

## Annual report on the activities of the European Ombudsman in 2012

**Caption:** Annual report on the activities of the European Ombudsman for the year 2012. On 3 July 2013, Emily O'Reilly is elected as the first female European Ombudsman, taking over from Nikiforos Diamandouros, who has held the post for ten years.

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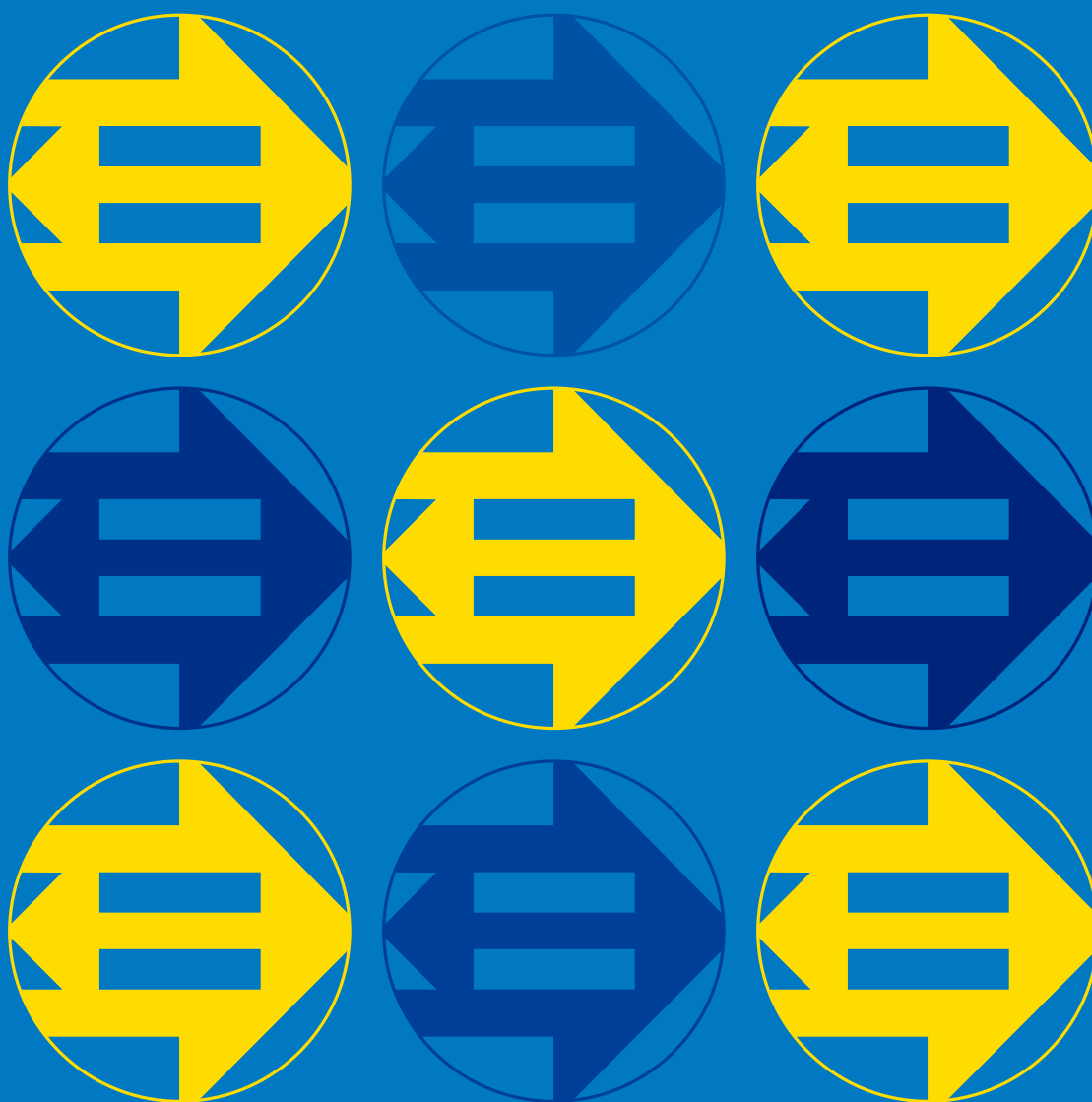
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European  
Ombudsman

**Annual Report**  
2012

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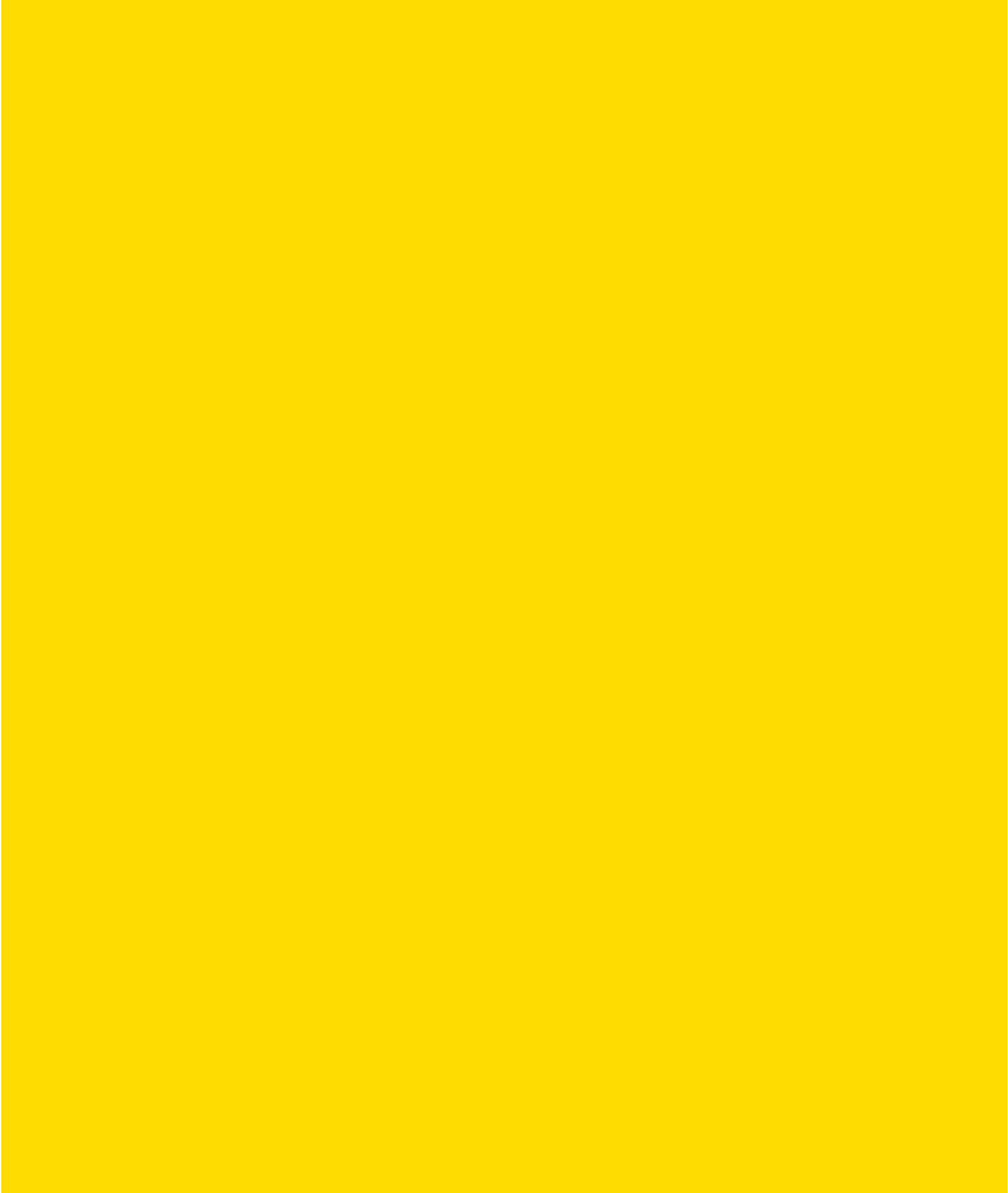


**Mission statement** The European Ombudsman seeks fair outcomes to complaints against European Union institutions, encourages transparency, and promotes an administrative culture of service. He aims to build trust through dialogue between citizens and the European Union and to foster the highest standards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



European  
Ombudsman

**Annual Report**  
2012






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Annual Report 2012

## The Ombudsman's introduction



**I am delighted to present you with the European Ombudsman's *Annual Report 2012*. You will find within these pages a comprehensive account of our complaint-handling activities, an overview of our efforts to promote good administration within the institutions, bodies, offices, and agencies of the European Union, and a presentation of our outreach activities, aimed at ensuring that citizens can enjoy their rights fully.**



The Report begins with this introduction, in which I draw attention to the institution's highlights from 2012. Chapter 1 offers a comprehensive account of the Ombudsman's work in handling complaints and in conducting inquiries, and includes an explanation of the Ombudsman's mandate and procedures. Chapter 2 concerns the Ombudsman's relations with other EU institutions, bodies, offices, and agencies,<sup>1</sup> with the community of national, regional, and local ombudsmen in Europe, and with other key stakeholders. It also contains, for the first time, a section on the rights of persons with disabilities. Finally, Chapter 3 provides details concerning the Ombudsman's staff and budget.

### A record year in terms of complaints and inquiries

The year 2012 was a particularly busy one for the Ombudsman and his staff, with a record number of inquiries opened and closed. The 465 inquiries opened constitute an 18% increase compared with 2011<sup>2</sup>. The number of inquiries closed increased by 23% compared with the previous year and reached a new peak of 390. More generally, as in 2011, the Ombudsman helped over 22 000 individuals by dealing with their complaints (2 442 cases), providing a reply to their requests for information (1 211), or offering advice through the interactive guide on our website (19 281).

The total number of complaints submitted to the Ombudsman fell for the fourth consecutive year, further reflecting the success of the interactive guide. This figure has gone from a high of 3 406 complaints in 2008 to 2 442 in 2012, mainly because fewer people are complaining to the Ombudsman for the wrong reason. Where individuals do turn to us, when in fact they should have complained elsewhere, we endeavour to advise them or to transfer the case. The most common advice provided by my Office is to contact a member of the European Network of Ombudsmen<sup>3</sup>. Almost 60% of complaints processed in 2012 fell within the competence of a member of the Network. Just over half of these cases (30% of the total) fell within the European Ombudsman's mandate. In terms of complaints outside the mandate, the figure, at 1 720, is the lowest in ten years.

Following our streamlining of the treatment of these "outside the mandate" complaints, it became possible to deal with them much more rapidly in 2012. However, due to the increased case-load, it took slightly longer, on average, to complete inquiries – eleven months in 2012, compared to ten months in 2011. We nevertheless continued to complete most inquiries (69%) within one year, improving slightly on our result in 2010 (66%). We achieved all this with an establishment plan that totalled 66 posts in 2012, and budgeted appropriations of EUR 9 516 500.

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

2. As explained in the *Annual Report 2011*, the Ombudsman's procedures were modified in 2011, which resulted in a record number of 396 inquiries opened that year. The further increase in 2012 represents a continuation of that trend.

3. The Network now comprises 99 offices in 35 European countries. It includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, other countries in the European Economic Area and/or the Schengen area, as well as the European Ombudsman and the European Parliament's Committee on Petitions.



## The Ombudsman's introduction

### A busy year supervising the EU administration

As is the case each year, most inquiries that the Ombudsman opened in 2012 concerned the European Commission (245 inquiries or 53% of the total). Since the Commission is the main EU institution that makes decisions having a direct impact on citizens, it is logical that it should be the principal object of citizens' complaints. The European Personnel Selection Office (EPSO), whose decisions impact citizens who want to work in the EU administration, saw 78 inquiries (17%) addressed to it. Not only does this represent a doubling of the number of inquiries compared with the previous year (42 inquiries), but I regret to say that EPSO's response to some of the issues raised in 2012 has given cause for concern.

A total of 24 inquiries opened in 2012 (5%) concerned the European Parliament, 14 concerned the European External Action Service (3%), and seven concerned the European Investment Bank (1.5%). A further 97 inquiries (21% of the total) concerned other EU institutions, bodies, offices, and agencies. Of these inquiries, 58 concerned the EU's agencies. I continued my programme of visits to the agencies, making eight visits in total during the year.

As is the case each year, I have, in this report as well, identified star cases that should serve as a model in terms of how to react to issues raised by the Ombudsman. Six of this year's ten star cases concern the Commission, while the European Council, the Council of the EU, the European Central Bank, and the European Medicines Agency each have one star case. Six cases concern transparency, while a further case pertains to the Charter of Fundamental

Rights of the EU. Issues of recruitment, respect for citizens, and compensation are also included.

These cases can be found in section 1.5 of this Report. The thematic analysis that follows outlines the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2012. The main subject matters dealt with in this thematic analysis are: (i) openness, public access, and personal data (22% of the total number of inquiries closed); (ii) the Commission as guardian of the Treaties (22%); (iii) award of tenders and grants (7%); (iv) execution of contracts (4%); (v) administration and Staff Regulations (17%); (vi) competitions and selection procedures (21%); and (vii) institutional matters, policy matters, and other (12%). It is noteworthy that, for the first time ever, the number of inquiries concerning the Commission as guardian of the Treaties is the same as the number of inquiries concerning transparency. Given the important role that the Ombudsman plays in this area, it is regrettable that the Commission's new Communication on relations with the complainant in respect of infringements of EU law is, unlike its predecessor, not addressed to the Ombudsman. I wrote to the Secretary-General of the Commission about this matter in June 2012.

Out of the 390 inquiries completed in 2012, ten were inquiries that the Ombudsman conducted on his own initiative. I concluded that there was maladministration in 56 cases (up from 47 in 2011) and obtained a positive outcome for the complainant in nine of these cases (compared to 13 in 2011) by making draft recommendations that were accepted. The Ombudsman issued critical remarks in 47 cases in 2012, twelve more, that is, than in 2011. This too is a cause for concern and I will closely monitor the follow-up



that the institutions give to these remarks in my annual study on the follow-up to critical and further remarks. With respect to the latter, I made further remarks in 30 cases in 2012 with a view to enhancing the quality of the administration.

The number of cases that the institutions settled or in which they agreed to a friendly solution fell slightly to 80 (compared to 84 in 2011). In 197 cases (compared to 128 in 2011), the Ombudsman considered that no further inquiries were justified. Many of these resulted from changes to the simplified procedure that the Ombudsman introduced in 2011. I found no maladministration in 76 cases (compared with 64 in 2011).

### **A positive year in terms of the Ombudsman's impact**

For the first time in 2012, we got a concrete answer to the question "How successful is the European Ombudsman?" Two publications produced last year – the follow-up study to critical and further remarks and a new compliance report – concluded that in four out of every five cases (82%), the EU institutions comply with the Ombudsman's suggestions. In other words, out of the 120 instances in which the Ombudsman was called upon to make remarks and issue recommendations in the context of cases closed in 2011, the institutions provided 98 positive replies either in 2011 or in the course of 2012. The follow-up study and compliance report covering cases closed in 2012 will henceforth be combined to provide a comprehensive account of the extent to which the EU institutions comply with the Ombudsman's suggestions. We aim to publish this new, combined report in November each year.

The feedback on the follow-up study we received during the year from European Council President Herman Van Rompuy further convinced me of the value of this exercise and, more importantly, of the need for us to keep up the hard work for citizens. President Van Rompuy wrote:

"This work is another essential element in reassuring public opinion that our Union has inbuilt checks and balances. Even for the bulk of citizens who have no need to have recourse to the Ombudsman, it is important for them to know that such safeguards exist and are actively pursued."

Needless to say, we will continue in our endeavours to foster the highest standards of behaviour in the institutions, as set out in the Ombudsman's mission statement. With this objective in mind, the Ombudsman published in 2012, in all official EU languages, a set of public service principles that should guide the conduct of EU civil servants. The five public service principles are commitment to the European Union and its citizens, integrity, objectivity, respect for others, and transparency. The principles take account of best practice in the Member States and were formulated following an initial consultation with the European Network of Ombudsmen. There was also a public consultation on a first draft of the principles. Following the publication of these principles, the Ombudsman drew up guidelines on ethics and deontology for his own Office.

## The Ombudsman's introduction



The European Ombudsman's communication highlight of 2012 was a seminar entitled "Europe in crisis: the challenge of winning citizens' trust". Mr José Manuel Barroso, President of the European Commission, was one of the main speakers at the event.

### A successful year in terms of reaching out to citizens

I drew attention to these principles when I met the Commission's Directors-General in March, particularly underlining that, at a time when the EU is facing a severe crisis, the principles can help build greater trust between citizens and the institutions. Our biggest stakeholder event to date gave citizens an opportunity to discuss the topic "Europe in crisis: the challenge of winning citizens' trust" with the Presidents of the Parliament, the Commission, and the Council of the EU. The event sought to explore concrete measures that European and national

institutions can take to gain citizens' trust – measures, that is, reflecting a guiding principle in the Ombudsman's mission statement, that is, to build trust through dialogue between citizens and the Union. The interactive nature of the event enabled audiences who were not in the room to follow the debate via webstream, and submit questions and comments via Twitter. A 'tweet wall' in the seminar room displayed citizens' contributions, giving the speakers an opportunity to address them. Our publication this year of a video-clip on our website and YouTube channel further demonstrates our determination to reach out to citizens in exciting and innovative ways.



On 28 September, the Ombudsman hosted a seminar in Brussels, in cooperation with the EIB's Complaints Mechanism, entitled "International Right to Know Day – Transparency and accountability in international development banks".



The Eighth Regional Seminar of the European Network of Ombudsmen was held in Brussels from 14 to 16 October.



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Another highlight in the Ombudsman's annual calendar of thematic events is the International Right to Know Day, which occurs on 28 September each year. In 2012, and in cooperation with the Complaints Mechanism of the European Investment Bank (EIB), the Ombudsman hosted the seminar "Transparency and accountability in international development banks". This event followed the 9th Annual Meeting of the Independent Accountability Mechanisms (IAMs), which took place from 25 to 27 September 2012 and was co-organised by the Ombudsman, the European Investment Bank, and the University of Luxembourg.

The Ombudsman was involved in the organisation of three further events that were of central importance to the institution. First, along with the Research Network on EU Administrative Law (ReNEUAL), the Ombudsman organised a conference in March, in Brussels, which explored the possibility of adopting an EU administrative procedure law, that is to say, a general set of rules of administrative procedure for EU institutions, bodies, offices and agencies.

