NOTICE FOR TRANSLATION SERVICES

Summary of decision on complaint 2523/2005/TN against the Court of Justice of the European Communities

The complaint concerned a contract notice, published by the Court, relating to the conclusion of framework contracts for the translation of legal texts. The complainant was a Swedish translation bureau, which, following an application to participate, had been invited to submit a tender. However, this invitation also contained a requirement that had not been mentioned in the original contract notice, namely, that the translator for each language combination had to deliver a test translation within 37 days as part of the tender. Since its translator for the language combinations English-Swedish and French-Swedish was on holiday for 35 days at the time when it received the invitation, the complainant was not in a position to fulfil this requirement.

According to the complainant, all requirements applicable to the contracting procedure should have been made clear in the contract notice and the Court had wrongfully changed the conditions during the ongoing procedure.

The Court argued that it had acted in accordance with the applicable rules, in particular Directive 92/50[6] on the co-ordination of procedures for the award of public service contracts.

Since the complainant did not appear to question the rules applied by the Court, the Ombudsman found it reasonable to examine the case in the light of Directive 92/50. Article 32(3) of Directive 92/50 suggested that it was sufficient for certain requirements as regards information to be specified only in the invitation to tender and not already in the contract notice. The Ombudsman considered this finding to be supported by Article 19(2)(d), which provided that the letter inviting the selected candidates to submit their tenders had to include an indication of any document to be annexed, either to support the verifiable statements furnished by the candidate, or to supplement the information already provided. The Ombudsman considered a test translation to constitute such supplementary information and did not consider that the Court had changed the conditions during an ongoing procedure. The Ombudsman therefore found no maladministration.

6 Council Directive 92/50/EEC of 18 June 1992 relating to the co-ordination of procedures for the award of public service contracts, OJ 1992 L 209, p. 1. This Directive is no longer in force but was in force at the time of publication of the notice.

3.1.4 The European Personnel Selection Office

ALLEGEDLY INACCURATE EVALUATION OF COMPETITION TESTS

Summary of decision on complaint 1217/2004/OV (Confidential) against the European Personnel Selection Office (EPSO)

The complainant, who participated in Open Competition COM/A/9/01, organised by EPSO, was informed that he was not among the 200 candidates who had obtained the best scores for written test e) and oral test f). He wrote to EPSO asking for a review of his results because, given his serious preparation for the tests, his language skills, and his experience in the field, he was convinced that errors had been made in the marking. He also sent to EPSO a package including an audio CD and a four-page "transcription" of his oral test to prove that his answers in the oral test were correct. The Selection Board maintained its decision. The complainant made an appeal under Article 90(2) of the Staff Regulations, to which the Appointing Authority replied on 2 March 2004. However, the complainant did not receive a translation of the decision into his mother tongue, Dutch.

The complaint to the Ombudsman contested the Selection Board's evaluation of the complainant's tests and alleged that the Board had failed to consider the evidence presented by the complainant and to give reasons for its replies. The complainant also alleged EPSO had not respected the deadlines for replying to his Article 90(2) appeal and contested the failure to reply to him in Dutch.

In their joint opinion, the Commission and EPSO recalled that the assessment of candidates is comparative and argued that the package sent by the complainant contained documents irrelevant to the re-examination of his tests. EPSO also pointed out that a reply in Dutch to the Article 90(2) appeal was in fact sent to the complainant on 1 June 2004 and expressed its regret for the delay.

In reply to further inquiries, EPSO drew a distinction between the *administrative work* carried out by EPSO's staff, where it is possible to identify a potential case of maladministration, and *the decisions adopted by the Selection Board*, which, it argued, can be reviewed only by the Civil Service Tribunal.

The Ombudsman's decision, referring to the case-law of the Court of Justice, underlined that the Ombudsman can also examine the legality of the Board's decisions, for which the Appointing Authority retains the final responsibility.

With regard to the evaluation of the complainant's tests, the Ombudsman came to the conclusion that there was no manifest error in the Board's assessment, and that it had sufficiently reasoned its decision. The Ombudsman also considered that the "transcription" of the oral test did not constitute a relevant factor for the Board's evaluation of the complainant's performance because it was based on his own recollection of the test.

As regards the reply to the complainant's Article 90 appeal, the Ombudsman concluded that, considering the expression of regret by EPSO for the delay in sending its reply and the translation into Dutch, no further inquiries were necessary. However, he made a further remark encouraging the Appointing Authority to send a holding reply if it expects its reply to be sent after the expiry of the four-month deadline.

NON-ADMISSION TO A SELECTION TEST

Summary of decision on complaint 1482/2005/MHZ against the European Personnel Selection Office (EPSO)

The complaint was submitted on behalf of the Association of Graduates of the National School of Public Administration concerning Open Competition EPSO/A/8/03 for assistant administrators (Polish nationals) in the field of "Audit".

A number of Polish candidates who had been nominated state auditors by the Supreme Chamber of Control in Poland ("the Chamber of Control"), after having passed the relevant examination and undergone specific training in auditing, were excluded from the competition on the grounds that their university degree was not in a relevant subject and their professional qualification was not of the required equivalent level.

The complainant alleged that the Selection Board had failed to take into consideration the Polish system of training of auditors and therefore wrongly assessed the qualifications of Polish candidates. It also claimed that EPSO should promptly launch a new competition in the field of audit in which the candidates from Poland could take part.

EPSO pointed out that the Board has a wide discretion with regard to assessing the qualifications of candidates and that such assessment is made on the basis of the requirements stipulated in the Notice of Competition. EPSO also noted that it had organised two new competitions in the field of audit (EPSO/AD/23-24/05), in which candidates who did not possess a degree in a field relevant to the duties concerned could be admitted on the basis of an additional qualification which was relevant.

The Ombudsman took the view that EPSO's drafting of the Notice of Competition had been based on an incomplete understanding of the Polish education system in auditing, but that, in drafting the notices for the new competitions, it appeared to have made appropriate use of the additional information that had been brought to its attention by the complainant. The Ombudsman also noted that the candidates whose applications were rejected appeared to be eligible to take part in the new competitions and that the complainant had made clear that it did not seek the annulment of the competition in question.

The Ombudsman concluded that no further inquiries into the complaint were justified and closed the case.

OBLIGATION TO APPLY FOR ONLY ONE OF THREE PARALLEL COMPETITIONS

Summary of decision on complaint 2616/2005/SAB against the European Personnel Selection Office (EPSO)

EPSO published notices of three competitions for linguistic administrators, which informed candidates that the tests for these competitions might be held simultaneously and instructed them to apply for only one of the competitions. The complainant contested this restriction and wished to apply for all three competitions.

EPSO put forward that it had organised the tests of the competitions simultaneously for reasons related to a better handling of the time constraints and the financial implications inherent in the recruitment procedures involving a large number of candidates.

The Ombudsman considered EPSO's explanation reasonable in light of the legitimate aim of ensuring sound time management and a rational use of the financial resources available. The alternative solution of obliging EPSO to organise the tests of the competitions in question separately, to allow potential candidates to participate in all the competitions, would create disproportionate

and unreasonable difficulties for the administration and unjustifiable delays for the institutions and other candidates. In light of these considerations and of the fact that the tests of the open competitions in question were actually held on the same day, the Ombudsman concluded that there were no indications that EPSO had exceeded the margins of its discretionary powers in allowing candidates to apply for only one of the competitions. The Ombudsman thus found no maladministration.

However, the Ombudsman considered that normally EPSO should not prohibit candidates from applying for more than one parallel competition unless it is certain that the tests for the competitions will indeed be held simultaneously. He made a further remark to this effect.

ASSESSMENT OF A CANDIDATE'S REPLY TO A TEST QUESTION

Summary of decision on complaint 3389/2005/WP against the European Personnel Selection Office (EPSO)

The complainant took part in an open competition for German-language proofreaders. One of the test questions was the following: *"What does 'prelims' mean? (a) the part of the book which precedes the text part; (b) the bibliography; (c) the main title together with the corresponding sub-title; (d) none of those."* The complainant had chosen answer (d). However, according to the list of correct answers, answer (a) was the correct one.

In his complaint to the Ombudsman, the complainant alleged that the Selection Board had wrongly assessed his reply to the question as being incorrect. He argued that *not only* the part of the book preceding the text part constituted the "prelims", but that sometimes parts of the "prelims", such as blank pages or a photo of the author, appeared after the text part. The complainant also referred to the following dictionary entry: *"The 'prelims' are the pages of a book preceding the text itself, such as the imprint. (...) In books of some publishers the imprint can appear at the end of the book."*

In its opinion, EPSO submitted that a Selection Board has extensive powers of discretion and is neither obliged to explain exactly why a candidate's answer was not considered sufficient nor to give detailed information concerning the evaluation it has carried out. Nevertheless, EPSO informed the Ombudsman that, having re-examined the complainant's case, the Selection Board considered that, in referring to the dictionary entry, the complainant had confirmed the general position of the "prelims" in a book. Thus, it was obvious even to him that answer (a) could not be wrong. Consequently, answer (d) could not be considered as correct. EPSO took the view that the complainant had not been able to show that it was impossible to find the correct reply to the question concerned.

Applying the same criteria as the Community Courts in recruitment matters, which are characterised by the Selection Board's wide discretion, the Ombudsman sought to establish whether there was a manifest error in the Selection Board's assessment. From the information provided to the Ombudsman, it appeared that, for example, the imprint, which normally forms part of the "prelims", is indeed sometimes placed after the text pages. The Ombudsman therefore understood why the complainant hesitated to choose answer (a). However, if it were to be assumed that the complainant's definition of "prelims" was correct, it appeared to the Ombudsman that answer (d) could not be correct because it was not contested that the "prelims" (*also*) designate the part of the book preceding the text part, so that answer (a) could not be excluded as wrong.

In any event, the Ombudsman considered that the complainant had not shown that there had been a manifest error in the Selection Board's assessment. The Ombudsman closed the case with a finding of no maladministration.

ALLEGEDLY POOR ORGANISATION OF AN OPEN COMPETITION

Summary of decision on complaint 472/2006/DK against the European Personnel Selection Office (EPSO)

A participant in an open competition organised by EPSO complained to the Ombudsman that the competition had not been sufficiently transparent and well organised. He alleged, in particular, that the time-limits for registration for the selection tests had not been respected.

EPSO acknowledged that several candidates experienced difficulties when they attempted to register for the tests, due to the fact that a large number of candidates sought to register on the first day of the registration period and that, as a result, the IT system became overloaded. EPSO was consequently obliged to set up a queuing system, in order to limit the inconvenience caused by the above difficulties. It also pointed out that it had never failed to publish relevant and up-to-date information in the candidates' EPSO Porta (on-line profile), and on its official website.

After taking into account the kind of information provided by EPSO on its official website and in the candidates' EPSO Porta, as well as how quickly this information was provided, the Ombudsman found that EPSO had provided the candidates, on a regular basis and in compliance with the Call for expression of interest, with information concerning the successive stages of the selection procedure. In this context, the Ombudsman noted that EPSO had endeavoured, in a service-minded way, to inform candidates about the technical difficulties it had encountered, and the changes that were necessary in the organisation of the selection tests to meet these difficulties. Moreover, the information provided by EPSO was clear and adequate, since it allowed a reasonable reader to understand what the next stage of the procedure would be and what element of the procedure had changed. The Ombudsman also considered that EPSO could not have originally foreseen the technical problem referred to above, that it had dealt appropriately with this unforeseen event, and, most importantly, that it had informed the candidates, without any delay, about the related changes in the organisation of the competition. On the basis of the above, the Ombudsman found no instance of maladministration corresponding to the complainant's allegations.

3.1.5 The European Investment Bank

REFUSAL TO PROVIDE INFORMATION ON POSSIBLE FINANCING OF A PROJECT IN A CANDIDATE COUNTRY

Summary of decision on complaint 3501/2004/PB against the European Investment Bank (EIB)

The EIB refused the complainants' request (submitted in 2003) for information about its possible financing of a project in the Czech Republic, on the ground that the Czech authorities had asked it to keep such information confidential until the Czech Parliament had approved the loans. In reply to a complaint sent to it, the EIB observed, in general terms, that its refusal complied with its policy and rules in force at the time. The reply did not address the complainants' argument that, according to a relevant EIB publication, there would be transparency unless the promoters of the project were opposed to it, on justified grounds of commercial/market confidentiality.

The complainants therefore turned to the Ombudsman.

During the course of the Ombudsman's inquiry, the EIB remedied its original failure to address the complainants' argument regarding transparency by putting forward explanations referring to the public interest as regards international relations. The Ombudsman found that the EIB could validly rely on such considerations. Furthermore, the Ombudsman considered that the EIB was

not required to obtain, in writing, written confirmation of the Czech Government's desire for confidentiality specifically for the project in question, and that, in the context of his inquiry, the EIB had provided sufficient evidence with respect to the behaviour of the Czech authorities which led it to refuse disclosure of the information concerned.

The Ombudsman pointed out that principles of good administration require the Administration to provide citizens with the information they have requested, unless it invokes valid and adequate reasons for not doing so. This requirement was reflected in the EIB's own code of good administrative behaviour, which also referred to the duty to provide reasons for decisions.

As regards the present case, the Ombudsman concluded that it had not been established that the EIB had breached its own rules on access to information. However, he invited the EIB, if it refuses to provide information in future, to provide an adequate explanation to the person requesting the information before the stage of a complaint to the Ombudsman.

3.1.6 The European Anti-Fraud Office

ALLEGED FAILURE TO REPLY TO A REQUEST FOR INFORMATION

Summary of decision on complaint 3436/2004/ELB against the European Anti-Fraud Office (OLAF)

The complainants are directors of a company whose project (Blue Dragon) was selected to receive Community funds granted under the Community's LEADER II initiative. Suspecting that the funds applied for on behalf of their company had been subject to fraud, they contacted OLAF. At the end of its investigation, OLAF concluded that the Community funds paid should be recovered. The complainants alleged that OLAF failed to reply to the questions which they addressed to it concerning its investigation into the Blue Dragon project.

In its opinion, OLAF noted that the issues raised in the complainants' letter related to the same events and the same time period as those covered in complaint 1769/2002/(IJH)ELB. In the context of that complaint, OLAF provided extensive information with regard to the issues raised in its submissions. Moreover, this matter, and the specific issues raised in the complainants' letter had also been the subject of scrutiny by the European Parliament's Committee on Budgetary Control (COCOBU), to which OLAF had provided detailed written and oral information. Requiring OLAF to again provide detailed answers on the same issues would constitute an undue administrative burden. OLAF concluded that it therefore limited its submissions to indicating where answers to each of the questions raised by the complainants in their letter had already been given, and provided any supplementary information that might be helpful.

The Ombudsman considered that, as alleged victims of fraud, who made a complaint to OLAF, the complainants are entitled to expect OLAF to pay special attention to their interest in obtaining information on the relevant inquiries carried out by OLAF. He also considered, however, that there are limits to the European institutions' duty to respond to requests for information under the European Code of Good Administrative Behaviour. In particular, the interests of good administration require that duty to be subject to the principle of proportionality, in order to avoid an unreasonable administrative burden. In circumstances such as those of the present case, where OLAF had already responded to inquiries by the Ombudsman and by COCOBU, the Ombudsman considered that OLAF could reasonably respond to the complainants' letter by indicating where answers to each of the questions raised by the complainants had already been provided. The Ombudsman recognised that the complainants were not satisfied with the content of those answers. However, after careful examination of the questions and answers, the Ombudsman considered that the complainants' allegation that OLAF had failed to answer could not be sustained.

3.2 CASES SETTLED BY THE INSTITUTION

3.2.1 The European Parliament

ACCESS TO AN ARTICLE IN THE "EP NEWSHOUND"

Summary of decision on complaint 1363/2006/MF against the European Parliament

The complainant, a European Parliament official, tried to read an article concerning the political situation in Spain which had appeared on 4 March 2006 in the "EP Newshound" (the internal on-line weekly newsletter of the European Parliament). However, the article had in the meantime been withdrawn. By e-mail of 6 April 2006, the complainant requested the service responsible for the "EP Newshound" to send him a copy of the article. On the same day, the responsible service informed the complainant that, given that the article had been withdrawn and cancelled due to "popular reactions", his request could not be granted.

In his complaint to the Ombudsman, the complainant alleged that Parliament's refusal to provide him with a copy of the article was unfair, discriminatory and constituted a failure to provide information.

Parliament informed the Ombudsman that it had decided to forward the article directly to the complainant. The complainant then informed the Ombudsman that he had received the article and was satisfied with Parliament's reply. The Ombudsman concluded that Parliament had settled the matter.

3.2.2 The European Commission

REFUSAL TO PAY OUTSTANDING SALARY AND INTEREST

Summary of decision on complaint 106/2005/TN against the European Commission

The complaint concerned the Commission's alleged refusal to pay the salary of the complainant's daughter, a former Commission official, who fell ill soon after taking up her duties. After she had been on the sick list for a while, the Commission declared the result of the medical examination that the complainant's daughter had undergone before taking up her position invalid. The Commission argued that she must already have been ill at the time of the medical examination. The matter was brought before the Court of First Instance, which annulled the Commission's decision, and the daughter was reinstated as an official. Since she was still ill, she could not work and was finally granted a disability pension as of November 2002. However, the Commission did not pay the complainant's daughter any salary for the period May 2001 to October 2002, arguing that she had not provided any evidence to indicate that her absence was due to medical reasons. The complainant's daughter made a complaint regarding the matter under Article 90(2) of the Staff Regulations but did not receive a reply within the stipulated time period. The complainant therefore made a complaint to the Ombudsman on her daughter's behalf.

The complainant argued that the Commission already possessed the necessary information to conclude that her daughter had been ill during the period in question, since her incapacity to work had been evaluated by the Commission's Invalidity Committee during that period. The complainant alleged that the Commission's decision to classify her daughter's absence during the period May 2001 to October 2002 as unauthorised was unreasonable. The complainant claimed that the Commission should pay her daughter her salary for the period in question.

In its opinion, the Commission explained that it had decided to accept the daughter's complaint under Article 90(2) and that it had paid her the outstanding salary for the period in question. The complainant acknowledged that the salary had been paid but considered it remarkable that the Commission had paid no interest.

The Ombudsman noted that, in her complaint under Article 90(2), the complainant's daughter had not only claimed that her outstanding salary should be paid, but also that the Commission should pay interest. Since the Commission, in its opinion, explained that it had made a decision "*accepting [the daughter's] complaint under Article 90(2)*", the Ombudsman found it appropriate to make further inquiries, asking the Commission why it had not paid any interest.

In reply, the Commission acknowledged that interest should be paid and the complainant subsequently informed the Ombudsman that the Commission had paid it. She thanked the Ombudsman's services for their help in resolving the matter.

REPLY IN A DIFFERENT LANGUAGE TO A JOB APPLICATION

Summary of decision on complaint 1841/2005/BM against the European Commission

The complainant sent a job application in Spanish to the Representation of the European Commission in Barcelona ("the Representation"). The Representation sent an e-mail in Catalan informing the complainant that he had not been shortlisted.

The complainant alleged that the Commission had not complied with Article 21 of the EC Treaty by having replied to his job application in a language other than that of his initial letter and, in addition, in a language not foreseen in the EC Treaty.

The Commission explained that the Representation generally uses the two official languages of the region, as established in the Spanish Constitution. In this case, the Representation had sent an e-mail in Catalan to all the non-selected candidates. The Commission regretted the mistake, noting that a translation of the reply into Spanish, as well as an apology, had been sent to the complainant. The Commission stated that the Representation was committed to ensuring that, in the future, e-mails intended for multiple recipients would be sent in both Spanish and Catalan.

The complainant informed the Ombudsman that he considered that the matter had been settled and thanked the Ombudsman and his services for having helped to find a positive solution to his complaint.

DELAY IN PAYMENT OF A TOWN TWINNING GRANT

Summary of decision on complaint 3172/2005/WP against the European Commission

A local authority in Berlin, Germany, and its partner authority in Halton, United Kingdom, organised an exchange programme for pupils of their music schools, in the framework of their town twinning activities. For one project, which took place in Halton in October 2004, the Commission awarded a grant of nearly EUR 11 000. However, the German authority complained to the Ombudsman that (i) there had been a significant delay in the Commission's handling of the application for funding,

(ii) the Commission had failed to pay out its share of the grant, and (iii) its own efforts to contact the Commission had been in vain.

In its opinion, the Commission apologised for the delay, which had been due to a particularly high volume of payments in the town twinning sector and to a reorganisation of the competent service. It explained that, for citizens' meetings, it used to pay directly to all invited towns their share of the grants. However, in view of the success of the programme and the increasing number of multilateral projects, this system had no longer been manageable. The Commission had therefore decided to simplify the payment system and to pay all grants in full to the organising town, whose task it was to forward to the invited towns their share of the grant. Due to the high workload, this system had already been applied in 2004, although the call for proposals had foreseen direct payment to the invited towns. The Commission had informed the organising towns and the main organisations representing towns and municipalities about the change. However, it had been difficult to simultaneously inform all the invited towns as well, although the Commission acknowledged that this would have been useful for them. Concerning the project in question, the Commission had contacted the partner authority in Halton and reminded it of its responsibility. After this reminder, the authority paid the complainant its share of the grant.

The Commission regretted the fact that the complainant had not been sufficiently informed about the new payment system.

The complainant informed the Ombudsman's services that it had received the payment and considered the case to be settled. It thanked the Ombudsman for his efforts. The Ombudsman therefore closed the case. However, in a further remark, he added that, since applicants for funding in this sector are likely to be bodies with relatively limited financial means, he would consider it to be a further improvement of the Commission's administrative standards if it could consider paying interest for late payment in such cases.

3.2.3 The European Commission and the European Environment Agency

RAPID APOLOGIES FOR ERRORS

Summary of decisions on complaints 3297/2006/BU and 3684/2006/BU

In a reply to a query from the complainant, the European Environment Agency (EEA) addressed him with an incorrect family name. Given that the substance of the query fell outside its remit, the EEA transferred the query to the Commission for answer. The Commission sent an acknowledgement of receipt to the complainant. However, the acknowledgement of receipt was in Polish, while the query was written in Slovak.

The complainant turned to the Ombudsman, whose services telephoned the EEA and the Commission in order to clarify matters rapidly and find a solution that could satisfy the complainant. The responses from the EEA and Commission services were positive and they agreed to offer prompt apologies to the complainant. The Ombudsman's services then contacted the complainant, who was pleased to accept the apologies.

The Ombudsman considered that the EEA and the Commission had settled the complaints, and thanked them for the good co-operation shown by their services.

3.2.4 The Committee of the Regions

REIMBURSEMENT OF TRAVEL EXPENSES FOR A JOB INTERVIEW

Summary of decision on complaint 800/2006/WP against the Committee of the Regions

In October 2005, the complainant attended a job interview at the Committee of the Regions, after which he sent a registered letter to the Committee, containing the required documents for the reimbursement of his travel expenses. Having received no reply, he contacted the Committee in December 2005. On 10 January 2006, the Committee informed him that it had not received the required documents. On 14 January 2006, the complainant sent copies of the documents to the Committee. He was informed that they were sufficient for the reimbursement.

In his complaint to the Ombudsman, submitted in March 2006, the complainant alleged that he had still not received the payment and that the Committee had failed to reply to a reminder he had sent in February 2006. He claimed that his travel expenses should be reimbursed, that he should be paid interest for the delay, and that the Committee's reimbursement procedure should be improved.

In its opinion, the Committee submitted that it had never received the complainant's registered letter but that it had decided to reimburse him on the basis of the copies of the documents. The Committee also submitted that the deadline for the reimbursement had been set at 2 March 2006. However, due to internal reorganisation over the period in question, the payment had only been made on 29 April 2006. It had therefore paid the complainant interest. As to the complainant's claim that its reimbursement procedure should be improved, the Committee submitted that the delay had been due to exceptional circumstances and that its procedures did not require revision.

The complainant informed the Ombudsman's services that he was satisfied with the Committee's handling of his case in as far as he had received the outstanding payment and interest. However, he did not agree with the Committee's position that its procedures did not need to be improved. He argued that the Committee had not informed him that it had not received the required documents. Furthermore, the Committee could have informed him about the internal reorganisation that had delayed the payment. Nevertheless, the complainant stated that the case could be closed. He thanked the Ombudsman for his help.

The Ombudsman concluded that the Committee had settled the complaint in as far as the reimbursement and the payment of interest were concerned. He considered that the complainant had dropped his claim that the Committee's reimbursement procedure should be improved and closed the case.

However, in a further remark, the Ombudsman suggested that the Committee's administrative standards would be further improved if the Committee were systematically to follow-up on payment files such as the one at issue in this case, in particular by contacting applicants if certain documents required for the execution of the payment were missing and, in case delays arise, by keeping applicants informed about these delays and their reasons.

3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN

3.3.1 The European Commission

INTERPRETATION OF THE DATA PROTECTION DIRECTIVE IN THE CONTEXT OF AN INFRINGEMENT COMPLAINT

Summary of decision on complaint 2467/2004/PB against the European Commission

The complainant filed an infringement complaint with the Commission, alleging that the Registration Act of the State of Hamburg violated Article 14(1)(b) of the EC Data Protection Directive 95/46[7], insofar as it allowed personal data in the possession of the State (and, in particular, of its public registry) to be handed over to third persons *without* the data subjects being informed or having the opportunity to object, *even when* it was clear that these third persons intended to sell the data for the purpose of direct marketing. The Commission rejected the complaint, considering that (i) a separate right to object to all public bodies could not be deduced from Article 14(1)(b) of the Directive; and (ii) with regard to direct marketing, Article 14(1)(b) of the Directive only concerns the entity that actually intends to use the personal data for its own direct marketing purposes and that an entity such as a public register does not fall within this category.

The Ombudsman found that the Commission's interpretation implied an unduly narrow reading of the terms "processing" and "controller", defined in Article 2 of the Directive[8], and that the Commission had failed to provide valid and convincing arguments for its position that Article 14(1)(b) did not apply to the circumstances referred to by the complainant. The Ombudsman, thus, made a friendly solution proposal, according to which the Commission could consider re-examining its reply to the complainant.

In its reply, the Commission admitted that Article 14(1)(b) of the Directive could be interpreted as focussing not only on the intention of the controller but also on specific knowledge of a processing operation for the purposes of direct marketing, which might be those of the controller or those of a third party. The Commission, thus, stated that it would address the issue of a wider interpretation of Article 14(1)(b) with the Member States, aiming at the proper implementation of the general right to object to all processing operations for the purpose of direct marketing. The Commission would also address, in this context, the specific case of Hamburg's legislation. The complainant welcomed the Commission's reply to the Ombudsman's friendly solution proposal, which he considered successful.

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7 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31. According to Article 14(1)(b) of this Directive: *"Member States shall grant the data subject the right: (a) ... (b) to object, ... to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or to be informed before personal data are disclosed for the first time to third parties ... for the purposes of direct marketing, and to be expressly offered the right to object ... to such disclosures ... "*

8 Under Article 2(b), *"'processing of personal data' ('processing') shall mean any operation ... which is performed upon personal data ..."*. Pursuant to Article 2(d), *"'controller' shall mean the natural or legal person, public authority, agency or any other body which ... determines the purposes and means of the processing of personal data"*.

3.3.2 The European Investment Bank

REFUSAL OF ACCESS TO AN AUDIT REPORT — 1

Summary of decision on complaint 1776/2005/GG against the European Investment Bank (EIB)

In the early 1990s, two companies belonging to the same group took part in a hydropower project in Lesotho, which was supported by EU funds, including funds made available by the European Investment Bank (EIB). Following a bribery case involving a local consultant the companies had hired, the EIB carried out an audit that led to a report in 2000. Based on the conclusions of this report, the European Anti-Fraud Office (OLAF) closed its investigation into the same matter. However, in 2003, and on the basis of new information, OLAF opened a new investigation.

The complainant, a lawyer representing another company within the same group, asked the EIB for access to its audit report. The EIB rejected the request by referring to its "Rules on Public Access to Documents", according to which "access to all or part of a document shall be refused where its disclosure would undermine the protection of (...) the purpose of inspections, investigations and audits".

In his complaint to the Ombudsman, the complainant submitted that this provision could not be interpreted so widely as to encompass investigations that had already been completed. In any event, the protection was no longer justified on the basis of the contents of the document concerned. He stressed that it was important to understand what new evidence justified the re-opening of OLAF's investigation in order to help the companies defend themselves.

The EIB maintained its view that no access could be granted.

The Ombudsman noted that it was not immediately obvious how the disclosure of the report could undermine the protection of the purpose of any old or new inspections, investigations and audits, given that OLAF had decided to close its first investigation in the light of the conclusions of the report and given that the report appeared to have been drawn up some four years before the request for access was made. Furthermore, the EIB had not considered the possibility of granting partial access. The Ombudsman therefore addressed a proposal for a friendly solution to the EIB, asking it to reconsider the complainant's request.

In its reply, the EIB explained that full disclosure could not be envisaged. However, after further consideration and in the spirit of good co-operation, public access could be granted to certain excerpts (which it enclosed with its reply). Furthermore, it would exceptionally grant the complainant private access to certain further sections.

The complainant pointed out that he was grateful for the access granted. The Ombudsman was pleased to note that a friendly solution had been agreed. He welcomed the EIB's constructive and co-operative approach to this case and noted that the innovative way in which the EIB had complied with the complainant's request for access whilst at the same time protecting the legitimate interests of third parties could serve as a model for future cases.

3.3.3 The European Aviation Safety Agency

RECOVERY OF INSTALLATION ALLOWANCES PAID DURING A PROBATIONARY PERIOD

Summary of decision on complaint 1729/2005/JF (Confidential) against the European Aviation Safety Agency (EASA)

The complainant was employed as a member of EASA's temporary staff and was required to serve a probationary period of six months, first in Brussels and then in Cologne.

Before the end of the probationary period, EASA informed the complainant that his contract of employment was not confirmed. Later that month, EASA requested that the complainant reimburse the installation allowances already paid to him.

The complainant alleged that EASA was acting abusively and contrary to natural justice. He argued that the termination of his employment had been unilateral and involuntary and that he had incurred material expenses in relocating twice within a few months.

EASA argued, in summary, that a temporary member of staff only acquires the right to the installation allowance after having served the probationary period satisfactorily. It also recalled that the complainant had signed two declarations that informed him that the installation allowances were granted as an advance, subject to repayment in case of failure to become established. EASA had, for additional clarity, amended the installation allowance declaration forms in order to include situations of involuntary termination of employment. It understood the hardship faced by staff members when having to relocate first to Brussels and then to Cologne, but the complainant had been paid all the statutory payments and allowances to which he was entitled and was thus compensated for the material expenses incurred when relocating.

The Ombudsman noted that EASA had paid the installation allowances to the complainant before the end of his probation period and thus at a time when, according to EASA's own analysis, he had no right to receive them. He also noted that EASA had, in substance, admitted that the declarations signed by the complainant referred to the obligation to repay only in case of voluntary resignation and not in the case of involuntary termination of employment. In the Ombudsman's view, EASA had therefore provided incomplete information, which had been liable to mislead the complainant. Although established case-law provides that officials are presumed to know their rights and obligations, this does not mean that Community institutions and bodies may provide misleading information.

The Ombudsman therefore proposed, as a friendly solution, that EASA could consider cancelling the recovery of at least part of the installation allowances.

In reply, EASA maintained its opinion that no maladministration had taken place. However, "having regard to the unique nature of this case and having the highest regard towards the opinion of the Ombudsman", EASA agreed to the friendly solution proposal and cancelled in full the recovery of the installation allowance.

3.4 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN

3.4.1 The European Parliament

ACCESS TO THE LISTS OF CANDIDATES IN A SELECTION PROCEDURE

Summary of decision on complaint 1919/2005/GG against the European Parliament

The complainant, a Parliament official, submitted applications in response to three vacancy notices within Parliament. He subsequently asked for access to the lists of admissible candidates in these selection procedures, all of whom were either Parliament officials or officials from other Community institutions. Parliament granted partial access to the lists. However, on the released copies, the names of all candidates, apart from the complainant's own name, had been deleted. The complainant argued that Parliament's view that the candidates' privacy and integrity had to be protected under data protection rules was flawed.

Parliament submitted that the disclosure of the other candidates' names might result in career-related problems for the persons concerned, should they not be appointed to the post involved, particularly as regards future promotions. It further submitted that, in view of the deadline for dealing with requests for access to documents, it had been impossible to ask all applicants if they would agree to the disclosure of their names.

However, Parliament suggested that the three institutions to which the legislation on access to documents in question applied (the Commission, the Council, and Parliament itself) could adopt a common position as regards access to lists of candidates in selection procedures.

The Ombudsman welcomed this initiative. In relation to the case at issue, he took the view that a refusal to disclose the names of applicants was not justified where candidates from the Community institutions and bodies were concerned. Since the Staff Regulations provide for promotion on merit and expressly envisage transfers of officials within and between institutions, a superior would act illegally if he were to disadvantage an official because he or she had applied for another post. Furthermore, in view of Parliament's well-known policy of encouraging mobility, the Ombudsman noted that he would find it very surprising if an official were actually disadvantaged in such a situation.

Furthermore, if disclosure of the lists was indeed likely to undermine the candidates' privacy, the Ombudsman considered that it would have been appropriate to ask them for their opinion before taking a decision. Given that the lists in question comprised the names of 35 candidates and that it could be presumed that all candidates could be reached by e-mail, the Ombudsman failed to see why it was impossible to consult them within the relevant deadline.

The Ombudsman therefore urged Parliament in a draft recommendation to reconsider the complainant's request. Parliament did not implement this draft recommendation.

Since Parliament had recognised that the issue required further attention and interinstitutional discussions on the subject were still ongoing, the Ombudsman closed the case with a critical remark. He emphasised that this did not exclude the possibility of re-examining the matter in light of the conclusions the institutions would reach.

3.4.2 The Council of the European Union

THE HANDLING OF A REQUEST FOR INFORMATION

Summary of decision on complaint 817/2006/TN against the Council of the European Union

The complainant contacted the Council by telephone to ask whether it had any obligations or possibilities to express its support for Denmark in its disaccord with a number of Muslim countries. The complainant asked to speak to the High Representative for the Common Foreign and Security Policy and Secretary-General of the Council of the EU, Mr SOLANA, and was put through to a secretary who told him that he could not speak to Mr SOLANA. The secretary said that the question was not easy to answer and she put him through to the person responsible for contacts with the press. That person could not answer the question either.

The complainant turned to the Ombudsman, alleging that the Council had failed to act in accordance with its policy of increased openness and friendliness towards citizens.

According to the Council, it was not unreasonable that a press officer had been unable to provide an answer expressing the position of the Institution. At that time, the Council was still discussing its detailed position on the matter. Under such circumstances, the Council found it difficult to imagine what meaningful reply could have been given to the complainant.

The Ombudsman did not consider it unreasonable for the complainant to have been directed to the press office with his request for information, since the press office should normally be aware of the Council's position on different matters. However, the press office should have explained to the complainant that the Council had not yet formulated a position on the matter, if that was the case. If the press office did not have the necessary knowledge to answer, the complainant should have been advised to make a written request for information, in accordance with Article 22(2) of the European Code of Good Administrative Behaviour. The failure to give such information or advice to the complainant in the present case was an instance of maladministration.

3.4.3 The European Commission

UNFAIR TREATMENT OF SECONDED NATIONAL EXPERTS

Summary of decision on complaint 495/2003/ELB against the European Commission

The complainants were a married couple who both worked as Seconded National Experts in the Commission. Their complaint concerned the wife's entitlement to allowances. The Commission granted her reduced subsistence allowances because her place of deemed residence was her place of secondment (Brussels). According to the complainants, her place of recruitment was Paris and, consequently, she should have received the full subsistence allowances.

In its opinion, the Commission explained that, in accordance with Article 20 of the Commission Decision of 30 April 2002 that governed such allowances, the husband's principal residence was Brussels. The wife's place of deemed residence was therefore also Brussels and she was entitled only to the reduced allowances.

After comparing the French and English versions of the Commission Decision, the Ombudsman proposed a friendly solution. He suggested that the Commission could consider paying the wife (i) the full daily subsistence allowances to which she appeared to be entitled according to the French

version of Article 17 and (ii) the additional flat-rate allowance to which she appeared to be entitled according to both the English and the French versions of Article 18.

The Commission rejected the proposal. It considered that the intention of the author of the Decision was to exclude payment of the higher-rate allowance when the expert was seconded to a place where his or her spouse was already settled. The Commission admitted that there was an error of translation in the French version of the Decision, but considered that such an error could not create a legal right and did not constitute a case of maladministration.

In February 2004, the Commission adopted a new Decision which amended both the French and English texts so as to give effect to what it argued its intention had been in the 2002 Decision.

In December 2005, the Ombudsman addressed a letter to the responsible Commissioner asking for his personal involvement in seeking a satisfactory outcome to the complaint, indicating that this could take the form of an *ex gratia* payment to the complainants. The Commissioner's reply took the view that the Commission had correctly interpreted the applicable rules and rejected the Ombudsman's proposal.

The Ombudsman considered that the Commission had acted unfairly by treating the complainants, in substance, as if the new Decision rather than the earlier Decision had been in force at the relevant date. This was an instance of maladministration and the Ombudsman made a critical remark. Moreover, he regretted that the Commission had failed to use an opportunity to demonstrate its commitment to principles of good administration. The Ombudsman announced his intention to examine, with the responsible Commissioner, how best to promote a culture of service in the Directorate-General concerned.

ACCESS TO DOCUMENTS: CHARGES UNDER NATIONAL LAW AND REASONS FOR REFUSAL OF PARTIAL ACCESS

Summary of decision on complaint 617/2003/IP against the European Commission

The complainant applied to the Commission for access to certain documents under Regulation 1049/2001[9]. The Commission rejected the application on the grounds that disclosure would undermine the protection of commercial interests of a natural or legal person (Article 4(2), first indent, of the Regulation).

After considering the submissions of the complainant and the Commission, the Ombudsman made a draft recommendation that the Commission should either reconsider its decision and grant access to those documents or parts thereof that are not covered by the above exception, or provide sufficiently detailed explanations to show that some or all of these documents or parts thereof are covered by the said exception.

The Commission's detailed opinion recognised that a certain number of the documents requested by the complainant were, in accordance with Italian law, public documents. However, since they were not available to the public free of charge in Italy, the Commission took the view that it would have been inappropriate and contrary to the principle of loyal co-operation between the institution and the Member State concerned for it to provide the complainant with free copies of the relevant documents. It therefore proposed, as a fair solution, to allow the complainant to consult the relevant documents at the premises of the Joint Research Centre in Ispra.

Concerning the possibility of granting partial access to the other documents, the Commission argued that the examination, page by page, of the relevant documentation and the extraction of limited fragments thereof would have created a totally disproportionate administrative burden and

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

that the public interest in obtaining access to fragmentary parts of the document did not justify the administrative work involved.

The Ombudsman did not find the Commission's position convincing. However, since he considered that it was not apparent what kind of action the European Parliament could have taken in order to assist the Ombudsman and the complainant, he concluded that it was not appropriate to submit a special report and closed the case with two critical remarks. The Ombudsman pointed out, in particular, that Regulation 1049/2001 does not contain an exception that would oblige the European Union to refuse access to documents purely because the disclosure of the documents in a Member State is not free of charge. He also recalled that the Court of First Instance had established that the institutions might, in particular cases, balance the public's interest in having partial access to the requested documents against the burden of work so caused. The Ombudsman also noted, however, that the Court made this principle dependant on a concrete and individual examination of the documents in question. No such concrete and individual examination appeared to have been carried out in the present case.

REFUSAL TO PAY LEGAL EXPENSES

Summary of decision on complaint 1537/2003/ELB (Confidential) against the European Commission

The complainant was a temporary agent of the Commission. A disciplinary procedure was launched against him and he was subsequently acquitted of the charges made against him. Following his acquittal, the complainant requested compensation, including the costs of preparing his defence.

According to the Commission, the complainant was not entitled to reimbursement of his legal expenses because the disciplinary action against him had not gone to the Disciplinary Board.

After considering the submissions of the complainant and the Commission, the Ombudsman made a proposal for a friendly solution, in which he suggested that, taking into account the seriousness of the charges made against the complainant and the length of time which had elapsed before it decided not to invoke the Disciplinary Board, the Commission could consider reimbursing the complainant for the expenses he had reasonably incurred for his defence during the disciplinary procedure.

In reply to the Ombudsman's proposal, the Commission took the view that, regardless of the seriousness of the charges made against him and the length of time which elapsed before it decided not to invoke the Disciplinary Board, the Staff Regulations prevented it from paying expenses reasonably incurred by the complainant for his defence.

In November 2005, the Ombudsman addressed a letter to the responsible Commissioner asking for his personal involvement in seeking a satisfactory outcome to the complaint. The Commissioner's reply repeated that the Commission did not share the Ombudsman's interpretation of the Staff Regulations and rejected his proposal.

The Ombudsman considered that the Staff Regulations did not prevent the Commission from responding positively to his proposal to consider paying, on an ex gratia basis, the expenses reasonably incurred by the complainant for his defence. The Ombudsman therefore concluded that the Commission's refusal to pay the complainant's expenses, regardless of the seriousness of the charges against him and the length of time which elapsed before the Commission decided not to turn to the Disciplinary Board, was an instance of maladministration.

Given that the Commission had refused not only a proposal for a friendly solution but also a further initiative to resolve the case, addressed personally to the responsible Commissioner, the Ombudsman considered that a draft recommendation would be pointless. The Ombudsman also took the view that the likely consequences of the maladministration were not of a sufficiently

serious nature to justify a special report to the European Parliament. The Ombudsman therefore closed the case with a critical remark.

The Ombudsman also expressed regret that the Commission's responsible Directorate-General had failed to use an opportunity to demonstrate its commitment to principles of good administration and announced his intention to examine, with the responsible Commissioner, how best to promote a culture of service in the Directorate-General concerned.

Note: The complaint was against both the Commission and OLAF. However, the Ombudsman's inquiry made clear that the Commission alone was responsible for the substantive issues raised. The Ombudsman's proposal for a friendly solution and the critical remark in the closing decision were therefore addressed only to the Commission and not to OLAF.

REFUSAL OF ACCESS TO AN AUDIT REPORT — 2

Summary of decision on complaint 1764/2003/ELB against the European Commission

The complainant requested that the Commission grant him access to an audit report concerning Niger. Only partial access (extracts of national legislation) to the document was granted. The complainant alleged that, in refusing to grant him access to the remaining part of the audit report, the Commission had failed to comply with Regulation 1049/2001 on public access to documents[10] . He claimed that he should be granted access to this document.

The Commission argued that its refusal to grant access to the remaining parts of the audit report was justified, since disclosure would undermine the protection of the purpose of audits and the protection of the public interest as regards international relations. Moreover, sections containing personal data were covered by a further exception laid down in Regulation 1049/2001.

The Ombudsman proposed a friendly solution, considering that, with regard to the exception relating to the protection of the purpose of audits, the Commission had failed to show that it was entitled to rely on this exception in order to limit public access to the audit report and that, concerning the protection of the public interest as regards international relations, it had failed to justify appropriately its refusal to disclose those parts of the report that it itself accepted could be disclosed. He therefore suggested that the Commission could consider granting access to those parts of the report that it itself had proposed could be disclosed.

Although the Commission agreed to release part of the document, the complainant pointed out that the expunged material represented in essence the entirety of the substantive content of the audit report.

The Ombudsman noted that the Commission enjoys a wide discretion in the context of a decision refusing access founded on the basis of the protection of the public interest concerning international relations. Consequently, the Ombudsman's scope of review in this context is limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment or a misuse of powers. As to the duty to state grounds, the Ombudsman recalled that, although it is for the institution concerned to demonstrate that the documents to which access is sought do indeed fall within the exceptions listed in Regulation 1049/2001, it may be impossible to give reasons justifying the need for confidentiality in respect of each individual document without disclosing the content of the document and, thereby, depriving the exception of its very purpose.

The Ombudsman noted that the report involved an in-depth audit of the administration of Niger. He further noted that the Commission considered that full disclosure of the requested document

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

could lead to a deterioration of its relations with Niger. He found that the Commission had provided a clear explanation for its challenged refusal and that this explanation, although brief, was adequate in light of the fact that mentioning additional information, in particular making reference to the content of the document concerned, would negate the purpose of the exception relied upon. The Ombudsman further found that the contested decision was not vitiated by a manifest error of assessment as to the protection of the public interest concerning international relations. He concluded that there was no maladministration with regard to the Commission's challenged refusal to grant access to parts of the audit report requested by the complainant.

The complainant also alleged that the Commission's register of documents was incomplete, because he found only two documents relevant to the audit when searching the register.

The Commission had decided that its register of documents should, initially, contain references to documents that essentially cover its legislative activities. The coverage of the register would be extended gradually. In order to satisfy the complainant, the Commission had decided to establish a list of the documents held by it relating to the audit concerned.

The Ombudsman remarked that sound financial management is of great concern to the public and that audit reports are valuable sources of information on the way Community funds are used. Hence, principles of good administration require that audit reports and relevant documents held by the Commission should receive high priority in its setting up of a register of documents. The Ombudsman observed that the Commission only made general remarks regarding the contents of its register, which cannot adequately address the shortcoming pointed out by the complainant. The Ombudsman found that the Commission's register of documents was inadequate, as regards the documents related to the audit in question. This constituted an instance of maladministration. The Ombudsman made a critical remark.

FAILURE TO REPLY TO A COMPLAINT MADE UNDER ARTICLE 90(2) OF THE STAFF REGULATIONS

Summary of decision on complaint 2227/2004/MF against the European Commission

On 14 March 2003, the complainant lodged an Article 90(2) complaint against the Commission's decision concerning his travel expenses for a mission. Given that this complaint was never forwarded to the responsible services, the complainant lodged a further complaint to the Commission on 19 August 2003. In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to provide a reasoned answer to his Article 90(2) complaint.

The Commission argued that the failure to reply to an Article 90(2) complaint was deemed to constitute an implied decision rejecting it.

In view of his position taken in previous cases, pursuant to which it is good administrative practice for the Appointing Authority to give an explicit reply to all Article 90(2) complaints, the Ombudsman considered that the Commission's failure to give a reasoned answer to the complainant's complaint constituted an instance of maladministration.

The Ombudsman therefore addressed a draft recommendation to the Commission, according to which the latter should give a reasoned reply to the complainant's Article 90 (2) complaint.

In its detailed opinion, the Commission referred to its limited resources and argued that the possibility implicitly to reject appeals aimed to ensure a margin for manoeuvre in order to establish priorities in its respect for good administration. The Commission further submitted that, given that the possibility of implied decisions rejecting appeals was foreseen both by the Staff Regulations and by the national legal systems of some Member States, the exercise of this possibility could not be considered to constitute maladministration. It added that, over the past two years, there had been five implied decisions rejecting complaints out of a total of 1 211 Article 90(2) complaints.

The Commission further submitted that the decision on the mission expenses itself had stated the grounds on which it was based.

Given that the Commission had refused to accept his draft recommendation, the Ombudsman considered it necessary to point out the following:

It is good administrative practice for the Appointing Authority to give an explicit reply to Article 90(2) complaints. In its detailed opinion, the Commission had failed to address the reasons on which the draft recommendation was based. The extremely limited number of implied rejection decisions would appear to confirm that the limited resources of the Commission did not oblige the latter to refrain from providing express replies to such complaints. Moreover, whilst it could be accepted that the Commission should be able to establish priorities as regards Article 90(2) complaints submitted to it, this did not make its decision to provide no answer whatsoever to a particular complaint compatible with principles of good administration. The concept of maladministration is, as confirmed by the case-law of the Community courts, broader than that of illegality. It was clearly not sufficient that the Commission's decision concerning the complainant's travel expenses for his mission indicated the reasons on which it was based. If the Commission considered that this decision was correct and contained all the necessary explanations, it should have been all the easier for it to take a reasoned decision on the Article 90(2) complaint. Given that the Commission had been unable to deal properly with the complainant's first Article 90(2) complaint, a reply to his second Article 90(2) complaint of 19 August 2003 should have been all the more necessary.

The Ombudsman therefore reiterated his view that principles of good administration require the administration to provide a written reply to Article 90(2) complaints and that this reply had to be provided within the four-month period laid down in this provision. The Commission's failure to do so in the present case thus constituted an instance of maladministration.

Given that the complainant, in his observations on the Commission's opinion, had stated that he did not consider it useful for the inquiry into his complaint to be pursued, the Ombudsman concluded that it was not appropriate to submit a special report to the European Parliament. The Ombudsman therefore closed the case with a critical remark.

DISCRIMINATION IN THE HANDLING OF AN APPLICATION AND FAILURE TO GRANT ACCESS TO DOCUMENTS

Summary of decision on complaint 2437/2004/GG against the European Commission

In 2003, the Commission published a call for proposals under the Leonardo da Vinci programme. Applicants had to submit pre-proposals which the Commission examined with the help of external experts. Those applicants whose pre-proposals had been selected were sent the comments and suggestions of the external experts and invited to submit full proposals.

The Commission informed the complainant that his pre-proposal could not be selected since he had failed to comply with the deadline. The Commission later accepted that it had made a mistake. In order to remedy this mistake, it invited the complainant to submit a full proposal. The complainant accepted that invitation. However, in June 2004, the Commission informed him that his project had not been selected for funding.

In his complaint to the Ombudsman, the complainant alleged that he had been discriminated against, since he had not had the benefit of the external experts' remarks in order to improve his pre-proposal. He claimed compensation amounting to more than EUR 11 000. He further alleged that the Commission had failed properly to handle his request for access to documents.

The Ombudsman considered that the Commission had acted rapidly and constructively when the mistake in question had been brought to its attention. However, it had not ensured that the complainant was dealt with in the same way as the other applicants who had been invited to submit full proposals. The Ombudsman therefore made a draft recommendation, inviting the Commission

to offer the complainant fair compensation, which could be much lower than the amount claimed. The Ombudsman also recommended that the Commission should deal with the full scope, procedural and substantive, of the complainant's request for access to documents.

In its detailed opinion, the Commission submitted, *inter alia*, that the complainant had explicitly refused to have his pre-proposal evaluated and that there was, therefore, no basis for a claim for damages. The Commission also disclosed further documents from its file.

The Ombudsman did not find the Commission's argument convincing, particularly since it had been aware that the mere permission to submit a full proposal was not enough to guarantee equal treatment. However, in his observations on the Commission's detailed opinion, the complainant explained that the only approach that would have been correct and possible in the circumstances would have been to proceed to a completely new publication of the relevant part of the call for proposals. The Ombudsman thus concluded that, by submitting a full proposal, the complainant had to be considered to have made a deliberate and informed decision to accept the risk that this way of proceeding might not lead to a satisfactory result. The Ombudsman therefore considered that there was no longer any basis for the claim for damages.

As regards access to documents, it was still unclear whether the Commission had yet released to the complainant all the documents on its file relating to him. The Ombudsman therefore asked the Commission to reconsider the relevant issues. The Commission replied that there was no specific file concerning the complainant's application in response to the call for proposals and that all relevant documents had been disclosed.

The Ombudsman took the view that, given the special circumstances of the case, there was no need for a critical remark concerning the discrimination that had occurred. However, critical remarks were made concerning the handling of the request for access to documents, both as regards substance and procedure.

LACK OF REMEDY IN EUROPEAN SCHOOLS

Summary of decision on complaint 3403/2004/GG against the European Commission

The complainants' son attended the European School in Brussels until 2003 when he took his school-leaving examination. In his written examination in German, his teacher gave him 9.5 points ("excellent"). However, since the second examiner only gave him 5.5 points ("insufficient"), a third examiner was called upon who fixed the final mark at 6.0 points.

The complainants appealed, but the Complaints Board of the European School considered that it was not competent to deal with the case. It held that although Article 27 of the Convention defining the Statute of the European Schools, which had been in force since 2002, envisaged such appeals, the existing implementing provisions did not allow an appeal in a case like the present one.

The complainants turned to the Ombudsman. Given that the European Schools are not themselves Community institutions or bodies, his inquiry had to focus on the Commission's role. The complainants stressed the Commission's duty to ensure their right to a fair procedure.

In February 2005, new implementing provisions were adopted. However, the Complaints Board again rejected the complainants' case because the new provisions were not applicable retroactively.

After an unsuccessful attempt to achieve a friendly solution, the Ombudsman made a draft recommendation, urging the Commission to ensure that a proposal for an amendment of the implementing provisions was presented to the Board of Governors of the European Schools so that the Complaints Board could examine the complainants' case.

The Commission's reply pointed out that it had informed the European Schools that there were no legal objections to such a proposal. The Commission added that a preparatory committee to the

Board of Governors had subsequently debated the issue but, much to the regret of the Commission, had decided not to support any proposal for changing the status quo. In the Commission's view, it had done everything that was reasonably possible.

The Ombudsman welcomed the Commission's constructive and sustained efforts to assist the complainants. However, he took the view that the importance of the Commission's involvement in the European Schools System was such that it must play an active role in order to ensure that the European Schools comply with principles of good administration.

The Ombudsman recalled that the necessary amendment of the relevant implementing provisions aimed at nothing more than giving practical effect to Article 27 of the Convention from the date on which the Convention had entered into force. There appeared to be no valid reason to prevent the Board of Governors from accepting such an amendment.

The Ombudsman considered that, given the clear-cut nature of the deficiency and the importance of the issue, the Commission should have insisted that the Board of Governors discuss the proposal. Since the Commission had failed to do so, the Ombudsman made a critical remark.

Given that the new implementing provisions had come into force in 2005 and the number of persons affected by the problem in question thus appeared to be very limited, the Ombudsman did not consider it appropriate to make a special report to the European Parliament on the case. However, similar issues arise in two further cases that are still pending before the Ombudsman (2153/2004/MF and 3323/2005/WP), the outcome of which is not prejudged by the present decision.

The complainants informed the Ombudsman that they were satisfied with the way the Ombudsman had handled the case and that they hoped that the Commission would bring this decision to the attention of the European Schools.

The Commission subsequently informed the Ombudsman that, given the importance of the issue, it had asked the Secretary-General of the European Schools to put the Ombudsman's decision on the agenda of the Board of Governors. It also informed the Ombudsman that the European Schools had adopted a Code of Good Administrative Behaviour (available on the website of the European Schools).

REFUSAL OF ACCESS TO A COMMISSION WORLD TRADE ORGANISATION PANEL DISPUTE SUBMISSION

Summary of decision on complaint 582/2005/PB against the European Commission

Friends of the Earth was refused access to the Commission's Second Submission to a dispute panel of the World Trade Organisation (WTO). The dispute had arisen out of a complaint by the United States and others in connection with the European Community's approach to the commercialisation of biotechnology (genetically modified organisms). The complainant alleged that the Commission had breached Regulation 1049/2001 on public access to documents[11]. In its opinion, the Commission argued that "*the WTO dispute settlement procedure has to be assimilated to court proceedings*" within the meaning of Article 4(2), second indent, of Regulation 1049/2001 on public access to documents, which provides that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) — court proceedings (...)*".

The Ombudsman recalled that the exceptions to public access must be construed and applied strictly. To consider that 'court proceedings' under Article 4(2), second indent, of Regulation 1049/2001 also cover dispute *settlement procedures that can be assimilated to court proceedings* involved an impermissibly extensive interpretation. Besides, the Commission had not shown that the

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

Community legislator intended the phrase 'court proceedings' in Regulation 1049/2001 to also cover other dispute settlement procedures. In light of this, the Ombudsman took the view that the Commission's refusal of access was not well founded, and made a critical remark.

With regard to the complainant's claim that the Commission's submissions should in the future be made public at the time they are filed with the WTO panel, the Ombudsman noted, in particular, that his finding of maladministration (above) did not by itself imply that the Commission would in general be obliged to publish or otherwise disclose to third parties its submissions in WTO disputes at the stage in proceedings referred to by the complainant.

SPECIAL LEAVE RULES FOR NATIONAL EXPERTS

Summary of decision on complaint 760/2005/GG against the European Commission

The complainant worked as a seconded national expert ("SNE") for the Commission. Her request for special leave in order to appear as a witness in court was rejected on the grounds that the rules in force did not foresee this possibility for SNEs.

In her complaint to the Ombudsman, the complainant alleged that this refusal constituted discrimination, given that officials of the Communities could benefit from special leave in such circumstances.

The Commission's opinion appeared to suggest, first, that any unequal treatment that might exist was explained by the objective differences between officials and SNEs and, second, that, in substance, there was no unequal treatment between officials and SNEs, given that the absence of a specific provision allowing for special leave in such cases for SNEs was compensated for by the possibility of obtaining special leave under other headings.

The Ombudsman did not find the Commission's position convincing because the Commission (i) had not provided a satisfactory explanation as to why the existing differences between officials and SNEs could entitle it to treat them differently when it came to deciding on applications for special leave to appear as a witness in court and (ii) had not shown that officials and SNEs were, in substance, treated equally.

The Ombudsman suggested, as a friendly solution, that the Commission consider amending or clarifying the existing rules to ensure that SNEs may be granted special leave under the same conditions as officials in cases where they have to appear as witnesses before a court. Since the Commission did not accept the proposal, the Ombudsman repeated it in the form of a draft recommendation.

In its detailed opinion, the Commission stated, without elaborating, that it would study the Ombudsman's proposal within the context of a future, more comprehensive examination of the situation of SNEs. The Commission noted that an additional day of ordinary leave had nevertheless been granted to the complainant for 2006.

The Ombudsman considered that this reply was not satisfactory, since it did not constitute an undertaking that the draft recommendation would be implemented.

Given that it did not appear justified to submit a special report to the European Parliament, the Ombudsman closed the case with a critical remark.

The Ombudsman also expressed his regret at the fact that the relevant service of the Commission had failed to use the opportunity to demonstrate its commitment to principles of good administration and announced his intention to examine, with the responsible Commissioner, how best to promote a culture of service in the Directorate-General concerned.