It also considered the possible contents of such a law regarding rulemaking, single case decision-making, public contracts, and information networks. Second, the Ombudsman co-organised the Eighth Regional Seminar of the European Network of Ombudsmen in Brussels in October 2012. This took place in the Flemish Parliament and the Parliament of the Wallonia-Brussels Federation. Finally, in June, the Eighth Liaison Seminar of the European Network of Ombudsmen took place in Strasbourg. The concluding sessions of the Seminar focused on the role of ombudsmen in protecting and promoting fundamental rights.



## The Ombudsman's introduction

### A year of achievement for the institution

One fundamental rights issue that the Ombudsman particularly focused on in 2012 concerned the integration of persons with disabilities. The Ombudsman's central role with regard to disabilities was recognised when the Council, in October, endorsed the EU-level framework under the UN Convention on the Rights of Persons with Disabilities. Alongside Parliament's Committee on Petitions, the Commission, the Union's Fundamental Rights Agency, and the European Disability Forum, the Ombudsman will work to protect, promote, and monitor implementation of the Convention. This Convention is the first human rights treaty that the EU has ever ratified. As far as the Ombudsman is concerned, it is of utmost importance that the Union live up to the promises it has made to citizens in signing and ratifying the Convention.

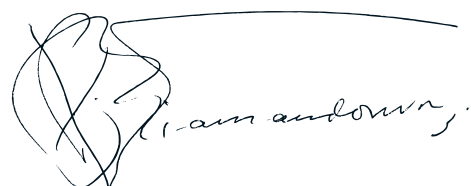
In order to ensure that we make best use of existing resources, the Ombudsman participated in a project run by the European Foundation for Quality Management during 2012. The outcome, as well as the process itself, were extremely rewarding. Thanks to the successful completion of the three improvement priorities identified, the Ombudsman is now officially recognised as being "Committed to Excellence". The three projects focused on (i) streamlining the treatment of complaints falling outside the mandate; (ii) defining and clarifying the responsibilities of the Heads of Unit, Directors, and Secretary-General; and (iii) creating a simple feedback mechanism

for complainants in the form of a web-based satisfaction survey. During the year, the Ombudsman also carried out a survey on strategy and governance, asking external and internal stakeholders to evaluate our performance.

### Looking to the year ahead

All of the aforementioned activities mean that, by the end of the year 2012, we are in a good position as regards the promises we made in the Ombudsman's strategy for the 2009-2014 mandate<sup>4</sup>. As one of the overarching aims of the strategy is to ensure that European citizens enjoy their rights fully, we look forward to working in 2013, the European Year of Citizens, with renewed energy and enthusiasm towards this goal.

Strasbourg, 11 February 2013

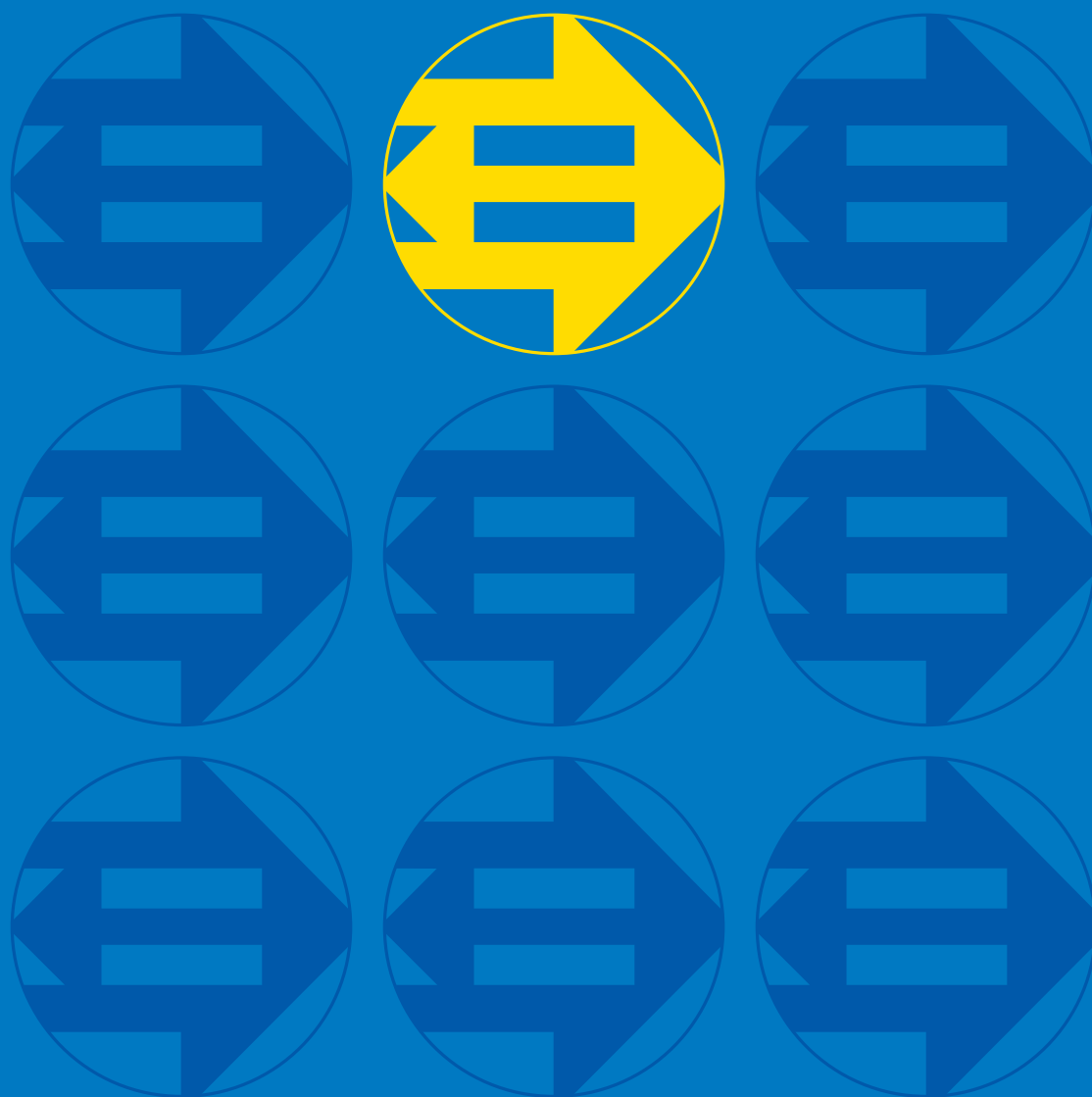


P. Nikiforos Diamandouros

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

# 1 Complaints and inquiries

Chapter 1 explains the Ombudsman's mandate and procedures, gives an overview of the complaints dealt with in 2012, and provides an in-depth analysis of the inquiries completed. It also includes a section on star cases, as well as a thematic presentation. The chapter ends with a look at referrals to other complaint-handling bodies.



## Complaints and inquiries

### 1.1 The Ombudsman's mandate and procedures

#### The role of the European Ombudsman

The Maastricht Treaty established the office of European Ombudsman as part of the citizenship of the European Union. Article 24 of the Treaty on the Functioning of the European Union (TFEU) provides for the right to complain to the European Ombudsman as one of the rights of citizenship of the Union. The Charter of Fundamental Rights of the EU (Article 43) also includes this right. Possible instances of maladministration come to the Ombudsman's attention mainly through complaints, although he also conducts inquiries on his own initiative.

Article 228 TFEU, as well as the Statute of the Ombudsman<sup>1</sup> and the implementing provisions, which the Ombudsman adopted under Article 14 of the Statute<sup>2</sup>, govern the Ombudsman's work. The Statute and the implementing provisions are available on the Ombudsman's website (<http://www.ombudsman.europa.eu>) and also in hard copy from the Ombudsman's office.

Complaints against public authorities of the Member States are not within the European Ombudsman's mandate, even if they concern matters falling within the scope of EU law.

1. In June 2008, the European Parliament adopted a decision revising the Ombudsman's Statute, with effect from 31 July 2008 (European Parliament Decision 2008/587 of 18 June 2008, amending Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties; OJ 2008 L 189, p. 25).

2. On 3 December 2008, the Ombudsman revised his implementing provisions in order to reflect the June 2008 changes to his Statute and to take account of experience gained since 2004, when the provisions were last changed. The new implementing provisions came into force on 1 January 2009.

#### The Ombudsman's mandate

Article 228 TFEU empowers the Ombudsman to receive complaints concerning instances of maladministration in the activities of Union institutions, bodies, offices, and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

#### Union institutions, bodies, offices, and agencies

The EU institutions are listed in Article 13 of the Treaty on European Union (TEU). There is no definition or authoritative list of Union bodies, offices, and agencies. The term includes bodies established by the Treaties, such as the European Economic and Social Committee (EESC), as well as bodies set up by legislation, such as the European Banking Authority (EBA). The Treaty of Lisbon broadened the Ombudsman's mandate to include possible maladministration in the framework of the Common Foreign and Security Policy, including the Common Security and Defence Policy.

Complaints against public authorities of the Member States are not within the European Ombudsman's mandate, even if they concern matters falling within the scope of EU law. Many such complaints are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen (see section 1.7 below).

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



## Maladministration

In response to a call from the European Parliament for a clear definition of maladministration, the Ombudsman offered the following, which the Parliament welcomed in a resolution that the Commission also agreed to:

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

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

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The Ombudsman has defined ‘maladministration’ in a way that requires respect for the rule of law, for principles of good administration, and for fundamental rights. The Charter of Fundamental Rights includes the right to good administration as a fundamental right of Union citizenship (Article 41).

On 6 September 2001, the European Parliament approved the European Code of Good Administrative Behaviour, which EU institutions, their administrations, and their officials should respect in their relations with the public. The Code takes account of the principles of European administrative law contained in the case-law of the European courts and draws inspiration from national laws. The Ombudsman will publish a new edition of the Code in early 2013.

necessarily implies maladministration, maladministration does not automatically entail illegality. The Ombudsman’s findings of maladministration do not therefore automatically imply that there is illegal behaviour that a court<sup>3</sup> could sanction.

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

<sup>3</sup> See, in this context, the judgments of the General Court of 28 October 2004 in joined cases T-219/02 and T-337/02 *Herrera v Commission* [2004] ECR-SC I-A-319 and II-1407 paragraph 101, and of 4 October 2006 in case T-193/04 *Hans-Martin Tillack v Commission* [2006] ECR II-3995, paragraph 128.



## Complaints and inquiries

### Admissibility and grounds for inquiries

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

1. The author and the object of the complaint must be identified (Article 2(3)).
2. The Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Article 1(3)).
3. The complaint must be made within two years of the date on which the facts on which it is based came to the attention of the complainant (Article 2(4)).
4. The complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Article 2(4)).
5. In the case of complaints concerning work relationships between the institutions and bodies, on the one hand, and their officials and servants, on the other, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging a complaint with the Ombudsman (Article 2(8)).

Article 228 TFEU provides that the Ombudsman shall “conduct inquiries for which he finds grounds”.

Article 228 TFEU provides that the Ombudsman shall “conduct inquiries for which he finds grounds”. In the course of 2011, the Ombudsman decided that cases in which he provides the complainant with the opportunity to provide additional information, supporting documents, or further argumentation to support his/her case should be counted as inquiries (clarificatory inquiries). Where the Ombudsman deems the information that the complainant supplies to be insufficient or unconvincing, he may close the inquiry with a finding of “no maladministration” or “no further inquiries justified”, as appropriate. Where, on the other hand, the information or clarifications which the complainant supplies make it useful to ask the relevant institution to provide an opinion, the Ombudsman does so.

As a result of this change in classification, the percentage of admissible cases which the Ombudsman closed as “no grounds for inquiry” fell from 40% in 2010 and 24% in 2011, to just 12% in 2012. These “no grounds” cases were largely limited to those that another body was already dealing with, or where the complainant failed to provide documentary evidence necessary to support his/her complaint. As a corollary, the number of inquiries opened by the Ombudsman rose from 396 in 2011 to 465 in 2012.



## Complaints and own-initiative inquiries

Article 228 TFEU empowers the Ombudsman to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union. The Ombudsman also has the power to open inquiries on his own initiative. Using the own-initiative power, the Ombudsman may investigate a possible case of maladministration that a person who is not entitled to make a complaint brings to his attention. His practice in such cases is to give the person concerned the same procedural opportunities during the inquiry as if he had dealt with the matter as a complaint. The Ombudsman opened two such own-initiative inquiries in 2012.

The Ombudsman may also use his own-initiative power to tackle what appear to be systemic problems in the institutions. In 2012, he did so on five occasions.

The Ombudsman may also use his own-initiative power to tackle what appear to be systemic problems in the institutions. In 2012, he did so on five occasions. Cases **OI/1/2012/MHZ** and **OI/6/2012/MHZ** concerned the European Personnel Selection Office (EPSO). The former concerned the stage at which Selection Boards in open competitions verify candidates' supporting documents, while the latter dealt with the information provided in calls for expressions of interest concerning the remedies available to candidates. Similarly, case **OI/3/2012/CK** concerned the information provided to candidates on the outcome of selection procedures organised by the European Network and Information Security Agency (ENISA). Case **OI/2/2012/VL** concerned the fact that the Commission's 2002 Communication on relations with the complainant in respect of

infringements of Community law had not been made available in all EU official languages. Finally, **OI/5/2012/BEH-MHZ** concerned the implementation by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (Frontex) of its fundamental rights obligations. This latter inquiry also involved a public consultation.

A further eight own-initiative inquiries were opened in 2012 in relation to the Ombudsman's programme of visits to the EU agencies.<sup>4</sup> These concerned the European Centre for the Development of Vocational Training (Cedefop), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the EU's Judicial Cooperation Unit (Eurojust), the European

Police Office (Europol), the European Systemic Risk Board (ESRB), ENISA, the European Chemicals Agency (ECHA), and Frontex. The purpose of these visits is to promote good administration and share best practice. Comprehensive information regarding these inquiries is available at: <http://www.ombudsman.europa.eu/activities/visits.faces>

## The Ombudsman's procedures

### Written and simplified inquiry procedures

All complaints sent to the Ombudsman are registered and acknowledged, normally within one week of receipt. The acknowledgement informs the complainant of the procedure to be followed and includes a reference number, as well as the name and telephone number

4. A full explanation of the procedure underpinning these visits is set out in the *Annual Report 2011*.

## Complaints and inquiries

of the person dealing with the complaint. It also includes information about the protection of the complainant's personal data.

Each complaint is then examined to determine whether it falls within the Ombudsman's mandate. With a view to informing complainants as rapidly as possible when he cannot deal with their complaint, the Ombudsman decided in 2011 to streamline the treatment of complaints falling outside his mandate. The office's Registry now handles these complaints, explaining to complainants why a given complaint falls outside the mandate and, where possible, transferring it to a competent body, or advising the complainant where to turn. Complainants may make a reasoned request for the Ombudsman to review the determination that a complaint falls outside the mandate.

If the Ombudsman considers that an inquiry is needed, he has a number of possibilities at his disposal:

- If further information is required from the complainant, the Ombudsman can invite him/her to submit clarifications. Depending on the clarifications, the Ombudsman may decide to close the case, or, if he finds that the institution in question should explain its position, he can ask it to submit an opinion.
- The Ombudsman may decide to carry out an inspection of the documents in the institution's file (see below) in order to find out whether it is necessary to ask the institution for an opinion.
- As an alternative to opening a written inquiry into possible maladministration, and with the aim of solving the relevant problem rapidly, the Ombudsman may contact the institution informally in order to try to bring about a solution. This is often done in cases where the complaint is about an institution's failure to reply, or failure to provide an adequate reply. During 2012, 53 cases were settled after the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered or inadequately answered correspondence.<sup>5</sup>

This new procedure for handling such complaints has significantly reduced the amount of time needed to respond to complainants in cases falling outside the Ombudsman's mandate.

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If the complaint falls within the mandate, the Ombudsman will examine whether it meets the applicable admissibility conditions. He will then decide, normally within one month, whether to open an inquiry. If no inquiry is opened, the complainant is informed of the reason.

5. As explained in the *Annual Report 2011*, the Ombudsman's procedure in this regard was changed in 2011, with a view to providing complainants with an opportunity to submit observations on the institution's reply. The main statistical implications of the new approach are that the Ombudsman now closes fewer cases as settled by the institution, while he closes a greater number of cases with a finding of no maladministration or no further inquiries justified.



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

Article 3(2) of the Statute requires officials and other servants of the EU institutions to testify at the Ombudsman's request,

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

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

although they continue to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy. The Ombudsman did not use his power to hear witnesses in 2012.

#### **Inspection of files and hearing of witnesses**

Article 3(2) of the Ombudsman's Statute requires the EU institutions to supply the Ombudsman with any information he has requested from them and to give him access to the files concerned. The Ombudsman's power to inspect files allows him to verify the completeness and accuracy of the information that the EU institution in question supplies. Accordingly, the Ombudsman's capacity to conduct a thorough and complete investigation constitutes an important guarantee to the complainant and to the public. The Ombudsman's power to inspect the institution's files was used in 36 cases in 2012, compared to 38 in 2011.

The 2008 Statute revision clarified and strengthened the requirement for the Ombudsman to maintain the confidentiality of documents and information obtained during an inquiry. As amended, the Statute provides that the Ombudsman's access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation 1049/2001<sup>6</sup>, shall be subject to compliance with the rules on security of the EU institution concerned. The institutions supplying such classified information or documents shall inform the Ombudsman of the classification. Moreover, the Ombudsman shall have agreed in advance with the relevant institution the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

6. 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.

## Complaints and inquiries

### 1.2 Overview of complaints examined in 2012

The Ombudsman registered<sup>7</sup> 2 442 complaints in 2012, compared to 2 510 in 2011. Of the 2 460 complaints processed<sup>8</sup>, 30% (740 complaints) were inside the European Ombudsman's mandate.

A total of 67% of the complaints received in 2012 were submitted using the Internet.

A total of 67% of the complaints received in 2012 were submitted using the Internet. A large proportion of these (56%) was received through the electronic complaint form available on the Ombudsman's website in the 23 official EU languages. In 2012, the Ombudsman received and replied to over 1 200 requests for information. Although the Ombudsman's e-mail account remains the main medium

of correspondence, 128 requests were made and replied to through ordinary mail and fax. The significant sustained reduction in requests for information received over the last few years (1 200 in 2011, 1 000 in 2010, 1 850 in 2009, 4 300 in 2008, and 4 100 in 2007) demonstrates the success of the Ombudsman's interactive guide, which has been available on his website since the start of January 2009. It enables interested parties to obtain information without having to submit a request. In total, the Ombudsman handled over 3 600 complaints and information requests in 2012.