FAILURE TO MAKE GERMANY COMPLY WITH A COURT JUDGMENT

Summary of decision on complaint 1037/2005/GG against the European Commission

In 1998, Germany introduced a "Regulation on the Avoidance and Recovery of Packaging Waste", transposing a European directive into national law. The Regulation obliged producers and distributors to accept, free of charge, the return of empty sales packaging and to recover it. Under certain conditions, this obligation could be met by participating in a global system for the collection of used sales packaging. Distributors of certain drinks had to charge customers a deposit on plastic bottles and cans, unless they participated in such a system. However, if certain conditions concerning the proportion of reusable packaging on the market were not attained, the producers could no longer fulfil their obligations by participating in the system. In such a case, drinks in non-reusable packaging became subject to the deposit and return system. On 2 July 2002, the German authorities required that a deposit be charged on non-reusable packaging for mineral water, beer and carbonated soft drinks from 1 January 2003.

Following infringement proceedings against Germany concerning mineral waters, the European Court of Justice held that the relevant rules constituted a barrier to inter-Community trade (Case C-463/01). In particular, it held that the Regulation had not provided for a sufficiently long transitional period.

In a second case that had been referred to the Court by a German court (Case C-309/02), it held that a change from one packaging-waste management system to another was compatible with Community law only if an operational system existed at the time of the change, in which the producers and distributors concerned could actually participate.

In their complaint to the Ombudsman, two lawyers acting for companies affected by the Regulation alleged that the Commission had failed to take the necessary steps in order to make Germany comply with these judgments.

According to the Commission, the two judgments did not provide a legal basis to require that Germany suspend the relevant rules. In the first judgment, the Court had held the mandatory deposit to be incompatible with Community law only on the grounds that it had been introduced without a sufficient transitional period. The Commission considered that, by now, a sufficiently long period had in any event expired.

As to the second judgment, the Commission considered that it was not applicable in the present case because it was a preliminary ruling that only stated general conditions as regards the compatibility of the deposit with Community law without assessing the German system as such. The question of whether the German system was incompatible with Community law because of insufficient geographic coverage was the subject of another infringement procedure that was currently being dealt with by the Commission. No further action was therefore required.

The Ombudsman recalled that maladministration can occur when the administration misinterprets a legal rule or principle. In this case, Article 228 of the EC Treaty was relevant. It provides that, if the Member State fails to take appropriate measures, the Commission shall issue a reasoned opinion and may bring the case before the Court.

In the Ombudsman's view, it was clear that a transitional period must precede the introduction of a new system. He considered that the Commission had submitted no convincing legal arguments to support its view that the passing of time after the introduction had caused the Court's ruling to cease to be valid. The arguments it relied on appeared to be inspired by considerations of expediency.

As regards the second Court judgment, the Ombudsman considered that the allegation that the Commission had failed to ensure that Germany complied with this judgment was clearly unfounded, since it was a preliminary ruling on the interpretation of the Treaty. However, he found that the judgment clearly referred to the German Regulation and set out conditions that it had to fulfil.

The Ombudsman took the view that, even on the assumption that a sufficient transitional period had passed, the Commission's position that no further action needed to be taken as regards compliance with the first judgment could only be justified if it had assured itself that an operational system open to all interested companies was available. However, the Commission had concluded at an earlier point that no such system had been set up. Furthermore, it had admitted that the issue was still being assessed in the context of another infringement procedure. The Ombudsman therefore found the Commission's position to be inconsistent.

He concluded that the Commission had wrongly interpreted its obligations under Article 228 of the EC Treaty by failing to provide convincing arguments to show that no further steps to make Germany comply with the Court's rulings were necessary.

In view of the fact that one of the infringement procedures concerning the German Regulation was still ongoing, he considered that his views, expressed in a critical remark, could usefully be taken into consideration by the Commission in the context of that procedure.

ACCESS TO DOCUMENTS CONCERNING THE ALLOCATION OF GREENHOUSE GAS EMISSION ALLOWANCES

Summary of decision on complaint 1463/2005/TN against the European Commission

The complaint concerned the Commission's refusal to grant access to documents relating to the national plans for the allocation of greenhouse gas emission allowances ("NAPs") notified to the Commission by the United Kingdom, France and Slovakia. The Commission had refused access to the documents in question on the basis of Article 4(2), third indent, and Article 4(3), first paragraph, of Regulation 1049/2001[12] on public access to documents, arguing that its negotiations with Member States were still ongoing and that access to the documents in question would compromise its negotiating position.

The complainant argued that, since all NAPs had to be assessed individually and without discretion, the Commission's position on one NAP could not affect its position on another NAP. The complainant alleged that the Commission had wrongfully refused access to the documents in question.

In its opinion, the Commission argued that the assessment of the NAPs takes the form of an investigation, the purpose of which is to ascertain whether the NAPs comply with Directive 2003/87[13] on the trading of greenhouse gas emissions. This procedure involves a substantial amount of negotiation with a view to finding a solution, consistent with Community law, which takes into account the specific situation of the Member State.

The Ombudsman noted that the complainant had been granted access to the requested documents after the NAP approval procedure for all Member States had been finalised. However, as regards the Commission's refusal to grant access to NAPs during ongoing negotiations, he pointed out that principles of good administration require that valid and convincing arguments be provided.

Article 4(3), first paragraph, of Regulation 1049/2001 applies to documents drawn up by an institution for internal use. The documents covered by the request for access were communications sent to and received from the authorities of certain Member States. In the Ombudsman's view, they could not, therefore, be considered as documents meant for internal use.

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

13 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ 2003 L 275, p. 32.

Article 4(2) of the Regulation requires that, in order for access to be refused, it has to be established that disclosure would undermine the protection of the purpose of the investigations. The purpose of the investigations in the present context was to make sure that the Member States' NAPs were in conformity with Community law. In order for the exception in Article 4(2) to be applicable, the Commission had to establish that the disclosure of the documents in question would undermine that purpose. It had not done so. The Ombudsman therefore found that the Commission had wrongly refused access to the documents during ongoing negotiations and that its refusal constituted an instance of maladministration. The Ombudsman made a critical remark in this regard.

FAILURE TO EXPLAIN A NEGATIVE ASSESSMENT OF AN AGENCY EMPLOYEE

Summary of decision on complaint 163/2006/MHZ against the European Commission

A Commission official sent a letter to the European Environment Agency (EEA) about problems regarding the Commission's co-operation with an EEA working group for which the complainant was responsible. According to the complainant, who had subsequently been dismissed, the letter had been sent at the request of her supervisor in order to produce evidence against her. The complainant wrote to the Commission asking for explanations. Since the Commission did not reply, the complainant turned to the Ombudsman.

The Commission acknowledged and regretted that the complainant had not received a reply to her letter. However, the Commission took the view that it would have been inappropriate for it to enter into a debate with individual employees or former employees of the EEA about its contacts with the EEA. The Commission would therefore not have been able to reply in substance to the complainant's request for information.

In her observations, the complainant stated that she expected that the Commission official in question would receive a written warning and that a copy of the warning would be sent to her.

The Ombudsman considered that the Commission had offered a reasonable justification for not providing the complainant with the information she had requested. However, the Commission's failure to reply to the complainant's letter was maladministration. The Commission's expression of regret for the failure to reply did not constitute an unambiguous apology that could reasonably be expected to satisfy the complainant. The Ombudsman therefore made a critical remark.

As regards the issue raised in the complainant's observations, the Ombudsman pointed out that disciplinary sanctions can only be imposed in accordance with the relevant provisions of the Staff Regulations. If the Ombudsman were, as part of his inquiry into a complaint submitted to him, to investigate whether disciplinary proceedings should be opened in a given case, he would in effect be carrying out what might be called pre-disciplinary proceedings, the conclusions of which would be likely to prejudge, or be seen to prejudge, the outcome of any subsequent disciplinary proceedings. Insofar as the complainant's observation could be understood as a new claim, the Ombudsman therefore considered that it could not be dealt with in his inquiry.

CHECKING OF THE DATE OF DISPATCH OF GRANT PRE-PROPOSALS

Summary of decision on complaint 866/2006/SAB against the European Commission

The complainant alleged that the Commission had failed properly to handle its pre-proposals, under the Socrates programme, by wrongfully concluding that they had been sent after the deadline (1 November 2005). The complainant argued, in essence, that the Commission had been provided with records of the timely submission of the pre-proposals. In its opinion, the Commission stated that it declared the pre-proposals ineligible because the airway bills of the express mail company DHL, received by the Commission together with the pre-proposals, bore the date of 2 November 2005. There had, according to the Commission, been no reason to doubt this date.

The relevant call for proposals provided for the "*closing dates for submission (=dispatch) of proposals*" and fixed the date of 1 November 2005 as the closing date for the submission of the pre-proposals in question. The relevant application form mentioned that this date was "*1 November 2005 (as per postmark). Applications bearing postmark after this date* [would] *not be considered. The application* [had to] *be sent by post*."

The Ombudsman's inquiry revealed that the pre-proposals were handled by two express mail companies. The Ombudsman noted that the airway bills referred to by the Commission indicated that the mail delivered to it by DHL had been given to DHL by a company called SPEEDEX, and not by the complainant. The very name of the latter company suggested that it provided express mail services. Under these circumstances, the Ombudsman did not accept the Commission's argument that there was no reason to doubt that the date appearing on DHL's bills was the date of dispatch. Relatedly, he recalled that, while it appeared that the Commission had conducted an internet search in the DHL database in order to check the date of dispatch, it had not taken other steps to verify the date of dispatch. Moreover, the Commission had confirmed its initial decisions to reject the complainant's pre-proposals, although the complainant had contested them by providing documents showing that they had been sent on 1 November 2005 by SPEEDEX. In light of the above, the Ombudsman concluded that the Commission had indeed failed properly to handle the pre-proposals in question and found that this was an instance of maladministration.

3.4.4 The European Personnel Selection Office

INADEQUATE INFORMATION TO A CANDIDATE REGARDING HIS MISTAKES IN A TRANSLATION TEST

Summary of decision on complaint 674/2004/PB against the European Personnel Selection Office (EPSO)

The complainant asked EPSO for information that would help him understand his marks in a translation test he had failed. EPSO sent him an evaluation sheet, indicating that "... *the translation does not sufficiently possess the qualities of faithfulness to the original and/or appropriateness in French usage for the tasks to be accomplished*". In the course of the Ombudsman's inquiry, EPSO also gave certain information about the types of errors committed by the complainant.

In 1999, the Commission made a commitment to give candidates access to their own marked examination papers, following the acceptance by both the European Parliament and the European Commission of the Ombudsman's Special Report on openness in recruitment procedures. In this Report, it was pointed out that the granting of such access would (i) give the candidate the opportunity to discover his or her mistakes and thus to improve future performance; (ii) strengthen the candidate's confidence in the administration; and (iii) enable failed candidates wishing to dispute the assessment to argue much more precisely.

In his draft recommendation regarding the present case, the Ombudsman considered that the adequacy of the information provided in an evaluation sheet prepared by the Selection Board is to be appraised in view of the purpose of providing a candidate with a copy of his marked examination paper. Hence, the evaluation sheet must provide sufficiently clear and detailed information in the light of those purposes. The Ombudsman found that this requirement implies that, where the evaluation sheet concerns a translation test, it must provide information not only on the types, but also on the seriousness and the extent of the errors or weaknesses identified by the Board in the candidates' paper, without, however, imposing an unreasonable administrative burden on the Board. Relatedly, the Ombudsman pointed out that the Board is under no obligation, deriving from principles of good administration, to provide candidates with a detailed opinion on the *specific* errors or weaknesses that it has identified.

EPSO responded by providing more information on the *types* of errors committed by the complainant in the test. However, it stated that it is not the Board's responsibility to indicate the gravity and importance of the different types of errors identified during the correction of the paper concerned. EPSO, thus, did not accept the Ombudsman's draft recommendation.

In his decision, the Ombudsman noted that EPSO had neither argued that the provision of the above information would entail an unreasonable administrative burden nor indicated any other valid reasons for the failure to give this information to the complainant. The Ombudsman therefore made a critical remark. Moreover, the Ombudsman indicated that he would consider whether the above issue could usefully be included in his own-initiative inquiry on access to the evaluation criteria established by Boards for written examinations (inquiry OI/5/05/PB) and might also consider whether it would be useful to open a separate own-initiative inquiry.

ALLEGED DISCRIMINATION AND UNFAIRNESS DUE TO LESS PREPARATION TIME FOR AN ORAL TEST THAN THE OTHER CANDIDATES

Summary of decision on complaint 3399/2004/OV against the European Personnel Selection Office (EPSO)

The complainant participated in Open Competition COM/A/3/02, organised by EPSO. In December 2003, EPSO informed him that he was not admitted to oral test e) because his mark of 23.2/40 in written test d) was insufficient for him to be among the 145 best candidates. The complainant requested a copy of his test. In response, the Selection Board informed him, by letter of 27 January 2004, that it had reconsidered his test and decided to invite him for oral test e), which was to take place on 18 February 2004. On 23 April 2004, EPSO informed the complainant that he had not been included on the reserve list. The complainant found out from this letter that he had, in fact, obtained 25.6/40 in written test d).

The complainant turned to the Ombudsman alleging (i) that there had been administrative irregularities in the correction of his written test d), as evidenced by the different marks communicated to him (23.2/40 and 25.6/40), and (ii) that he had not been treated reasonably and on an equal basis with other candidates because he received the invitation to the oral test only on 3 February 2004 and so had less time to prepare.

In a joint opinion, the Commission and EPSO stated that the re-examination of the complainant's written test had led to a new mark of 25.6/40 and that this was not an administrative irregularity, but a rectifying decision. As regards the alleged unreasonable and unequal treatment, they pointed out that the Notice of Competition had informed candidates of the various aptitudes, capacities and knowledge that would be evaluated during the tests, and that all candidates could therefore have used the period after the pre-selection tests to prepare for the other tests, including the oral one.

The Ombudsman's services inspected EPSO's file. The Selection Board had received 14 requests from candidates, either for re-evaluation of written test d), or for more information on the reasons for their insufficient mark. The Board had considered all 14 requests as being requests for a re-evaluation. Following a third marking, two candidates, including the complainant, were admitted to the oral test. The Ombudsman was thus able to confirm and welcome the fact that the Board had carried out a genuine re-evaluation of the complainant's test, which led to a rectifying decision. No maladministration was therefore found as regards the allegation of administrative irregularities. Moreover, the Ombudsman made a further remark encouraging EPSO and the Selection Boards in all competitions to duly consider requests for re-evaluation and to make corrections to their previous assessments so as to enhance the confidence and trust of citizens in the selection procedures organised by EPSO.

As regards the second allegation, the Ombudsman considered that the difference in treatment was objectively justified by the fact that the complainant's test had been re-evaluated and that, as a result, he had been admitted to the oral test. The Ombudsman found, however, that the complainant had

not been treated fairly and reasonably, because EPSO had proposed to the complainant the date of 18 February 2004 for his oral test, whereas it could have proposed the other possible date of 1 March 2004, which would have given the complainant an extra ten days to prepare. The Ombudsman therefore made a critical remark in this regard.

INCONSISTENT DATA IN AN OPEN COMPETITION TEST

Summary of decision on complaint 32/2005/ELB against the European Personnel Selection Office (EPSO)

The complainant took part in an Open Competition. He failed to obtain the pass mark in test (c), which comprised a series of multiple-choice questions "*to assess [candidates'] general ability, in particular [their] verbal and numerical reasoning skills*". The complainant alleged that question No 21 of this test contained inconsistent information.

The Ombudsman accepted the above argument made by the complainant. Nevertheless, he also held that question No 21 could not be deemed to be inconsistent with the purpose of the test and could not be considered, by itself, as incompatible with the principle of equal treatment of candidates or with the principles of good administration that require that Community institutions and bodies be consistent in their administrative action and provide citizens with information which is accurate and is not presented in a misleading form. In this regard, the Ombudsman also noted that, since the Notice of Competition and the cover page of test (c) clearly informed the candidates that this test comprised questions designed to test, in particular, their "*verbal and numerical reasoning skills*", EPSO's failure to specify in these documents that a test question might contain certain inconsistent information was not, by itself, an instance of maladministration. However, he considered that, as a matter of good administrative practice, EPSO could envisage including such a clarification in future Notices of Competition.

Given the nature of a multiple-choice test, the clear and unambiguous instruction that the candidates "*should choose the correct answer to each question*", and that, as a matter of principle and general knowledge, the answers that may be considered as correct in the context of a multiple-choice test are limited to answers proposed in the test, the Ombudsman did not accept the complainant's argument that his decision not to reply to the question at issue could be deemed as a correct reply.

The Ombudsman further remarked that the cover page of test (c) emphasised that "*the correct answer is based solely on the information provided in the text or table*". However, the correct answer to the question at issue was based on the information provided *cumulatively* in its text *and* its table. Hence, the information provided to the candidates in the cover page of test (c) was inaccurate. This amounted to an instance of maladministration and the Ombudsman made a relevant critical remark. The Ombudsman proceeded to consider whether EPSO's decision not to regard the complainant's failure to reply to question No 21 as a correct reply, and, consequently, not to award him one extra point constituted maladministration. In the light of his other findings and the fact that the complainant had not alleged that his failure to reply to the question was due, even in part, to the inconsistency and inaccuracy indicated above, the Ombudsman found that there was no maladministration as regards this aspect of the case.

3.4.5 The Committee of the Regions

PARTIAL PAYMENT FOR ALLEGEDLY INCOMPLETE WORK

Summary of decision on complaint 786/2006/JF against the Committee of the Regions

The complainant carried out a study under a contract with the Committee of the Regions and submitted a final report. According to the contract, the Committee had 30 days in which to approve or reject the report. Five days after the contractual period expired, the Committee informed the complainant that it was not satisfied with the report's quality and was therefore prepared to pay the complainant only two thirds of the amount agreed under the contract.

The complainant alleged that the Committee had failed to respect the provisions of the contract and had not informed him about the possibilities of appeal. He also alleged that the Committee failed to reply to his letters, including a letter in which he sought a non-judicial resolution of the matter. The complainant claimed that the Committee should pay him the contractual fee in full, plus interest.

The Committee explained the delay in giving its views on the complainant's final report by pointing to the need for a thorough examination and to consult its Internal Audit and Legal services on the next steps. It did not reply to the complainant's letters because the complainant had stated that he was ready to take legal action.

The scope of the Ombudsman's review in complaints concerning the fulfilment of contractual obligations is limited. He therefore took the view that he should not seek to determine whether there had been a breach of contract or whether the Committee was contractually entitled to refuse to pay the full amount. However, if the Committee was unable to meet the contractual deadline, it should, as a matter of good administration, have informed the complainant accordingly before the expiry of the deadline. Its failure to do so was maladministration and a critical remark was therefore made.

The Ombudsman understood the Committee's position to be that, despite its delay in informing the complainant, it was justified in not paying the contractually agreed amount in full because the complainant had failed to deliver a report of the quality which the Committee was entitled to receive under the contract. He therefore concluded that the Committee had provided a coherent and reasonable account of the legal basis for its actions and why it believed that its view of the contractual position was justified.

As regards the other aspects of the complaint, the Ombudsman took the view that, since the contract contained a specific provision governing disputes, the Committee was not obliged to inform the complainant of other more general possibilities. However, the Ombudsman criticized the Committee for its failure to reply to the complainant's letters.

3.4.6 The Centre for the Development of Vocational Training

RELATIONSHIP BETWEEN THE ADMINISTRATION AND PUBLIC SERVANTS IN A COMMUNITY BODY

Summary of decision on complaint 1429/2005/JF against the Centre for the Development of Vocational Training (CEDEFOP)

The complainant alleged that the Director of CEDEFOP made a unilateral decision to close CEDEFOP for a week in August 2005, ignoring the request of the Staff Committee to wait until the staff could be consulted on the closure in its General Assembly.

CEDEFOP explained that the summer closure was put into effect for the first time in 2003, as an experiment. In 2004, and after consultation with the Staff Committee, CEDEFOP decided to repeat the summer closure.

After an inquiry, the Ombudsman concluded that the Staff Committee had asked CEDEFOP's administration to wait for the Staff's General Assembly to take place before issuing the contested decision. He considered that, having made such a request, the Staff Committee could reasonably have expected that, if CEDEFOP did not accept it, it would have explained its reasons for not doing so, thereby demonstrating the sincerity of the consultation with the Staff Committee. However, the evidence available to the Ombudsman was that no such explanation had been given, and that CEDEFOP had not offered one in its opinion.

The Ombudsman therefore made a critical remark to the effect that CEDEFOP's failure to respond to the Staff Committee's request was not in accordance with principles of good administration as they apply to the relationship between the administration and public servants in a Community body.

3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION

3.5.1 The European Commission

ALLEGED STATE AID CONCERNING THE PRIVATISATION OF A GERMAN COMPANY

Summary of decision on complaint 642/2004/GG against the European Commission

In 1989, Preussag AG acquired (what was then) Salzgitter AG, a state-owned company, for DM 2 452 billion. According to the complainant, this price was far below the real value of the company and thus comprised elements of state aid.

In December 2003, the complainant asked the Directorate-General for Competition of the European Commission ("DG Competition") to intervene.

In reply, DG Competition stated that it had already examined the transaction; that there were no indications of illegal state aid and that the complainant's letter contained no new elements that would justify a different interpretation of the relevant facts.

In March 2004, the complainant turned to the Ombudsman. He alleged that DG Competition had failed to consider his letter of December 2003 with the requisite care.

After a thorough inquiry, involving four requests for further information to the Commission, the Ombudsman focussed on the complainant's argument that statements made at a meeting of a committee of the Parliament of Lower Saxony (the Land most directly affected by the sale of Salzgitter AG to Preussag AG) suggested or proved that there had been state aid.

The Ombudsman considered that the document submitted by the complainant in this context suggested that the government of Lower Saxony shared the view that Preussag AG had purchased Salzgitter AG at a price that was not the market price. In the Ombudsman's view, good administrative practice would therefore at least have required the Commission to try and ascertain whether, contrary to its assumption thus far, the sale did contain elements of state aid. However, the Commission had not taken any steps to clarify the statements made at the above-mentioned meeting and this, in the Ombudsman's view, constituted maladministration. He therefore made a draft recommendation that the Commission should take appropriate steps in order to ascertain whether the sale of Salzgitter AG to Preussag AG in 1989 entailed elements of state aid.

In its detailed opinion, the Commission informed the Ombudsman that it accepted his findings and had therefore addressed itself to the German authorities in order to clarify the relevant statements.

In his observations, the complainant submitted that the Commission should conduct inquiries of its own with a view to obtaining information from independent sources.

The Ombudsman took the view that the Commission had accepted his draft recommendation and that the measures taken to implement it were satisfactory.

To avoid any possible misunderstanding, the Ombudsman found it useful to add that, if it were to be found that representatives of the government of Lower Saxony did indeed consider the sale of Salzgitter AG to Preussag AG to constitute a "present" to the latter, good administrative practice would make it necessary for the Commission to conduct a more thorough investigation into the whole case. However, the Ombudsman noted that he had no reason to assume that the Commission would fail to do so if necessary.

COMMISSION'S FAILURE TO ADOPT A DECISION ON AN INFRINGEMENT COMPLAINT

Summary of decision on complaint 956/2004/PB against the European Commission

In the context of the Ombudsman's inquiry into a previous complaint (case 801/2001/PB), the Commission made an undertaking to adopt a decision on the complainant's infringement complaint (concerning breaches of Community law by Denmark in respect of car taxation) by October 2001. However it failed to do so and, in the course of the Ombudsman's inquiry into case 1237/2002/(PB)OV, explained this failure by stating that it preferred to take a global approach to the problems related to car taxation and that its aim was to solve these problems simultaneously in all the Member States. The Ombudsman accepted this explanation. The Commission's continued delay in adopting a decision led to the present complaint to the Ombudsman.

The Ombudsman made a draft recommendation, pointing out that the Commission could not effectively abstain from taking a decision on the complainant's infringement complaint for as long it was pursuing its global approach. The Commission's ongoing failure to take a decision could not be adequately justified on the ground that the Commission had not been able to obtain information that it requested from the Member States in 2001 and 2003. The Commission had had considerable time to try to obtain that information, and it was not clear why a lack of response to these information requests should prevent the Commission from reaching a decision on individual infringement complaints. In this respect, the Ombudsman recalled that, according to the case-law of the Court of Justice, the Member States must facilitate the fulfilment of the Commission's role as

the guardian of the Treaty. Refusal by a Member State to assist the Commission in its investigations, under Article 226 of the EC Treaty, constitutes a failure to fulfil a duty incumbent on every Member State under Article 10 of the Treaty. In such a case, the Commission may bring the matter before the Court of Justice.

The Commission's detailed opinion informed the Ombudsman that it had adopted decisions on the relevant issues and had informed the complainant of those decisions. The Ombudsman therefore concluded that the Commission had accepted his draft recommendation.

3.6 CASES CLOSED FOR OTHER REASONS

3.6.1 The Council of the European Union

SPONSORSHIP OF THE PRESIDENCY OF THE COUNCIL

Summary of decision on complaint 2172/2005/MHZ against the Council of the European Union

The complainant wrote to the Council expressing his concerns regarding commercial sponsorship of the Presidency of the Council. He referred, in particular, to the example of the sponsorship of the Irish Presidency (January to June 2004). The Secretariat replied that it would pass his letter on to the former Irish Presidency and to the current Luxembourg Presidency. In its answer to the complainant, the Luxembourg Presidency informed him about its website and pointed out that it had no sponsors.

The complainant alleged that the Council had failed to answer his query concerning commercial sponsorship of the Presidency. He claimed that he should receive an answer to his query.

In its opinion, the Council took the view that the question of commercial sponsorship of its Presidency is not a matter falling within the responsibility of the Council as a Community institution.

The Ombudsman considered that the Council's answer to the complainant's concerns was inadequate, and addressed a proposal for a friendly solution to the Council, according to which it could consider revising and supplementing its reply to the complainant on the matter by (i) accepting that the question of commercial sponsorship of its Presidency is a matter within the responsibility of the Council as a Community institution and (ii) indicating its willingness, within an appropriate time-frame, to take measures to prevent such sponsorship, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

The Council rejected the Ombudsman's proposal for a friendly solution, on the basis of the same view as it had expressed in its opinion.

The Ombudsman considered that no further inquiries were necessary as regards the general question of the Council's responsibility for its Presidency, given that the same issue arose in another case (1487/2005/GG), in which the Ombudsman had presented a Special Report to the European Parliament in November 2006.

The Ombudsman remained concerned, however, that citizens' trust in the Union and its functioning could be adversely affected by the Council's failure to respond to the invitation to consider measures to prevent commercial sponsorship of its Presidency, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

Given the Council's position that the organisation of the Presidency is a matter for Member State authorities to determine, the Ombudsman decided to bring the matter to the attention of the Member States individually. He therefore wrote to their Permanent Representatives about the matter.

3.6.2 The European Commission

UNJUSTIFIED DELAY IN THE HANDLING OF TWO INFRINGEMENT PROCEEDINGS

Summary of decision on complaint 3369/2004/JMA against the European Commission

The complaint concerned the Commission's alleged failure to handle with due diligence the infringement proceedings it carried out in relation to two formal complaints lodged by the complainant in 2001 and 2003. The complaints to the Commission concerned the failure of Spanish legislation to recognise the rights granted to minority shareholders under Community law[14].

The complainant alleged that, despite informal assurances given to him by the Commission services regarding the forthcoming dispatch of a reasoned opinion to the Spanish authorities in relation to his first complaint, no action had been taken. He also alleged that the Commission had failed to take action for two years in relation to his second complaint, despite assurances given by its services that a letter of formal notice would be sent shortly to the Spanish authorities.

The Commission stated that, on 5 January 2005, it delivered a reasoned opinion to the Spanish authorities concerning the first complaint and a letter of formal notice concerning the second complaint. The Commission pointed out that the responsible services could not have assured the complainant that these actions would be adopted within a certain deadline, since only the College of Commissioners could take this decision. The Commission also noted that the length of time it had taken its services to deal with these two cases had been due to the need to work closely with the translation service in order to assess the many extensive submissions received from both the complainant and the responsible authorities of the Member State. The Commission considered that, given the circumstances of this case, its services had handled the complaints with due diligence and complied with the provisions of its Communication on relations with complainants in infringement cases[15].

The Ombudsman noted that this Communication specifies neither a normal time-limit for the investigation of complaints following the issuing of a letter of formal notice, nor the information to be given to complainants in the period after such a letter has been sent. The Ombudsman pointed out that Article 41(1) of the Charter of Fundamental Rights of the European Union states that "(e)very person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union". After having carefully studied the case-law of the Community courts concerning the discretion that the Commission enjoys in

14 Second Council Directive 77/91/EEC of 13 December 1976 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, OJ 1997 L 26, p. 1.

15 Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (COM(2002) 141 final), OJ 2002 C 244, p. 5.

handling infringement cases, the Ombudsman concluded that the case-law does not exclude the application of the principles of good administration to the relations between the Commission and complainants in the period following the sending of a letter of formal notice. The Ombudsman, therefore, considered that the Commission should respect the principles of good administration in its relations with complainants in the period following the sending of a letter of formal notice.

INCORRECT CLASIFICATION OF AN AUXILIARY CONFERENCE INTERPRETER

Summary of decision on complaint 2787/2005/OV (Confidential) against the European Commission

The complainant started working as an auxiliary conference interpreter ("ACI") for the European Parliament in 1995. In light of his previous four years of professional experience in the field, Parliament immediately granted him Category 1 status[16]. In 2001, the complainant started working for the Joint Interpreting and Conference Service of the Directorate-General for Interpretation of the European Commission ("DG SCIC"). Contrary to his expectations, the complainant was classified as a Category 2 interpreter. At the end of 2004, the European institutions decided to merge their ACI lists and all ACIs were sent a personal data sheet ("*fiche signalétique*"). From the complainant's sheet, it appeared that he had been classified as a Category 1 interpreter only from November 2004 onwards. When the complainant noticed this presumed error, he wrote e-mails to the Commission in April 2005 requesting a rectification of his personal data sheet, which should mention that he had been a Category 1 interpreter since January 1995 and not since November 2004. The complainant also asked for the payment of 28% of his salary corresponding to the sum unpaid due to the allegedly erroneous classification for the period from 2001, when he joined the Commission, to November 2004, when he was classified as a Category 1 interpreter. The Commission replied to the complainant that his classification would not be changed.

In August 2005, the complainant lodged a complaint with the Ombudsman claiming that the Commission should (i) rectify his personal data sheet and officially acknowledge that he has been a Category 1 interpreter since January 1995, and (ii) rectify his payments for the period between September 2001 and 10 November 2004 during which time he was erroneously classified as a Category 2 interpreter and pay the 28% of his salary still due to him for that period.

In its opinion on the complaint, the Commission observed that the data encoded in the complainant's personal data sheet would be rectified in accordance with the complainant's request. The complainant subsequently informed the Ombudsman that, even though he had not received the salary due to him because of the erroneous classification, he had obtained moral redress.

FIVE-YEAR FAILURE TO REPLY

Summary of decision on complaint 242/2006/BM against the European Commission

On 8 November 2000, the complainant addressed a letter to the Commission, in which he asked for help to solve a problem with the Spanish judicial system. The Commission sent him an acknowledgement of receipt, dated 20 November 2000, in which it explained that his letter had been given a reference number and had been assigned to the Commission's Directorate-General for Justice and Home Affairs. The complainant, however, never received a substantive reply. He considered that the Commission's failure to answer to his correspondence after five years was unacceptable and asked the Ombudsman to investigate the situation.

16 The European Institutions have a system of two categories for session auxiliary conference interpreters ("ACIs"), namely Category 2 (beginning interpreter) and Category 1 (experienced interpreter, having worked more that 100 days for the European Institutions). The difference in remuneration is 28%.

In its opinion, the Commission confirmed that it had received the complainant's letter of 8 November 2000 and had sent an acknowledgement of receipt. It further explained that the complainant had contacted the Commission again, in 2003, in order to request a reply to his letter. The Commission expressed its regret for having failed to reply on the substance, it acknowledged that the failure was not in accordance with its duties and rules, and it apologised. Furthermore, the Commission explained that, on 14 July 2006, it had sent a letter to the complainant in which it apologised for the delay and informed the complainant that his case had a domestic dimension and had no link with EC law, as it referred to a contractual relationship between two Spanish companies and to a problem with the Spanish judicial system. The Commission advised the complainant to contact the responsible national authorities.

The Ombudsman recalled that both the European Code of Good Administrative Behaviour and the Commission's Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public contain specific provisions regarding replies to correspondence. He also noted that the Commission's opinion had admitted its failure to comply with these provisions. In light of the facts of the case, the Ombudsman found no reason to consider that the Commission would disagree with the complainant's assessment of its behaviour. However, the Ombudsman noted that the Commission had responded to the present complaint by frankly acknowledging its failure to act in accordance with its rules and duties and that it had apologised to the complainant, both directly and through its opinion on the complaint. The Ombudsman welcomed the Commission's response, as well as the fact that the Commission itself had provided the information that the complainant had contacted the Commission again in 2003 in order to request a reply to his letter, but that no reply had been given following this reminder. Finally, the Ombudsman also noted that the Commission had provided a substantive reply to the complainant, who made no other claims. The Ombudsman therefore considered that it was unnecessary to conduct further inquiries.

3.6.3 The European Personnel Selection Office

FAILURE TO APOLOGISE FOR AN ERROR OF ASSESSMENT

Summary of decision on complaint 2312/2004/MHZ against the European Personnel Selection Office (EPSO)

The complainant took part in an open competition for assistant administrators of Czech citizenship. The Selection Board excluded her from the competition on the ground that her qualifications did not give her access to doctoral studies in the Czech Republic. Subsequently, the Charles University in Prague admitted the complainant to doctoral studies. The complainant informed the Board of this fact, but it maintained its decision.

The complainant alleged that EPSO did not assess her academic degrees correctly when stating that they did not give her access to doctoral studies.

EPSO took the view that the Selection Board had not committed an error.

The Ombudsman did not agree with EPSO's view, because the complainant's qualifications did, in fact, give her access to doctoral studies in the Czech Republic, as was proven by the fact that the Charles University admitted her to doctoral studies. The Selection Board was therefore in error, although this did not necessarily imply that it should be criticised or that it could be held liable. The Ombudsman also took the view that, given that candidates in competitions organised by EPSO communicate with EPSO and, in the event of complaints by candidates to the Ombudsman, it was EPSO which replied, it was appropriate for EPSO to apologise to candidates if a Board made an error. Finally, as set out in the European Code of Good Administrative Behaviour (Article 12(3)),

principles of good administration require institutions to acknowledge and apologise for errors. The Ombudsman therefore proposed, as a friendly solution, that EPSO could consider offering an apology to the complainant.

EPSO did not accept the Ombudsman's proposal and repeated its refusal in reply to a further letter from the Ombudsman.

Since EPSO had declined on two occasions to apologise to the complainant, the Ombudsman apologised to her on behalf of the European Communities for the fact that her qualifications were assessed as not giving her access to doctoral studies.

3.7 CASES CLOSED AFTER A SPECIAL REPORT

3.7.1 The Council of the European Union

LANGUAGES USED FOR PRESIDENCY WEBSITES

Summary of decision on complaint 1487/2005/GG against the Council of the European Union

An association for the defence of the German language complained about the Council's failure to ensure that the Presidency websites are available in German.

The complainant pointed out that more EU citizens had German as their mother tongue than any other language and that, after the accession of the new Member States, German was, next to English, the language understood by most EU citizens, either as their mother tongue or as a foreign language. The complainant further submitted that communications by EU institutions that were mainly addressed to the public should be accessible to as many EU citizens as possible. Where the number of languages used was limited, this choice should, in the complainant's view, be based on the demographic weight of these languages. The complainant therefore found it incomprehensible that the Presidency websites normally used only English and French, in addition to the language of the country holding the Presidency.

While accepting that the Presidency forms part of the Council as an institution, the Council maintained that it bears no responsibility for the Presidency websites, arguing that they fall under the authority of the Member States holding the Presidency.

In the Ombudsman's view, since the Presidency clearly forms part of the Council, the Presidency websites cannot be considered as "national" websites that are outside the reach of Community law. Consequently, the issue of the languages used on the Presidency websites cannot be regarded as being beyond the scope of the Council. The Ombudsman therefore considered that the Council's failure to consider the substance of the complainant's request constituted maladministration. Accordingly, the Ombudsman made a draft recommendation on the matter.

Following the Council's rejection of the draft recommendation, the Ombudsman made a special report to the European Parliament on 30 November 2006, asking for Parliament's support in relation to the following conclusions of his inquiry:

(i) the Council is responsible for the languages used on its Presidency websites;

(ii) the information on the Council Presidency website should ideally be available in all official Community languages;

(iii) if the number of languages used on the Council Presidency website is to be limited, the choice of the languages to be used must be based on objective and reasonable considerations; and

(iv) the Council's refusal to deal with the substance of the case, i.e., the complainant's request that the internet presentations of the Presidencies should be made available in German as well, is therefore unjustified and constitutes maladministration.

3.7.2 The European Commission

DELAY IN DEALING WITH A POLITICALLY SENSITIVE AND CONTROVERSIAL COMPLAINT

Summary of decision on complaint 289/2005/GG against the European Commission

The complainant used to offer sports betting services in Lower Saxony, Germany. He reported that the German authorities had ordered him to stop offering these services, thus forcing him to close his business. The complainant argued that the behaviour of the German authorities violated EU law, especially the freedom to provide services. His lawyer submitted an infringement complaint to the Commission. When the Commission did not reply to an inquiry about the state of the investigation seven months after its registration, he turned to the Ombudsman. The complainant essentially alleged that the Commission had failed properly to deal with his infringement complaint. He claimed that a reaction by the Commission was urgently required because he was incurring losses due to the closure of his business.

The Commission submitted that it had received several infringement complaints relating to gambling services and had assessed the justification for and proportionality of a number of national bans on sports betting services. The Commission had sent a letter of formal notice to Denmark while its examination of infringement complaints against Germany, Italy and The Netherlands were ongoing.

According to the Commission, it was still "intensively" examining specific aspects of the complainant's infringement complaint. The Ombudsman considered that this submission did not appear to be supported by the information provided to him. In particular, the Commission had also stated that the case required a difficult assessment of the justification for and proportionality of the national ban on sports betting services, based on public order considerations. However, the Commission had itself acknowledged that it had so far not had any contacts with the German authorities. The Ombudsman found it implausible that the Commission could assess the justification and proportionality without such contacts. In a draft recommendation, the Ombudsman asked the Commission to deal with the complainant's infringement complaint diligently and without undue delay.

In its detailed opinion, the Commission stated that infringement complaints relating to sports betting services were "highly politically sensitive and controversial". The issue had been raised in four internal infringement meetings. However, a decision to open infringement proceedings required the support of the College of Commissioners, which had not yet been obtained.

The Ombudsman welcomed the frankness of the Commission's detailed opinion. He considered, however, that these considerations did not relieve the Commission of its duty properly to deal with such complaints.

Conscious of the fact that the Commission has discretion in the infringement procedure, the Ombudsman noted that the present case concerned the administrative stage of the procedure. He considered that the Commission is not entitled indefinitely to delay its decision on a given infringement complaint on the grounds that it is unable to reach a political consensus on how to proceed. The Ombudsman took the view that this constituted an important issue of principle. He therefore restated his recommendation in a special report to the European Parliament.

The Commission subsequently informed the Ombudsman that it had, in the meantime, decided to open infringement proceedings by sending a letter of formal notice to Germany.

3.8 OWN-INITIATIVE INQUIRIES BY THE OMBUDSMAN

INQUIRY INTO THE COMMISSION'S READINESS TO USE MEDIATION IN CONFLICTS WITH CONTRACTORS

Summary of decision following own-initiative inquiry OI/1/2006/TN

Every year, the European Ombudsman receives a significant number of complaints against the Commission concerning contractual disputes. The complaints come from individuals, small and medium-sized enterprises and other organisations, and involve both contractors and sub-contractors. The Ombudsman started an own-initiative inquiry in which he asked the Commission to investigate the possibility of increased use of mediation to deal with disputes arising under the contracts it funds. This followed the Commission's endorsement of mediation as an often quicker, simpler and more cost-effective way of solving disputes.

During the inquiry, the Commission made a commitment to encourage alternative methods of dispute resolution in the future. This could be done through the insertion of an optional mediation clause in its standard procurement contracts, it said. However, it warned that the use of mediation or other methods of dispute resolution might involve costs. It also stated that the Commission cannot impose mediation for disputes between its contractors and their sub-contractors.

In his decision closing the inquiry, the Ombudsman welcomed the introduction of an optional mediation clause in Commission contracts. He stressed that mediation is normally a more cost-effective way of solving a dispute than bringing the matter directly before a court. The Ombudsman asked the Commission to inform him about its follow-up to the use of the mediation clause and about its efforts to extend the use of mediation to include disputes about grants from the Commission. Furthermore, the Ombudsman underlined the importance of also recommending the use of mediation in conflicts between contractors and sub-contractors.

The Commission should inform the Ombudsman about its follow-up on the matter by 30 June 2007.

HANDLING OF A COMPLAINT CONCERNING THE DEVELOPMENT OF AN INDUSTRIAL HARBOUR IN SPAIN

Summary of decision following own-initiative inquiry OI/2/2006/JMA

Having received a very large number of complaints and other communications concerning the development of an industrial harbour by the Spanish authorities in the city of Granadilla, on the

island of Tenerife, Spain, the Ombudsman decided to open an own-initiative inquiry in order to give the Commission an opportunity to explain its role as guardian of the Treaty in this case.

According to the complainants, the Commission had decided to close its inquiry into a number of complaints concerning the development of an industrial harbour in Granadilla on the basis that the development would not be contrary to Community law, in particular Article 6(4) of the Habitats Directive[17]. The complainants argued, in general terms, that the Commission had failed to consider the existence of possible alternative solutions to the proposed development.

The Commission argued that its services were still assessing the project. The Commission explained that, since the presence or absence of alternatives to the project was a relevant issue that would have an influence on its final opinion pursuant to Article 6(4) of the Habitats Directive, the Commission would thoroughly consider this aspect of the case and deliver an opinion that should assess the environmental impact, the relevance of the "imperative reasons" advanced by the Spanish authorities in favour of the development, and the balance between these two opposing interests, as well as an evaluation of the compensation measures. The Commission also underlined that it was taking all the necessary measures to reach a decision as soon as possible, and that it would inform the complainants.

The Ombudsman took the view that the Commission's opinion had adequately clarified the points raised in his inquiry. In particular, the Commission had not yet taken a decision on the matter. Accordingly, the Ombudsman concluded that no further inquiries were needed. The Ombudsman also pointed out that, once the Commission takes a decision, or if its decision were to be unduly delayed, citizens and residents could submit complaints to him if they considered that there had been an instance of maladministration on the part of the Commission.

UPPER AGE LIMITS IN THE IN-SERVICE TRAINEESHIP PROGRAMME

Summary of decision following own-initiative inquiry OI/3/2006/BB

In January 2006, the Ombudsman opened an own-initiative inquiry concerning the European Parliament's rules and policies on upper age limits in its traineeship programme. The Ombudsman referred to (i) Article 21 of the Charter of Fundamental Rights of the European Union, which states that: "*Any discrimination based on any ground such as (...) age (...) shall be prohibited*", (ii) recent case-law of the Court of Justice, according to which the principle of non-discrimination on grounds of age is a general principle of Community law[18], and (iii) the Commission's decision to abolish age limits in its traineeship programme, following a draft recommendation made by the Ombudsman in case 2107/2002/PB.

In its opinion, Parliament stated that, on 1 February 2006, it had adopted a new decision on the Internal Rules Governing Traineeships and Study Visits in the Secretariat of the European Parliament (Rules). Since 15 February 2006, the date of entry into force of the new Rules, it no longer applied an upper age limit with regard to its traineeship programme. Prior to that date, it had applied an upper age limit of 45 years.

The Ombudsman concluded that, since Parliament had repealed the age limit, no further inquiries were necessary.

17 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1996 L 59, p. 63.

18 Case C-144/04, *Werner Mangold v. Rüdiger Helm*, ECR [2005] I-9981, paragraph 75.

3.9 QUERIES DEALT WITH BY THE OMBUDSMAN

MEMBER STATE'S DISCRETION IN AN AGRICULTURAL MATTER

Summary of query Q1/2006/GK submitted by the Irish Ombudsman

In March 2006, the Ombudsman of Ireland submitted a query to the European Ombudsman relating to one of her cases. The query concerned the interpretation, by the Department of Agriculture and Food in Ireland, of Article 40 of Regulation 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers. In particular, the query concerned the question of whether Article 40(4) allowed the competent national authority discretion in defining those epizootic diseases, which, in case they affect part or all of the farmer's livestock, should be accepted as constituting *force majeure*.

The query sought information from the Commission, which explained, in summary, that any claim of *force majeure* has to be assessed by the competent national authorities in conducting a case by case examination.

The Commission considered that, on the basis of the information provided in the query, the Irish authorities had not manifestly exceeded the limits of their power of assessment in the application of Article 40(4) of Regulation 1782/2003. The Commission's opinion was forwarded to the Irish Ombudsman who informed the European Ombudsman that she was satisfied with the outcome of the query.

FREE MOVEMENT OF GOODS

Summary of query Q3/2005/IP submitted by the regional Ombudsman of Friuli-Venezia Giulia

The regional Ombudsman of Friuli-Venezia Giulia, Italy, addressed a query to the Ombudsman concerning the impossibility to import into Italy textiles produced in Germany for theatre furniture. Under Italian law, any (imported) product that must comply with the Italian legislation on fire prevention needs a specific homologation by the Italian authorities. The Regional Ombudsman asked the European Ombudsman about the perspectives for harmonisation of law in this field at Community level to deal with obstacles to the free movement of goods.

The Ombudsman sought information from the Commission which explained that, in the absence of applicable harmonised EU standards or rules in the relevant area, the general provisions concerning the free movement of goods laid down in Articles 28 to 30 of the EC Treaty apply. According to these principles, a product legally manufactured and sold in a Member State must be capable of being sold in another Member State. Article 30 foresees that the provisions of Article 28 shall not preclude prohibitions or restrictions on import on the grounds of, *among others*, public morality, public policy, public security or the protection of human health and life. The national measures must, in order to be justified, be necessary to achieve the objectives pursued and be proportionate to those objectives. Moreover, such prohibitions or restrictions must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Any complaint tending to demonstrate a violation of Community law by a Member State could be addressed directly to it for investigation.

The regional Ombudsman informed the European Ombudsman that she was satisfied with the Commission's reply and the case was therefore closed.

Relations with European Union institutions and bodies

4 RELATIONS WITH EUROPEAN UNION INSTITUTIONS AND BODIES

The European Ombudsman is particularly keen to maintain and promote a constructive dialogue with the EU institutions and bodies to help achieve the best possible results for citizens. This chapter contains an overview of the meetings and events held during 2006 with Members and officials of the EU institutions and bodies with a view to ensuring excellent working relations. During the same year, the Ombudsman also signed a number of agreements which are explained below.

Of particular importance in 2006 were the bilateral meetings with European Commissioners to discuss the operation of the Commission's new procedure for dealing with the Ombudsman's inquiries, introduced in November 2005. Since the Commission is the institution accounting for the highest proportion of inquiries carried out by the Ombudsman, it is critical to ensure that this procedure works optimally. Mr DIAMANDOUROS met with 11 Commissioners during 2006 and was greatly encouraged by their commitment to promoting a culture of service to citizens. The Ombudsman also had a highly productive meeting in June with the Commission staff responsible for co-ordinating the handling of the Ombudsman's inquiries. This meeting gave him the opportunity to explain how the Ombudsman is not only a mechanism of external control but also a rich resource that can help the institutions improve the way they function. Key to facilitating all of these meetings was Commission Vice-President Margot WALLSTRÖM, responsible, *inter alia*, for relations with the Ombudsman, and Commission Secretary-General Catherine DAY. Ms WALLSTRÖM also addressed the Ombudsman's staff in Strasbourg in December, where she gave an overview of the efforts the Commission has been making to improve its relations with the citizen.

The European Parliament elects the Ombudsman and he is accountable to it. The Ombudsman enjoys an excellent working relationship with Parliament's Committee on Petitions, which is responsible for relations with the Ombudsman and drafts the report on his Annual Report. In 2006, Mr DIAMANDOUROS participated in four meetings of the Committee on Petitions, during which he presented his Annual Report and Special Reports, which covered a range of subjects. At the Committee's request, the Ombudsman was represented by a member of his staff at each of the meetings held by the Committee during the year in question. The Ombudsman also further built on his constructive relations with MEPs in 2006.

The Ombudsman continued to reach out to the other institutions and bodies in 2006. In March, he met with the Presidents of the Court of Justice, the Court of First Instance and the Civil Service Tribunal, the President of the Court of Auditors, and the President of the European Investment Bank, in Luxembourg. In October, he met with the Directors of the European Agency for Reconstruction and the European Centre for the Development of Vocational Training, in Greece. Throughout the year, he also made presentations about his work to various groups of staff members of European institutions and bodies in Brussels, Luxembourg, and Strasbourg.

With a view to ensuring the best possible service to citizens, the Ombudsman signed a number of important agreements during the year in question.

In March 2006, the Ombudsman signed a new agreement with the Parliament, which covers co-operation in areas such as buildings policy, information technology and communications. The new agreement should enable the Ombudsman to make the most judicious use of the resources granted to his Office (see Annex B), while ensuring him absolute autonomy in his work.

Another important agreement signed in 2006 was the Memorandum of Understanding with the European Data Protection Supervisor (EDPS)[1]. The purpose of this agreement is to ensure the consistent treatment of complaints concerning data protection and to avoid unnecessary duplication. In pursuit of this goal, the Ombudsman and the EDPS agreed: (i) to inform complainants about the other institution and facilitate the transfer of complaints; (ii) to inform the other institution about complaints relevant to it; (iii) not to reopen a complaint that has already been brought forward, unless significant new evidence is submitted; (iv) to adopt a consistent approach to legal and administrative aspects of data protection, thereby promoting the rights and interests of citizens and complainants. The Ombudsman and the Data Protection Supervisor, Mr Peter HUSTINX, signed the Memorandum of Understanding in Brussels on 30 November, with the Assistant European Data Protection Supervisor, Mr Joaquín BAYO DELGADO, and the Ombudsman's Secretary-General, Mr Ian HARDEN, also in attendance. This occasion offered an opportunity to exchange information on a range of issues of mutual interest.

Mr Diamandouros and Mr Peter Hustinx, European Data Protection Supervisor, sign the Memorandum of Understanding. Brussels, Belgium, 30 November 2006.

Also on 30 November, the European Ombudsman signed a co-operation agreement with the Spanish government to allow for the use of Basque, Catalan/Valencian, and Galician, co-official languages in Spain, in complaints to the European Ombudsman. The Permanent Representative of Spain to the EU, Ambassador Carlos BASTARRECHE SAGÜES, signed the agreement on behalf of the Spanish government. In signing the agreement, the Ombudsman aligns 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. According to the agreement, a translation body, which will be set up by the Spanish government, will be responsible for translating complaints submitted in these languages. In turn, it will translate the Ombudsman's decisions from Spanish/Castilian into the language of the complainant. When the translation body is set up by the Spanish authorities and consequently the agreement becomes effective, information on how to complain in these languages will be available via the following link on the Ombudsman's website: http://www.ombudsman.europa.eu

The aforementioned meetings and events, and all other activities of the Ombudsman in this area, are listed in the sections of this chapter immediately following.[2]

1 Memorandum of Understanding between the European Ombudsman and the European Data Protection Supervisor; OJ 2007 C 27, p. 21.

2 Unless otherwise stated, the meetings and events took place in Brussels, Luxembourg, or Strasbourg.

4.1 THE EUROPEAN PARLIAMENT

18 January: Participation in a luncheon meeting of the "Kangaroo Group" of MEPs. The principle speaker was Mr Andrew DUFF MEP, who addressed the subject of "The period of reflection — The structure, subjects and context for an assessment of the debate on the European Union". The meeting was chaired by Mr Manuel MEDINA ORTEGA MEP.

25 January: Presentation of the Ombudsman's Special Report on Transparency in the Council's proceedings at a meeting of the Committee on Petitions of the European Parliament. Mr Marcin LIBICKI MEP, Chairman of the Committee, Mr Elmar BROK MEP, Mr David HAMMERSTEIN MINTZ MEP, Mr Michael CASHMAN MEP, Ms Diana WALLIS MEP, and Mr Hans BRUNMAYER, Director-General and Head of Protocol of the Council, participated in the subsequent debate, and are listed here in the order of their interventions.

14 February: Meeting with Ms Inés AYALA SENDER MEP.

14 February: Meeting with Mr David HAMMERSTEIN MINTZ MEP.

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

14 March: Presentation of the Ombudsman's *Annual Report 2005* to Mr Josep BORRELL FONTELLES MEP, President of the European Parliament, and signature of the new co-operation agreement with the European Parliament (see Annex B).

Mr Diamandouros and Mr Josep Borrell Fontelles, President of the European Parliament, sign the new co-operation agreement. Strasbourg, France, 14 March 2006.

14 March: Meeting with Mr Markus FERBER MEP.

14 March: Meeting with Mr Manolis MAVROMMATIS MEP.

4 April: Meeting with Mr Andreas SCHWAB MEP and Mr Richard SEEBER MEP.

2 May: Meeting with Mr Louis GRECH MEP.

3 May: Presentation of the Ombudsman's *Annual Report 2005* to the Committee on Petitions. Mr Marcin LIBICKI MEP, Chairman of the Committee, Mr Andreas SCHWAB MEP, Mr Manolis MAVROMMATIS MEP, Sir Robert ATKINS MEP, Ms Inés AYALA SENDER MEP, Mr David HAMMERSTEIN MINTZ MEP, and Ms Alexandra DOBOLYI MEP participated in the subsequent debate, and are listed here in the order of their interventions.

15 May: Presentation of the Ombudsman's Special Report on the European Anti-Fraud Office (OLAF) to the Committee on Petitions. Mr DIAMANDOUROS made a statement and then answered questions from, in the order of their interventions, Sir Robert ATKINS MEP, Mr Michael CASHMAN MEP, Mr Paul VAN BUITENEN MEP, Mr Manolis MAVROMMATIS MEP, and Mr Jens-Peter BONDE MEP. Subsequently, Mr Franz-Hermann BRÜNER, Director-General of OLAF, made a statement and then answered questions from Sir Robert ATKINS MEP, Ms Alexandra DOBOLYI MEP, Mr Michael CASHMAN MEP, Mr Paul VAN BUITENEN MEP, and Mr Jens-Peter BONDE MEP.

15 May: Meeting with Mr Andreas SCHWAB MEP and Mr Manolis MAVROMMATIS MEP.

17 May: Participation in a luncheon in honour of the official visit of Mr Karolos PAPOULIAS, President of Greece, to the European Parliament.

15 June: Meeting with Mr Pascal DE POORTERE and Mr Ville-Veikko TIMBERG, Accounting Officers of the European Parliament.

4 July: Meeting with Mr Jo LEINEN MEP.

4 July: Meeting with Mr Herbert BÖSCH MEP.

4 July: Meeting with Mr Gregorio GARZÓN CLARIANA.

13 July: Presentation on the "Role of the Ombudsman in the context of the evolving European legal order" at a Seminar on the "European system of human rights protection" at the Adam Mickiewicz University in Poznan, Poland. This event was organised by the Chairman of the Committee on Petitions, Mr Marcin LIBICKI MEP. The Polish Ombudsman, Mr Janusz KOCHANOWSKI, also participated in the Seminar.

13 September: Presentation of the Ombudsman's Special Report on the Commission's failure to deal with an Article 226 complaint to the Committee on Petitions. Mr Marcin LIBICKI MEP, Chairman of the Committee, Mr Manolis MAVROMMATIS MEP, Mr David HAMMERSTEIN MINTZ MEP, Mr Proinsias DE ROSSA MEP, and Ms Maria PANAYOTOPOULOS-CASSIOTOU MEP participated in the subsequent debate, and are listed here in the order of their interventions.

23 October: Meeting with Mr Gregorio GARZÓN CLARIANA.

14 November: Dinner, hosted by the European Ombudsman, in honour of the Bureau and Co-ordinators of the Committee on Petitions. Mr Marcin LIBICKI MEP, Chairman of the Committee, Sir Robert ATKINS MEP, Ms Alexandra DOBOLYI MEP, Ms Diana WALLIS MEP, Mr David HAMMERSTEIN MINTZ MEP and Mr David LOWE, Head of the Secretariat of the Committee on Petitions, attended the dinner.

15 November: Speech to the "Kangaroo Group" of MEPs on "Empowering citizens — The role of the European Ombudsman". The meeting was chaired by Sir Robert ATKINS MEP.

16 November: Presentation of the Ombudsman's *Annual Report 2005* to the plenary of the European Parliament (see section 6.1).

4.2 THE EUROPEAN COMMISSION

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

12 January: Meeting with Ms Catherine DAY, Secretary-General of the European Commission.

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

30 March: Meeting with Mr Peter GALEZOWSKI, acting internal mediator of the European Commission.

30 March: Presentation to European Commission staff based in Luxembourg on the role of the European Ombudsman.

16 May: Meeting with Mr Janez POTOČNIK, Member of the European Commission for Science and Research.

16 May: Meeting with Mr Stavros DIMAS, Member of the European Commission for Environment.

17 May: Meeting with Mr Vladimír ŠPIDLA, Member of the European Commission for Employment, Social Affairs and Equal Opportunities.