The European Ombudsman opened 450 inquiries on the basis of complaints, and launched 15 additional inquiries on his own initiative. This compares with 382 and 14, respectively, in 2011.

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

Table 1.1: Cases dealt with during 2012

Complaints registered in 2012	2 442
Complaints processed in 2012	2 460
Complaints within the competence of a member of the European Network of Ombudsmen	1 467
Complaints inside the mandate of the European Ombudsman of which:	740 228 inadmissible 62 admissible but no grounds for opening an inquiry 450 inquiries opened on the basis of complaints
Own-initiative inquiries opened	15
Inquiries closed of which:	390 (including 10 own-initiative inquiries) 206 from 2012 113 from 2011 71 from previous years

7. This category refers to complaints "registered" during a given calendar year, as opposed to complaints "received" during the same period, but registered in the following year.

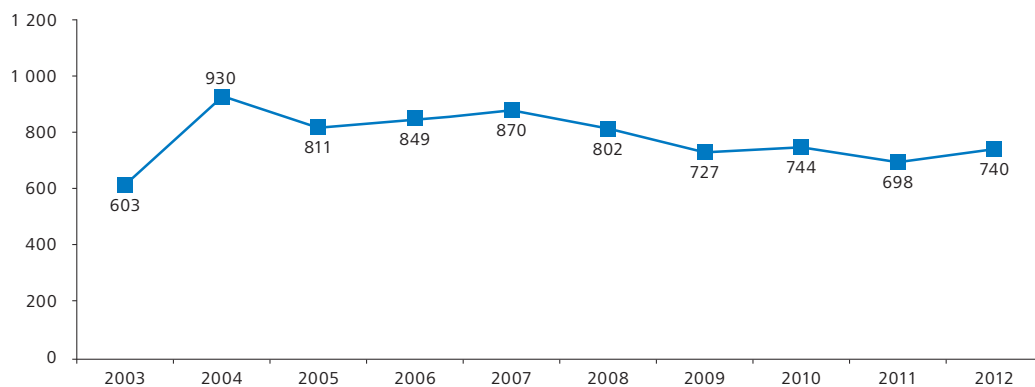
8. The statistical category "processed" means that the Ombudsman has concluded his analysis to determine whether the complaint (i) falls within his mandate or not, (ii) meets the criteria of admissibility or not, and (iii) provides grounds to open an inquiry or not, and has informed the complainant accordingly.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



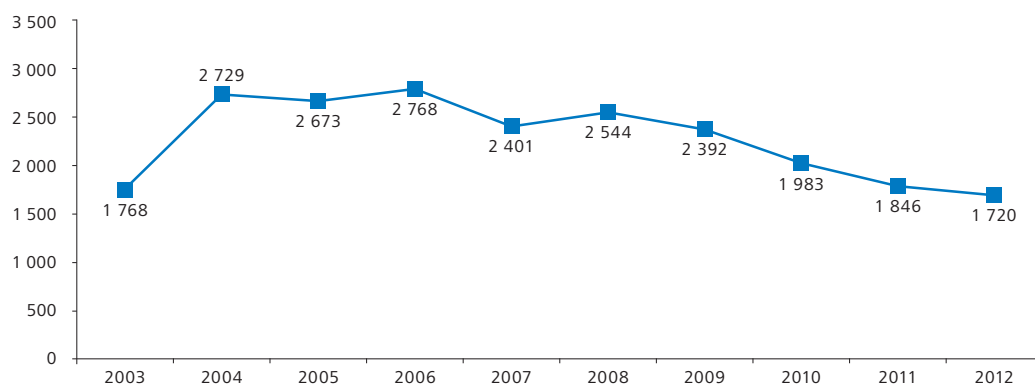
As Figure 1.1 reveals<sup>9</sup>, the number of complaints inside the Ombudsman's mandate rose sharply between 2003 and 2004, averaged at around 830 between 2005 and 2008, and has remained at an average of around 730 since 2009.

As Figure 1.2 shows<sup>10</sup>, the number of complaints outside the Ombudsman's mandate fell to 1 720 in 2012, the lowest figure recorded since 2002. The Ombudsman is continuing his efforts further to reduce the number of complaints outside the mandate. He does so by providing clear information about what he can and cannot do, and by helping guide complainants to the right address first time around.

**Figure 1.1: Number of complaints inside the mandate 2003-2012**



**Figure 1.2: Number of complaints outside the mandate 2003-2012**



<sup>9</sup>. In 2005, 335 of the complaints submitted, which were inside the Ombudsman's mandate, concerned the same issue. To allow for a more accurate comparison over the years, only 11 of these complaints have been taken into account in Figure 1.1.

<sup>10</sup>. In 2006, 281 of the complaints submitted, which were outside the Ombudsman's mandate, concerned the same issue. To allow for a more accurate comparison over the years, only 11 of these complaints have been taken into account in Figure 1.2.

## Complaints and inquiries

Table 1.2 outlines the national origin of complaints registered in 2012. Traditionally, complainants from Germany, the EU's most populous country, have submitted the largest number of complaints, followed by Spain. However, that trend changed in 2011, when Spain moved from second to top position and maintained its position in 2012. Like in 2011, it was followed by Germany, Poland, and Belgium. Relative

to population size, most complaints again came from Luxembourg, Cyprus, Malta, Belgium, and Slovenia.

In 2012, 17 Member States accounted for more complaints than might have been expected, given the size of their population, nine accounted for fewer, while the number of complaints from one Member State (Estonia) reflected the actual size of its population.

**Table 1.2: National origin of complaints registered in 2012**

Country	Number of complaints	% of complaints	% of EU population	Ratio
Luxembourg	39	1.6	0.1	16.0
Cyprus	30	1.2	0.2	6.1
Malta	14	0.6	0.1	5.7
Belgium	182	7.5	2.1	3.5
Slovenia	31	1.3	0.4	3.2
Ireland	50	2.0	0.9	2.3
Bulgaria	66	2.7	1.6	1.7
Hungary	76	3.1	2.0	1.6
Spain	340	13.9	9.0	1.5
Portugal	77	3.2	2.1	1.5
Lithuania	23	0.9	0.7	1.3
Greece	74	3.0	2.3	1.3
Latvia	16	0.7	0.5	1.3
Slovakia	34	1.4	1.1	1.3
Denmark	34	1.4	1.1	1.3
Poland	235	9.6	7.7	1.2
Austria	45	1.8	1.7	1.1
Estonia	7	0.3	0.3	1.0
Finland	25	1.0	1.1	0.9
Sweden	38	1.6	1.8	0.9
Czech Republic	42	1.7	2.1	0.8
Germany	273	11.2	16.6	0.7
The Netherlands	51	2.1	3.3	0.6
Romania	58	2.4	4.4	0.5
United Kingdom	162	6.6	12.3	0.5
France	138	5.7	12.8	0.4
Italy	118	4.8	11.9	0.4
Other countries	138	5.7		
Not known	26	1.1		

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



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

**Ratio** (% complaints / % population)





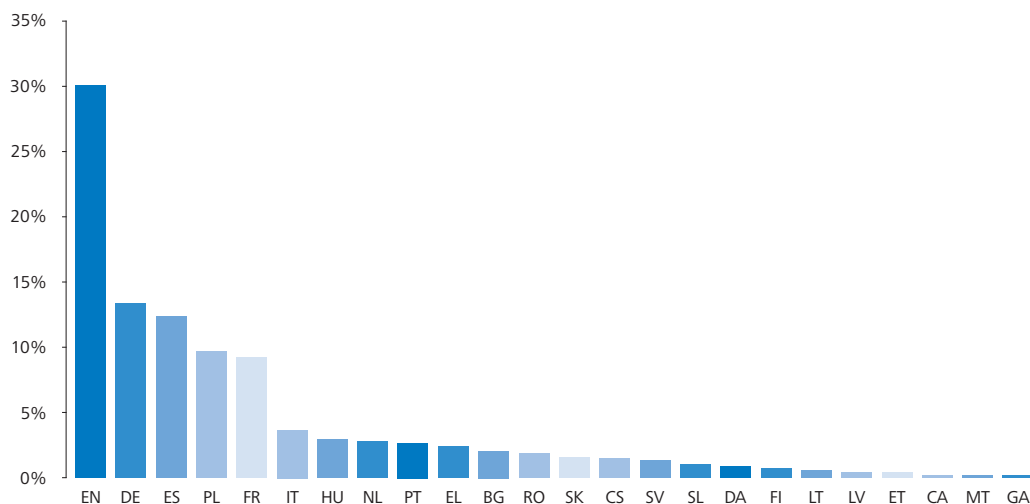
## Complaints and inquiries

A complainant may submit a complaint to the Ombudsman in any of the 23 EU official languages<sup>11</sup>. As Figure 1.3 shows, in 2012 most complainants chose to complain to the Ombudsman in English, followed by German and Spanish.

As Figure 1.4 reveals, in over 75% of cases, the Ombudsman was able to help the complainant by opening an inquiry (18.3% of cases), transferring the case to a competent body, or advising the

complainant on where to turn (57.1%). Section 1.7 of this Report deals with the cases that the Ombudsman transferred, or where he advised the complainant on where to turn. In 24.6% of the cases that the Ombudsman dealt with in 2012, he concluded that no further advice could be given and informed the complainant accordingly. In some cases, this was because the complainant failed to identify whom or what he/she wished to complain against.

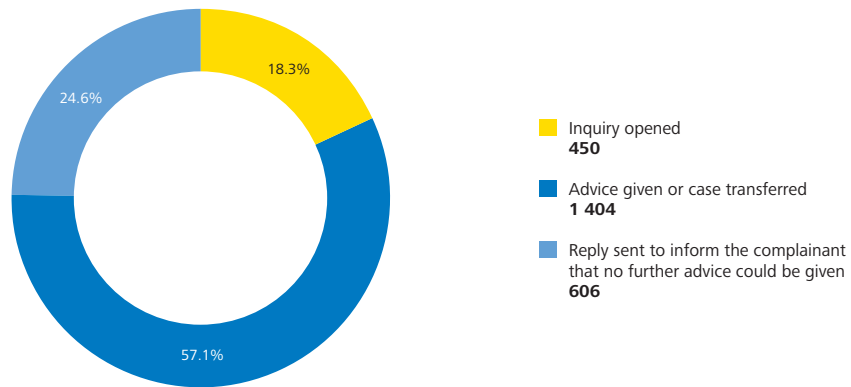
Figure 1.3: Language distribution of complaints



<sup>11</sup> Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, and Swedish. Following an agreement that the European Ombudsman and the Spanish government signed in November 2006, citizens may also complain to the Ombudsman in any of the co-official languages in Spain (Catalan/Valencian, Galician, and Basque). In signing this agreement, the Ombudsman aligned his practice with the June 2005 conclusions of the Council of the EU providing for the use of these languages to facilitate Spanish citizens' communications with EU institutions.



Figure 1.4: Action taken on complaints received



Note: The figures in the table above include 95 complaints that were registered towards the end of 2011 and were processed in 2012. They do not include 18 complaints that were registered towards the end of 2012, and were still under consideration at the end of the year, with an eye to determining what action to take.

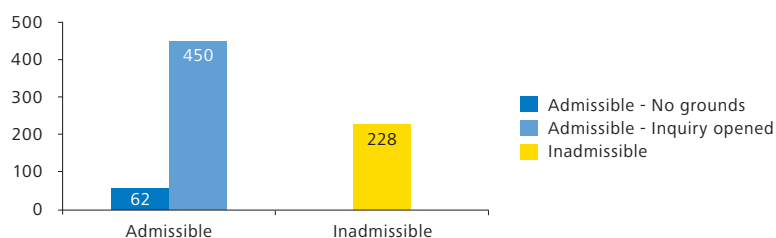
## Complaints and inquiries

### 1.3 Analysis of inquiries opened<sup>12</sup>

As already noted, in the course of 2011, the Ombudsman modified his simplified procedures in order to render them more citizen-friendly.

All the complaints which fell inside the Ombudsman's mandate were further analysed to determine admissibility. Of the 740 complaints falling within the mandate, 228 were deemed to be inadmissible, while, in a further 62 cases, which were admissible, the Ombudsman found no grounds for opening an inquiry.

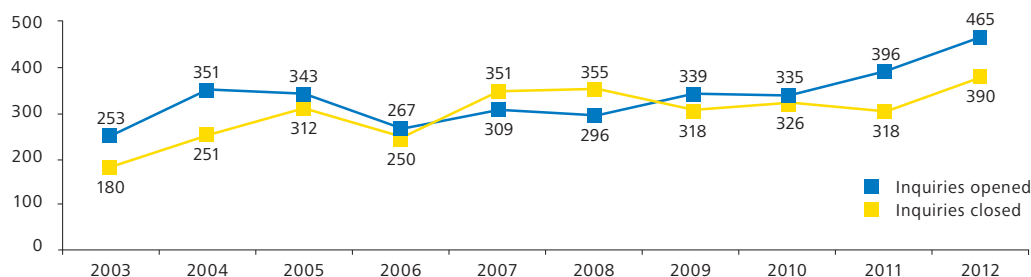
Figure 1.5: Complaints within the mandate of the European Ombudsman



The Ombudsman opened a total of 450 inquiries during the year on the basis of complaints. This constitutes an increase of 18% compared with 2011. The Ombudsman also began 15 inquiries on his own initiative.

As Figure 1.6 shows, the number of inquiries that the Ombudsman opened in 2012 was the highest ever, exceeding the levels attained in 2011 (396) and 2004 (351).

Figure 1.6: Evolution in the number of inquiries



12. The analysis in this section refers to the number of inquiries opened in 2012, rather than to the total number of inquiries dealt with during the year.

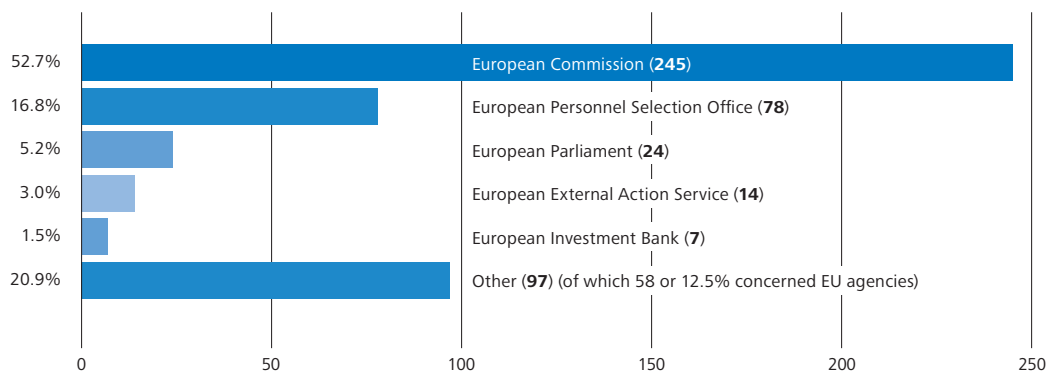


Most inquiries which the Ombudsman opened in 2012 concerned the European Commission (based on 245 complaints or 52.7%). The comparable figure for 2011 was 231. Since the Commission is the main EU institution whose decisions have a direct impact on citizens, it is logical that it should be the main subject of citizens' complaints. The European Personnel Selection Office (EPSO) was in second position with 78 (42 in 2011). The number

of inquiries that the Ombudsman opened with regard to the European Parliament increased by 50% compared to 2011. He opened 14 inquiries concerning the European External Action Service (EEAS) and seven concerning the European Investment Bank (EIB). Twenty-two other EU institutions, bodies, offices, and agencies were the subject of a further 97 inquiries<sup>13</sup>.

Most inquiries which the Ombudsman opened in 2012 concerned the European Commission.

**Figure 1.7: Institutions and bodies subject to inquiry**

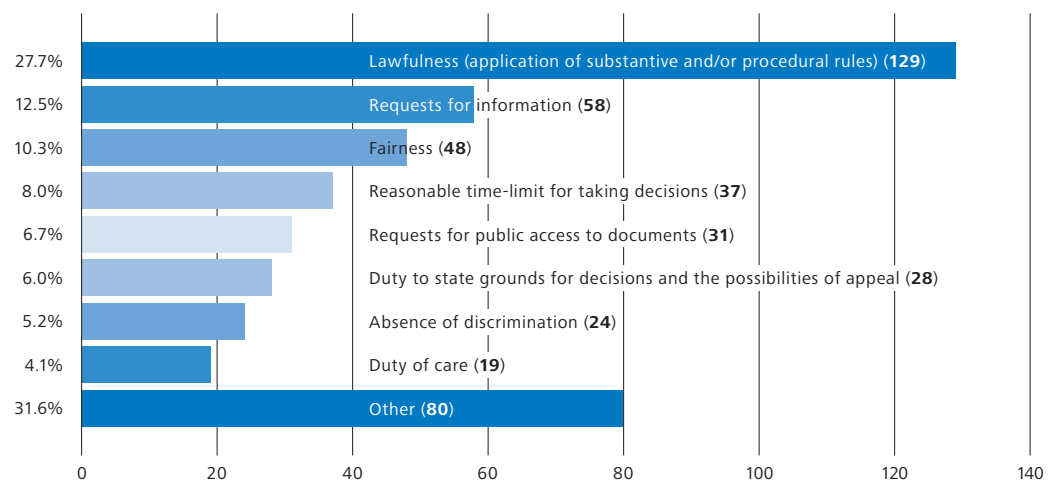


<sup>13</sup>. Frontex (5), European Chemicals Agency (5), Research Executive Agency (5), European Medicines Agency (5), European Network and Information Security Agency (5), European Aviation Safety Agency (4), Office for Harmonisation in the Internal Market (4), European Union Agency for Fundamental Rights (3), European Education, Audiovisual and Culture Executive Agency (3), European Banking Authority (3), Translation Centre for the Bodies of the European Union (2), European Foundation for the Improvement of Living and Working Conditions (2), Executive Agency for Competitiveness and Innovation (2), European Securities and Markets Authority (2), European Centre for the Development of Vocational Training (1), Fusion For Energy (1), European Defence Agency (1), Body of European Regulators for Electronic Communications (1), European Union Institute for Security Studies (1), European Institute of Innovation and Technology (1), European Systemic Risk Board (1), and European Centre for Disease Prevention and Control (1).

## Complaints and inquiries

The main types of alleged maladministration which the Ombudsman investigated in 2012 concerned lawfulness (27.7% of inquiries), as well as requests for information (12.5%), fairness (10.3%), and reasonable time-limit for taking decisions (8%).