6 June: Meeting with Ms Margot WALLSTRÖM and Ms Catherine DAY.

6 June: Presentation to Commission staff responsible for co-ordinating the handling of the Ombudsman's inquiries.

4 July: Meeting with Mr Charlie McCREEVY, Member of the European Commission for Internal Market and Services.

4 July: Meeting with Mr Giuseppe MASSANGIOLI, Director in the European Commission responsible for relations with the European Ombudsman, and Mr Andrea PIERUCCI, Head of Unit.

26 September: Meeting with Mr Ján FIGEĽ, Member of the European Commission for Education, Training and Culture.

26 September: Meeting with Mr Joaquín ALMUNIA, Member of the European Commission for Economic and Monetary Affairs.

26 September: Meeting with Mr Markos KYPRIANOU, Member of the European Commission for Health.

27 September: Meeting with Ms Margot WALLSTRÖM.

16 November: Meeting with Mr Olli REHN, Member of the European Commission for Enlargement.

13 December: Meeting with Ms Benita FERRERO-WALDNER, Member of the European Commission for External Relations and European Neighbourhood Policy.

13 December: Presentation by Ms Margot WALLSTRÖM to the European Ombudsman's staff. During her presentation, the Commission Vice-President addressed the topics of communication, complaint-handling and the Constitutional Treaty.

4.3 OTHER INSTITUTIONS AND BODIES

12 January: Meeting with Ambassador Nicholas EMILIOU, Permanent Representative of Cyprus to the European Union.

12 January: Meeting with Ambassador Vassilis KASKARELIS, Permanent Representative of Greece to the European Union.

6 March: Meeting with the President of the Court of Justice of the European Communities, Mr Vassilios SKOURIS.

6 March: Working luncheon with the President of the Court of First Instance, Mr Bo VESTERDORF, Mr Jörg PIRRUNG and Mr Marc JAEGER, Presidents of Chambers, and Mr Emmanuel COULON, Registrar.

6 March: Meeting with the President of the Civil Service Tribunal, Mr Paul J. MAHONEY, and Mr Horstpeter KREPPEL, Ms Irena BORUTA, Mr Sean VAN RAEPENBUSCH and Mr Stéphane GERVASONI, Members of the Tribunal, and Ms Waltraud HAKENBERG, Registrar.

6 March: Meeting with Mr Hubert WEBER, President of the European Court of Auditors.

6 March: Meeting with Mr Philippe MAYSTADT, President of the European Investment Bank, and Mr Eberhard UHLMANN, Secretary-General.

30 March: Presentation to the Assembly of Staff Committees of the European Agencies on the role of the European Ombudsman.

15 June: Meeting with Ms Vicky VOULGARAKI from the United Kingdom Permanent Representation to the European Union.

14 September: Presentation to the staff of the European Investment Bank on the subject of "The role of the European Ombudsman and the EIB".

26 September: Meeting with Ambassador Nina VASKUNLAHTI, Deputy Permanent Representative of Finland to the European Union.

6 October: Meeting with Mr Richard ZINK, Director of the European Agency for Reconstruction, and with members of the staff of the Agency in Thessaloniki, Greece.

6 October: Meeting with Ms Aviana BULGARELLI, Director of the European Centre for the Development of Vocational Training (CEDEFOP), and with members of the staff of the Agency in Thessaloniki, Greece.

30 November: Signature of a Memorandum of Understanding with the European Data Protection Supervisor, Mr Peter HUSTINX.

30 November: Signature of a co-operation agreement with the Spanish government to allow for the use of Basque, Catalan/Valencian, and Galician, co-official languages in Spain, in complaints to the European Ombudsman. The Permanent Representative of Spain to the EU, Ambassador Carlos BASTARRECHE SAGÜES, signed the agreement on behalf of the Spanish government.

Relations with ombudsmen and similar bodies

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

The European Ombudsman co-operates closely with his colleagues at the national and regional levels to help ensure that citizens' complaints are handled effectively. This chapter begins with an overview of the activities of the European Network of Ombudsmen in 2006. It goes on to outline the wider range of conferences and meetings in which the Ombudsman and his staff participated, with a view to promoting ombudsmanship throughout the Union and beyond. It ends with an account of the bilateral meetings that took place throughout the year.

5.1 THE EUROPEAN NETWORK OF OMBUDSMEN

The European Network of Ombudsmen consists of almost 90 offices in 31 European countries. Within the Union, it covers the ombudsmen and similar bodies at the European, national, and regional levels, while at the national level, it also includes Norway, Iceland, and the applicant countries for EU membership. Each of the national ombudsmen and similar bodies in the EU Member States, as well as in Norway and Iceland, has appointed a liaison officer to act as a point of contact for other members of the Network.

The Network was established in 1996 and has steadily developed into a powerful collaboration tool for ombudsmen and their staff, serving as an effective mechanism for co-operation on case handling. It is of particular importance to the European Ombudsman to enable him to deal promptly and effectively with complaints that fall outside his mandate. Experiences and best practice are shared via seminars and meetings, a regular newsletter, an electronic discussion forum and a daily electronic news service. Visits of the European Ombudsman organised by the ombudsmen in the Member States and accession countries have also proved highly effective in developing the Network. Section 5.1 therefore ends with a brief mention of the Ombudsman's information visits in 2006. These visits are covered in greater detail in section 6.2.

All of the activities described below are key to enabling ombudsmen to play their part in ensuring that EU law is applied correctly throughout the Union. This is vital, if citizens are to enjoy their EU law rights to the full. The European Ombudsman, therefore, sees this as a particular priority and devotes considerable resources to developing the Network.

Seminars

Fifth Seminar of the Regional Ombudsmen of EU Member States

Seminars for national and regional ombudsmen are held in alternate years and organised jointly by the European Ombudsman and a national or regional counterpart. The Fifth Seminar of Regional Ombudsmen of EU Member States, organised jointly by the Local Government Ombudsman for England, Mr Tony REDMOND, and the European Ombudsman, took place in London from 19 to 21 November 2006.

This was the first time that the European Ombudsman was heavily involved in the organisation of a regional ombudsman seminar and it was an extremely positive experience. Around 80 participants, from each of the six countries in which there are ombudsmen at the regional level, namely, Belgium, Germany, Spain, Italy, Austria, and the United Kingdom, attended the event.

The theme of the 2006 Seminar was "Working together to promote good administration and defend citizens' rights in the EU". The programme included sessions on EU law, promoting good administration, complaint-handling and ombudsmen working together.

The Seminar was opened by the co-organisers, Mr Tony REDMOND and Mr DIAMANDOUROS, along with the First Vice-President of the Committee of the Regions of the EU, Mr Luc VAN DEN BRANDE, and the Permanent Secretary of the Department for Communities and Local Government of the United Kingdom, Mr Peter HOUSDEN.

Mr Tony Redmond, Local Government Ombudsman for England.

Ms Alice Brown, Scottish Public Services Ombudsman.

Mr Felix Dünser, Ombudsman of Vorarlberg, Austria.

Ms Anne SEEX, Local Government Ombudsman for England, chaired Session 1, on "The implementation of EU law in the Member States". This session saw presentations on the "Free movement of persons" by Professor Elspeth GUILD, Professor of Migration Law at the Radboud University of Nijmegen, and "Sharing knowledge through the European Network of Ombudsmen" by Mr Ian HARDEN, Secretary-General in the European Ombudsman's office.

Mr Bernard Hubeau, Ombudsman of Flanders, Belgium.

Ms María Jesús Aranda Lasheras, Ombudsman of Navarra, Spain.

Mr Silvano Micele, Ombudsman of Basilicata, Italy.

Mr Silvano MICELE, Ombudsman of Basilicata, and Mr Bernard HUBEAU, Flemish Ombudsman, chaired Session 2, entitled "The proactive work of ombudsmen — Promoting good administration". This session comprised six presentations on "Disseminating good practice, adding value" (Mr Tony REDMOND, Local Government Ombudsman for England), "Promoting constructive relations with the administration" (Mr Frédéric BOVESSE, Ombudsman of Wallonia), "Reporting mechanisms" (Ms Alice BROWN, Scottish Public Services Ombudsman), "Improving access for the citizen" (Mr Ullrich GALLE, Ombudsman of Rhineland-Palatinate), "Working with the citizen to promote

good administration" (Mr Felix DÜNSER, Ombudsman of Vorarlberg), and "Codes of good administrative behaviour" (Ms María JESÚS ARANDA LASHERAS, Ombudsman of Navarra).

Session 3, on "The reactive work of ombudsmen — Complaint-handling", was chaired by Mr Alexander KÖNIG, President of the Committee on Petitions of Bavaria. This session included presentations on "Dealing with complaints from vulnerable groups in society" (Ms Caterina DOLCHER, Ombudsman of Friuli-Venezia Giulia), "Upholding children's rights" (Mr Roger MORGAN, Children's Rights Director), and "Dealing with persistent and vexatious complainants" (Mr Jerry WHITE, Local Government Ombudsman for England).

Mr Jerry White, Local Government Ombudsman for England, Mr Roger Morgan, Children's Rights Director in the United Kingdom, Mr Alexander König, President of the Committee on Petitions of Bavaria, Germany, and Ms Caterina Dolcher, Ombudsman of Friuli-Venezia Giulia, Italy.

The final session, entitled "Moving forward together", consisted of a presentation by the European Ombudsman on "Working together through the European Network of Ombudsmen". This last session, which was chaired by Mr Rafael RIBÓ I MASSÓ, Ombudsman of Catalonia, allowed for an exchange of views on the functioning of the Network and on how regional ombudsmen can become more actively involved in it.

Mr Tom Frawley, Northern Ireland Assembly Ombudsman and Commissioner for Complaints.

A particular highlight of the Seminar was the after-dinner speech by Mr Tom FRAWLEY, Northern Ireland Assembly Ombudsman and Commissioner for Complaints, who addressed important issues for ombudsmen including ethics, accountability and accessibility.

Feedback received after the Seminar was very positive. The Ombudsman is hopeful that a similarly successful Seminar will take place in Germany or Austria in 2008.

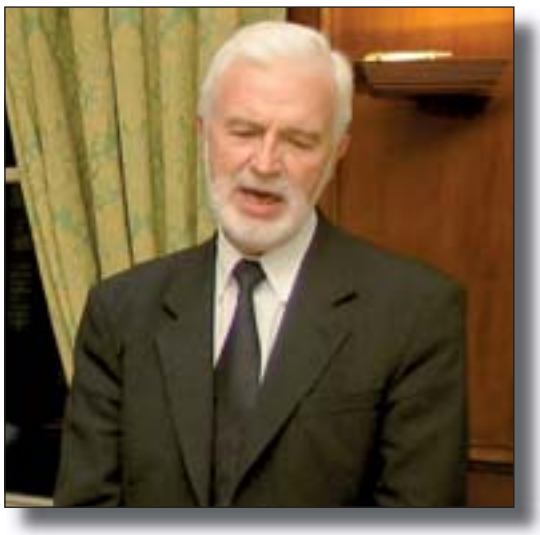
Liaison Officers Seminar 2006

The fifth Seminar of the Liaison Officers of the European Network of Ombudsmen took place from 18 to 20 June 2006 in Strasbourg. Entitled "Upholding fundamental rights — Sharing best practice", the Seminar aimed to serve as a forum for an exchange of views among liaison officers concerning best practice within their institutions, as well as to encourage discussion on their work promoting fundamental rights. The Seminar equally provided an opportunity for the liaison officers to discuss the functioning of the Network and to suggest ways to improve it. All in all, 28 participants from 26 European countries attended the Seminar, including, for the first time, representatives from the national ombudsman institutions of Bulgaria, Croatia and Romania.

Participants at the Fifth Seminar of the Liaison Officers of the European Network of Ombudsmen. Strasbourg, France, 18–20 June 2006.

Discussions during the first day of the Seminar focused on improving complaint-handling, promoting good administration, enhancing co-operation through the Network and measuring complainant satisfaction.

In the evening, participants met for dinner in the centre of Strasbourg where they heard a speech from the Union's longest-standing national ombudsman, Mr Hans GAMMELTOFT-HANSEN, who described his experience of almost twenty years as Danish Ombudsman, focusing in particular on his work promoting and defending fundamental rights.



Mr Hans Gammeltoft–Hansen, Parliamentary Ombudsman of Denmark, addresses the Fifth Seminar of the Liaison Officers of the European Network of Ombudsmen. Strasbourg, France, 18–20 June 2006.

The second day of the meeting gave priority to a subject that was raised by a number of liaison officers as an issue that would be worth exploring together, namely, upholding fundamental rights, and, more specifically, the right to freedom of information, freedom of expression and equal treatment.

The Seminar offered a rich and varied agenda, which gave rise to lively discussions. It confirms the value of meeting every two years to exchange views and develop contacts with the other liaison officers in the Network and augurs well for the future.

Co-operation on case-handling

National and regional ombudsmen in the Member States are competent to deal with many of the complaints that fall outside the mandate of the European Ombudsman because they are not against a Community institution or body. During 2006, the Ombudsman advised 828 complainants to turn to a national or regional ombudsman and transferred to the competent ombudsman 363 complaints, 270 of which on the same subject. Examples of these complaints are given in section 2.5 of this Report.

In addition to the regular informal exchanges of information through the Network, a special procedure exists through which national or regional ombudsmen may ask for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific cases. The European Ombudsman either provides the answer directly or, if appropriate, channels the query to another EU institution or body for response. In 2006, two new such queries were received, one from a national and one from a regional ombudsman, and three, including two brought forward from 2005, were closed. Details of the queries are provided in Chapter 3.

European Ombudsmen — Newsletter

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

The Newsletter has proved to be an extremely valuable forum for exchanging information about EU law and best practice. In 2006, the two issues covered a wide range of topics, including articles on the supremacy of EU law, the mutual recognition of qualifications in the EU, European environmental law and access to environmental information, the role of ombudsmen in supervising prisons, universal access to broadband internet, discrimination in access to employment, freedom of expression, children's rights, and migration and asylum issues.

Electronic communications tools

In November 2000, the Ombudsman launched an Internet discussion and document-sharing forum for ombudsmen and their staff in Europe. Over 230 individuals have access to the forum which offers possibilities for daily co-operation between and among offices.

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

In 2006, the discussion forum continued to provide a very useful way for ombudsman offices to share information through the posting of questions and answers. Several major discussions were initiated in this way. They covered issues as diverse as the independent monitoring of prisons, permanent resident status for immigrant children born in the EU, combating discrimination and promoting equal treatment, and the right to vote in local elections in the EU.

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

Information visits

In the course of 2006, the European Ombudsman visited his ombudsman colleagues in Luxembourg (March), Spain (May), Northern Ireland (November), and Bulgaria (November). These visits offered an excellent opportunity to intensify working relations within the European Network of

Ombudsmen and to raise awareness of the non-judicial remedy that is the ombudsman. These visits are covered in detail in section 6.2.

5.2 OTHER OMBUDSMAN SEMINARS AND CONFERENCES

The European Ombudsman's efforts to collaborate with his ombudsman counterparts stretch beyond the activities of the European Network of Ombudsmen. The Ombudsman is an active member of an array of ombudsman organisations and participates regularly in conferences and seminars that they organise. This section gives an overview of the Ombudsman's and of his staff's participation in such events in 2006.

Conference of Ombudsmen of the Black Sea Economic Co-operation Member States, Istanbul, Turkey

On 26 April, the European Ombudsman participated in a Conference of Ombudsmen of the Black Sea Economic Co-operation (BSEC) Member States entitled "The role of ombudsman institutions in consolidating democracy". The event was organised by the Parliamentary Assembly of the BSEC and took place in Istanbul, Turkey. Mr DIAMANDOUROS spoke on "The ombudsman institution in the rule of law — Challenges and perspectives". Participants at the Seminar included ombudsmen from the BSEC Member States. The draft Law on the Ombudsman institution in Turkey was also discussed at the seminar, and a keynote address was delivered by Mr Süleyman DEMIREL, former President of Turkey.

International Ombudsman Institute (IOI) — European Region Meeting and General Assembly, Vienna, Austria

From 11 to 13 June, Mr DIAMANDOUROS participated in the Meeting and the General Assembly of the IOI — European Region which was held in the Austrian Parliament in Vienna. On 12 June, Mr DIAMANDOUROS acted as Rapporteur for Working Group 1, which examined the relationship between ombudsmen and the courts. Other themes discussed during the conference were "The competence of European ombudspersons", "The implementation of human rights in Europe", and "The implementation of human rights and the role of ombudspersons".

The ombudsman as an institution of administrative reform, Ohrid, Former Yugoslav Republic of Macedonia

From 14 to 16 September, a conference entitled "The ombudsman as an institution of administrative reform" was held in Ohrid, Former Yugoslav Republic of Macedonia. The conference was organised as part of the Eunomia project of the Ombudsman of Greece in co-operation with the Ombudsman of Catalonia and the Ombudsman of the Former Yugoslav Republic of Macedonia. It constituted a capacity-building seminar for Southeast European ombudsman institutions. Some 60 participants attended the conference. The European Ombudsman was represented at the conference by Mr Gerhard GRILL, Principal Legal Adviser in the Ombudsman's Office, who made a presentation on the European Code of Good Administrative Behaviour.

International conference on "Ombudswork for children", Athens, Greece

On 29 and 30 September, the Ombudsman participated in an international conference entitled "Ombudswork for Children" in Athens, Greece. The conference was co-organised by the Commissioner for Human Rights of the Council of Europe, Mr Thomas HAMMARBERG, the Ombudsman for Human Rights of the Russian Federation, Mr Vladimir LUKIN, and the Greek Ombudsman, Mr Yiorgos KAMINIS. Mr DIAMANDOUROS spoke on the subject of "Establishing independent offices for children's rights — The different models".

Ombudsmanship in Italy and Europe, Florence, Italy

On 16 October, Mr DIAMANDOUROS addressed a conference in Florence entitled "Ombudsmanship in Italy and Europe" where he presented the perspective of the European Ombudsman on Italian efforts to establish the institution of ombudsman at the national level. The event took place in the Auditorium of the Parliament of the region of Tuscany. The conference was organised by the Regional Ombudsman of Tuscany, Mr Giorgio MORALES.

Conference on the right to petition and to complain, Bremen, Germany

On 21 November, the *Landesverband Bremen* of the Europa-Union and the *Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V.* organised a conference in Bremen on the right to petition the European Parliament and the right to complain to the European Ombudsman. Some 50 persons, including the President and Members of the *Bremische Bürgerschaft* (the Parliament of the Bremen *Land*), judges and a representative of the Committee on Petitions of the German *Bundestag*, attended the conference. The European Ombudsman's Office was represented by Mr Gerhard GRILL, Principal Legal Adviser, who, in delivering the main lecture of the evening, described the role and work of the European Ombudsman.

International seminar on discrimination, Ljubljana, Slovenia

On 8 December, the Ombudsman attended an international seminar entitled "Let's face discrimination", held in Ljubljana, Slovenia. The seminar was organised by the Slovenian Human Rights Ombudsman, Mr Matjaz HANZEK, and the Austrian Ludwig Boltzmann Institute for Human Rights. Mr DIAMANDOUROS delivered a speech on "The role of the European Ombudsman in combating discrimination". After the conference, the Ombudsman met with the President of the Constitutional Court, Mr Janez CEBULJ and certain of his colleagues, and exchanged views on their respective institutions and roles.

5.3 OTHER EVENTS WITH OMBUDSMEN AND THEIR STAFF

Bilateral meetings with ombudsmen

The year 2006 saw multiple bilateral contacts between the European Ombudsman and ombudsmen from within Europe and further afield, which were organised with a view to promoting ombudsmanship, discussing interinstitutional relations, and exchanging best practice:

On 24 January in Strasbourg and on 23 March in Paris, Mr DIAMANDOUROS met with Mr Jean-Paul DELEVOYE, the French Ombudsman. Their discussions concerned the work of ombudsmen in relation to fundamental rights in the EU and plans for the Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries, which they are due to co-host in Strasbourg in autumn 2007.

On 15 February, Mr Alex BRENNIKMEIJER, Ombudsman of The Netherlands, visited Mr DIAMANDOUROS in Strasbourg to discuss issues of common interest.

On 17 March, the Ombudsman of the Internet Corporation for Assigned Names and Numbers (ICANN), Mr Frank FOWLIE, visited the European Ombudsman's Brussels Office. During his visit, he exchanged views with Mr DIAMANDOUROS by videoconference.

On 20 March, Mr Giorgio MORALES, Regional Ombudsman of Tuscany, Italy, met with Mr DIAMANDOUROS in Strasbourg.

On 28 March, the Ombudsman had a meeting in Strasbourg with the newly-elected Polish Ombudsman, Mr Janusz KOCHANOWSKI.

On 30 March, Mr DIAMANDOUROS met with Ms Emily O'REILLY, Ombudsman of Ireland, in Brussels.

On 12 April, 3 July, and 20 September, Mr DIAMANDOUROS met by videoconference with Mr Tony REDMOND, Local Government Ombudsman for England, in order to prepare the Fifth Seminar of the Regional Ombudsmen of EU Member States, which they co-hosted in London from 19 to 21 November.

On 12 July, Mr DIAMANDOUROS met with the Chairman of the Committee on Petitions of the European Parliament, Mr Marcin LIBICKI MEP, and the Polish Ombudsman, Mr Janusz KOCHANOWSKI, in Poznan, Poland.

On 30 September, Mr DIAMANDOUROS met with Mr Yiorgos KAMINIS, Greek Ombudsman, in Athens, Greece.

On 2 October, Mr DIAMANDOUROS spoke about his work as European Ombudsman to the staff of the Greek Ombudsman.

On 8 November, Mr DIAMANDOUROS met with Ms Emily O'REILLY, Ombudsman of Ireland, in Dublin.

On 18 December, Mr DIAMANDOUROS spoke at the launch of the journal of the Greek Ombudsman's staff in Athens, Greece.

Meetings involving staff members

A number of meetings took place at the level of the Ombudsman's staff:

On 5 December, the Ombudsman's Assistant, Mr Nicholas CATEPHORES, met with Mr Bruce BARBOUR and Mr Chris WHEELER, respectively Ombudsman and Deputy Ombudsman of New South Wales.

On 8 December, Mr Nicholas CATEPHORES met with Mr John McMILLAN, Commonwealth of Australia Ombudsman.

6 COMMUNICATIONS

Reaching out to citizens is an activity central to the Ombudsman's function. Efforts to spread information concerning the right to complain about maladministration were further intensified in 2006. Around 120 presentations were made by the Ombudsman and his staff during conferences, seminars, and meetings that took place during the year. The Ombudsman's visits to Luxembourg, Spain, Northern Ireland, and Bulgaria, gave him a further opportunity to promote awareness among citizens in these countries.

This chapter details the European Ombudsman's activities in the area of communications in 2006. It begins with a look at the highlights of the year in question, followed by the Ombudsman's information visits, participation in events and conferences, media relations, publications, and electronic communications.

6.1 HIGHLIGHTS OF THE YEAR

THE ANNUAL REPORT 2005

The Annual Report is the Ombudsman's most important publication. It provides an overview of his complaint-handling activities in a given year, offers an account of his efforts to raise awareness about his work, and explains the use that has been made of the resources put at his disposal. The Report is of interest to a wide range of groups and individuals at multiple levels — fellow ombudsmen, politicians, public officials, professionals, academics, interest groups, non-governmental organisations, journalists and citizens alike at the European, national, regional, and local levels.

Mr Diamandouros presents his third Annual Report to Mr Josep Borrell Fontelles, President of the European Parliament. Strasbourg, France, 14 March 2006.

Mr DIAMANDOUROS presented his Report to Mr Josep BORRELL FONTELLES MEP, President of the European Parliament, on 14 March 2006 and to the Parliament's Committee on Petitions on 3 May. This latter meeting gave the Ombudsman the opportunity to explain the results achieved during the year in question and to exchange views with Members of the Committee about ideas and initiatives for the future.

Mr Andreas SCHWAB MEP drafted the Committee's Report on the Ombudsman's activities for 2005. On 16 November, the Plenary of the Parliament debated Mr SCHWAB's Report, with the participation of Mr DIAMANDOUROS, European Commission Vice-President Ms Margot WALLSTRÖM, and, in the order of their interventions, Mr Andreas SCHWAB MEP, Mr Manolis MAVROMMATIS MEP, Mr Proinsias DE ROSSA MEP, Ms Diana WALLIS MEP, Mr David HAMMERSTEIN MINTZ MEP, Mr Willy MEYER PLEITE MEP, the Chairman of the Parliament's Committee on Petitions Mr Marcin LIBICKI MEP, Mr Witold TOMCZAK MEP, Sir Robert ATKINS MEP, Ms Inés AYALA SENDER MEP, Ms Mairead McGUINNESS MEP, Mr Thijs BERMAN MEP, Mr Richard SEEBER MEP, Ms Lidia Joanna GERINGER DE OEDENBERG MEP, Ms Marie PANAYOTOPOULOS-CASSIOTOU MEP, and Mr András GYÜRK MEP. Subsequently, the Plenary of the Parliament adopted a Resolution based upon Mr SCHWAB's Report, declaring its satisfaction with the public profile of the Ombudsman and welcoming the constructive co-operation between the Ombudsman and the institutions.

The Ombudsman presented his Report to the media at a press conference on 24 April. The more than 50 journalists who attended this event gave him the opportunity to draw attention to the most important outcomes of his inquiries in 2005.

OPEN DAYS

On 30 April and 1 May in Strasbourg, and on 6 May in Brussels, the Ombudsman's Office participated in the Open Days organised by the European Parliament. Material covering the Ombudsman's work was distributed to visitors in 25 languages, together with a range of promotional items. Staff members were present throughout the three days to answer questions. Over 35 000 people visited the Parliament during the Open Days.

Citizens visiting the Ombudsman's stand at the Open Day in Strasbourg, France, 1 May 2006.

6.2 INFORMATION VISITS

With a view to raising awareness among citizens about their right to complain to the European Ombudsman and to further intensify his working relations with his national and regional counterparts, the Ombudsman embarked on an intensive programme of information visits to the Member States and accession countries in 2003. These visits have continued apace. During each of the Ombudsman's visits, his counterparts in the Member States and accession countries arrange in-depth programmes of activities and meetings, often accompanying him throughout the trip. The presence of both ombudsmen in these events is most beneficial for citizens, since it allows them better to understand and appreciate the respective roles and competences of the national and the European Ombudsman, and to learn about their own rights deriving from citizenship not only in their state but also in the EU.

In 2006, the Ombudsman visited Luxembourg, Spain, Northern Ireland, and Bulgaria, meeting parliamentarians, judges, senior civil servants, the academic community, potential complainants and other citizens. The following section gives an overview of the wide range of meetings that took place during these four visits, lists the key interlocutors and mentions the numerous presentations that were made. The media activities that took place as part of the information visits are covered in section 6.4 of this Report.

LUXEMBOURG

From 6 to 8 March, the European Ombudsman visited Luxembourg. The Office of the Luxembourg Ombudsman organised the visit, setting up a wide range of meetings which allowed the European Ombudsman to raise awareness about his role among top government and state officials, the media, non-governmental organisations and interested citizens.

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Mr Diamandouros with His Royal Highness the Grand-Duke Henri and Mr Marc Fischbach, National Ombudsman of Luxembourg, during the European Ombudsman's information visit to Luxembourg, 6–8 March 2006.

During his visit, Mr DIAMANDOUROS had the opportunity to discuss his work with His Royal Highness the Grand-Duke HENRI, the Prime Minister of Luxembourg, Mr Jean-Claude JUNCKER, and the President of the Chamber of Deputies, Mr Lucien WEILER. These meetings focused on the role of the European Ombudsman and the service he provides to Luxembourg citizens. Over the two days, Mr DIAMANDOUROS also met Mr Laurent MOSAR, Vice-President of the Chamber of Deputies, Mr Pierre MORES, President of the Council of State, and Mr Claude WISELER, Minister for the Public Service and Administrative Reform.

The visit provided an excellent opportunity to further develop relations with the Luxembourg Ombudsman, Mr Marc FISCHBACH, and his staff. Besides the official meetings, during which they discussed their respective functions, the Ombudsmen and their staff had many occasions to exchange views more informally.

Mr Marc Fischbach, National Ombudsman of Luxembourg, Mr Laurent Mosar, Vice-President of the Chamber of Deputies, Mr Diamandouros, Mr Pierre Mores, President of the Council of State, and Mr Claude Wiseler, Minister for the Public Service and Administrative Reform, during the European Ombudsman's information visit to Luxembourg, 6-8 March 2006.

The information visit included a meeting with potential complainants and a press conference that gathered around 15 journalists. These events were organised by the Head of the European Parliament Office in Luxembourg, Ms Monique SCHUMACHER. At the start of his visit, Mr DIAMANDOUROS had the opportunity to discuss his work with Ms SCHUMACHER, and with the Head of the European Commission's Representation, Mr Ernst MOUTSCHEN.

SPAIN

The European Ombudsman continued his information tour with a visit to Spain from 8 to 10 May. The National Ombudsman of Spain, Mr Enrique MÚGICA HERZOG, hosted the visit and accompanied Mr DIAMANDOUROS to most of the meetings and events that were organised over the three days.