**Figure 1.8: Alleged maladministration concerning:**



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



Table 1.3 outlines the national origin of inquiries opened in 2012. Belgium had the highest number of inquiries opened, followed by Italy, Germany, Spain, and the United Kingdom. Relative to population size, most inquiries opened were based on complaints from Luxembourg, Belgium, Slovenia, and Ireland. As a comparison with Table 1.2 above clearly shows, the number of complaints that originate in a Member State is not directly proportional to the number of inquiries opened.

In 2012, 11 Member States accounted for more inquiries opened than might have been expected, given the size of their population, 14 accounted for fewer, while the number of inquiries opened following complaints received from two Member States (Spain and Portugal) reflected the actual size of their population.

**Table 1.3: National origin of inquiries opened in 2012**

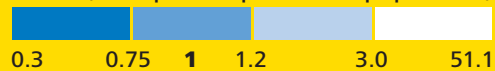
Country	Number of inquiries opened	% of inquiries opened	% of EU population	Ratio
Luxembourg	23	5.1	0.1	51.1
Belgium	103	22.9	2.1	10.9
Slovenia	7	1.6	0.4	3.9
Ireland	15	3.3	0.9	3.7
Estonia	4	0.9	0.3	3.0
Cyprus	2	0.4	0.2	2.2
Malta	1	0.2	0.1	2.2
Denmark	7	1.6	1.1	1.4
Greece	14	3.1	2.3	1.4
Lithuania	4	0.9	0.7	1.3
Hungary	11	2.4	2.0	1.2
Spain	39	8.7	9.0	1.0
Portugal	9	2.0	2.1	1.0
Bulgaria	6	1.3	1.6	0.8
The Netherlands	12	2.7	3.3	0.8
Slovakia	4	0.9	1.1	0.8
Finland	4	0.9	1.1	0.8
Italy	42	9.3	11.9	0.8
Austria	5	1.1	1.7	0.7
Sweden	5	1.1	1.8	0.6
United Kingdom	34	7.6	12.3	0.6
Romania	11	2.4	4.4	0.6
Germany	39	8.7	16.6	0.5
Latvia	1	0.2	0.5	0.4
France	24	5.3	12.8	0.4
Czech Republic	3	0.7	2.1	0.3
Poland	9	2.0	7.7	0.3
Other countries	12	2.7		

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

## Complaints and inquiries

The map below is based on the number of inquiries opened following complaints that the Ombudsman received from each Member State relative to the size of its population (see note accompanying Table 1.3 above regarding the ratio calculation).

**Ratio** (% inquiries opened / % population)





## 1.4 Findings of the Ombudsman's inquiries

As Figure 1.6 above shows, the Ombudsman closed 390 inquiries in 2012.

Individual citizens submitted a total of 85.3% of complaints which led to inquiries closed in 2012 (324), whereas companies, associations, and other legal entities submitted 14.7% (56).

**Table 1.4: Source of complaints in inquiries closed in 2012**

<b>Companies, associations, and other legal entities</b>	<b>14.7% (56)</b>
<b>Individual citizens</b>	<b>85.3% (324)</b>

Most of the inquiries that the Ombudsman closed in 2012 were completed within one year (69%). He closed almost a third, that is, 32%, within three months. Among this latter category figured cases which the Ombudsman was able to resolve very quickly, for example, by telephoning the institution concerned to propose a solution<sup>14</sup>. The Ombudsman completed over 79% of inquiries within 18 months. The average length of inquiry was 11 months.

Individual citizens submitted a total of 85.3% of complaints which led to inquiries closed in 2012 (324), whereas companies, associations, and other legal entities submitted 14.7% (56).

**Table 1.5: Length of inquiry of cases closed in 2012**

<b>Average length of inquiry</b>	<b>11 months</b>
<b>Cases closed within 3 months</b>	<b>32%</b>
<b>Cases closed within 12 months</b>	<b>69%</b>
<b>Cases closed within 18 months</b>	<b>79%</b>

Note: Based on 30 days per month.

As Figure 1.9 shows, in 80 of the cases which the Ombudsman closed in 2012, a positive outcome was attained when the institution concerned accepted a friendly solution proposal or settled the matter. The Ombudsman found no maladministration in 76 cases and maladministration in 56 others. In nine of these (compared to 13 in 2011), the institution in question either fully or partially accepted a draft recommendation. The Ombudsman closed 47 cases with critical remarks and issued one special report (see Figure 1.10). In 30 cases, the Ombudsman issued further remarks designed to help improve the relevant institutions' future performance. These findings are further detailed below<sup>15</sup>.

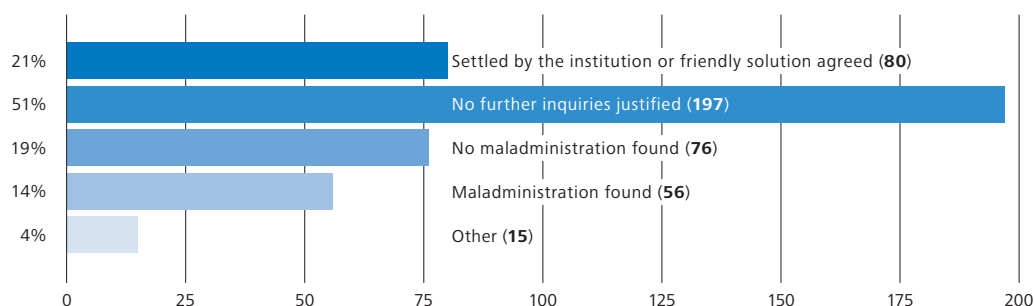
<sup>14</sup>. This figure includes cases where the Ombudsman would have conducted a full inquiry if the complainant had not withdrawn the complaint. It also includes cases where the Ombudsman undertook an inquiry which he then closed because the complainant decided to go to court.

<sup>15</sup>. The analysis that follows is based on inquiries completed during 2012. The Ombudsman may have issued several findings, if an inquiry dealt with more than one allegation or claim.



## Complaints and inquiries

Figure 1.9: Results of inquiries closed in 2012



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

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

### No maladministration

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

In 2012, the Ombudsman closed 76 cases in which he found no maladministration. A finding of no maladministration is not necessarily a negative outcome for the complainant, who at least benefits from receiving a full explanation from the institution concerned with regard to what it has done. The complainant also benefits from the Ombudsman's independent analysis of the case. At the same time, and as the case below illustrates, such a finding serves as tangible evidence that the institution concerned has acted in conformity with the principles of good administration.

#### Infringement of EU law

The municipal authorities of the Samos island in Greece rejected a vine-grower's application for a licence to produce his own wine because Greek legislation obliges vine-growers to sell all their produce to the Samos Union of Cooperatives. The vine-grower challenged that decision in the Greek Council of State and also complained to the Commission that the Greek law in

question infringed EU law. He later complained to the Ombudsman that the Commission had unjustifiably delayed examining his complaint and breached the duty to act impartially and objectively, and that it should fully investigate his infringement complaint. The Ombudsman's inquiry (case **1625/2010/ANA**) found no instance of maladministration on the part of the Commission.

#### Further remarks

Even when the Ombudsman finds no maladministration or concludes that there are no grounds to continue his inquiry, he may issue a further remark if he identifies an opportunity to enhance the quality of the administration of the institution concerned. A further remark should not be understood as implying criticism of the institution to which it is addressed. Rather, its aim is to advise the institution on how it can improve a particular practice, in order to improve the quality of service that it provides to citizens. The Ombudsman made further remarks in 30 cases in 2012.



## Cases settled by the institution and friendly solutions

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

During 2012, in 80 cases, the institution either settled the matter, or a friendly solution was reached. Below is an illustrative example of one such case.

### Incorrect application of rules

The Commission authorised the use of a number of neonicotinoids (insecticides) for plant protection. In March 2012, the Austrian Ombudsman Board explained to the Ombudsman that new scientific evidence suggested that certain insecticides had led to increased bee mortality. The Board alleged that the Commission had failed to take into account this new evidence, which argues in favour of restricting the use of the insecticides. The relevant EU regulation provides for a review of the authorisation of substances where new scientific evidence indicates that they no longer fulfil the approval criteria, for example, because they pose a threat to animal health. During the Ombudsman's investigation (case **512/2012/BEH**), the Commission submitted a list of the measures it had recently taken to address increased bee mortality. For example, it had designated an EU reference laboratory for bee health and commissioned a study on the extent of the problem. Additionally, it requested that the European Food Safety Authority (EFSA) review the risk assessment of all neonicotinoids and their effect on bees. These measures satisfied the complainant.

If an inquiry leads to a preliminary finding of maladministration, the Ombudsman tries to achieve a friendly solution whenever possible. He closed nine cases during the year, including the case below, in which a friendly solution was achieved. At the end of 2012, 18 proposals for friendly solutions were still under consideration.

### Recovery of costs

From 2004 to 2005, the Belgian NGO, Vluchtelingenwerk Vlaanderen, carried out a project aimed at supporting micro-business development by migrant entrepreneurs in the Democratic Republic of Congo. In total, the project cost more than EUR 750 000, of which the Commission covered more than EUR 500 000. The NGO successfully implemented 59 micro-businesses. While implementing the project, the NGO asked the Commission to accept a simpler cost-reporting method because it had experienced difficulties in obtaining proper bills or invoices from local entrepreneurs. The Commission's contact person agreed to the request in writing. When the Commission audited the project and found that there were no supporting documents for certain costs, it ordered Vluchtelingenwerk Vlaanderen to reimburse EUR 150 000. The NGO complained to the Ombudsman that the recovery order was neither justified nor proportionate. The Ombudsman asked the Commission (case **53/2010/OV**) to determine whether the NGO had complied with the alternative cost-reporting method and, if so, to consider reimbursing the NGO the corresponding amount. The institution accepted the Ombudsman's friendly solution and refunded more than EUR 100 000 to the NGO.

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

## Complaints and inquiries

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

### Maladministration found

The Ombudsman concluded that there was maladministration in 14% of the cases closed in 2012. He closed 47 such cases with critical remarks to the institution concerned (35 cases in 2011). In addition, he closed nine cases when the institution complained against accepted a draft recommendation, and issued one special report.

### Critical remarks

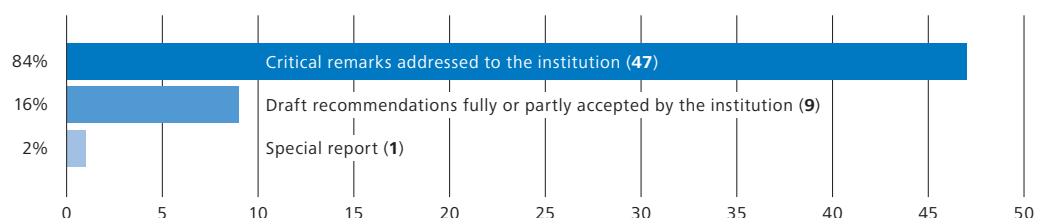
If a friendly solution is not possible, or if the search for such a solution is unsuccessful, the Ombudsman

either closes the case with a critical remark to the institution concerned or makes a draft recommendation. The Ombudsman normally makes a critical remark if (i) it is no longer possible for the institution involved to eliminate the instance of maladministration, (ii) the maladministration appears to have no general implications, and (iii) no follow-up action by the Ombudsman seems necessary. The Ombudsman also makes a critical remark if he considers that a draft recommendation would serve no useful purpose. He likewise proceeds in this manner in cases where the institution concerned fails to accept a draft recommendation, and where he does not deem it appropriate to submit a special report to Parliament.

A critical remark does not constitute redress for the complainant. It informs the institution concerned of what it has done wrong, so that it can avoid similar maladministration in the future. The following example illustrates circumstances which may lead the Ombudsman to issue a critical remark.

A critical remark does not constitute redress for the complainant. It informs the institution concerned of what it has done wrong, so that it can avoid similar maladministration in the future.

Figure 1.10: Inquiries where maladministration was found



Note: In one case where the Ombudsman found maladministration, the institution fully accepted the draft recommendation, but the Ombudsman also issued a critical remark. The above percentages therefore total more than 100%.



### Restrictive language policy

The Commission regularly consults citizens, associations, and other stakeholders in order to enable them to participate in EU decision-making. In 2010, a Spanish lawyer complained to the Ombudsman that the Commission publishes the documents for many such consultations only in English, and that its language policy is arbitrary and contrary to the principles of openness, good administration, and non-discrimination. The Ombudsman shared the complainant's view (case **640/2011/AN**) that citizens cannot be expected to participate in a consultation which they are unable to understand. He considers multilingualism to be essential for citizens to exercise their right to participate in the EU's democratic life, which the Treaty of Lisbon guarantees. He concluded that the Commission's restrictive language policy constitutes maladministration and called on the institution to publish its public consultation documents in all 23 EU languages or to provide translations upon request. The Commission rejected the Ombudsman's recommendations, arguing that time constraints and available resources govern the principle of multilingualism, and that there is no legal right that entitles citizens to consultation documents in all EU languages. In 2012, Parliament adopted a resolution urging the Commission to review its restrictive language policy for public consultations.

### Follow-up to critical remarks and further remarks

With a view to helping the institutions learn lessons from inquiries he has carried out, the Ombudsman publishes a study each year<sup>16</sup> on the institutions' follow-up to his critical and further remarks.

### Follow-up to critical and further remarks made in 2011

The Ombudsman invited the institutions concerned to respond, within a period of six months, to the critical and further remarks he made in 2011. Responses were received to almost all the remarks made, albeit with a delay in some cases.

Some of the follow-up responses were exemplary – indeed ten warrant special mention as “star cases”, which should serve as a model for other institutions of how best to react to critical remarks and further remarks. They concern the Commission (**2605/2009/MF**, **62/2010/RT**, and **1301/2010/GG**), the Court of Justice of the EU (**3018/2009/TN**), the European Anti-Fraud Office (OLAF) (**856/2008/BEH**), Eurojust (**325/2010/OV**), the European Defence Agency (**1342/2010/MHZ**), the European Police Mission for the Palestinian Territories (**OI/1/2010/MMN**), Fusion for Energy (**439/2011/AN**), and the Executive Agency for Health and Consumers (**413/2010/BEH**).

Taking together critical and further remarks made in 2011, the rate of satisfactory follow-up was 84%. The follow-up to further remarks was satisfactory in 89% of cases, while the rate of satisfactory follow-up to critical remarks was lower at 80% (albeit significantly higher than the 2010 figure of 68%).

Taking together critical and further remarks made in 2011, the rate of satisfactory follow-up was 84%.

<sup>16</sup> The Ombudsman's follow-up study for 2011 is available at: <http://www.ombudsman.europa.eu/en/cases/followup.faces/en/12374/html.bookmark>

## Complaints and inquiries

### Draft recommendations

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

During 2012, the Ombudsman issued 17 draft recommendations, including the case below. In addition, 16 draft recommendations from 2011 led to decisions in 2012, while three further cases were closed, following draft recommendations made in 2010. The Ombudsman closed nine cases during the year when an institution accepted a draft recommendation either fully or partly. The Ombudsman closed 47 cases with critical remarks. At the end of 2012, 14 draft recommendations were still under consideration, including two made in 2011 and 12 in 2012.

### The right to be heard

The Commission's computerised Early Warning System (EWS) lists persons, companies, NGOs, associations, or other parties which the Commission considers pose a threat to the EU's financial interests. The EU administration may block or suspend contracts or payments if the tenderer or contractor concerned is listed on the EWS. Upon receiving several complaints about the operation of the EWS, the Ombudsman conducted an own-initiative inquiry (case [OI/3/2008/FOR](#)), including a public consultation to which many stakeholders contributed. Participants criticised the Commission for listing individuals and other parties without systematically informing them, and for not making clear how they can lodge an appeal. In a draft recommendation, the Ombudsman called on the Commission to guarantee the rights of those targeted to be heard before they are listed, and also both to respect their right of access to their file and to ensure that it informs them of their rights to complain to the Ombudsman or to go to court. The Commission responded by announcing its intention to revise the EWS in 2013, taking into account both the Ombudsman's findings and the outcome of an ongoing appeal before the court (T-320/09 *Planet AE v Commission* of 13 April 2011) concerning the EWS.



## Special reports

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

The possibility to present a special report to Parliament is of inestimable value for the Ombudsman's work. It is the most powerful tool at his disposal.

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

In accordance with the Rules of the European Parliament, the Committee on Petitions is responsible for Parliament's relations with the Ombudsman. At a meeting of the Committee on Petitions on 12 October 2005, the Ombudsman undertook, in accordance with Rule 205(3) of Parliament's Rules of Procedure, to appear before the Committee whenever he presents a special report to Parliament.

The Ombudsman submitted one special report to Parliament in 2012.

## Conflict of interest and principles of good administration

Vienna Airport (Austria) has expanded through several building projects since 1999. In 2006, 27 Austrian citizens' organisations complained to the Commission that the Austrian authorities had infringed EU law by not assessing the projects' environmental impact. The Commission requested that the Austrian authorities retrospectively assess the said impact. The organisations complained to the Ombudsman that the authority in charge of the *ex-post* assessment had itself issued some of the permits for the projects, and that, in accordance with EU law, they did not have access to further review procedures at national level. A first inquiry into the case was closed by the Ombudsman after the Commission had stated that it would only close the infringement case when it was satisfied that the Austrian authorities had taken the necessary steps to comply with EU law. The Ombudsman opened a second investigation (case **2591/2010/GG**) after the organisations turned to him again. He concluded that the Commission failed to (i) comply with the principles of good administration; (ii) properly address the complainants' arguments that there was a manifest conflict of interest, and to take appropriate action when faced with a clear infringement of EU law; and (iii) follow his advice. He therefore submitted a special report to Parliament, asking for its support in persuading the Commission to correct its approach in the case.



## Complaints and inquiries

### 1.5 Star cases exemplifying best practice

Ten star cases closed in 2012 illustrate best practice. These cases concern a range of EU institutions and bodies, as well as a variety of issues.

Ten star cases closed in 2012 illustrate best practice. These cases concern a range of EU institutions and bodies, as well as a variety of issues. Given the many cases concerning transparency that the Ombudsman deals with every year, the first six cases outlined below are particularly welcome. A further case pertains to provisions in the Charter of Fundamental Rights, while the Commission's constructive response in cases concerning respect for citizens, recruitment, and grants is also included.