The visit enabled Mr DIAMANDOUROS to reach out to key target audiences and to emphasise the importance of the work of ombudsmen during meetings with high-level political, judicial and administrative representatives. During the visit he met with His Majesty the King JUAN CARLOS, Her Royal Highness the Infanta CRISTINA, the President of the Congress of Deputies, Mr Manuel MARÍN GONZÁLEZ, the President of the Senate, Mr Francisco Javier ROJO GARCÍA, the Minister of Foreign Affairs and Co-operation, Mr Miguel Ángel MORATINOS CUYAUBÉ, the Minister for Public Administration, Mr Jordi SEVILLA SEGURA, the Leader of the Opposition, Mr Mariano RAJOY BREY, the President of the General Council of the Judicial Power, Mr Francisco José HERNANDO SANTIAGO, the President of the Constitutional Court, Ms Emilia CASAS BAAMONDE, the Head of the European Commission Delegation in Spain, Mr José Luis GONZÁLEZ VALLVÉ, and the Head of the European Parliament Information Office, Mr Fernando CARBAJO.

Mr Diamandouros with His Majesty the King Juan Carlos and Mr Enrique Múgica Herzog, National Ombudsman of Spain, during the European Ombudsman's information visit. Madrid, Spain, 8–10 May 2006.

On Europe Day (9 May), the European Ombudsman attended an event organised by the European Parliament Information Office, was interviewed for a television programme entitled *"Europa 2006"*, and held a joint press conference with the Spanish Ombudsman.

Mr Diamandouros with Ms Emilia Casas Baamonde, President of the Constitutional Court, during the European Ombudsman's information visit. Madrid, Spain, 8–10 May 2006.

The European Ombudsman, the Spanish Ombudsman, and their staff took the opportunity to strengthen co-operation between their institutions by exchanging views, in both formal and informal settings throughout the visit, on issues of common interest, including best practice.

NORTHERN IRELAND

From 8 to 10 November, the Ombudsman visited Belfast as part of his information tour to the EU Member States. The Office of the Northern Ireland Ombudsman organised the visit, putting

together a full programme of meetings, presentations and media interviews to help raise awareness about the role of the European Ombudsman.

During his visit, Mr DIAMANDOUROS had the opportunity to discuss his work with the Lord Chief Justice, Sir Brian KERR, the Head of the Northern Ireland Civil Service, Sir Nigel HAMILTON, and the Police Ombudsman, Ms Nuala O'LOAN. He also met the Head of the Equality Commission, Mr Bob COLLINS, the Chief Executive of the Community Relations Council, Mr Duncan MORROW, and the Vice Chancellor of the University of Ulster, Mr Richard BARNETT.

The Speaker of the Northern Ireland Assembly, Ms Eileen BELL, hosted a dinner for the Ombudsman in Stormont Castle on 9 November, with Members of the Legislative Assembly, Mr Billy BELL and Ms Margaret RITCHIE, as well as the Northern Ireland Ombudsman, Mr Tom FRAWLEY, in attendance.

Mr Diamandouros with Ms Eileen Bell (to his right), Speaker of the Northern Ireland Assembly, and other participants at the dinner hosted by the Speaker during the European Ombudsman's information visit. Belfast, Northern Ireland, 8–10 November 2006.

Mr FRAWLEY accompanied the European Ombudsman throughout his visit. This enabled the Ombudsmen to jointly present the service they provide to citizens. Mr DIAMANDOUROS also presented his work to the staff of the Northern Ireland Ombudsman and explained the value of co-operating through the European Network of Ombudsmen.

Mr Tom Frawley, Northern Ireland Assembly Ombudsman and Commissioner for Complaints, and Mr Diamandouros during the European Ombudsman's information visit. Belfast, Northern Ireland, 8–10 November 2006.

The information visit included an extremely valuable meeting with potential complainants organised by the Head of the European Commission Office, Mr Eddie McVEIGH, who also arranged for a lecture in Queen's University Belfast's School of Politics and International Studies, where Mr DIAMANDOUROS spoke on "The European Union — Rights, remedies and the European Ombudsman".

BULGARIA

From 27 to 29 November, Mr DIAMANDOUROS visited Bulgaria on the eve of its accession to the European Union. The visit, organised by the Office of the Bulgarian Ombudsman, provided a perfect opportunity for the European Ombudsman to inform Bulgarian citizens, residents, businesses, associations, and other bodies of the rights that they will acquire at the European level as a result of Bulgaria's membership of the EU.

Mr Diamandouros meeting Mr Sergei Stanishev, Prime Minister of Bulgaria, during the European Ombudsman's information visit. Sofia, Bulgaria, 27–29 November 2006.

Accompanied by the Bulgarian Ombudsman, Mr Guinio GANEV, Mr DIAMANDOUROS met with Mr Georgi PARVANOV, President of Bulgaria, Mr Sergei STANISHEV, Prime Minister, Mr Boris VELTCHEV, Chief Prosecutor, Mr Lyuben KORNEZOV, Deputy Chairman of the National Assembly, and with the Presidents and Members of the following Standing Committees of the National Assembly: Combating Corruption Committee, Citizens' Complaints and Petitions Committee, European Integration Committee, Human Rights and Religious Affairs Committee.

Mr Diamandouros, Mr Guinio Ganev, Ombudsman of Bulgaria, and Mr Lyuben Andonov Kornezov, Deputy Chairman of the National Assembly, during the European Ombudsman's information visit. Sofia, Bulgaria, 27–29 November 2006.

Over 220 students, academics and journalists attended a lecture by the European Ombudsman at the University of National and World Economy in Sofia on the theme of "Democracy, accountability and the ombudsman". The lecture, hosted by the Vice Rector of the University, Professor Statty STATTEV, was followed by a lively question and answer session.

Mr Diamandouros presenting his work at the University of National and World Economy during the European Ombudsman's information visit. Sofia, Bulgaria, 27–29 November 2006.

Over 100 high level representatives of the central and local administration, ambassadors from EU Member States, government officials, parliamentarians, local public defenders, and journalists attended a presentation by Mr DIAMANDOUROS on "The European Ombudsman and the protection of citizens' rights".

At a meeting organised by the Center for the Study of Democracy, and hosted by its Chairman, Mr Ognian SHENTOV, Mr DIAMANDOUROS presented his work to a wide range of non-governmental organisations based in Bulgaria and informed them of how they could make use of his services.

The press coverage generated by the European Ombudsman's visit was extensive, with over 40 articles in the print and online media, as well as extensive television and radio coverage.

The visit also enabled Mr DIAMANDOUROS to develop his co-operation with the Bulgarian Ombudsman and his staff, with a view to serving the citizens and residents of Bulgaria as effectively as possible as their country enters the Union.

6.3 OTHER CONFERENCES AND MEETINGS

Conferences, seminars, and meetings offer an excellent opportunity for the Ombudsman to raise awareness about his work among key target audiences such as non-governmental organisations, interest groups, and academic institutions. They equally facilitate his work of promoting the concept of ombudsmanship more generally. Conferences and meetings also enable the Ombudsman and his staff to keep abreast of developments on the European landscape that are of particular relevance to the institution.

This section details the full range of activities aimed at promoting the concept of ombudsmanship generally and the work of the European Ombudsman in particular. Where the Ombudsman cannot participate personally in an event, he entrusts the representation of the institution to an appropriate staff member. Many groups also learn about the Ombudsman's work in the context of study trips

to Strasbourg. This section therefore includes a list of group presentations that took place during 2006.

INVOLVING THE OMBUDSMAN

On 3 February, the Ombudsman had a meeting with Professor Spiros SIMITIS, Professor of Labour, Civil and Computer Sciences and Law at the Johann Wolfgang Goethe University, Frankfurt am Main, Germany, and President of the German Ethics Committee. Professor SIMITIS then participated in a meeting of the staff of the European Ombudsman where he made a presentation on "Data protection — Deficiencies and limits of a common EU approach".

On 8 February, Mr DIAMANDOUROS addressed the Annual General Meeting of the European Network of Equality Bodies (EQUINET) in Brussels to explain the work he has done in the area of combating discrimination and promoting equal treatment. EQUINET seeks to develop co-operation between specialised equality bodies in Europe and to facilitate the effective exchange of expertise with a view to enhancing the uniform application of EU anti-discrimination law. It is funded by the European Commission and chaired by the Dutch Equal Treatment Commission.

On 20 March, Mr DIAMANDOUROS met with Ambassador James A. SHARKEY, Permanent Representative of Ireland to the Council of Europe, to discuss the role of the European Ombudsman.

On 22 March, Mr DIAMANDOUROS gave a lecture at the *Institut d'Etudes Politiques* in Paris on the subject of "The European Ombudsman and fundamental rights in an enlarged European Union".

On 23 March, the Ombudsman had a meeting with the President of the French High Authority for Combating Discrimination and Promoting Equality (*La Haute Autorité de Lutte contre les Discriminations et pour l'Egalité — HALDE*), Mr Louis SCHWEITZER, at HALDE's offices in Paris.

On 23 March, Mr DIAMANDOUROS gave a lecture at the Pantheon — Assas Paris II University on "The role of the institution of the ombudsman in the protection of human rights — The perspective of the European Ombudsman".

On 27 March, Mr DIAMANDOUROS hosted a dinner in Strasbourg in honour of the outgoing Commissioner for Human Rights of the Council of Europe, Mr Alvaro GIL-ROBLES.

On 3 April, Mr DIAMANDOUROS made a presentation on "Co-operation between the Commissioner for Human Rights of the Council of Europe and the European Ombudsman" at the event marking the entry into office of the new Commissioner for Human Rights of the Council of Europe, Mr Thomas HAMMARBERG, and the departure of Mr Alvaro GIL-ROBLES.

On 6 April, Mr DIAMANDOUROS gave a speech on good administration at the EU and Greek levels at a dinner organised by the Association of Greek Entrepreneurs in Athens, Greece.

On 14 April, the Ombudsman delivered a speech by video-recording entitled "The institution of the ombudsman as an extra-judicial mechanism for resolving disputes in the context of the evolving European legal order" to an international symposium on "Greece in the European community of law" organised by the Greek Academy of Sciences, the Greek Society for Judicial Studies and the Greek Centre for European Studies and Research (EKEME).

On 24 April, Mr DIAMANDOUROS had a meeting with three representatives of Alter-EU in Brussels: Mr Jorgo RISS, Greenpeace, Mr Olivier HOEDEMAN, Corporate Observatory Europe, and Mr Paul DE CLERCK, Friends of the Earth Europe. Alter-EU is a coalition of over 140 civil society groups, trade unions, academics, and public affairs firms, calling for greater transparency in the workings of the EU institutions and bodies.

On 28 April, the Ombudsman was the guest speaker at a working breakfast organised in Madrid by the New Economy Forum, a Spanish public policy think tank. Mr DIAMANDOUROS'S speech was entitled "Towards a citizens' Europe". The Spanish Ombudsman, Mr Enrique MÚGICA

HERZOG, introduced Mr DIAMANDOUROS to the audience of over 150 people, which included several Spanish regional ombudsmen, MEPs, politicians, businessmen, academics, diplomats, and journalists. The speech by Mr DIAMANDOUROS was followed by questions from the audience.

In the course of a dinner held the night before, on 27 April, the President of New Economy Forum, Mr José Luis RODRÍGUEZ, presented Mr DIAMANDOUROS with a memorial plaque commemorating his participation in the event.

On 16 May, Mr DIAMANDOUROS met with Mr Thomas HAMMARBERG, Commissioner for Human Rights of the Council of Europe, to discuss their respective roles.

On 19 May, the Ombudsman met in Strasbourg with Ms Dora BAKOYIANNI, Minister of Foreign Affairs of Greece.

On 22 May, Mr DIAMANDOUROS made a presentation on "Freedom of information — A European perspective" to the Fourth International Conference of Information Commissioners in Manchester, United Kingdom.

On 27 June, Mr DIAMANDOUROS met with Ms Ann-Marie NYROOS, Permanent Representative of Finland to the Council of Europe.

On 4 July, the Ombudsman presented his work at a dinner in Strasbourg organised by the European Affairs Committee of French Mayors.

On 18 and 19 September, the Ombudsman participated in a workshop on "Democracy, non-judicial remedies, and ombudsman studies", at the European University Institute (EUI) in Florence, Italy.

On 26 September, the Ombudsman met with Mr Alexandre CZMAL and Ms Emmanuelle GARAULT, representatives of the Assembly of French Chambers of Commerce, to discuss the European Commission's initiative in the field of transparency.

On 2 October, Mr DIAMANDOUROS held a series of meetings in Athens, Greece, with Mr Karolos PAPOULIAS, President of Greece, Mr Kostas KARAMANLIS, Prime Minister of Greece, Ms Anna BENAKI-PSAROUDA, President of the Greek Parliament, and Mr George PAPANDREOU, Leader of the PASOK Party to inform them of the European Ombudsman's activities.

On 5 October, the Ombudsman was a guest speaker at the Annual Congress of EUROCHAMBRES, the Association of European Chambers of Commerce and Industry. More than 500 representatives of 44 European chambers of commerce and industry, representing a total of 18 million enterprises, attended the Congress, which addressed various dimensions of its central theme, namely, "Communicating Europe — Sharing the vision, delivering the results". Mr DIAMANDOUROS contributed to the session entitled "Europe & entrepreneurs — Facts, gaps, delays and prospects". During the conference, Mr DIAMANDOUROS also held a bilateral meeting with the President of Eurochambres, Mr Pierre SIMON.

On 10 October, Mr DIAMANDOUROS made a presentation at a working lunch of the EU Member States' Permanent Representatives to the Council of Europe, hosted by Ms Ann-Marie NYROOS, Permanent Representative of Finland to the Council of Europe.

On 17 October, Mr DIAMANDOUROS spoke on "The ombudsman institution and the quality of democracy" at a graduation ceremony organised by the Centre for the Study of Political Change at the University of Siena, Italy.

On 17 October, the Ombudsman delivered a lecture on "Transparency, accountability, and democracy in the EU" at the Johns Hopkins University School of Advanced International Studies in Bologna, Italy.

On 19 October, Mr DIAMANDOUROS held a videoconference meeting with Ms Aspasia PAPAVASSILIOU, Deputy Attorney-General for the State of California, United States, who visited the EU institutions in the framework of the European Union Visitors Programme. During the

meeting, Ms PAPAVASSILIOU was informed of the European Ombudsman's mandate, as well as of the most important types of cases being dealt with by his Office.

On 8 November, the Ombudsman presented his work to the Joint Committee on European Affairs of the Irish Parliament. The Irish Ombudsman, Ms Emily O'REILLY, also addressed the Committee. A lively questions and answers session followed the presentations during which issues pertaining to free movement of persons, equality of treatment and awareness of the ombudsman were raised. Prior to this meeting, the Ombudsman had the opportunity to discuss his work with the Head of the European Parliament Office in Dublin, Mr Francis JACOBS, and members of his staff, along with staff from the Commission's Representation in Dublin.

On 13 November, the Ombudsman travelled to Karlsruhe, Germany, to make a presentation on the role of the European Ombudsman to the Europa-Union Karlsruhe. Earlier that evening, he was invited by the First Mayor of Karlsruhe, Mr Siegfried KÖNIG, to a reception in the Town Hall.

On 21 November, Mr DIAMANDOUROS delivered a lecture at Kingston University, London, on "Maladministration, the courts, and the ombudsman". The lecture, which was organised by the School of Law, was hosted by the Acting Dean of the Faculty of Business and Law, Professor Philip SAMOUEL.

Mr Diamandouros with students and staff from Kingston University, London following a presentation of his work. London, United Kingdom, 21 November 2006.

On 19 December, Mr DIAMANDOUROS participated, along with the President of the European Court of Justice, Mr Vassilios SKOURIS and the First Vice-President of the European Court of Human Rights, Mr Christos ROZAKIS, in a round-table organised by the Athens Bar Association to launch the book *Human rights in Europe: The jurisprudence of the European Court of Human Rights.*

INVOLVING THE OMBUDSMAN'S STAFF

On 1 March, Mr Daniel KOBLENCZ, Legal Officer, met Mr Heribertus JAKA TRIYANA, Lecturer in International Law, to explain the tasks and duties of the European Ombudsman.

On 11 May, Ms Tina NILSSON, Legal Officer, and Ms Rosita AGNEW, Joint Head of the Communications Sector, participated in a workshop organised by the European Investment Bank (EIB) for Civil Society Organisations (CSOs) in Brussels, with an eye to raising awareness among CSOs concerning their right to complain to the European Ombudsman about maladministration in the activities of the EIB.

On 15 June, Mr José MARTÍNEZ-ARAGÓN, Principal Legal Adviser, gave a presentation on the work of the European Ombudsman to a group of diplomats, in the context of a seminar on European affairs organised by the Centre for European Studies in Strasbourg.

On 27 June and 11 July, Mr Daniel KOBLENCZ received two participants in the European Union Visitors Programme, and explained the work of the European Ombudsman to them.

On 27 July, Mr Branislav URBANIČ met with Mr Thierry NGOGA to discuss the principles of good administration, on which Mr NGOGA was conducting research.

On 26 September, Mr Peter BONNOR participated in a seminar on openness and communication, giving a speech on the right of public access to documents at the EU level. The seminar took place at Roskilde University, Denmark, and was organised by the European Commission's Representation in Copenhagen. It was attended by students, journalists, and representatives from civil society.

On 26 October, Mr Lucio MALAN, Vice-President of the Senate of the Italian Republic, paid a visit to the Ombudsman's Office. Mr Gerhard GRILL, Principal Legal Adviser, welcomed him and answered his questions concerning the role and work of the European Ombudsman.

On 30 November, Mr Ian HARDEN, Secretary-General in the Ombudsman's Office, spoke at a conference organised by the CEE Bankwatch Network in Brussels entitled "Right to appeal — International financial institutions and accountability — On the way to independent compliance and appeal mechanism for the European Investment Bank". During the session entitled "What are the existing accountability mechanisms on the EU level to keep the EIB accountable?", Mr HARDEN explained the role the European Ombudsman can play and gave examples of complaints that the Ombudsman has already dealt with concerning the EIB.

On 1 December, Ms Tina NILSSON delivered a speech entitled "Openness, transparency, and access to documents — Is the legislation working?" at the European Information Management Seminar "Keep ahead with European information in the enlarged Europe", organised by the European Institute of Public Administration in Maastricht, The Netherlands.

Group presentations

In 2006, Mr DIAMANDOUROS and members of his staff (indicated in parentheses) explained the role and work of the Ombudsman to the following visitors' groups:

February

- a group of 85 French officials taking part in a seminar on European affairs organised by the Centre for European Studies in Strasbourg. (Mr José MARTÍNEZ-ARAGÓN and Ms Marjorie FUCHS)
- 35 students and supervisors of public administration from the University of Twente, The Netherlands and from the *Westfälische Wilhelms-Universität Münster*, Germany. The group was accompanied by Mr Jaap H. DE WILDE. (Mr Gerhard GRILL)
- 44 students from the *Bayern Kolleg Augsburg*, Bavaria, Germany, within the framework of a trip to Strasbourg organised by the *Europäische Akademie Bayern*. The group was accompanied by Mr Alexander FRISCH. (Mr Gerhard GRILL)
- 35 persons from the *Deutschen Evangelischen Frauenbunde Bayern*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

March

- 42 persons from the *CDU Senioren-Union Hilden*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)

- 42 students from the *Techniche Universität Chemnitz*, Germany, within the framework of a trip to Strasbourg organised by the *Bildungswerk Sachsen*. (Mr Gerhard GRILL)
- 25 mayors from Trentino-Alto Adige, Italy, in the context of a trip to Strasbourg. (Ms Ida PALUMBO)
- 25 persons from the *Deutsch-Französisch Gesellschaft Bonn*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

April

- 37 persons from the fellowship of former members and friends of the (demobilised) 7th armoured division (*Kameradschaft Ehemaliger und Freunde der (aufgelösten) 7. Panzerdivision*), Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)
- a group of 21 persons from Germany invited by Ms Silvana KOCH-MEHRIN MEP. (Ms Wiebke PANKAUKE)
- 44 persons from the *Verein Haus und Grund* from Kerpen, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Anne EISENGRÄBER)
- a group of 26 members of the East-Finland Regional Councils' auditing committees in the framework of a study trip to Strasbourg. (Mr Peter BONNOR)
- a group of 29 law students specialising in European law from the University of Leiden, The Netherlands. The group was accompanied by Mr Rick LAWSON. (Mr Ian HARDEN)
- 37 persons from Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)
- 37 persons from the umbrella organisation of Catholic student associations (*Dachverbande Katholische Studentenverbindungen*), Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)
- a group of 24 persons in the context of a trip organised by the Association for International Affairs (*Auslandsgesellschaft*), Dortmund, Germany. (Ms Wiebke PANKAUKE)
- 32 persons from the *CDU Senioren-Union Bremerhaven*, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)
- a group of 43 soldiers of the German federal armed forces (*Bundeswehr*) and members of the *Katholische Militärseelsorge*, Germany, within the framework of a seminar organised by the *Europäische Akademie Bayern*. The group was accompanied by Mr Alexander FRISCH. (Ms Wiebke PANKAUKE)

May

- a group of 29 persons in the context of a seminar on European affairs organised by the *Forum Europa e.V.*, Leipzig, Germany. (Mr Gerhard GRILL)
- a group of 12 law students specialising in European law from the University of Komotini, Greece. (Mr P. Nikiforos DIMANDOUROS and Mr Ioannis DIMITRAKOPOULOS)
- a group of 32 students and members of staff from the *Thorbecke Academie Leeuwarden*, The Netherlands, in the context of a study trip to Brussels and Strasbourg. (Mr Peter BONNOR)
- a group of 4 persons from Finland invited by Ms Piia-Noora KAUPPI MEP. (Mr Peter BONNOR)
- 30 persons from the CDU Women's Union Alfter, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

- 37 public finance officials within the framework of a seminar organised by the *Deutschland- und Europapolitisches Bildungswerk Nordrein-Westfalen*, Germany. (Mr Gerhard GRILL)
- a group of 49 students from an institution for youth education (*Jugendbildungswerk*), Marburg, Germany. (Mr Gerhard GRILL)
- 22 school principals and teachers from the Lüneburg and Schwerin regions, Germany, in the framework of a seminar organised by the German armed forces (*Bundeswehr*). (Mr Gerhard GRILL)

Mr Gerhard Grill, Principal Legal Supervisor, presents the Ombudsman's work to a visitors' group. Strasbourg, France, 23 May 2006.

June

- a group of 18 postgraduate students and two members of staff from the School of Law and Social Sciences of Glasgow Caledonian University, United Kingdom. The group was accompanied by Ms Marcela CHISHOLM. (Mr Peter BONNOR)
- a group of 12 political science students from the University of Southern Maine, Portland, United States. (Mr Georgios KATHARIOS)
- a group of 45 persons from Germany taking part in a study trip to Strasbourg organised jointly by the *Europäische Akademie Bayern* and Mr Wolfgang KREISSL-DÖRFLER MEP. (Mr Gerhard GRILL)
- 43 persons from the diocese council of the Köln archbishopric, Germany, in the context of a seminar on European politics organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)
- a group of 31 volunteer firemen from Wesseling, Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)
- a group of 48 persons in the framework of a trip organised by the House of Europe of Lyon and Rhône region. (Mr Gerhard GRILL)
- 20 mayors from the province of Trento, Italy, in the context of a trip to Strasbourg. (Ms Wiebke PANKAUKE)
- a group of 58 trainee teachers at special schools from the Oberfranken region, Germany, taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*. (Mr Gerhard GRILL)
- a group of 50 participants in the "*Europa-Seminar*" organised by the Kolpingwerk, Germany. (Mr Gerhard GRILL)

- a group of 40 students from the Communications Department of the University of Rome-*La Sapienza*, Rome, Italy, in the context of a study trip to Brussels and Strasbourg. (Ms Ida PALUMBO)

- a delegation of 23 students taking part in a trip offered as a prize to the winning teams of the Mini European Assembly organised by the National Student Travel Foundation of Malta. (Mr P. Nikiforos DIAMANDOUROS and Ms Ida PALUMBO).

July

- a group of 33 trainee teachers from the Nuremberg area, Germany, taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*. (Ms Wiebke PANKAUKE)

- a group of 39 persons from Germany invited by Graf Alexander LAMBSDORFF MEP. (Ms Wiebke PANKAUKE)

- 31 members of the *Club BM56*, a Franco-German association for the promotion of town twinning activities between Erftkreis and Le Marbihan, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Ms Wiebke PANKAUKE)

- a group of 26 students from the Master in European Studies programme of the University of Tübingen, Germany. (Mr Gerhard GRILL)

- a group of 19 students from the National School of Public Administration, Athens, Greece. (Mr Georgios KATHARIOS)

- a group of 30 students from the University of Bamberg, Germany, in the context of a study trip to Strasbourg. (Mr Gerhard GRILL)

- 36 persons from the vocational education centre (*Berufsbildungszentrum*) Neustadt, Germany. (Mr Gerhard GRILL)

- a group of 42 trainee teachers from the Munich area, Germany, taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*. (Mr Gerhard GRILL)

- 31 students from the Einstein-Gymnasium, Kehl, Germany. (Ms Wiebke PANKAUKE)

September

- 24 students from the Institute for Municipal Administration, and former soldiers of the German federal armed forces (*Bundeswehr*), Germany, in the context of a trip organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

- a group of 49 persons from Germany invited by Graf Alexander LAMBSDORFF MEP. (Mr Gerhard GRILL)

- a 25 person delegation from the Lempäälä municipality, Finland, in the context of a study trip to Strasbourg. (Mr Peter BONNOR)

- 31 persons from a Catholic education institution (*Katholisches Bildungswerk)*, Meckenheim, Germany, in the context of a seminar in Strasbourg organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

- a group of 42 students from the *St Ursulagymnasium* in Köln, Germany, in the context of a seminar in Strasbourg organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

- 17 members of the *CDU Münster-Amelsbüren*, Germany, in the context of a seminar in Strasbourg organised by the *Karl-Arnold-Stiftung*. (Mr Gerhard GRILL)

October

- a group of 45 lawyers in the framework of a study trip to Strasbourg, Brussels, and Luxembourg organised by the Lawyers Association — Katowice branch, Poland. (Ms Marta HIRSCH-ZIEMBIŃSKA)
- 26 persons from Germany in the context of a seminar in Strasbourg organised by the *Jakob-Kaiser-Stiftung*. (Mr Gerhard GRILL)
- a group of 30 academics and political science students from the University of Düsseldorf, Germany, in the context of a seminar in Strasbourg organised by the *ESTA-Bildungswerk*. (Mr Gerhard GRILL)
- 50 students from the Franco-German Association (*Deutsch-Franzöziche Gesellschaft*) Bonn und Rhein-Sieg, Germany, taking part in a study trip to Luxembourg and Strasbourg. (Mr Gerhard GRILL)
- a group of 45 persons from the association of historic gun clubs *(Bund der Historischen Deutschen Schützenbrüderschaften)*, Willich, Germany, invited by Mr Klaus HÄNSCH MEP. (Mr Gerhard GRILL)

November

- a group of 27 persons from *SPD Duisburg*, Germany, invited by Mr Klaus HÄNSCH MEP. (Ms Wiebke PANKAUKE)
- a group of 25 law students specialising in European law from the University of Leiden, The Netherlands. The group was accompanied by Mr Rick LAWSON. (Mr Peter BONNOR)
- 11 persons from Serbian NGOs in the framework of a study visit to the European institutions in Brussels organised by the Center for Development of Serbia. (Mr Georgios KATHARIOS)
- 18 persons from an adult education centre (*Münchner Volkshochschule*), Germany, in the context of a study trip to Strasbourg organised by the *Münchner Volkshochschule*. (Mr Gerhard GRILL)

Ms Wiebke Pankauke, Legal Officer, presents the Ombudsman's work to a visitors' group. Strasbourg, France, 15 November 2006.

December

- a group of 17 Hungarian lawyers and students in law in the context of a study visit to the European institutions in Brussels organised by *Bruxinfo*. (Mr Daniel KOBLENZ)

- a group of 39 persons from Germany taking part in a study trip to Strasbourg organised by the *Europäische Akademie Bayern*. (Mr Gerhard GRILL)
- 33 students from *Universitätsgruppe Market Team Tübingen*, Germany, invited by Mr Jorgo CHATZIMARKAKIS MEP. (Mr Gerhard GRILL)
- a group of 48 persons from the metal workers' trade union (der *IG-Metall Senioren*), Duisburg, Germany, invited by Mr Klaus HÄNSCH MEP. (Mr Gerhard GRILL)

In addition to the above, members of the Ombudsman's staff presented his work to trainees from the European Commission on 14 occasions and to trainees from the Council of the European Union on 2 occasions in 2006, with approximately 50 trainees attending each session.

6.4 MEDIA RELATIONS

The Ombudsman's media activities range from interviews to press conferences and from written articles to press releases. These activities help draw attention to the service the Ombudsman provides to citizens, organisations, and companies, and highlight cases of particular salience. The media can help emphasise the importance of these cases, thereby enabling the EU institutions or bodies to adopt a service culture towards citizens geared to searching for solutions to their questions or problems.