In case [2016/2011/AN](#), the **European Central Bank** (ECB) provided the complainant with an appropriate statement of reasons, including a detailed description of the content of the letter he had requested and its purpose. It had denied access to the letter on the grounds that disclosure would undermine the EU's economic and monetary policy. After inspecting the document in question, the Ombudsman agreed. With the prior consent of the President of the ECB, the Ombudsman confirmed to the complainant that the letter in question did not suggest any amendments to the Spanish Constitution. The Ombudsman also made a further remark that the ECB should continue to view transparency not only as a legal obligation, but also as an opportunity to enhance its legitimacy in the eyes of citizens.

The Ombudsman welcomed the combination of general and institutional measures proposed in the context of own-initiative inquiry [OI/3/2011/KM](#), which concerned the **Council's** ability to reply to confirmatory applications within the time

limits foreseen in Regulation 1049/2001. Given that the procedure for dealing with applications takes time, the Council allocated additional staff to the task of processing initial applications and designated a contact person to liaise with Member States' delegations. It further made it possible to convene certain meetings at short notice. Finally, given that ordinary Coreper/Council meetings are less frequent in certain months, replies to confirmatory applications can now be adopted by way of a formal written procedure, where necessary.

The **Commission** fully disclosed the documents requested by the complainant in case [1161/2010/BEH](#). These documents related to infringement cases concerning certain customs issues regarding imports of armaments and dual-use goods. While the Ombudsman expressed concern about the length of time the Commission took to decide on the complainant's confirmatory application, he was pleased to note that the Commission itself acknowledged that this delay was unjustifiable and applauded its constructive approach.

The **Commission** outlined a number of measures which the relevant Directorate-General had taken to improve compliance with Regulation 1049/2001 on public access to documents, after the Ombudsman asked it to explain what steps it had taken or intended to take in order to ensure compliance with the Regulation. In its initial response to case [849/2010/KM](#), the Commission admitted that it failed to handle the complainant's letters in accordance with the Regulation. It granted access to the relevant documents and apologised for the delay. The complainant was content with the documents he received but maintained his criticism of the handling of his request. This led to the aforementioned measures.



The **European Medicines Agency** (EMA) agreed to provide public access to adverse reaction reports relating to an anti-acne drug, in response to a draft recommendation by the Ombudsman. After the complainant raised concerns, the Ombudsman carried out further inquiries, which included a meeting with the EMA. As a result, he was able to confirm that the EMA had not withheld relevant documents and that the documents had been redacted, and rightly so, in order to protect personal data. In closing case [2493/2008/FOR](#), the Ombudsman recognised the important progress that the EMA has made in rendering its work more transparent<sup>17</sup>.

In case [808/2011/MHZ](#), the Ombudsman praised the **European Council** for having apologised to a citizen who turned to it to voice his concern over the personal use of service cars. The complainant had asked the European Council to reply to a number of questions and for a copy of the relevant rules concerning this matter. In the Ombudsman's view, the Council's sincere apology constitutes the best example of the EU administration showing respect for its citizens. Without this respect, the gap between the EU and its citizens cannot be narrowed, he said. The Ombudsman also found that the replies the complainant initially received were inappropriate.

In response to own-initiative inquiry [OI/3/2008/FOR](#), the **Commission** committed itself to reforming its Early Warning System (EWS) – a computerised information system which seeks to identify “threats” to the EU's financial interests and reputation. The Ombudsman insisted that the rights of persons included on the EWS, especially the fundamental rights of such persons as set out in the Charter of Fundamental Rights (for instance, the right to be heard and the right of access to the file),

must be protected, including during the transitional period leading to the reform of the EWS.

In the area of grants, the **Commission** agreed to reimburse over EUR 100 000 to an NGO after the Ombudsman made a friendly solution proposal. The complainant in case [53/2010/OV](#) alleged that the Commission infringed the principle of legitimate expectations by failing to respect the methodology for the reporting of costs that had been mutually agreed.

After the Ombudsman intervened in case [371/2010/\(MF\)AN](#), the **Commission** adopted a new policy concerning the recognition of national diplomas, in order to take into account different national practices. It also declared the complainant in this case eligible for the relevant posts. This followed the refusal by the Human Resources Directorate-General to recognise the complainant's diploma, specifically because her Master 2 degree had not been obtained after three years of university studies.

In response to case [882/2009/VL](#), the Director of the **Commission** service concerned presented a letter of apology to the complainant and offered to make a payment of EUR 500 in order to compensate her for the moral damage suffered. This followed an insulting message sent to the complainant's husband in the context of a recovery procedure concerning allegedly overpaid family allowances. The Commission also organised a series of internal training sessions to emphasise the importance of ethics and of a culture of service towards EU citizens. Such action was in response to the Ombudsman's comment that the use of the unacceptable language in the e-mail concerned might well have been an indication of a wider problem within the Commission's services.

<sup>17</sup>. It should be noted that the EMA had a similar star case in 2011.



## Complaints and inquiries

### 1.6 Thematic analysis of inquiries closed

Decisions closing inquiries are normally published on the Ombudsman's website (<http://www.ombudsman.europa.eu>) in English and, if different, the language of the complaint. A summary of each decision in English is also produced. Summaries of selected cases are published on the website in all 23 official EU languages. These summaries reflect both the range of subjects and of Union institutions covered by the decisions closing cases, which the Ombudsman adopted in 2012, as well as the different reasons for closing them.

not previously been presented to him. In light of the Ombudsman's efforts to promote the application of the Charter of Fundamental Rights, important cases which concern rights laid down in the Charter are also highlighted.

The section analyses the following main subject matters of inquiries:

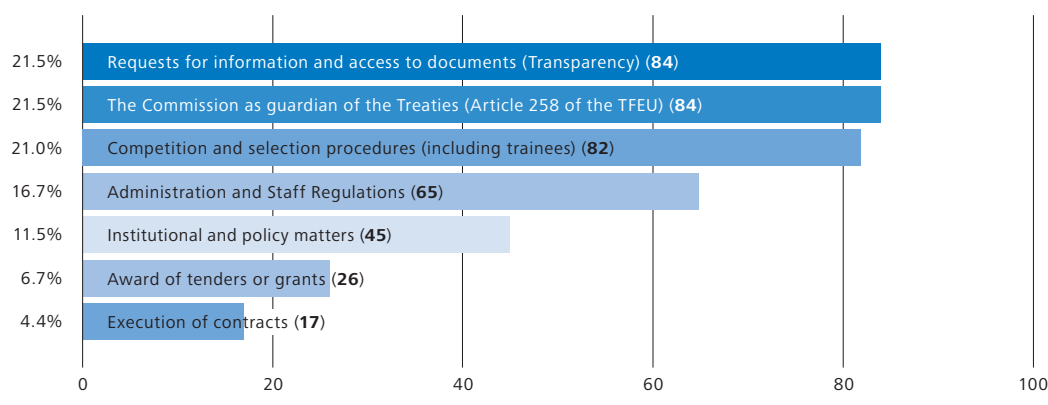
- openness, public access, and personal data;
- the Commission as guardian of the Treaties;
- award of tenders and grants;
- execution of contracts;
- administration and Staff Regulations;
- competitions and selection procedures;
- institutional matters, policy matters, and other.

To be sure, there is substantial overlap among the above subject matters. For example, issues of openness are often raised in complaints concerning recruitment or the Commission's role as guardian of the Treaties. It should also be noted that the categories are not listed in the order in which they appear in Figure 1.11<sup>18</sup>.

This section presents the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2012.

This section presents the most significant findings of law and fact contained in the Ombudsman's decisions closing inquiries in 2012. It includes cases which had a significant impact in terms of promoting transparency and good administration in the EU institutions, cases which resulted in a particularly positive outcome for the complainant, and cases which allowed the Ombudsman to clarify important points of law or to deal with an issue that had

Figure 1.11: Subject matter of closed inquiries



Note: In some cases, the Ombudsman closed inquiries with two or more subject matters. The above percentages therefore total more than 100%.

<sup>18</sup> Figure 1.11 provides information by subject matter on all inquiries completed in 2012. The figure aims to indicate the significance of the subject matters discussed in terms of the Ombudsman's overall caseload.



## Openness, public access, and personal data

### Public access to documents

Article 10(3) TEU refers to decisions in the Union being taken “as openly and as closely as possible to citizens”, whilst Article 15(1) TFEU requires the Union institutions, bodies, offices, and agencies to conduct their work as openly as possible, in order to promote good governance and ensure the participation of civil society. Article 15(3) TFEU provides for a right of access to documents of the Union institutions, bodies, offices, and agencies. The same right is also laid down in Article 42 of the Charter. Regulation 1049/2001 governs this fundamental right of access to documents<sup>19</sup>.

Article 15(3) TFEU provides for a right of access to documents of the Union institutions, bodies, offices, and agencies. The same right is also laid down in Article 42 of the Charter.

Regulation 1049/2001 gives applicants a choice of remedy. They may challenge a total or partial refusal of access either in court proceedings under Article 263 TFEU, or by complaining to the Ombudsman. As is evidenced below, the Ombudsman’s inquiries cover both procedural issues and the application of the exceptions to public access provided for in Article 4 of the Regulation.

### Procedural issues

Late registration and late answers to requests appear to be relatively common occurrences. In case **1972/2009/ANA**, the Commission acknowledged the unjustifiable delay that occurred in the handling of the complainant’s confirmatory application and provided an undertaking that such delays will not occur in future. The Ombudsman

found, in case **2938/2009/EIS**, that the Commission’s handling of the complainant’s application was clearly not in line with principles of good administration. The Commission apologised. In a further remark, the Ombudsman stressed that it would be most useful if the Commission were to take steps to prevent such shortcomings from occurring again. In case **2466/2011/ER**, the complainant alleged that the Commission unlawfully extended the deadline for deciding on his confirmatory application. The Ombudsman proceeded to close the case without having received the Commission’s opinion because (i) the Commission’s response was three months overdue and (ii) the information that had already been made available to him was sufficient to deal with the complaint. He pointed out that

Regulation 1049/2001 provides for binding deadlines – exceptions are only possible in “exceptional” cases and where “detailed reasons” have been given. In the present case, the Commission limited itself to stating that it still did not have in its possession all the elements it needed to make a final assessment.

In case **1472/2011/MMN**, which concerned a refusal to give access to the replies given by France and Spain to a questionnaire, the Commission’s response was substantially delayed. While it apologised to the complainant, the Commission’s replies to both the complainant and the Ombudsman showed that it appeared to consider that the need to consult Member States, in accordance with Article 4(5) of Regulation 1049/2001, entitles it to exceed the deadlines set out in the Regulation

<sup>19</sup>. Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; OJ 2001 L 145, p. 43.

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for answering requests for access. The Ombudsman noted that the Union courts have made it clear that the fact that the institution has initiated a dialogue, under Article 4(5), with the Member State from which the document requested originates, does not entitle it to exceed the time limits established in the Regulation.

In case **1683/2010/MMN**, which concerned access to documents relating to an open competition organised by EPSO, the complainant alleged that the Commission acted wrongly and failed to provide reasons when it extended, for the second time, the deadline to take a decision on his confirmatory application. The Ombudsman pointed out that the Commission did not provide any reasons for its decision. He further noted that Regulation 1049/2001 clearly only allows one extension of the deadline for a reply to a confirmatory application. The Commission apologised for the delay. As regards the claim for access, the Commission explained that the documents did not exist. The Ombudsman considered these explanations plausible. He was also pleased to note that the Commission did not limit itself to the above statement but granted access to certain documents that could be of interest to the complainant and drew attention to two documents concerning the work of the Selection Board.

### **Substantive issues: application of the exceptions**

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

### **Exception concerning inspections, investigations, and audits**

In the following two cases, the institution invoked the exception pertaining to the protection of the purpose of investigations as provided for in the third indent of Article 4(2) of Regulation 1049/2001, in order to refuse access to the documents in question.

Case **292/2011/AN** concerned access to documents related to infringement procedures<sup>20</sup>. The Ombudsman made a friendly solution proposal, which the Commission accepted by disclosing two of the three documents concerned. As regards the third, it stated that it needed to consult the Spanish authorities first, since the document originated with them. The Ombudsman stated that he trusted that the Commission would conclude the consultation with the Spanish authorities within a reasonable time and would inform the complainant of its reasoned decision concerning disclosure as soon as possible thereafter.

The Ombudsman found, in case **2914/2009/DK**, that the European Medicines Agency (EMA) wrongly refused to give public access to two internal audit reports. Moreover, the audit exercises in question had already been concluded. There was thus no risk that the auditing exercise would be undermined by public disclosure. The EMA agreed to reconsider its refusal and provided access to the reports, as well as to an accompanying note on the implementation of the recommendations made in the reports.

<sup>20</sup>. See also case **1972/2009/ANA** where the Commission refused access to a document on the grounds that it had to protect the dialogue it had entered into with the Greek authorities, with an eye to bringing the relevant Greek legislation into conformity with EU law.



### Exception concerning the institution's decision-making process

In case **127/2010/VIK** concerning access to documents relating to proposed investments in nuclear energy, the Commission exclusively relied on the exception pertaining to the need to protect its decision-making process (namely, Article 4(3) of Regulation 1049/2001). The Ombudsman was not convinced. However, in the course of the inquiry, it became evident that the project investor had not given its consent to disclosure. Given that the applicable legal framework temporally preceded the entry into force of the Lisbon Treaty, it was far from clear whether documents of the kind the complainant had requested could be disclosed without the consent of the Member State, person, or undertaking concerned, the Ombudsman concluded that no further inquiries were justified. However, he also informed the complainant of the possibility to submit a new application for access, since such an application would have to be assessed on the basis of the rules applicable after the entry into force of the Lisbon Treaty, which reconciled the consent requirement with the need for transparency.

### Exception concerning the protection of personal data

Among the exceptions laid down in Article 4 of Regulation 1049/2001 is Article 4(1)(b) which pertains to the fundamental rights to privacy and to the protection of personal data. In case **3136/2008/EIS**, the complainant, who was the subject of an OLAF investigation, requested access to (i) the documents on the basis of which OLAF decided to carry out that investigation; and (ii) information about the result of the investigation. OLAF refused. The Ombudsman inspected OLAF's file and consulted the European Data Protection Supervisor. On that basis, he concluded

that the reasons given by OLAF for the rejection of the request for access were valid and adequate. As regards the further issue raised by the complainant, the Ombudsman noted that, in its opinion, OLAF had provided information on the result of its investigation. The Ombudsman noted, however, that the fundamental right to good administration laid down in Article 41 of the Charter requires that a person who has been the subject of an investigation be informed, within a reasonable time, of the results of that investigation once it has been closed. In the present case, OLAF failed to do so.

Case **682/2010/TN** concerned a request for access to a report containing personal data. The Ombudsman noted that the Commission was, in principle, entitled to refuse access because the complainant had not established why it was necessary to have the personal data transferred. However, he proposed that the Commission reconsider granting access to other sections of the Report. As the Commission did not fully agree, the Ombudsman made a critical remark to the effect that the Commission had not provided convincing arguments as to why partial access could not be granted. He also made a further remark aimed at providing better information on procedures to applicants requesting access to documents containing personal data.

### Public access to information

Article 41 of the Charter recognises the right to have one's affairs dealt with impartially, fairly, and within a reasonable time by the EU administration. It also includes the right to receive a reply. The Ombudsman dealt with many cases in 2012 where the citizen alleged that the administration failed to reply adequately or at all. In order to ensure a timely

The Ombudsman dealt with many cases in 2012 where the citizen alleged that the administration failed to reply adequately or at all.

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response for the complainant, these cases were mostly dealt with through simplified procedures.

Case **1451/2011/BEH** constitutes an example of a fully-fledged inquiry in the area of public access to information. Specifically, it concerned an allegation that the Commission provided incorrect information on free movement rights. The complainant argued that a passage in the Commission's Guidelines on the Union Citizenship Directive (Directive 2004/38/EC) is not in conformity with EU law, as interpreted by the Court of Justice in its judgment in *Akrich* (case C-109/01). The Ombudsman indeed identified a problem and asked the Commission to consider reviewing the relevant passage. The Commission stated that it does not intend to modify the Guidelines at this stage, but will assess the added value of an update on the basis of the results of its second report on the application of Directive 2004/38 due in 2013. Noting the Commission's agreement that the relevant passage of the Guidelines could be clearer, the Ombudsman closed the case but asked the Commission to keep him informed.

### Data protection

Articles 7 and 8 of the Charter of Fundamental Rights cover, respectively, the fundamental rights to privacy and to the protection of personal data. This latter right was relevant in case **2384/2011/AN**, which was submitted by an individual who was the subject of an investigation by OLAF. OLAF disclosed details of the outcome of its investigation to a third party. The details were published in a press article in the complainant's country.

The European Data Protection Supervisor deemed the disclosure to be contrary to EU data protection rules. The complainant requested that OLAF admit wrongdoing and apologise. OLAF refused. Following the Ombudsman's inquiry, however, it sent a letter to the complainant in which it expressed regret for not acting in accordance with data protection rules in his case and apologised to him.

### The Commission as guardian of the Treaties

The rule of law is a founding principle of the EU. One of the Commission's most important duties is to serve as guardian of the Treaties<sup>21</sup>. Article 258 TFEU creates a general procedure under which the Commission may investigate and refer to the Court of Justice possible infringements of EU law by Member States. The Commission may open investigations on its own initiative, on the basis of complaints, or in response to requests from the European Parliament to deal with petitions addressed to it under Article 227 TFEU. Other procedures apply in relation to specific matters, such as illegal state aids.

It is important to mention in this context the EU Pilot<sup>22</sup>, a working method first launched in 2007 between the Commission and the Member States, with a view to correcting infringements of EU law at the earliest possible stage without having recourse to infringement proceedings. This project aims to ensure that the Member States implement EU law more effectively and that the complaints that citizens and businesses make are resolved more quickly.

<sup>21</sup>. Article 17 TEU requires that the Commission "ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them".

<sup>22</sup>. See the Commission Communication entitled "A Europe of Results – Applying Community Law, COM(2007)502".





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

As the examples below illustrate, the Ombudsman's inquiries in 2012 revealed a number of procedural shortcomings.

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

the Ombudsman opens an inquiry into such a complaint, he is careful to make clear that the inquiry will not examine whether there is an infringement. This is because the European Ombudsman has no mandate to investigate the actions of Member State authorities. The Ombudsman's inquiry is only directed at examining the Commission's behaviour in analysing and treating the infringement complaint. The Ombudsman can deal with both procedural and substantive aspects of the Commission's behaviour.

#### Delay and lack of due diligence

In case **773/2011/OV**, the Ombudsman found that, contrary to the complainant's allegation that the Commission failed properly to deal with his infringement complaint, the Commission had sent several substantive replies. In case **230/2011/(TS)EIS**, on the other hand, the Ombudsman pointed out that, in its handling of infringement complaints, the Commission is not free from constraints flowing from fundamental rights and principles of good administration. He

The Ombudsman's inquiry is only directed at examining the Commission's behaviour in analysing and treating the infringement complaint.