Twenty two press releases were issued in 2006 and distributed to journalists and interested parties throughout Europe. Among the issues covered were the choice of languages for EU Presidency websites, transparency in the area of lobbying and subsidies, a complaint about failure to implement the Working Time Directive properly, and lack of openness in the functioning of the Council.

The Ombudsman gave over 40 interviews to representatives of the print, broadcast and electronic media in 2006, in Strasbourg, Brussels, and elsewhere. This section lists the interviews given by the Ombudsman and his staff in 2006, and includes the range of media events that were organised during the year.

- On 5 January, Mr DIAMANDOUROS was interviewed by Mr Giorgos ADAM from the radio station *Dimotiko Radiofono Thessalonikis*, in Greece.
- On 20 January, Mr DIAMANDOUROS gave a telephone interview to Mr Mark BEUNDERMANN from *EUobserver* concerning his call for the Council to legislate in public.
- On 23 January, Mr DIAMANDOUROS gave a telephone interview to Mr Luc VERNET from the French newspaper *Sud Ouest* who was writing a portrait of the Ombudsman.
- On 25 January, Ms Ruth REICHSTEIN from the German radio station *Deutschlandfunk* interviewed the Ombudsman in Brussels, after a meeting of the Petitions Committee of the European Parliament to discuss the Ombudsman's Special Report concerning greater transparency in the Council.
- On 27 January, Mr DIAMANDOUROS gave an interview to Mr Herakles GALANAKIS from *ERA Herakleion* radio station in Greece.
- On 8 February, Mr DIAMANDOUROS was interviewed by Ms Isabel GUZMAN from the German news agency *Evangelischer Pressedienst* in Brussels. Ms GUZMAN was specifically interested in German complaints and cases.
- Later that day, Ms Patricia HALLER from the Austrian newspaper *Kurier* interviewed the Ombudsman in Brussels. She asked him about his experience as Ombudsman, examples of cases, and his work in general.

- On 9 February, the Ombudsman gave a telephone interview to Mr Jean-Pierre SARDIN from *Radio France Bleu* about the Ombudsman's press release concerning the Commission's White Paper on Communication.
- On 14 February, Mr DIAMANDOUROS was interviewed in Strasbourg by Ms Nayran AGUADO from the Spanish TV station *TVE* for their programme "Vivir Europa". The journalist was specifically interested in Spanish complaints.
- Later that day, Ms Renata GOLDIROVA from the Slovak TV news channel *TA3* interviewed the Ombudsman about his work and Slovak cases in particular.
- On 15 February, Ms Marta HIRSCH-ZIEMBIŃSKA, Principal Legal Adviser, was interviewed by telephone by Ms Helena VIEGAS from the Portuguese magazine *Noticias Magazine*. The journalist was specifically interested in Portuguese cases.
- On 17 February, Ms Marta HIRSCH-ZIEMBIŃSKA, Principal Legal Adviser, presented the Ombudsman's work to a group of 14 journalists from Bulgaria, Romania, and Croatia, in the context of a seminar on enlargement organised by the European Journalism Centre.
- On 2 and 3 March, a German *ARTE* television team, under Ms Katrin MOLNAR, interviewed and filmed Mr DIAMANDOUROS and other staff members in Strasbourg in order to broadcast a portrait of the Ombudsman.
- On 3 March, Ms Elodie CARTIER from *Radio Côte d'Amour* interviewed the Ombudsman by telephone concerning the Commission's White Paper on Communication.
- On 8 March, Mr DIAMANDOUROS gave a press conference in Luxembourg in the context of his information visit to Luxembourg. This was preceded by an interview with Mr Marc GLASENER from the *Luxemburger Wort*.
- On 15 March, the Ombudsman was interviewed in Strasbourg for a Czech TV documentary entitled "Across Europe". Young film makers, under the producer Mr Filip ALBRECHT, conducted interviews with European politicians and citizens in order to show Europe from different perspectives.
- On 29 March, the Ombudsman invited four journalists to a working lunch in Brussels: Mr Thomas FERENCZI from *Le Monde*, Mr Nick WATT from *The Guardian*, Mr Eric BONSE from *Handelsblatt*, and Mr Carlo FENU from the Italian news agency *ANSA*. Mr DIAMANDOUROS answered questions concerning his work and country specific complaints, and also explained the need to further reach out to potential complainants in the big EU Member States.
- Later that day, Mr DIAMANDOUROS gave an interview to Mr Jan SLIVA from the *AP* news agency for a feature about the work of the European Ombudsman.
- Afterwards, Mr DIAMANDOUROS was interviewed by Mr Tansel TERZIOGLU from the Austrian newspaper *Die Kleine Zeitung*. The journalist asked questions about Mr DIAMANDOUROS'S experience as Ombudsman since he took up the post.
- Later that afternoon, Mr DIAMANDOUROS gave a telephone interview to the German Radio PR Agency *Schlenker PR* for a series on the European institutions entitled "Living in Europe".
- Afterwards, Ms Daniela WEINGÄRTNER from the German newspapers *TAZ* and *Badische Zeitung* interviewed Mr DIAMANDOUROS for a portrait of the European Ombudsman. She also interviewed staff members in Strasbourg and attended a meeting of Mr DIAMANDOUROS with Commission staff in Luxembourg.
- On 24 April, the Ombudsman presented his *Annual Report 2005* at a press conference in Brussels. Over 50 journalists attended the presentation. Mr DIAMANDOUROS gave an overview of his activities in 2005, providing examples of cases and solutions obtained for citizens. The journalists asked questions about statistics, country specific complaints, the Ombudsman's relationship

with OLAF, transparency in the Council, pending special reports, and the language regime of EU Presidency websites.

- After the press conference, Mr DIAMANDOUROS gave individual interviews to *Deutsche Welle TV*, *German Public Radio*, Belgian *RTBF* radio, and the *Spanish Public Radio* about the most important findings of the *Annual Report 2005*.

- Later that day, the Ombudsman gave a telephone interview to Mr Fabrice LAMBERT from the Belgian business radio *BFM*, concerning the main findings of the *Annual Report 2005* and specific Belgian cases.

- On 26 April, Ms Gundi GADESMANN, Press Officer, gave a telephone interview to Mr Albrecht MEIER from the German newspaper *Der Tagesspiegel* about the efforts of the Ombudsman to reach out to target groups, such as SMEs, in Germany.

- On 27 April, Ms Rosita AGNEW, Joint Head of the Communications Sector, gave an interview to Ms Margarita GASCA from *Brussels TV* on the tasks of the European Ombudsman and the main findings of the *Annual Report 2005*.

- Later that day, Mr DIAMANDOUROS gave a telephone interview to Ms Nadja SCHEYS from the Belgian radio station *FM Bruxelles* on the *Annual Report 2005* and specific Belgian cases.

- On 9 May, during his information visit to Spain, Mr DIAMANDOUROS was interviewed by Mr Miguel ADROVER CONDE of *TVE* television for a programme entitled "Europa 2006", which was broadcast following his visit.

- Later that morning, the National Ombudsman of Spain, Mr Enrique MÚGICA HERZOG, and the European Ombudsman held a joint press conference in which they outlined the purpose of the visit, their respective roles and how they co-operate to best serve Spanish citizens and residents.

Mr Diamandouros and Mr Enrique Múgica Herzog, National Ombudsman of Spain, jointly present their work during a press conference organised as part of the European Ombudsman's information visit. Madrid, Spain, 8–10 May 2006.

- On 6 June, Mr Bruno WATERFIELD from the *Parliament Magazine* interviewed Mr DIAMANDOUROS in Brussels on the work of the Ombudsman, his achievements, his attempts to better inform the public about his services, his recommendations to the other EU institutions, and his objectives for the future, including ensuring greater transparency in the Council.

- On 16 June, the Commission's newsletter *En Direct* published an article by Mr DIAMANDOUROS entitled "I am there to help colleagues" in which the Ombudsman explained his role.
- On 27 June, Mr Olivier VERHEECKE gave an interview to Ms Ana LÁZARO from the *Canal Sur* television channel of Andalucía in the framework of a visit of 30 Spanish representatives from civil society platforms and non-governmental organisations to the European Parliament.
- For the June issue of the *DIHK* (German Chamber of Commerce) newsletter, Mr DIAMANDOUROS contributed an article on how he can specifically help small and medium-sized enterprises if they encounter problems with the EU institutions. The newsletter was distributed within 74 regional chambers of commerce in Germany.
- On 6 July, Mr DIAMANDOUROS presented the Ombudsman's work to a group of 14 journalists from Albania, Bosnia-Herzogovina, Croatia, Kosovo, and Serbia-Montenegro in the framework of a seminar entitled "Towards integration", which was organised by the European Journalism Centre.
- On 24 August, an interview with the Ombudsman, entitled "Sometimes a phone call is sufficient to solve a problem" was published in the newsletter of the German Confederation of Skilled Crafts and Small Businesses, *ZDH*.
- On 22 September, the Ombudsman was interviewed in Strasbourg by Ms Pauline WIRPH-DUVERGER from the French *Journal du Parlement*.
- On 27 September, Mr DIAMANDOUROS gave an interview to Ms Christina SIGANIDOU from *ERT3 Television*, Greece.
- On 5 October, during the EUROCHAMBRES Congress in Thessaloniki, the Ombudsman was interviewed by several Greek journalists, including Ms Magda CONSTANTINIDOU from *Naftemboriki* and the Austrian journalist Ms Sabine BERGER from the *Wirtschaftsblatt*.
- On 19 October, the Ombudsman explained his work to a group of journalists from the Nordic Journalist Centre, Århus, Denmark, who were visiting Strasbourg.
- On 3 November, Mr Nicholas CATEPHORES made presentations to two classes of journalism students at AKMI College in Athens, Greece, at the invitation of the journalist, Mr Thanasis KALFAS. Mr CATEPHORES spoke about the role and work of the European Ombudsman.
- On 14 November, Mr DIAMANDOUROS was interviewed for the BBC by Ms Shirin WHEELER in Strasbourg. She was particularly interested in different complaint mechanisms at the European level.
- On 15 November, Mr DIAMANDOUROS gave an interview to Mr Ioannis PAPADIMITRIOU, for the Greek section of *Deutsche Welle*.
- On 23 November, the Ombudsman gave an interview via videoconference to the correspondent of the Bulgarian news agency *BTA*, Mr Atanas MATEV, concerning the Ombudsman's information visit to Bulgaria.
- Later that day, Mr DIAMANDOUROS gave another interview via videoconference to the correspondent of the German section of AFP, Ms Andrea SCHNEIDER. The journalist's report was published, *inter alia*, in *Spiegel* online.
- On 27 November, in the context of the European Ombudsman's information visit to Bulgaria, Mr DIAMANDOUROS was interviewed by Mr Deian IODOV from the *TRUD Daily* newspaper.
- The same day, he gave an interview to Ms Snejana IVANOVA of *Bulgarian National Radio*.

Mr Diamandouros giving an interview to Mr Deian Iodov from the TRUD Daily newspaper during the European Ombudsman's information visit to Bulgaria, 27–29 November 2006.

- On 28 November, Mr DIAMANDOUROS and the Bulgarian Ombudsman, Mr Guinio GANEV, were interviewed live for the breakfast news programme of *Balkan Television (bTV)*. The interview was conducted by Mr Nicolay BAREKOV.
- On 29 November, Mr DIAMANDOUROS and Mr GANEV held a joint press conference in the National Assembly of Bulgaria.
- On 4 December, Ms Gundi GADESMANN, Press Officer, gave a telephone interview to the German Radio PR Agency *Schlenker PR* for a series on the European institutions entitled "Living in Europe".
- On 5 December, the Ombudsman provided written answers to interview questions for the newsletter of the Spanish think tank *Institución Futuro*. The interview, by Ms Ana YERRO, mainly concerned the Ombudsman's views on his work, the complaints he receives, and topical European issues.
- On 8 December, after a Seminar on Human Rights in Ljubljana, Slovenia, Mr DIAMANDOUROS was interviewed by Slovenian public and private TV stations, by the Slovenian news agency, and the Slovenian public radio. The journalists were mostly interested in the Ombudsman's views on human rights issues in Slovenia.
- On 18 December, Mr DIAMANDOUROS was interviewed by Ms Viki FLESSA for the programme "Sta Akra" appearing on *NET* television in Greece.
- On 27 December, Mr Gerhard GRILL was interviewed by *Radio France Internationale* concerning the Special Report that the Ombudsman had made in relation to the languages used for the websites of the Presidency of the Council.

6.5 PUBLICATIONS

The Ombudsman is keen to reach the widest possible audience with a view to raising awareness among citizens about their rights and, in particular, their right to complain. In 2006, the following publications were produced and distributed to interested parties with a view to informing key stakeholders and the general public about the European Ombudsman's activities and of the services he can offer to EU citizens and residents:

Annual Report 2005; photocopied version (in English)

A photocopied version of the Ombudsman's *Annual Report 2005* was made available in English to Members of the European Parliament's Committee on Petitions in May, to allow the Committee to deliberate on the Ombudsman's work before the full plenary debate later in the year.

Annual Report 2005 — Executive Summary and Statistics; photocopied version (20 languages)

Also in May, a photocopied version of the *Annual Report 2005: Executive Summary and Statistics* publication was made available to Members of the Committee on Petitions in all 20 official languages.

European Ombudsmen — Newsletter; Issues No 6 and No 7 (5 languages)

Issues No 6 and No 7 of the biannual newsletter of the European Network of Ombudsmen and the European Region of the International Ombudsman Institute were distributed, in April and October respectively, to national, regional, and local ombudsmen in Europe, as well as to Members of the European Parliament's Committee on Petitions.

The European Ombudsman: Could he help you? (23 languages)

A new edition of *The European Ombudsman: Could he help you?* complaint guide and form was published in 23 languages in 2006. This brochure is extremely helpful for potential complainants, greatly facilitating the exercise of their right to complain to the Ombudsman. Copies of the new edition of the brochure were distributed to ombudsmen, MEPs, Commission Representations, and Parliament Offices in the Member States, and were forwarded to EU relays and networks for further distribution. Great interest was shown in this publication with requests for many thousands of additional copies being received by the end of the year.

The European Ombudsman: At a glance (25 languages)

A new edition of *The European Ombudsman: At a glance* leaflet was published in 25 languages in 2006. This brochure is aimed at the general public and is designed to help explain what the European Ombudsman can and cannot do. It was distributed widely with a view to reducing the number of inadmissible complaints to the Ombudsman.

The Tenth Anniversary Commemorative Volume; hardback and softback (in French)

The tenth anniversary of the institution of the European Ombudsman was marked by a series of commemorative events. A Founders' Workshop was organised in June 2004 to record the steps leading to the creation of the European Ombudsman and to identify developments and trends that may be worth pursuing further. It was decided to produce a commemorative volume as a result of this exercise. Entitled *The European Ombudsman: Origins, Establishment, Evolution*, this publication was produced in English in 2005 in both hardback and softback versions. In light of the success of this publication, a French edition was produced in 2006.

Annual Report 2005; printed version (20 languages)

An initial quantity of 3 000 copies of the 20 official EU language versions of the Ombudsman's *Annual Report 2005* were distributed in October to MEPs, EU institutions and bodies, ombudsmen, and the European Commission's relays and networks. Further copies were distributed throughout the rest of the year.

Annual Report 2005: Executive Summary and Statistics; printed version (20 languages)

An initial quantity of 8 000 copies of the 20 language versions of the *Executive Summary and Statistics*, made available in October, were distributed to a large network of recipients of the complete Annual Report, as well as to non-governmental organisations and universities. Further copies were distributed throughout the rest of the year.

The Annual Report 2005 — Compilation of Decisions (3 languages)

This comprehensive electronic publication contains the full decisions, in English, French, and German, of the cases included in Chapter 3 of the Annual Report. It is available as a single electronic document on the Ombudsman's website, while a hard copy or CD-ROM is available to those requesting it from the Ombudsman's Office.

Other publications

The Ombudsman continued to distribute copies of his other publications during the year, most notably *The European Code of Good Administrative Behaviour*, which is available in 25 languages. The Code was produced in Macedonian in 2006 to help promote good administration in the Former Yugoslav Republic of Macedonia, which is an applicant country.

6.6 ONLINE COMMUNICATIONS

E-mail communication

In April 2001, an electronically-submittable version of the European Ombudsman's complaint form was added to the website in 12 languages. Following the enlargement of the European Union on 1 May 2004, the form was made available in a further nine languages. In December 2006, in preparation for the further enlargement of the European Union on 1 January 2007, the form was added to the website in Bulgarian and Romanian. Over 57% of all complaints received by the Ombudsman in 2006 were submitted over the Internet, of which a large proportion was received through the electronic complaint form.

In the year 2006, the main e-mail account of the Ombudsman was used to reply to a total of 10 801 e-mails requesting information. Of these, 7 261 were mass mailings submitted by citizens and concerned complaints received by the European Ombudsman. Issues covered by these mass mailings included the development of an industrial harbour by the Spanish authorities in the city of Granadilla, the right for doctors to refuse to perform abortions, and the alleged persecution of religious minorities in Poland. All such e-mails received a reply explaining the state of play with regard to the Ombudsman's handling of the complaint in question.

A total of 3 540 individual requests for information were received by e-mail in 2006, compared to around 3 200 in both 2005 and 2004. All received individual replies from an appropriate member of the Ombudsman's staff.

Website developments

The Ombudsman's website was created in July 1998. Throughout 2006, the European Ombudsman's Web Developer worked closely with the Heads of the Communications Sector, as well as with the technical services of the European Parliament, in preparing for the transformation of the Ombudsman's website into a modern, dynamic, informative, interactive, and constantly evolving service to citizens. It is envisaged that the new website will be ready to be launched in the first half of 2007.

In May 2006, the European Ombudsman's website, together with those of the other EU institutions, bodies, and agencies, migrated to the new dot.EU top-level domain. The addresses of the EU institutions' websites can now easily be recognised, as they all end in "europa.eu". Although the Ombudsman's old website address (http://www.euro-ombudsman.eu.int) will continue to work for the foreseeable future, the official address is now: http://www.ombudsman.europa.eu

The Ombudsman continued to update his website in 2006, adding the electronic versions of his various publications as they became available. These included his *Annual Report 2005*, and the related *Executive Summary and Statistics* in 20 languages; *The European Ombudsman: At a glance* in 25 languages, and *The European Ombudsman: Could he help you?* in 23 languages.

In January 2006, the Ombudsman created a new section of his website linked to an own-initiative inquiry into the Commission's role as guardian of the Treaty, which he decided to open following the receipt of a large number of complaints against the Commission concerning the development of an industrial harbour by the Spanish authorities in the city of Granadilla, on the island of Tenerife, Spain.

From 1 January to 31 December 2006, the Ombudsman's website received 416 533 unique visitors. The English-language pages of the site were the most consulted, followed by the French, Spanish, German, and Italian pages. In terms of the geographical origin of visits, the greatest number of visitors came from Italy, followed by Sweden, the United Kingdom, Spain, and Germany. The links section of the Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 44 000 visits were made to the links pages during 2006, clearly demonstrating the added value for citizens of the European Ombudsman's work in co-ordinating the European Network of Ombudsmen.

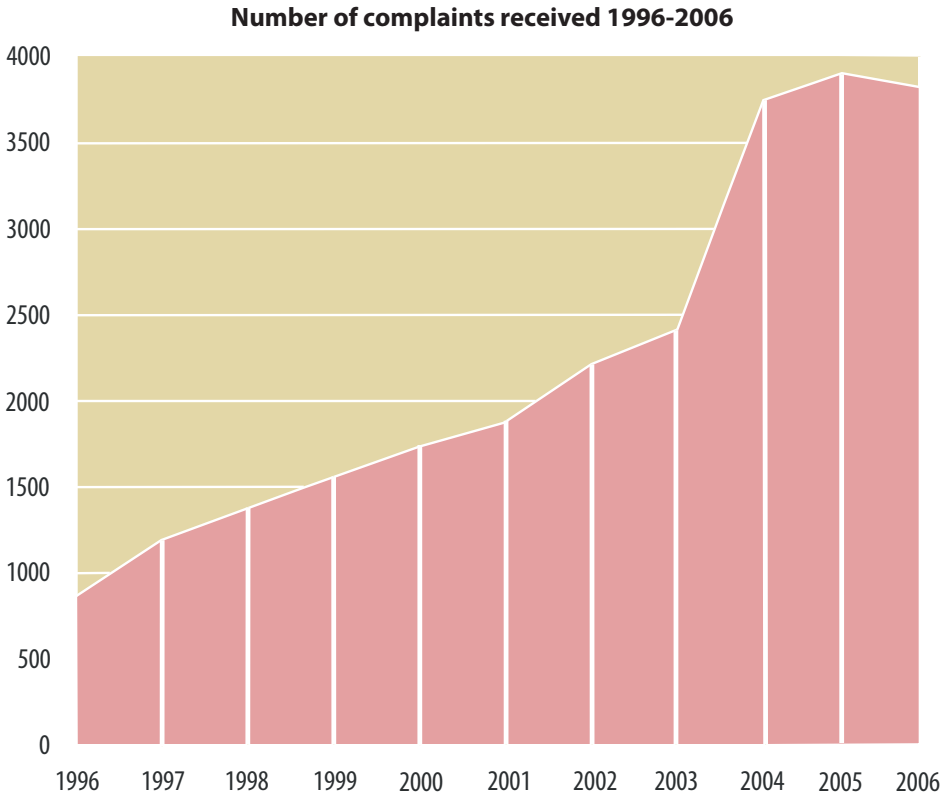
In order to ensure that the Ombudsman's website stays at the forefront of EU websites, the Office of the Ombudsman participated throughout 2006 in the work of the Inter-Institutional Internet Editorial Committee (CEiii), including in the Working Group of the CEiii that was set up to co-ordinate the migration to the dot.EU top-level domain.

A STATISTICS

1 CASES DEALT WITH DURING 2006

1.1 TOTAL CASELOAD IN 2006 ..... 4 422[1]

— inquiries not closed on 31.12.2005 ..... 315[2]
— complaints awaiting decision on admissibility on 31.12.2005 270
— complaints received in 2006 ..... 3 830[3]
— own-initiatives of the European Ombudsman 9



1 Of which 281 complaints on the same subject matter.

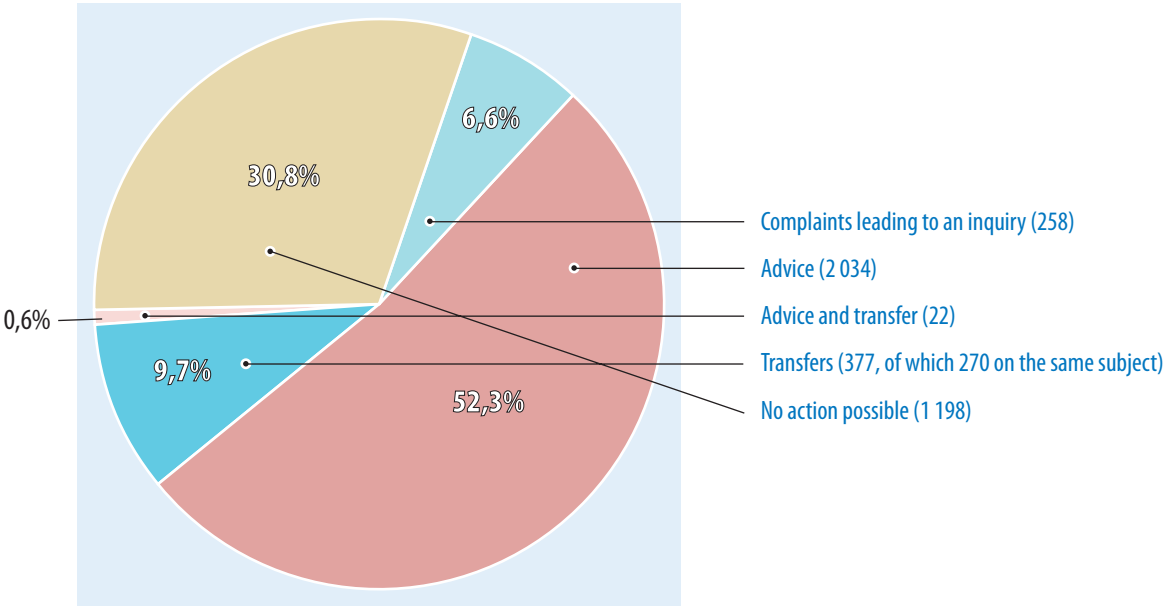
2 Of which three own-initiative inquiries of the European Ombudsman and 312 inquiries based on complaints.

3 Of which 281 complaints on the same subject matter, as mentioned in footnote 1.

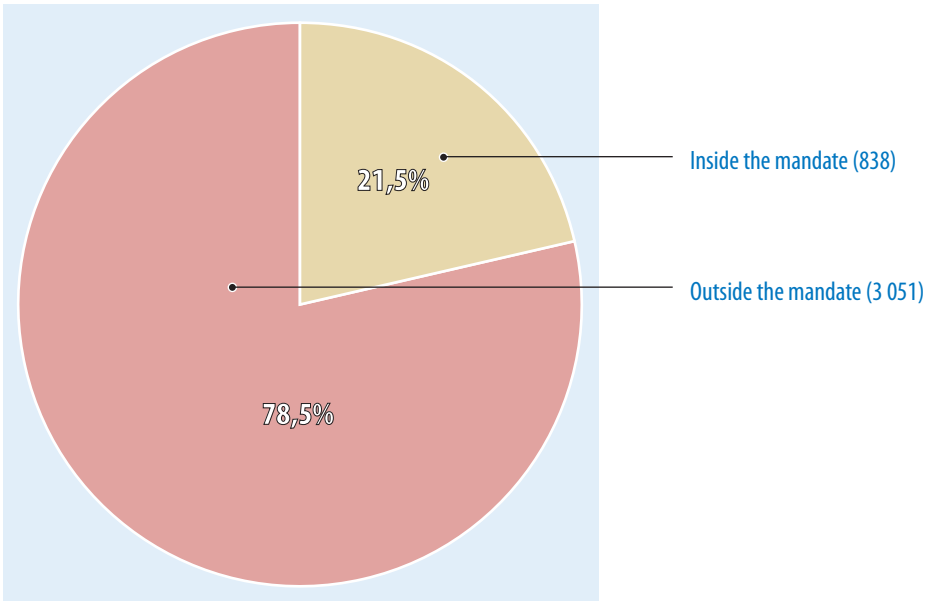
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED 95%

1.3 CLASSIFICATION OF THE COMPLAINTS

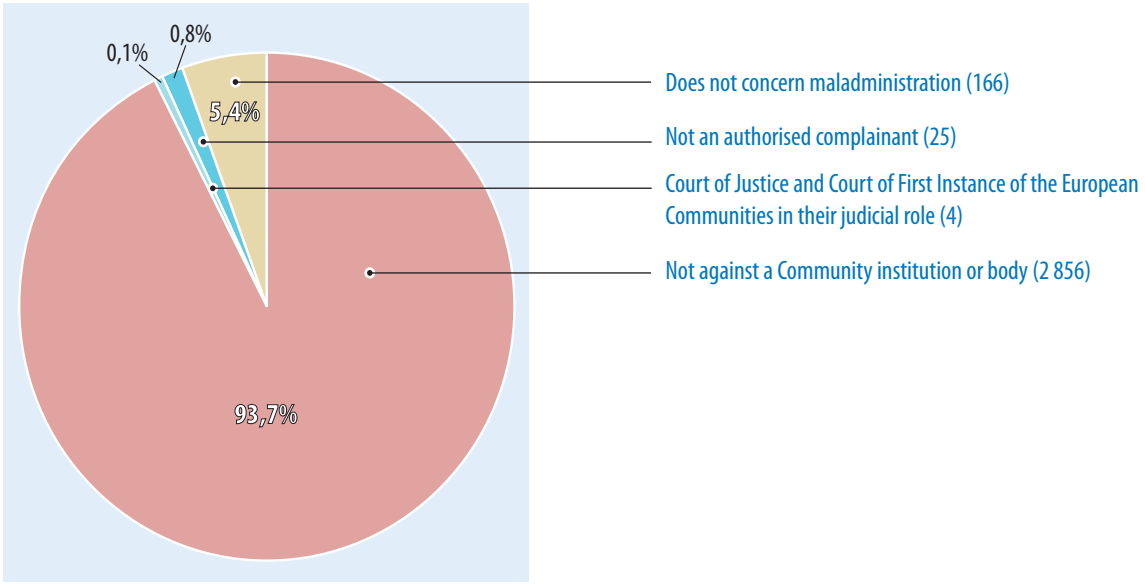
1.3.1 According to the type of action taken by the European Ombudsman to benefit the complainants