#### Procedural obligations

As regards the Commission's procedural obligations towards complainants, the Ombudsman's main point of reference is a communication, originally issued by the Commission in 2002<sup>23</sup>, with a revised version adopted in 2012<sup>24</sup>. The Communication provides for an obligation to register complaints, for certain exceptions to this obligation, and also establishes deadlines for dealing with complaints and for informing complainants. The Commission originally issued this Communication in response to the Ombudsman's inquiries and criticisms in relation to these matters. The Ombudsman considers this Communication as an important basis for citizens' trust in the Commission as guardian of the Treaties.

took the view that the complexity of the issues did not justify the delay incurred in this case. As regards the consistency issue raised as an argument by the Commission, the Ombudsman declared that pursuing a 'consistent approach' must not lead to unnecessary delays.

Cases **930/2010/CK** and **1827/2009/CK** concerned an alleged lack of diligence in handling two infringement complaints. With a view to assisting the Commission further to improve its procedures, the Ombudsman made two further remarks in the first case. In the second, he regretted the abrupt manner in which the Commission dismissed the complainant's arguments. Nevertheless, he noted that subsequent developments meant that the disagreement between the Commission

<sup>23</sup>. Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law; OJ 2002 C 244, p. 5.

<sup>24</sup>. COM(2012)154 final: Communication from the Commission to the Council and the European Parliament updating the handling of relations with the complainant in respect of the application of Union law.

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and the complainant as regards the correct interpretation of the Greek tax rules had become moot.

In case **1775/2012/ER**, which concerned failure to reply to, and properly to handle, an infringement complaint submitted by an Italian cigarette importer, the Commission acknowledged receipt of the complaint shortly after being contacted by the Ombudsman. Moreover, a Commission official contacted the complainant by telephone and informed him that he was the new case-handler. A meeting with the complainant took place shortly afterwards.

### Substantive issues

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

When investigating infringement complaints, the Ombudsman may also review the substance of the analyses and conclusions reached by the Commission<sup>25</sup>. He may, for example, check whether such analyses and conclusions are reasonable, well argued, and thoroughly explained to complainants. The Ombudsman's inquiries and conclusions fully respect the Commission's discretionary power, recognised by the Treaties and the case-law of the Court of Justice, to decide whether or not to refer an infringement to the Court.<sup>26</sup> If the Ombudsman were fundamentally to disagree with the Commission's assessment, he would state so, while pointing out that the highest authority in interpreting EU law is the Court of Justice. Disagreements of this kind are exceptional, however.

#### Failure to provide adequate reasoning

In case **1623/2009/FOR**, the Ombudsman concluded that the Commission failed to explain clearly the reasons for not

proceeding further with a complaint about an alleged infringement of rights concerning copyright holders in the Finnish television markets. In response to the Ombudsman's proposal that it explain clearly its position, the Commission stated that, in light of the complainants' further correspondence, the case was transferred to the EU Pilot project, whereby the Commission would contact Finland to request information or seek solutions to the problem. Similarly, in case **1260/2010/RT**, the Ombudsman considered that the Commission did not provide an appropriate justification for its decision to close an infringement complaint alleging that the French authorities failed to comply with the provisions of EU law concerning parallel imports of veterinary medicinal products (VMPs). Following the Ombudsman's draft recommendation, the Commission decided to open new infringement proceedings concerning the obstacles faced by wholesale dealers attempting to make parallel imports of VMPs.

#### Disagreement with the Commission's assessment

The complainant in case **1909/2009/BEH** submitted an infringement complaint, alleging that, contrary to EU law, the Austrian authorities did not perform an individual assessment as to whether his client, Mr D., posed a threat to public security. The Commission considered that, on the basis of the information provided, it was not in a position to conclude that the Austrian authorities had infringed EU law. It decided not to open infringement proceedings. The Ombudsman considered that the Commission provided plausible reasons in support of its position that the Austrian authorities carried out the aforementioned

<sup>25</sup>. See, for instance, case **2591/2010/GG** concerning the Commission's failure properly to conduct infringement proceedings against Austria concerning Vienna airport, which is described in section 1.4 above.

<sup>26</sup>. The Ombudsman notes, in this regard, that the fact that there is an infringement of EU law does not automatically imply that the Commission should pursue infringement proceedings. The Commission must, however, justify how it exercises its wide margin of discretion.



individual assessment. However, it failed properly to address the complaint to the extent that it was directed at the decision by the Austrian authorities (i) not to allow Mr D. a period of time for leaving Austrian territory and (ii) not to grant suspensory effect to his appeal against the expulsion decision which EU law allows for in cases of urgency only. The Ombudsman asked the Commission to re-examine the infringement complaint in this regard. The Commission essentially maintained that the Austrian authorities had examined the urgency of the case and assumed such urgency to exist. The Ombudsman found the Commission's reply not to be convincing. Considering the isolated nature of the case, he closed it with a critical remark.

### Award of tenders and grants

The Ombudsman deals with complaints about the award, or non-award, of tenders and grants. However, he considers that the institutions and, in particular, the evaluation committees and the awarding authorities in tenders, have a broad discretion, and that his review of such cases should be limited to checking whether the rules governing the procedure are complied with, the facts are correct, and that there is no manifest error of assessment or misuse of power. Moreover, he examines whether the institutions have complied with their duty to state reasons and whether these are coherent and reasonable.

Among the issues that the Ombudsman examined in 2012 in the area of tenders and grants were alleged lack of equal

treatment amongst tenderers and lack of transparency. The first case described below gave the Ombudsman an opportunity to remind the Commission that principles of good administration may require the institutions to do more than what the law prescribes.

#### Lack of equal treatment

Case 642/2008/MMN concerned an alleged conflict of interest involving a technical advisor in a tender procedure. The complainant alleged that the Commission breached the principle of equal treatment because one of the advisors to the Evaluation Committee had been employed by the successful tenderer. The Ombudsman called on the Commission, inter alia, to reword the Declaration of Impartiality and Confidentiality to be signed by all members of the Evaluation Committee, and any observers, to ensure that it clearly covers all possible conflicts of interest, namely, "actual", "potential", and "apparent" conflicts of interest. In reply, the Commission argued that the relevant provision of the Financial Regulation solely covers "actual" and "potential" conflicts of interest and that "apparent" conflicts of interest are only relevant where, upon examination, it emerges that there is an "actual" or "potential" conflict of interest. The Ombudsman was not convinced. However, given that the Commission indicated that it would review the Declaration of Impartiality and Confidentiality, he concluded that no further inquiries were justified. At the same time, he said that he would request that the Commission report, within a reasonable time, on the outcome of the announced review.

Among the issues that the Ombudsman examined in 2012 in the area of tenders and grants were alleged lack of equal treatment amongst tenderers and lack of transparency.



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In case **3000/2009/JF**, the Ombudsman found that the Commission failed to ensure equal treatment of tenderers and that this undermined the complainant's chances of succeeding in the tender process. He proposed a friendly solution to the effect that the Commission compensate the complainant for the expenses it incurred in order to participate in the process. As a result, the Commission paid out over EUR 10 000.

In case **105/2011/TN**, the complainant's bid was rejected when it emerged that its proposed team leader had committed himself to working full-time on another EU-funded project taking place at the same time. The Ombudsman found that the Commission committed an instance of maladministration by recommending to the contracting authority that it exclude the company's offer before it had been established that the proposed team leader would be unavailable for the project. However, the eventual decision to exclude the offer was appropriate. The Ombudsman made a further remark aimed at reducing the risk of similar problems arising in the future.

### **Lack of transparency**

In case **1683/2011/TN**, which concerned a tender procedure for a supply contract, the Commission acknowledged that the procedure was not totally transparent. It indicated that, at the time of drafting its opinion on this case, it was negotiating with the complainant with a view to resolving the issue amicably. The Ombudsman appreciated the fact that the Commission had taken responsibility for the mistake and that it was negotiating a solution with the complainant.

### **Execution of contracts**

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

However, the scope of the review that the Ombudsman can carry out in such cases is necessarily limited. The Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. Only a court of competent jurisdiction can effectively deal with this question.

In cases concerning contractual disputes, the Ombudsman therefore considers it justified to limit his inquiry to examining whether the Union institution has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

The year 2012 allowed the Ombudsman to look at a number of fundamental rights issues in the area of contracts, notably, the right to be heard. He also dealt frequently with allegations of unfairness, notably, in disputes relating to eligible costs and audit actions. Finally, the Ombudsman also looked into the extent of the Commission's responsibilities vis-à-vis subcontractors.



The year 2012 allowed the Ombudsman to look at a number of fundamental rights issues in the area of contracts, notably, the right to be heard. He also dealt frequently with allegations of unfairness, notably, in disputes relating to eligible costs and audit actions.

### **Failure to respect fundamental rights**

Case **2635/2010/TN** concerned the Commission's alleged failure to notify the complainant of its finding that he had breached the Code of Conduct of the EU Election Observation Missions. As the Ombudsman was not fully convinced that the complainant's rights as guaranteed by the Charter, as well as the European Code of Good Administrative Behaviour, had been respected, he suggested measures that the Commission could take to put things right. The Commission provided assurances that the complainant remains a fully eligible candidate for future Observation Missions. It further stated, concerning its general procedures for finding a breach of the Code of Conduct for EU Observers, that it was already implementing the Ombudsman's suggestion to carry out a review.

In case **1045/2011/RT**, the Commission decided, following an OLAF investigation, to recover the entire amount paid for two projects. The complainant argued that the Commission failed to hear it in relation to the allegations brought against it. The Ombudsman considered that the complainant had, de facto, the possibility of being heard because it could submit its comments before and during the recovery process, and thus change the outcome in its favour. However, the pre-information letter indicating the reasons for recovery did not contain an explicit invitation to submit comments on the intended recovery and a clear indication of the deadline for doing so. The Ombudsman made a further remark in this respect.

Case **2386/2010/MHZ** concerned the dismissal of a Polish expert from his position as team leader in an EU-funded project in Bosnia and Herzegovina (BiH). The complainant argued, inter alia, that his right to be heard and to be informed of the reasons for the Commission's request were not respected. The Ombudsman considered the Commission's failure to ensure the complainant's right of defence before it made a request to his employer for his dismissal to constitute an instance of maladministration. He also criticised the Commission for failing to provide convincing explanations as to why it did not inform the BiH authorities about its request for the complainant's dismissal.

### **Alleged unfairness**

Many cases in this area concern disputes over eligible costs, which often arise in light of audit findings. In some of the cases, the institution's position is reasonable, although that was not the case as regards complaint **3373/2008/JF** which arose after an audit report identified certain costs as ineligible in an EU-sponsored project. The Ombudsman urged the Commission to waive its claim for reimbursement on the grounds that it was disproportionate and unfair. The Commission refused. The Ombudsman then emphasised that, when faced with silence from EU project officers concerning their actions in projects they execute, organisations such as the complainant's may reasonably be led to believe that they are acting in accordance with the applicable rules. When this is not the case, and once project officers are

## Complaints and inquiries

made aware of such actions, they should take preventive action. When they fail to do so, it should be possible to subject them to disciplinary measures. Since the foregoing raised an important issue of principle, the Ombudsman considered that a special report to the European Parliament could be justified. However, he decided not to submit such a report before he conducts an own-initiative inquiry into certain aspects of the Commission's behaviour when dealing with projects it finances.

On the other hand, in case **351/2011/OV** concerning the rejection of staff costs of a project partner, the Ombudsman concluded that the grant agreement did give the Commission the legal right to reject the staff costs declared by the complainant. The Ombudsman also found that the Commission had exercised its discretionary power to the complainant's greatest possible advantage, since it had allowed some of the staff costs to be transferred to the category of "subcontracting costs". The Commission's refusal to consider eligible the remaining part of the ineligible subcontracting costs was, therefore, not unfair, he said.

Case **901/2011/OV** also concerned the recovery of ineligible costs in the framework of a project following an audit. The complainant turned to the Ombudsman alleging that the Commission's position was unjustified and unfair. It argued that it had acted in

Commission's representative and that the Commission was not bound by any statement made by the coordinator, which did not result from express instructions from the Commission. No such express instructions had been given, he concluded. He therefore found no maladministration.

### The Commission's responsibilities vis-à-vis subcontractors

The complainant in case **535/2010/RT** worked as an expert on a project financed by the Commission. He was only partially paid for his work and requested that the Commission intervene in order to ensure that he receive the payment due to him. The Commission failed to do so. After the Ombudsman intervened, the Commission asked the lead contractor to make the outstanding payment. The Ombudsman closed the case, adding that he trusted that, despite the negative replies it had received thus far, the Commission would continue to urge its lead contractor to make the outstanding payment, by using all means at its disposal to convince the lead contractor to change its uncooperative position.

### Administration and Staff Regulations

Every year, the Ombudsman receives a number of complaints concerning staff issues in the institutions, notably, the EU administration's application of the Staff

| At times in staff cases, fundamental rights are at stake, thereby providing the Ombudsman with an opportunity to promote correct application of the Charter.

good faith and on the basis of information received from the project coordinator. The Ombudsman found that the Commission's conclusion that the relevant costs were ineligible was correct. He also pointed out that the coordinator was not the

Regulations, and other relevant texts. At times in staff cases, fundamental rights are at stake, thereby providing the Ombudsman with an opportunity to promote correct application of the Charter. In other cases, the manner in which the



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

#### **Duty of care**

Case **10/2012/AN** raised an issue pertaining to the Charter. It specifically concerned the absence of provisions enabling teachers seconded to the European Schools (ES) to enjoy parental leave. The inquiry was addressed to the Commission in its capacity as a member of the ES' Governing Board and as a contributor to their funding. The Ombudsman considered that the impossibility to benefit from parental leave was not in line with the Charter and with other provisions of EU law. In the course of the inquiry, the ES Staff Regulations were amended so as to provide for the possibility to request parental leave. The complainant's request to take parental leave was therefore granted.

Case **1810/2011/BEH** concerned the handling of the complainant's requests for internal mobility and assistance at Frontex, the European Agency for the Management of Operational Cooperation at the EU's External Borders. The Ombudsman considered that Frontex failed to reply in a timely manner to the complainant's request for internal mobility. As regards the request for assistance, he found that Frontex had carried out a proper inquiry into the facts set out. For instance, Frontex appointed an internal investigator who offered sufficient guarantees of independence and professional expertise and prepared a comprehensive report based on statements and testimonies collected. As regards the timeliness of its actions, the Ombudsman noted that Frontex had continuously and

steadily moved forward the complainant's case and regularly informed him of the state of affairs concerning it. The Ombudsman concluded that Frontex's position that it was appropriate not to take emergency measures was reasonable.

#### **Unreasonableness**

In case **1752/2011/RT**, in which the Commission was refusing to reimburse the complainant for his children's travel expenses because he decided to leave Guinea before the Commission declared a crisis situation in that country, the Ombudsman drew attention to the age of the children and invited the Commission to consider whether it could find a solution by offering to pay the travel costs on an *ex gratia* basis. The Commission agreed.

Case **141/2011/RT** concerned the determination of the complainant's place of origin. In its opinion, the Commission acknowledged that the European Food Safety Authority (EFSA) had made a mistake when it determined the place of origin to be Brussels instead of Marseille. However, as the complainant did not contest the above decision within the deadline provided for by the Staff Regulations, the Commission was bound by EFSA's decision. The Ombudsman found that it was not consistent for the Commission to acknowledge that EFSA's decision was wrong and, at the same time, base itself on it. In response, the Commission agreed to determine the complainant's place of origin anew.

#### **Problems relating to promotions**

In case **2744/2009/(MF)JF**, the complainant alleged that a staff member at the European Economic and Social Committee (EESC), had been promoted as a result of political pressure. The Ombudsman's inquiry revealed that the EESC indeed promoted the official in question in breach

## Complaints and inquiries

of its own internal rules. In addition, he found evidence of undue interference in the promotion exercise. The EESC acknowledged that it acted wrongly and reversed the irregular decision. It also took appropriate measures to prevent similar situations from occurring in the future. However, the Ombudsman criticised the fact that the EESC failed to respond to his draft recommendation correctly when it produced statements which clearly contradicted the facts as documented in its file. In light of the particularly serious irregularities uncovered, and considering that such behaviour jeopardises transparency and the public image of EU institutions, the Ombudsman forwarded his decision to the President of the European Parliament who could consider assigning it to the relevant committee of Parliament dealing with the EESC.

Case **683/2010/OV** also concerned a dispute about a promotion, this time that of the complainant, who was 'seconded' from the Council to the Commission in 2004. Due to an IT error, the Commission treated him as if he were a 'transferred official'. The Commission promoted the complainant in 2008, but when it realised that the promotion was based on promotion points accumulated as a 'seconded' and not as a 'transferred' official, the promotion was cancelled. Following the Ombudsman's intervention, the Commission agreed that the IT mistake constituted the basis of the complaint and that it could have handled the request for a transfer more swiftly. It proposed to promote the complainant.

The complainant in case **475/2012/KM** turned to the Ombudsman alleging that the Commission had failed to pay her the arrears due as a result of her promotion with retroactive effect. She asked the Commission to consider settling the matter as fairness seemed to require that she be paid. Barely a month after the inquiry was opened, the complainant informed the Ombudsman that the Commission had granted her claim by promoting her as of 1 January 2010 and paying the resulting arrears.

### **Mishandling of a complaint**

The complainant in case **862/2011/AN** unsuccessfully took part in a certification procedure. He submitted a complaint, pursuant to Article 90(2) of the Staff Regulations. The Commission forwarded the complaint to the European Personnel Selection Office (EPSO), as the competent body in this instance, but EPSO only became aware of it five months later, when it considered that, due to the expiration of the statutory time limits, it had been tacitly rejected. The Ombudsman took the view that the spirit of Article 90(2) impeded EPSO from taking this position. He made a draft recommendation to the effect that EPSO should consider that the complaint was lodged on the date when it actually received it. He further asked EPSO to assess the complaint's admissibility in terms of the observance of time limits on the basis of the date of submission to the non-competent body. EPSO accepted the Ombudsman's second draft recommendation, but not the first. It considered that the case-law of the Court of Justice supported its position. Unconvinced by EPSO's arguments, the Ombudsman closed the case with critical remarks.