1.3.2 According to the mandate of the European Ombudsman

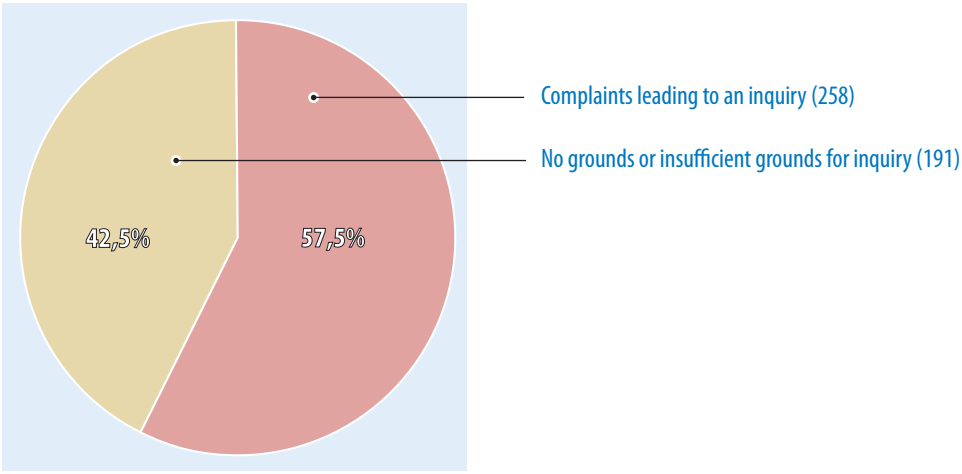


OUTSIDE THE MANDATE

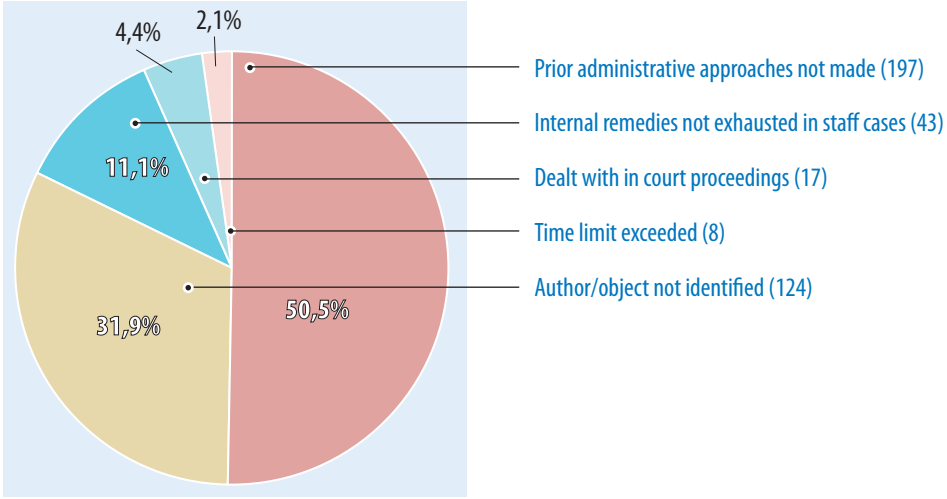


INSIDE THE MANDATE

Admissible Complaints

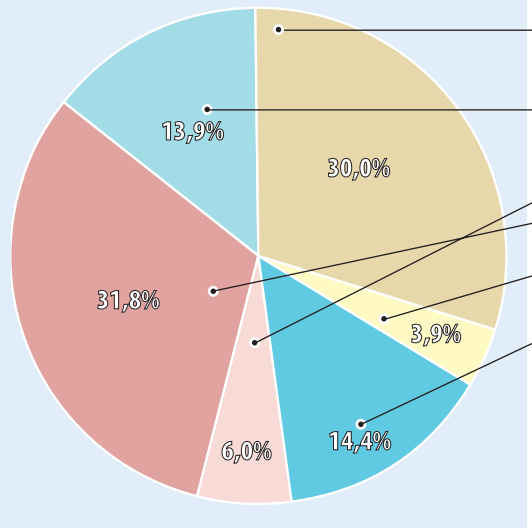


Inadmissible Complaints



2 TRANSFERS AND ADVICE

(In certain cases, more than one advice was given)



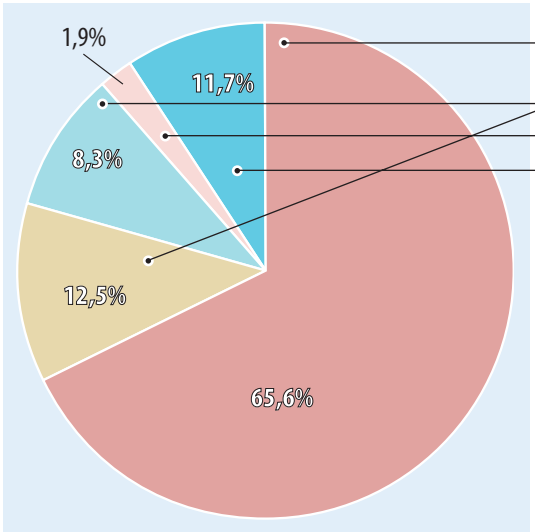
- Advice to contact another ombudsman or petition a regional or national parliament (828)
- Advice to contact the European Commission (383)
- Advice to petition the European Parliament (166)
- Advice to contact other bodies (877)
- Advice to contact SOLVIT (109)
- Transfers (399 of which 270 on the same subject)
  - To the European Parliament (22)
  - To the European Commission (4)
  - To a national or regional ombudsman (363 of which 270 on the same subject)
  - To SOLVIT (9)
  - To other bodies (1)

3 INQUIRIES DEALT WITH IN 2006 582

In 2006, the European Ombudsman dealt with 582 inquiries. Of these, 267, of which nine own-initiatives, were initiated in 2006, while 315, of which three own-initiatives, were carried over from 2005.

3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES

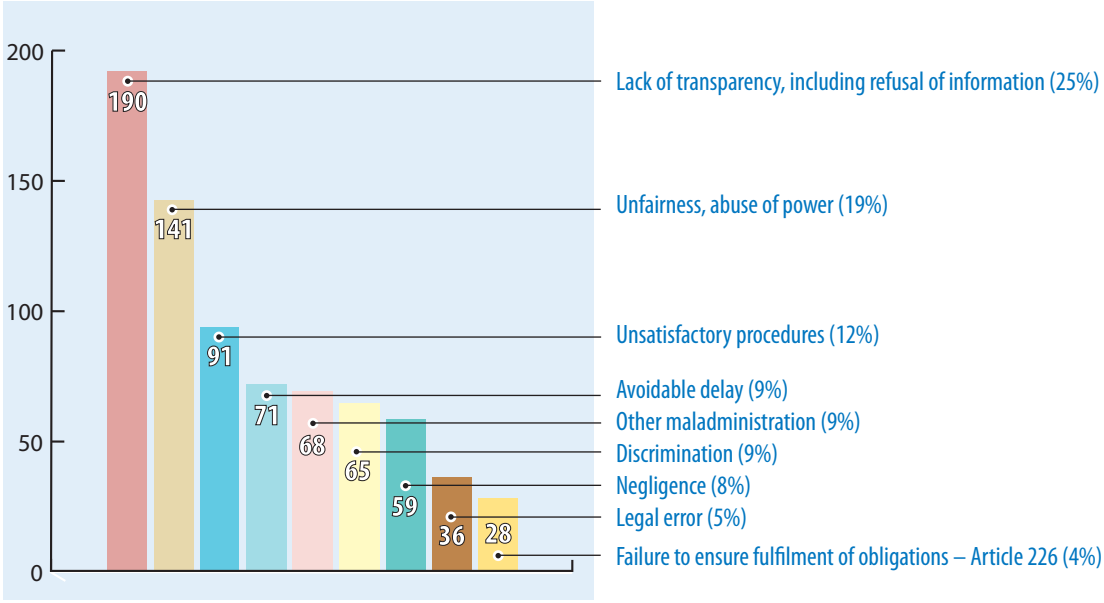
(In some cases, the inquiry concerned two or more institutions or bodies)



- European Commission (387)
- European Personnel Selection Office (74)
- European Parliament (49)
- Council of the European Union (11)
- Others (69)
  - Court of Justice (4)
  - European Court of Auditors (2)
  - OLAF (18)
  - European Central Bank (3)
  - Committee of the Regions (4)
  - Economic and Social Committee of the European Communities (4)
  - European Monitoring Centre on Racism and Xenophobia (3)
  - Eurojust (1)
  - Opoce (4)
  - European Investment Bank (7)
  - European Environment Agency (1)
  - European Centre for the Development of Vocational Training (4)
  - European Aviation Safety Agency (3)
  - European Defence Agency (1)
  - Office for Harmonisation in the Internal Market (1)
  - European Data Protection Supervisor (2)
  - European Food Safety Authority (1)
  - European Medicines Agency (3)
  - European Police Office (2)
  - Intelligent Energy Executive Agency (1)

3.2 TYPE OF MALADMINISTRATION ALLEGED

(In certain cases, two or more types of maladministration are alleged)

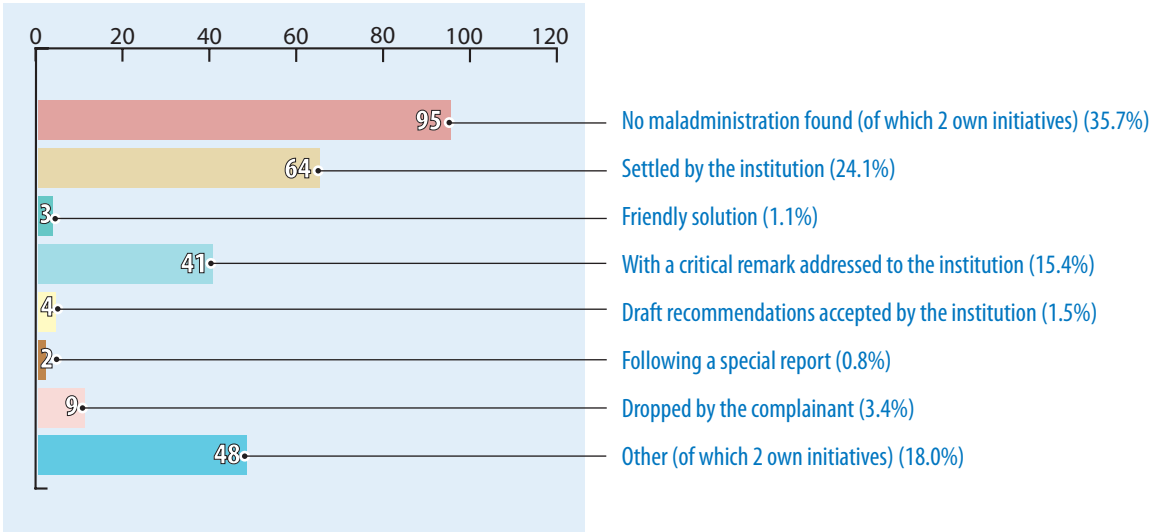


3.3 PROPOSALS FOR FRIENDLY SOLUTIONS, DRAFT RECOMMENDATIONS AND SPECIAL REPORTS MADE IN 2006

— Proposals for friendly solutions.....28
— Draft recommendations 13
— Special reports 2

3.4 INQUIRIES CLOSED ..... 250[4]

(Inquiries were closed on one or more of the following bases)



4 Of which three own-initiatives of the Ombudsman.

4 ORIGIN OF COMPLAINTS REGISTERED IN 2006

4.1 WHO COMPLAINS?

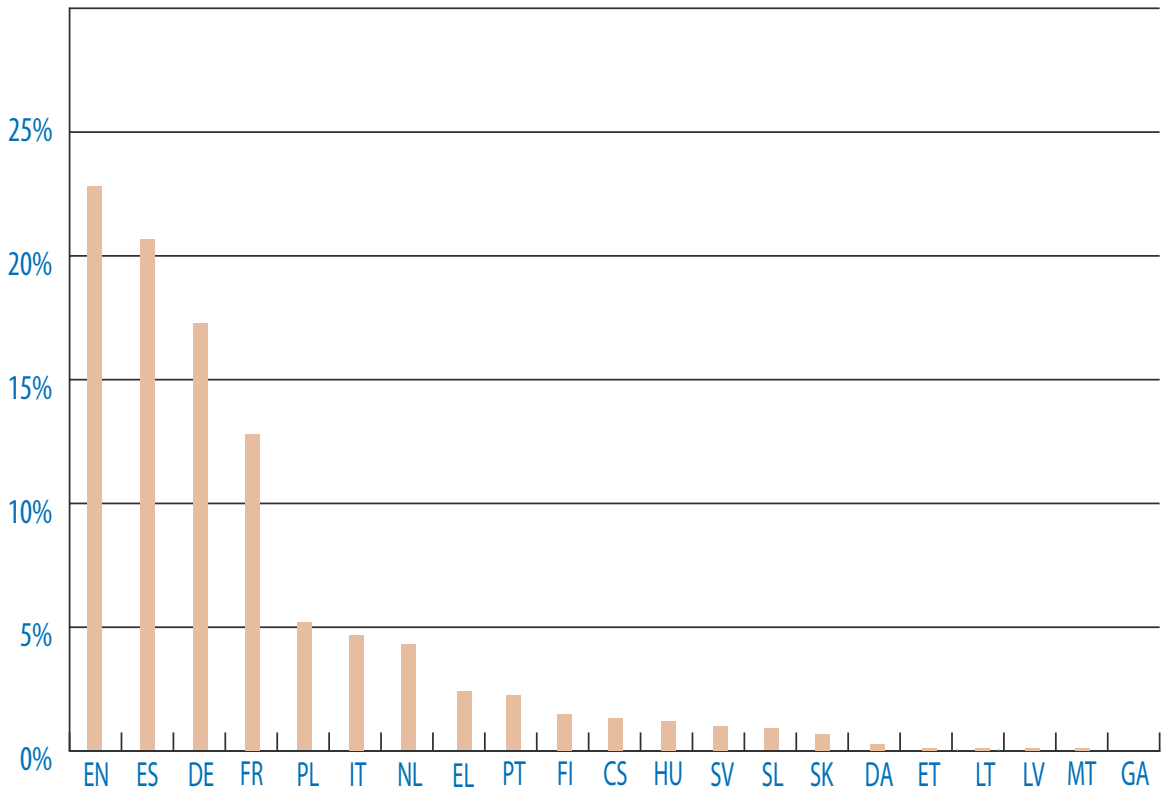
Companies and associations

5.5% (211)

Individual citizens

94.5% (3 619)

4.2 LANGUAGE DISTRIBUTION OF COMPLAINTS



4.3 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population	Ratio[1]
Luxembourg	54	1.4	0.1	14.2
Malta	33	0.9	0.1	10.0
Cyprus	44	1.1	0.2	7.6
Belgium	241	6.3	2.3	2.8
Slovenia	44	1.1	0.4	2.7
Spain	781	20.4	9.4	2.2
Finland	74	1.9	1.1	1.7
Ireland	47	1.2	0.9	1.4
Austria	81	2.1	1.8	1.2
Greece	105	2.7	2.4	1.1
Portugal	96	2.5	2.3	1.1
Hungary	72	1.9	2.2	0.9
Slovakia	37	1.0	1.2	0.8
Czech Republic	67	1.7	2.2	0.8
Germany	537	14.0	17.8	0.8
The Netherlands	106	2.8	3.5	0.8
Poland	228	6.0	8.2	0.7
Sweden	53	1.4	1.9	0.7
Estonia	7	0.2	0.3	0.7
France	335	8.7	13.6	0.6
Latvia	12	0.3	0.5	0.6
Denmark	20	0.5	1.2	0.4
Italy	207	5.4	12.7	0.4
United Kingdom	147	3.8	13.0	0.3
Lithuania	9	0.2	0.7	0.3
Others	291	7.6		
Not known	102	2.7		

[1] This figure has been calculated by dividing the percentage of complaints by the percentage of population. Where the quotient is greater than 1, this indicates that the country in question submits more complaints to the Ombudsman than might be expected given the size of its population. All percentages in the above table have been rounded to one decimal place.

B THE OMBUDSMAN'S BUDGET

An independent budget

Since 1 January 2000[5], the Ombudsman's budget has been an independent section of the budget of the European Union (currently section VIII-A).

Structure of the budget

The Ombudsman presented the budget for the year 2006 according to a new budget structure (nomenclatures). The aim of this new structure is to increase transparency and to facilitate enhanced control on the part of the budget authority, by allowing for better oversight of expenditure of a similar nature, which in the structure used previously was spread over several titles or chapters.

Accordingly, the Ombudsman's budget for 2006 was divided into three titles. Title 1 contains salaries, allowances and other costs related to staff. Title 2 covers buildings, furniture, equipment and miscellaneous operating expenditure. Title 3, finally, contains the expenditure resulting from general functions carried out by the institution.

Co-operation with the European Parliament

To avoid unnecessary duplication of administrative and technical staff, some of the technical services necessary for the Ombudsman to carry out his functions are provided by, or through, the European Parliament. Areas in which the Ombudsman relies, to a greater or lesser extent, on the assistance of the Parliament's services include:

- translation, interpretation, and printing;
- rental of office space;
- information technology, telecommunications, and mail-handling.

The co-operation between the European Ombudsman and the European Parliament has allowed for considerable efficiency savings to the Community budget.

The co-operation between the European Parliament and the European Ombudsman was initiated by a framework agreement dated 22 September 1995. Additional agreements on administrative co-operation and on budgetary and financial co-operation were signed on 12 October 1995.

These co-operation agreements were revisited in 2005 with an eye to adapting them to the new realities that the first decade of the European Ombudsman institution had shaped. A new agreement was signed on 15 March 2006, by the President of the Parliament, Mr Josep BORRELL FONTELLES MEP, and the European Ombudsman, and entered into force in April 2006. Its goal is to maintain co-operation with the Parliament in all the domains where substantial economies of scale and budgetary savings are possible. The European Parliament will therefore continue to provide the Ombudsman with services in a number of areas, including buildings, information technology, communications, medical services, training, translation, and interpretation.

The new agreement allows for greater clarity concerning pricing policy. Services will henceforth be paid on the basis of a fair, transparent, and reasonable estimate of costs, with the exception of auditing and accounting costs, for which a lump sum was agreed upon. These changes also reflect the Ombudsman's autonomy in staff management and in financial matters.

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

The 2006 budget

The establishment plan of the Ombudsman showed a total of 57 posts in 2006, compared to 51 posts in 2005.

The total initial appropriations available in the Ombudsman's 2006 budget amounted to EUR 7 682 538. Title 1, that is, expenditure relating to persons working for the institution, amounted to EUR 5 808 538. Title 2, which covers buildings, equipment, and miscellaneous operating expenditure, amounted to EUR 1 085 000. Title 3 concerns expenditure resulting from special functions carried out by the institution. It amounted to EUR 789 000. The 2006 budget provided for total revenue of EUR 812 271.

The following table indicates expenditure in 2006 in terms of committed appropriations.

(in EUR)

Title 1	5 347 167
Title 2	1 129 253
Title 3	607 819
Total	7 084 239

The 2007 budget

The 2007 budget, prepared during 2006, provides for an establishment plan of 57 posts (no new posts).

Total appropriations for 2007 are EUR 8 152 800. Title 1 (Expenditure relating to persons working with the institution) amounts to EUR 6 150 300. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounts to EUR 1 251 500. Title 3 (Expenditure resulting from general functions carried out by the institution) amounts to EUR 751 000.

The 2007 budget provides for total revenue of EUR 939 980.

C PERSONNEL

To ensure that the institution can properly carry out the tasks of dealing with complaints about maladministration in 23 Treaty languages, and of reaching out to citizens and residents of the EU to raise awareness about the right to complain, the Ombudsman has the support of a well-qualified, multilingual staff. This Annex contains a full list of staff members in 2006, their job titles and contact details, as well as a description of the work carried out by the various departments and sectors within the office. It ends with a short overview of the staff meetings and the staff retreat that took place during the year.

EUROPEAN OMBUDSMAN

P. Nikiforos DIAMANDOUROS
European Ombudsman

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

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

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

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

He has written extensively on the politics and history of Greece, Southern Europe and Southeastern Europe and, more specifically, on democratisation, state- and nation-building, and the relationship between culture and politics.

SECRETARIAT OF THE EUROPEAN OMBUDSMAN

The Secretariat of the European Ombudsman is responsible for the running of the Ombudsman's private office. It manages the Ombudsman's agenda, co-ordinates his incoming and outgoing correspondence, advises on relations with the other EU institutions and bodies, deals with the protocol aspects of the institution's work, and undertakes general secretarial duties for the Ombudsman.

Alexandra ANDROULAKAKIS
Secretary to the European Ombudsman
(until 30.6.2006)
Tel. +33 3 88 17 25 28

Kelly KOUNDOURI
Secretary to the European Ombudsman
(from 1.7.2006)
Tel. +33 3 88 17 25 28

Nicholas CATEPHORES
Assistant to the European Ombudsman
Tel. +33 3 88 17 23 83

SECRETARY-GENERAL

Ian HARDEN
Secretary-General (from 1.8.2006)
Tel. +33 3 88 17 23 84

Following the appointment of Mr Ian HARDEN to the post of Secretary-General, and pending the completion of the recruitment procedure for a new Head of the Legal Department, Mr HARDEN continued to perform the functions of Head of the Legal Department beyond 1 August 2006.

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

LEGAL DEPARTMENT

The Legal Department consists mainly of lawyers whose major responsibility is to analyse the complaints received by the European Ombudsman and conduct inquiries under the supervision of the Head of the Legal Department and three Principal Supervisors. The Head of the Legal Department also advises the Ombudsman on the legal strategy and direction of the institution and manages the Department. The Assistant to the Head of the Legal Department ensures the operation of internal quality control and management information systems and co-ordinates the Department's contribution to the Annual Report.

In 2006, the Department had a total staff of 21, consisting of the Head of the Legal Department, seven Principal Legal Advisers, three of whom serve as Principal Supervisors[6], eleven Legal Officers, a Lawyer Linguist, a Legal Assistant and the Assistant to the Head of the Legal Department. During the year in question, the Legal Department supervised 15 trainees.

Murielle RICHARDSON
Assistant to the Head of the Legal Department
Tel. +33 3 88 17 23 88

6 The third Principal Legal Adviser, serving as Principal Supervisor, joined the Department on 1 November 2006.

LEGAL OFFICERS

The Legal Officers deal with complaints, which may be submitted to the Ombudsman in any of the 23 Treaty languages of the European Union. They also propose and carry out own-initiative inquiries, reply to requests for information from citizens, provide assistance to the Ombudsman on legal matters, advise on the legal procedures, developments and traditions of their respective Member States and represent the Ombudsman at certain public events.

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Peter BONNOR
Legal Officer
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Benita BROMS
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Ioannis DIMITRAKOPOULOS
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Gerhard GRILL
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ADMINISTRATION AND FINANCE DEPARTMENT

The Administration and Finance Department is responsible for all the work of the Ombudsman's Office that is not directly related to examining complaints and conducting inquiries. It is made up of four sectors — the Administration Sector, the Finance Sector, the Complaints-Handling Sector and the Communications Sector. The Head of the Administration and Finance Department co-ordinates the overall work of the Department. In that capacity, he is responsible for the general organisation and operation of the office, personnel policy in the office, proposing and implementing the budgetary and financial strategy of the institution, and for representing the Ombudsman in a number of interinstitutional fora. In 2006, the Department had a total staff of 35, including the 9 members of the Complaints-Handling Sector, whose work is intimately linked to that of the Legal Department.

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

ADMINISTRATION SECTOR

The Administration Sector's tasks are broad. They include the recruitment and management of staff, dealing with incoming and outgoing correspondence, the telephone switchboard, the office infrastructure, co-ordination of document translation, the organisation and management of the legal reference library, and the institution's documentation and archive policy. This sector is also responsible for the information technology policy of the institution and for meeting the office's IT needs, a task it carries out in close co-operation with the European Parliament.

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FINANCE SECTOR

The Finance Sector is in charge of ensuring that the Ombudsman's Office complies with the applicable financial rules of the EU designed to guarantee that budgetary resources are implemented economically, efficiently and adequately. These responsibilities derive from the fact that the European Ombudsman has an independent budget. Four Financial Officers, under the responsibility of the Authorising Officer by Delegation, prepare and execute the budget.

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COMPLAINTS-HANDLING SECTOR

The Complaints-Handling Sector is responsible for the registration, distribution, and follow-up of complaints submitted to the European Ombudsman. The Sector ensures that all complaints are registered into a database, acknowledged, and transmitted to the Legal Department. It is responsible for managing all incoming and outgoing complaints-related correspondence, ensuring that the complaint records in the database are updated throughout the complaint procedure, monitoring compliance with deadlines, producing complaints-related statistics, and filing documents relating to complaints.

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The European Ombudsman and his staff.

COMMUNICATIONS SECTOR

The Communications Sector is responsible for assisting the Ombudsman in reaching out to citizens and informing them of their rights under Community law. In doing so, it plays a key role in enhancing relations and trust between citizens, on the one hand, and Europe and its institutions, on the other.

The Sector is responsible for maintaining and promoting relations with the media, writing and producing the Ombudsman's publications, maintaining the Ombudsman's websites, organising the Ombudsman's information visits and events, and co-ordinating relations within the European Network of Ombudsmen.

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STAFF MEETINGS

To help ensure maximum efficiency and effectiveness of the procedures within the Office, to guarantee a smooth flow of information among staff, and to promote professional development opportunities, the Ombudsman regularly convenes staff meetings. As a rule, the agenda for these meetings includes an overview by the Ombudsman of his recent and future activities, as well as a

Professor Spiros Simitis, Professor of Labour, Civil and Computer Sciences and Law at the Johann Wolfgang Goethe University, and President of the German Ethics Committee, addresses the staff of the European Ombudsman.
Strasbourg, France, 3 February 2006.

Ms Margot Wallström, European Commission Vice-President for Institutional Relations and Communication, makes a presentation to the Ombudsman's staff.
Strasbourg, France, 13 December 2006.

presentation of the administrative, legal, and policy developments effecting the institution. In line with the Ombudsman's strategy for the professional development of his staff, external speakers are frequently invited to address these meetings. In 2006, such presentations were given by Professor Spiros SIMITIS, Professor of Labour, Civil and Computer Sciences and Law at the Johann Wolfgang Goethe University, Frankfurt am Main, Germany, and President of the German Ethics Committee, on "Data protection — Deficiencies and limits of a common EU approach", and European Commission Vice-President for Institutional Relations and Communication, Margot WALLSTRÖM, on the efforts the Commission has been making to improve its relations with the citizen.

STAFF RETREAT

With a view to developing and strengthening understanding of the institution's values and mission, and to promoting their effective delivery, the Ombudsman organised an office retreat in 2006. This was the first time in its brief history that the institution undertook such an initiative. A retreat is an

Members of the Ombudsman's personnel during the staff retreat, 11–13 October 2006.

exercise in self-reflection, involving the whole staff of an institution, and is a widely used practice that Mr DIAMANDOUROS had successfully utilised during his time as the founding National Ombudsman of Greece.

As part of the preparation for the retreat, members of staff were invited to express their views on the overall functioning of the office and on the broader impact of the Ombudsman's work so far, by participating in a self-assessment exercise. This took the form of a questionnaire in which staff members evaluated different aspects of the European Ombudsman's work procedures and methods in the institution's various sectors of activities, as well as the Ombudsman's achievements for citizens at large. An additional aim of this important activity was to provide for enhanced risk management within the institution, as required under the EU's internal control standards.

The results of the questionnaire, along with other background materials, were distributed to all staff ahead of the meeting. They served as a foundation upon which to frame discussions which focused on (i) the meaning of good administration both from a conceptual and a procedural point of view, (ii) how to reach out to citizens at large and how to target particular, more specialised, audiences likely to act as multipliers capable of generating a greater number of complaints falling within the Ombudsman's mandate, and (iii) how to further enhance and promote a service culture within the Ombudsman's office.

Every member of staff was encouraged to take an active part in the deliberations, whether in plenary or in the working groups, and to express his/her views on the various themes for discussion. There was consensus after the retreat that it had clearly proved to be a very productive and worthwhile experience that deserved repeating.

Members of the Ombudsman's personnel about to participate in the Strasbourg 10 km run, 14 May 2006.

D INDICES OF DECISIONS

1 BY CASE NUMBER

2003

2004

2005

2006

2 BY SUBJECT MATTER

3 BY TYPE OF MALADMINISTRATION ALLEGED

Other maladministration

4 STAR CASES

5 LIST OF ALL THE CASES CLOSED WITH A CRITICAL REMARK IN 2006

2003

2004

2005

2006

Where case references are in bold, a summary of the decision is presented in section 3.4 of the present report. The full texts of the decisions in all the above cases are available on the Ombudsman's website at http://www.ombudsman.europa.eu

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QK-AA-07-001-EN-C

THE EUROPEAN OMBUDSMAN INVESTIGATES COMPLAINTS
AGAINST THE INSTITUTIONS AND BODIES OF THE EUROPEAN UNION

THE EUROPEAN OMBUDSMAN AND HIS PERSONNEL

www.ombudsman.europa.eu

Publications Office
Publications.europa.eu

ISBN 978-92-9212-090-0
9 789292 120900