## Competitions and selection procedures

### EPSO

The European Personnel Selection Office (EPSO) is the subject of most of the Ombudsman's inquiries concerning open competitions and other selection procedures. Over the years, EPSO has engaged constructively with the Ombudsman to resolve complaints in a swift and helpful manner. For some of the cases, this trend also continued in 2012, as the examples below illustrate. In some cases, however, its response to some of the issues raised during the year gave cause for concern.

#### Organisational issues

Case **989/2011/ER** concerned EPSO's policy regarding the booking of computer-based admission tests (CBT) in open competitions. In his decision, the Ombudsman recalled the findings in his own-initiative inquiry **OI/9/2010/RT**, according to which the new CBT booking procedure is a proportionate and necessary measure designed to reduce the duration of the whole selection procedure. He considered that EPSO had properly informed the complainant of the consequences of missing the deadline to book her CBT. Moreover, the complainant did not provide any specific reason as to why she was not able to access the Internet during the booking period. EPSO had, furthermore, promptly replied to her requests. The Ombudsman suggested, however, that EPSO could, in the future, proactively consider the specific situation of candidates who state that they have been unable to book their CBTs. EPSO could also consider specifying in the Guide to open competitions the consequences of missing the deadline for booking CBTs.

In case **521/2012/EIS** which was solved in less than 30 days through a simplified procedure, EPSO (i) gave the complainant another chance to sit the relevant tests in her country of residence, and (ii) reimbursed her additional travel expenses. The complainant had finished the first part of her admission test and started to work on the second part when the computer system failed with the result that she could not complete her tests on the spot.

#### Unclear information

Case **1370/2010/BEH** concerned alleged maladministration in the organisation of an open competition aimed at drawing up reserve lists for assistants in the buildings sector. Since he considered that the written test he had sat did not comply with the Notice of Competition, the complainant turned to EPSO which insisted that the tests did comply with the Notice. Having analysed its wording, the Ombudsman considered that the Notice of Competition was not sufficiently clear. He therefore issued a critical remark.

#### Other institutions, bodies, offices, and agencies

Even if the majority of complaints concerning recruitment are directed against EPSO, the Ombudsman occasionally receives complaints against other institutions, very often offices or agencies that have been established relatively recently.

In response to own-initiative inquiry **OI/3/2012/CK**, the European Network and Information Security Agency (ENISA) announced its new policy regarding selection procedures and provided a copy of its revised recruitment guidelines. According to ENISA's revised policy,

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candidates are now informed of each step of the procedure by e-mail. The inquiry was opened into ENISA's policy of not replying to candidates' requests for information concerning the outcome of selection procedures.

Case **1513/2010/VIK** concerned the eligibility of laureates of the CAST RELEX 2008 selection procedure for contract agents to apply for vacant posts in EU institutions and agencies. The complainant in this case responded to a call for expressions of interest issued by the European Research Council Executive Agency (ERCEA). ERCEA rejected her application, since it considered that only candidates from "the normal CAST database" were eligible to participate. The Ombudsman noted that nothing in the call suggested that candidates who had been included in the CAST RELEX database would not be eligible. The Commission replied that, in early 2012, it decided to allow other EU institutions and agencies to have access to the CAST RELEX 2008 database. Moreover, the validity of the relevant reserve list was extended to 31 December 2012.

Case **1017/2010/MMN** concerned the recruitment procedure for the House of European History. In response to the complainant's allegations, the Ombudsman agreed that Parliament had committed itself to publish details of selection procedures for temporary and/or contract agents on EPSO's website, or at least had given that impression. Its failure to comply with that (actual or apparent) commitment in the present case constituted an instance of maladministration. The Ombudsman also identified aspects of Parliament's procedures that could be improved and made three further remarks.

The complainant in case **328/2011/TN** alleged that the European Centre for Disease Prevention and Control (ECDC) failed to carry out the relevant selection procedure in a fair and proper manner. The Ombudsman identified a number of flaws in the procedure. First, the Selection Committee wrongly decided to take no account of the written test. Second, the condition that candidates had to obtain a minimum score of 70% was never communicated to candidates. The ECDC also failed properly to inform candidates of the recruitment procedure's outcome. The Ombudsman applauded the ECDC's positive response to his friendly solution proposal.

Case **1167/2011/MMN** against the European Securities and Markets Authority (ESMA) concerned ESMA's rejection of an application for a position. In its reply to the Ombudsman's finding of maladministration, ESMA offered to publish a new vacancy notice which was substantively identical to the one which led to the complaint. The complainant indicated that he was interested in receiving compensation. He also considered that the publication of a new vacancy would not be an adequate remedy because of the differences between the new draft vacancy notice and the original one. In view of this, ESMA submitted an amended draft vacancy notice, which the complainant still rejected. The Ombudsman closed the case noting that (i) the complainant made it clear that he would only accept financial compensation; (ii) ESMA offered to take adequate measures to eliminate the instance of maladministration; and (iii) the complainant did not put forward convincing reasons to demonstrate why financial compensation should be preferred.



Case **2017/2011/RT** concerned the Commission's failure to provide an adequate explanation for delaying the publication of the results of a competition. The Ombudsman considered that the time it took the Commission to publish the results of the admission tests was excessive. Moreover, the Commission did not give sufficient reasons for delaying the publication of the results by ten months. Finally, at no time during this ten month period did the Commission consider it appropriate to provide candidates with any information concerning the date on which it expected to publish the results and the reasons for the delay.

Case **1264/2012/VL** concerning the Commission's Institute for Prospective Technological Studies (IPTS) involved alleged discrimination against a job applicant who chose not to travel by air and who, consequently, saw his job interview cancelled and his request for reimbursement of his train ticket denied. Shortly after the Ombudsman asked the Commission for an opinion, the complainant informed him that the Commission had decided to reimburse the non-refunded amount of the train ticket he had purchased.

The Ombudsman found, in case **278/2011/RT**, that the Trans-European Transport Network Executive Agency (TEN-T EA) failed to explain exactly why the complainant's motivation letter disqualified her from being placed on the shortlist. He suggested that the TEN-T EA explain in detail why the complainant's letter was less convincing than the letters submitted by successful candidates. The TEN-T EA provided a detailed statement of reasons in reply.

The complainant in case **1425/2012/VIK** took part in a selection procedure organised by the European Foundation for the Improvement of Living and Working Conditions (Eurofound). In order to apply, he had to fill in an application form and upload it to the system. He argued that he was unable to submit his application in the form required by Eurofound. Eurofound did not detect any software incompatibility, as suggested by the complainant, but decided exceptionally to accept the complainant's application after the deadline. Eurofound further suggested that the complainant contact a member of its IT staff if he continued to experience difficulties with the submission of the relevant form.

### Institutional matters, policy matters, and other activities

This residual heading covers a range of complaints made against the institutions regarding their policy-making activities or their general operation.

#### On-the-spot check<sup>27</sup>

Case **2676/2009/ANA** concerned OLAF's conduct during an on-the-spot check. According to the complainant, OLAF failed to abide by the applicable rules and the principles of good administration and, consequently, infringed the complainant's rights. Following his inquiry, which included requesting information from the Greek authorities present at the on-the-spot check, the Ombudsman found that, within the framework of an on-the-spot check, OLAF must ensure that it sufficiently clarifies the applicable rights and procedural guarantees of those involved and that, in the present case,

<sup>27</sup> See also case **512/2012/BEH** concerning the Commission's alleged failure to take appropriate action to address increased bee mortality. This case is described in section 1.4 above.



## Complaints and inquiries

OLAF had failed to do so. Moreover, the behaviour of agents of the EU institutions should meet the highest standards. Where a citizen alleges that the behaviour of such an agent failed to meet these standards, the institution concerned should be able to provide a satisfactory explanation disproving such allegations.

Case **2450/2008/BEH** concerned the Commission's supervisory role in a building project in Tirana. Specifically, the complainant alleged that the Commission's Delegation to Albania failed properly to support him (i) in his efforts to ensure that the project works were carried out in accordance with the contract and (ii) in his related conflicts with other parties involved in the project. Following an inspection of the file, the Ombudsman noted that the complainant, who held key responsibility in the project, reported to the Commission instances of threats and intimidation against him. The Commission recognised the seriousness of these occurrences which were raised in two meetings. However, doing so was not commensurate to the acknowledged seriousness of the situation, in the face of which one would have clearly expected decisive action by the Commission. The Ombudsman also found that the Commission did not use the powers at its disposal to call for an investigation seeking reliably to establish the facts of a fatal accident in which one worker lost his life. As regards the complainant's allegation that the Commission failed to support him in his efforts to ensure compliance with the works contract, the Ombudsman's investigation revealed no maladministration. However, in view of its special expertise and responsibility in

auditing the spending of EU funds, the Ombudsman invited the European Court of Auditors to consider certain aspects of the case that his inquiry had not covered.

Case **814/2010/JF** concerned the Commission's failure to respond to requests for an independent external audit of the European Schools (ES), in particular on issues relating to school failure and governance. The Ombudsman found that the Commission's proposed response appeared to follow a suggestion made by Parliament that the ES seek inspiration from the best education systems in the world, as identified in a study by the Organisation for Economic Cooperation and Development (OECD). In his view, participating in that study would not adequately satisfy the complainant's claim for an external independent audit.

The Ombudsman opened own-initiative inquiry **OI/14/2011/BEH** in order to promote best practice as regards how the canteens made available by EU institutions and bodies deal with unconsumed food. In light of his inquiry, he concluded that the exploration of possible ways to deal with unconsumed food in a way that is both economical and guided by ethical considerations would be a concrete sign of the Union's care for needy people. He welcomed the initiatives already put into practice by the institutions in order to prevent food waste. Preference should, he said, be given, to the greatest extent possible, to resource-efficient uses and, in particular, to using unconsumed food for human consumption. The Ombudsman noted that Parliament had, in the meantime, taken up the matter and issued a relevant recommendation.



### **Alleged discrimination**

Case **2650/2008/MMN** concerned an alleged refusal by the European Medicines Agency (EMA) to allow a variation to a centralised marketing authorisation held by a pharmaceutical company. The Ombudsman found that it can be inferred from the applicable legislation that it is incumbent upon the marketing authorisation holder to ensure that its products are adequately labelled when it places them on the market. The EMA's view that the labelling method proposed by the complainant was not in compliance with the applicable legislation appeared to be correct. As regards the issue of discrimination, also raised by the complainant, the Ombudsman considered that a marketing authorisation holder and a parallel importer are not necessarily in the same situation. Besides, even if one were to assume that they were in a comparable position, the fact that the EMA may have wrongly authorised parallel distributors to engage in unlawful labelling practices would not entitle the complainant to obtain the EMA's approval for the same practices.

In case **3419/2008/KM<sup>28</sup>**, which concerned failure by the European Aviation Safety Agency (EASA) to translate consultation documents (so-called 'Notices of Proposed Amendment' or 'NPAs'), the Ombudsman noted that EASA was taking useful steps in the right direction. Specifically, it promised to make it clear on its website that translations of summaries of NPAs could be requested and to publish any translations already made, as well as to extend the time limit for consultations where necessary. The Ombudsman, however, maintained that it was of fundamental importance that consultation documents be available in all official languages, and that the recommendation he had made in this case had taken due account of the need to spend public funds carefully. He criticised EASA's refusal to translate the NPAs, or at least summaries of them.

<sup>28</sup>. See also case **640/2011/AN** concerning the Commission's linguistic policy for public consultations, which is described in section 1.4 above.

## Complaints and inquiries

### 1.7 Transfers and advice

In over 75% of all cases that the European Ombudsman processed in 2012 (1 854), he was able to help the complainant by opening an inquiry into the case, by transferring it to a competent body, or by advising the complainant on where to turn. Complaints which fall outside the Ombudsman's mandate often concern alleged infringements of EU law by Member States. National or regional ombudsmen within the European Network of Ombudsmen are best placed to handle many such cases. The European Parliament's Committee on Petitions is also a full member of the Network. One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent member of the Network, be it a national or regional ombudsman, a similar body, or the European Parliament's Committee on Petitions.

#### Complaint transferred to a regional ombudsman

A person with disability living in Italy asked the public authorities for financial help so that she could have permanent assistance, which would enable her to live on her own in her house, as provided for by Italian law. The relevant local authorities replied that they could only give her a small amount of money. Not satisfied with this response, the complainant turned to the Ombudsman who in turn transferred the case (case **255/2012/CMV**) to the Regional Ombudsman of Lombardy (Italy). The Regional Ombudsman later informed the Ombudsman that the relevant local authorities had decided to give the complainant the full amount of money she had requested.

#### Complaint transferred to a national ombudsman

A 12-year-old Romanian girl living in France reported that her father, a Romanian national, was imprisoned in Romania, while she lived in France with her mother and two younger sisters. Her mother was very ill. She asked the Ombudsman to assist her father in order to transfer his sentence to France, so he could be closer to his family, or 'reduce' it so that he could return home. The Ombudsman transferred the case (case **522/2012/AN**) to the Defender of Rights of France (Ombudsman), who assigned the case to the department in his office that deals with the rights of the child.

In some cases, the Ombudsman may consider it appropriate to transfer the complaint to the European Commission, to SOLVIT, or to Your Europe Advice. SOLVIT is a network that the Commission set up to help people who face obstacles when trying to exercise their rights in the Union's internal market. Your Europe Advice is another EU-wide network that

In total, 60% (1 467) of the complaints that the European Ombudsman processed in 2012 fell within the mandate of a member of the European Network of Ombudsmen.

In total, 60% (1 467) of the complaints that the European Ombudsman processed in 2012 fell within the mandate of a member of the European Network of Ombudsmen. Of these, 740 cases were within the mandate of the European Ombudsman. As Figure 1.12 shows, in 727 cases, the Ombudsman transferred the complaint<sup>29</sup> to a member of the Network or advised the complainant to contact a member of the Network. Accordingly, 664 complaints, including the two examples below, were transferred or referred to a national or regional ombudsman or similar body, while 63 were transferred or referred to the European Parliament's Committee on Petitions.

<sup>29</sup>. A complaint is transferred only with the prior consent of the complainant.



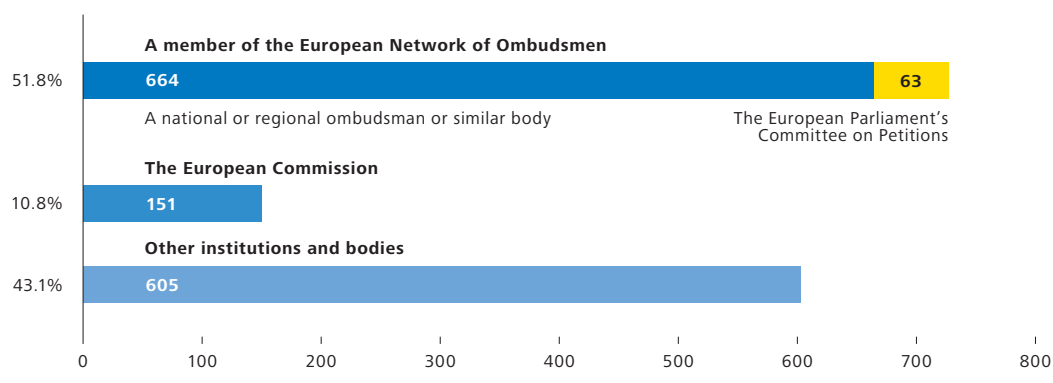
the Commission established to help and advise citizens on their life, work, and travel in the EU. Before transferring a complaint or advising the complainant, the Ombudsman's services make every effort to determine which other institution or body could best help him or her. In 2012, the Ombudsman referred 151 complainants to the Commission<sup>30</sup>, and 605 to other institutions and bodies, including SOLVIT and Your Europe Advice, as well as to specialised ombudsmen or complaint-handling bodies in the Member States.

In total, as the examples below show, in over 53% of all cases that the Ombudsman processed in 2012, he either advised the complainant or transferred the case.

#### Complainants advised to contact the European Commission

A Maltese national complained to the Malta Financial Services Authority (MFSA – the Maltese member of FIN-NET<sup>31</sup>) against a financial services company in Malta. Not satisfied with the MFSA's response, she turned to the Ombudsman, eventually asking him to transfer her complaint (case **1231/2012/CMV**) to the Commission. The Ombudsman transferred the complaint to the Commission's Directorate-General for the Internal Market and Services. In its reply to the complainant, the Commission explained that it was not competent to deal with the case, and invited the complainant to present it with any new information that might prove that the MFSA incorrectly applies EU rules.

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



Note i: The figures above include 95 complaints registered towards the end of 2011 that were processed in 2012. They do not include 18 complaints registered towards the end of 2012 that were still being processed at the end of the year, to determine what action to take.

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

<sup>30</sup>. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches to the institution had not been made before the complaint was lodged with the Ombudsman.

<sup>31</sup>. FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area (EU Member States plus Iceland, Liechtenstein, and Norway). FIN-NET members put consumers in cross-border disputes with financial services providers in touch with the relevant schemes and provide the necessary information about them. The Commission launched the network in 2001.

## Complaints and inquiries

When the Commission failed to reply to an Italian cigarette importer's infringement complaint for the second time, he turned to the Ombudsman. The latter contacted the Commission (case **1775/2012/ER**), which registered the complainant's infringement complaint, responded to his letters, and accepted his request to meet him. At the meeting and through subsequent exchanges, the cigarette importer supplied the Commission with additional information, arguments, and supporting documents. The Ombudsman later learned from the Commission and the complainant that the institution was actively dealing with the complainant's infringement complaint.

### **Complainants advised to contact SOLVIT**

In case **644/2012/MF**, a French national complained against the German public authorities about the level of her pension. She felt that the pension she received was not commensurate with the number of years she had worked, and that the German public authorities had failed properly to calculate the amount. The Ombudsman transferred the case to SOLVIT France, which later informed him of its intention to open an investigation and contact the relevant German authorities with a view to settling the matter.

In another case (case **1944/2012/HK**), a Spanish national complained against a decision of the Employment and Support Allowance office at the Department of Work and Pensions (DWP) in the United Kingdom. She had moved from Spain to the United Kingdom and worked part-time for two years before she was diagnosed with cancer and tuberculosis. The DWP decided that she was not considered to be habitually resident in the country and was thereby not entitled to employment and support allowance. The Ombudsman transferred the case to SOLVIT Spain.

In the era of the Lisbon Treaty, it is essential that the institutions develop and nurture a culture of service to citizens and of respect for their rights. The preceding thematic analysis seeks to capture the breadth and richness of the Ombudsman's inquiries during 2012. It also presents the various means through which the Ombudsman endeavours to promote the principles of a culture of service, and to help make the Charter of Fundamental Rights a living reality. Readers who wish to study the Ombudsman's inquiries in greater depth may visit the Ombudsman's website for more comprehensive summaries of his decisions, as well as for decisions, draft recommendations, and special reports.

## 2 Relations with institutions, ombudsmen, and other stakeholders

This Chapter gives an account of the European Ombudsman's relations with the EU institutions, his ombudsman colleagues, and other key stakeholders in 2012. It outlines the meetings and seminars in which the Ombudsman participated, and other activities that he undertook with a view to ensuring that complaints are dealt with effectively, best practice is shared as widely as possible, and that awareness of his role is raised among his various stakeholders.





## Relations with institutions, ombudsmen, and other stakeholders

### 2.1 Relations with EU institutions, bodies, offices, and agencies<sup>1</sup>

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

#### The European Commission

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

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

During the year, Mr Diamandouros met with Mr Maroš Šefčovič, Vice-President of the European Commission for Inter-Institutional Relations and Administration.

On 22 March, Mr Diamandouros exchanged views with the Directors-General of the European Commission.

The Ombudsman also met with Mr Rytis Martikonis, Deputy Director-General for Translation and with Mr Stephen Quest, Director of the European Commission's Office for the Administration and Payment of Individual Entitlements (PMO), and made a presentation to the PMO management team.

#### The European Parliament

The Ombudsman presented his *Annual Report 2011* to Mr Martin Schulz, MEP, President of the European Parliament, on 22 May and to the Parliament's Committee on Petitions on 19 June. Parliament debated the report in its plenary on 25 October. Ms Erminia Mazzoni, MEP, Chair of the Committee on Petitions, served as the Rapporteur.

In addition, Mr Diamandouros presented his special report (case 2591/2010/GG) to the Committee on Petitions on 19 June. During the year, Mr Diamandouros also met with the Director-General for Infrastructure and Logistics, Mr Constatin Stratigakis, and with Ms Maria Panagiotou, Co-President of the Assistants' Committee.



The European Ombudsman presented his *Annual Report 2011* to the President of the European Parliament, Mr Martin Schulz, MEP, on 22 May.

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



## Other institutions

During 2012, Mr Diamandouros met with Mr Mario Draghi, President of the European Central Bank (ECB), Mr Werner Hoyer, President of the European Investment Bank (EIB), Mr David Bearfield, Head of the European Personnel Selection Office (EPSO), and with Ms Lauriana Laudati, Data Protection Officer of the European Anti-Fraud Office (OLAF).

In addition, he made a presentation to participants in the Erasmus for Public Administration programme, which the European Administrative School organised.

## Agencies

Throughout 2012, Mr Diamandouros reached out to the various EU agencies in order to emphasise the importance of good administration, good complaint-handling, and a culture of service.

The Ombudsman visited or met with the directors and staff committees of the FRA, Cedefop, Eurofound, Europol, Eurojust, the ESRB, ENISA, Frontex, and ECHA.

For further information on the Ombudsman's programme of visits to the EU agencies during 2012, which aim to promote good administration and share best practices among the agencies, see the sub-section entitled "Complaints and own-initiate inquiries" in section 1.1 of this Report.

## 2.2 Relations with ombudsmen and similar bodies

Many complainants turn to the European Ombudsman when they have problems with a national, regional, or local administration. The European Ombudsman cooperates closely with his counterparts in the Member States to make sure that citizens' complaints about EU law are dealt with promptly and effectively. This cooperation takes place for the most part under the aegis of the European Network of Ombudsmen. The Network now comprises 99 offices in 35 European countries. It includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and other countries in the European Economic Area and/or the Schengen area, as well as the European Ombudsman and the European Parliament's Committee on Petitions.

One of the main purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. In 2012, in 727 cases, the European Ombudsman transferred the complaint to a member of the Network or advised the complainant to contact a member of the Network. Further details of this cooperation are provided in Chapter 1.

Also of direct relevance to complaint-handling is the special procedure, whereby national or regional ombudsmen may ask the European Ombudsman for written answers to queries about EU law and its interpretation, including queries that arise in their handling of specific

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



## Relations with institutions, ombudsmen, and other stakeholders

cases. During 2012, the Ombudsman received three such queries. The Ombudsman of Ireland submitted one of the queries, regarding rural development assistance, while the regional ombudsmen of Marches (Italy) and Veneto (Italy) submitted queries concerning, respectively, workers' freedom of movement and health insurance.

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

The Network serves as a useful mechanism for exchanging information on EU law and best practice through seminars, a biannual newsletter, and an electronic discussion and document-sharing Extranet.

Among the issues discussed through the Extranet in 2012 were the role of ombudsmen in protecting and promoting human and fundamental rights, the power of ombudsmen to initiate legal proceedings with respect to administrative acts, case management systems used by ombudsmen, the use of social media by ombudsmen for interacting with the public, detention of

persons under the influence of alcohol in a public place, security checks in airports, the rights of patients to access their medical files, and the demolition of buildings constructed without a building permit.

The Network holds seminars for national and regional ombudsmen in alternate years, which the European Ombudsman and a national or regional counterpart jointly organise.

The European Ombudsman and the three regional ombudsmen of Belgium jointly organised the Eighth Regional Seminar of the European Network of Ombudsmen. The Seminar took place in Brussels, from 14 to 16 October 2012. Ombudsmen and staff from ombudsman offices and similar bodies from the six EU countries where such regional institutions exist, as well as from Switzerland, attended the Seminar, as did representatives from the Committee on Petitions of the European Parliament.

The Seminar discussed a variety of topics, including: the implications for ombudsmen of the increase in internal dispute-resolution mechanisms; communicating with citizens; communicating with administrations; and how ombudsman offices can improve



The European Ombudsman and the three regional ombudsmen of Belgium jointly organised the Eighth Regional Seminar of the European Network of Ombudsmen in Brussels, from 14 to 16 October.



The Eighth Liaison Seminar of the European Network of Ombudsmen took place in Strasbourg, from 24 to 26 June.



the service that they provide to citizens. The Seminar participants were honoured by the presence of the following keynote speakers: Mr Rainer Wieland, Vice-President of the European Parliament, Mr Koen Lenaerts, Vice-President of the Court of Justice of the EU, and Mr Luc Van den Brande, former President of the EU's Committee of the Regions.

The Eighth Liaison Seminar of the European Network of Ombudsmen was held in Strasbourg, from 24 to 26 June 2012. In total, ombudsman offices from 26 countries were represented by members of their staff, as were the European Parliament, the European Commission, and the EU Agency for Fundamental Rights. The Seminar's six sessions discussed the European Citizens' Initiative (ECI) and the right to petition, the development of procedures for handling cases, the restructuring of ombudsman offices, increasing the visibility of the Network and its members, the role of ombudsmen in protecting fundamental rights, and the role of ombudsmen in protecting persons in detention.

## 2.3 Relations with other stakeholders

The European Ombudsman is committed to ensuring that any person or organisation that might have a problem with the EU institutions is aware of the right to complain to him about maladministration. He is also keen to raise awareness more generally about his efforts to promote transparency, accountability, and a culture of service in the EU administration.

Indeed, maintaining a dialogue with stakeholders is a key priority in the Ombudsman's strategy for the 2009-2014 mandate. On 24 April, the Ombudsman organised, in Brussels, an interactive seminar entitled "Europe in crisis: the challenge of winning citizens' trust". This annual spring event, which targets citizens, associations, NGOs, companies, civil society organisations, journalists, regional and national representations, representatives of other EU institutions, and other interested persons, attracted more than 300 participants. Discussions

## Relations with institutions, ombudsmen, and other stakeholders



The European Ombudsman's communication highlight of 2012 was a seminar entitled "Europe in crisis: the challenge of winning citizens' trust". Mr Martin Schulz, President of the European Parliament, and Ms Helle Thorning-Schmidt, Prime Minister of Denmark and then President of the Council of the EU, were two of the main speakers at the seminar.

at the event focused on concrete measures that European and national institutions can take to gain citizens' trust. The main speakers were: Mr Martin Schulz, President of the European Parliament, Ms Helle Thorning-Schmidt, Prime Minister of Denmark and then President of the Council of the EU, and Mr José Manuel Barroso, President of the European Commission. The BBC's EU correspondent, Ms Shirin Wheeler, chaired the event.

Another yearly highlight on the Ombudsman's calendar of thematic events is the International Right to Know Day, which is held on 28 September. In 2012, and in cooperation with the EIB's Complaints Mechanism, the Ombudsman hosted, once again in Brussels, a seminar entitled "International Right to Know Day – Transparency and accountability in international development banks". Over 100 representatives of associations, NGOs, companies, civil society organisations, journalists, regional and national representations, and other EU institutions attended the event.

As well as meeting with President Demetris Christofias, while in Cyprus from 17 to 19 September, the Ombudsman also met with representatives of civil society organisations. They discussed the implementation of EU legislation and EU-funded programmes, as well as the problems they face when dealing with the EU institutions. In a round table with journalists, Mr Diamandouros, together with the Cypriot Ombudsman, Ms Eliza Savvidou, discussed good governance, rule of law, transparency, and democracy. Mr Diamandouros elaborated on the European Ombudsman's relations with national ombudsmen. The Office of the European Parliament in Cyprus hosted these meetings. The Ombudsman also gave a talk at the University of Cyprus entitled "Good administration, accountability and the rule of law: the role of the ombudsman".



During his visit to Cyprus in September, the European Ombudsman met with the President of the Republic, Mr Demetris Christofias.



In the context of the process leading to the establishment of an independent parliamentary ombudsman institution in Turkey, the European Ombudsman participated in a workshop organised by the Turkish Ministry of Justice, in Istanbul, on 26-27 January. He also met with Mr Volkan Vural, a former Ambassador of Turkey and currently Member of the Board of the Turkish Industrialists and Businessmen's Federation, TÜSİAD, responsible for Foreign Affairs and EU compliance, and with Professor Dr Hasan Yaşar, Deputy Minister for EU Affairs. Both meetings, at which Mr Diamandouros presented the role of the European Ombudsman, discussed the draft law establishing an ombudsman institution in Turkey. The Ombudsman was among the speakers at the workshop.

The Ombudsman, together with the Steering Committee of ReNEUAL<sup>2</sup>, organised in March a conference in Brussels entitled "Towards an EU administrative procedure law?" to discuss the arguments for and against an EU administrative procedure law.

The conference attracted over 100 participants. Speakers included the Ombudsman, several professors from ReNEUAL's Steering Committee, and representatives of EU institutions.

To further foster synergies with human rights bodies, the European Ombudsman's Secretary-General, Mr Ian Harden, represented the office at a meeting which the FRA organised in October, in Vienna. Participants discussed ways to "bring the EU Charter of Fundamental Rights to life". The designation of 2013 as the European Year of Citizens and the launch of the first European Citizens' Initiative (ECI) in May provided an appropriate setting for actions designed to enhance the nature and content of European citizenship. In this context, the European Citizen Action Service (ECAS), an NGO, organised, in November, a conference, in Brussels, entitled "Building the EU citizen pillar". Mr João Sant'Anna, Director, represented the European Ombudsman's office. In the same month, Mr Gerhard Grill, Director, represented the Ombudsman's office at a workshop on access to clinical trial data and transparency, which the EMA organised in London.

2. Research Network on EU Administrative Law. The Network addresses the potential and substantial need for simplified EU administrative law.



## Relations with institutions, ombudsmen, and other stakeholders



On 28 September 2012, the Ombudsman, in cooperation with the EIB's Complaints Mechanism, hosted a seminar in Brussels entitled "International Right to Know Day – Transparency and accountability in international development banks".

All in all, during 2012, the Ombudsman and senior members of his staff presented his office's work at more than 50 events and bilateral meetings with major stakeholders, such as members of the legal community, business associations, think-tanks, NGOs, representatives of regional and local administrations, lobbyists and interest groups, academics, high-level political representatives, and civil servants. These conferences, seminars, and meetings took place in Brussels and in the Member States.

In the course of 2012, members of the European Ombudsman's staff made 94 presentations to 2 408 citizens from across the EU and beyond. Germany alone supplied around 55% of the visitors, followed by France, Belgium, and Denmark. Nearly 20% of the visitors came from EU institutions, while others came from as far afield as Canada, China, and Ethiopia. While resource constraints limit the number of presentations that the Ombudsman's office can make each year, he tries, as far as possible, to accept invitations and requests from interested parties.

The Ombudsman's main media activities in 2012 included the press conference on his *Annual Report 2011*, which took place in Brussels, in May. Mr Diamandouros and senior members of his staff also gave more than 30 interviews to journalists from the print, broadcast, and electronic media. The Ombudsman's office issued 18 press releases during the year, covering, inter alia, important transparency cases involving the EMA; the Commission's restrictive language policy in public consultations; its Early Warning System; and its actions to combat increased bee mortality. In addition, 1 700 articles covering the work of the European Ombudsman appeared in print and online media.

The Ombudsman's website was regularly updated throughout the year with decisions, case summaries, press releases, details of upcoming events, audiovisual content, publications, and other documents. A 'Strategy' section was added to the 'Resources' part of the website. It features, among others, the Ombudsman's strategy for the mandate, annual management plans, and annual



Mr Diamandourous and senior members of his staff gave over 30 interviews to journalists throughout 2012.



activity reports. A section was also created for a new publication entitled *The European Ombudsman's guide to complaints – A publication for staff of the EU institutions, bodies, offices, and agencies*.

In the autumn of 2012, the Ombudsman launched an anonymous feedback mechanism, which invites all complainants who submit their complaints through the website to reply to a number of questions after their case has been closed. The results of the survey will enable the Ombudsman continuously to improve the service that he provides to complainants.

**From 1 January to 31 December 2012, the Ombudsman's website received over 310 000 unique visitors, who, altogether, viewed over 6.2 million pages.**

From 1 January to 31 December 2012, the Ombudsman's website received over 310 000 unique visitors, who, altogether, viewed over 6.2 million pages. The greatest number of visitors came from Luxembourg, followed by Spain, Belgium, Poland, the Netherlands, and France. The most popular feature of the Ombudsman's website was again the interactive guide.

This important tool aims to help individuals identify the most appropriate body to turn to with their complaint. In 2012, more than 19 000 people sought and received advice from the Ombudsman through the interactive guide.

In 2012, the Ombudsman decided to widen the scope and reach of his communication activities by developing his use of social media. At the Ombudsman's spring event, on 24 April, social media was, for the first time, an integral part of an Ombudsman activity: the discussions were webstreamed live in three languages and a Twitter feed with comments from

the audience was projected live inside the room. WiFi was made available to all participants so as to facilitate interaction between participants inside and outside the room. Questions and comments from the online audience were actively fed into the discussion in the room, with all speakers replying to questions and comments received via Twitter.

## Relations with institutions, ombudsmen, and other stakeholders

A Social Media Officer joined the staff in July and during the summer, the Ombudsman claimed his LinkedIn company page. On 10 September, the Ombudsman's YouTube channel was opened and the clip entitled "Tangled up in EU administration?" was published in 23 languages. Furthermore, work began to ensure the widest possible distribution of the clip via various online communication channels. By the end of 2012, the clip had been viewed over 19 900 times on the European Commission's audiovisual portal and on the Ombudsman's YouTube channel. On 11 October, the Ombudsman institution opened its official Twitter account.

## 2.4 The rights of persons with disabilities<sup>3</sup>

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) entered into force for the EU on 22 January 2011. The CRPD gives rise to two main areas for action by the Ombudsman, as follows:

### Implement the CRPD internally

Every EU institution, body, office, and agency, including the Ombudsman, must give effect to the CRPD in carrying out its functions. For this purpose, the Ombudsman is:

- improving the accessibility of his website and publications, as well as of his new office space in Brussels;
- raising awareness among his staff, for example, through articles in the internal newsletter; and
- participating in the relevant EU interinstitutional committee (*Comité de préparation pour les affaires sociales*), which is charged with examining the possibility of harmonising the implementation of the CRPD within the EU administration.

### Participate in the Article 33(2) Framework of the CRPD

Article 33(2) of the CRPD foresees the establishment of a framework, made up of one or more independent mechanisms and charged with promoting, protecting, and monitoring the implementation of the CRPD. On 29 October 2012, the Council

<sup>3</sup>. The Ombudsman will henceforth use this Report to inform citizens, on an annual basis, of his activities in the area of the rights of persons with disabilities.



of the EU endorsed the Commission's proposal for an EU Framework, which includes the Ombudsman, alongside Parliament's Committee on Petitions, the Fundamental Rights Agency, the Commission, and the European Disability Forum. A constituent meeting of the Framework took place on 23 January 2013, in Brussels.

There are three distinct dimensions to the tasks to be carried out through the Framework, as follows:

#### **Protect**

The European Ombudsman holds the EU institutions to account, through the investigation of complaints and by carrying out own-initiative inquiries. The Ombudsman's duty to investigate and report on complaints will be central to the EU's efforts to protect rights under the CRPD, by ensuring that the institutions themselves comply with their obligation to respect such rights. Individuals who believe that an EU institution is not acting in accordance with the CRPD have the right to turn to the Ombudsman to seek redress.

By way of example, in February 2012, the Ombudsman opened an inquiry (2455/2011/JF) into a complaint alleging that: (i) EPSO's website is not user-friendly for the visually impaired and that: (ii) EPSO lacks a clear and consistent policy towards candidates who are visually impaired. In his letter to EPSO opening the inquiry, the Ombudsman highlighted the CRPD and asked EPSO to take it into account in providing its response. The Ombudsman's inquiry is ongoing.

Complaints may be made to the Ombudsman not only about the implementation of the Convention at the level of the EU institutions, but also concerning the way the Commission carries out its role in enforcing relevant EU law vis-à-vis the Member States.

#### **Promote**

In order to promote the implementation of the CRPD, the Ombudsman will continue to work proactively, with an eye to informing citizens and EU officials about their respective rights and obligations, and to identifying and highlighting good administrative practices. In 2012, the Ombudsman and his staff participated in a range of meetings focusing on the rights of persons with disabilities. Moreover, this dedicated disabilities section has been added to the *Annual Report 2012*.

#### **Monitor**

The Ombudsman can, through own-initiative inquiries, engage in proactive monitoring of the activities of the EU administration. While it is not part of the Ombudsman's function systematically to monitor legislative activity, the Ombudsman wrote to the President of Parliament in February 2012, with regard to the ongoing revision of the EU's Staff Regulations. The Ombudsman's view was that the legislative procedure for revising the Staff Regulations provides a valuable opportunity to ensure that the EU administration is aware of its responsibilities with respect to the rights of persons with disabilities.



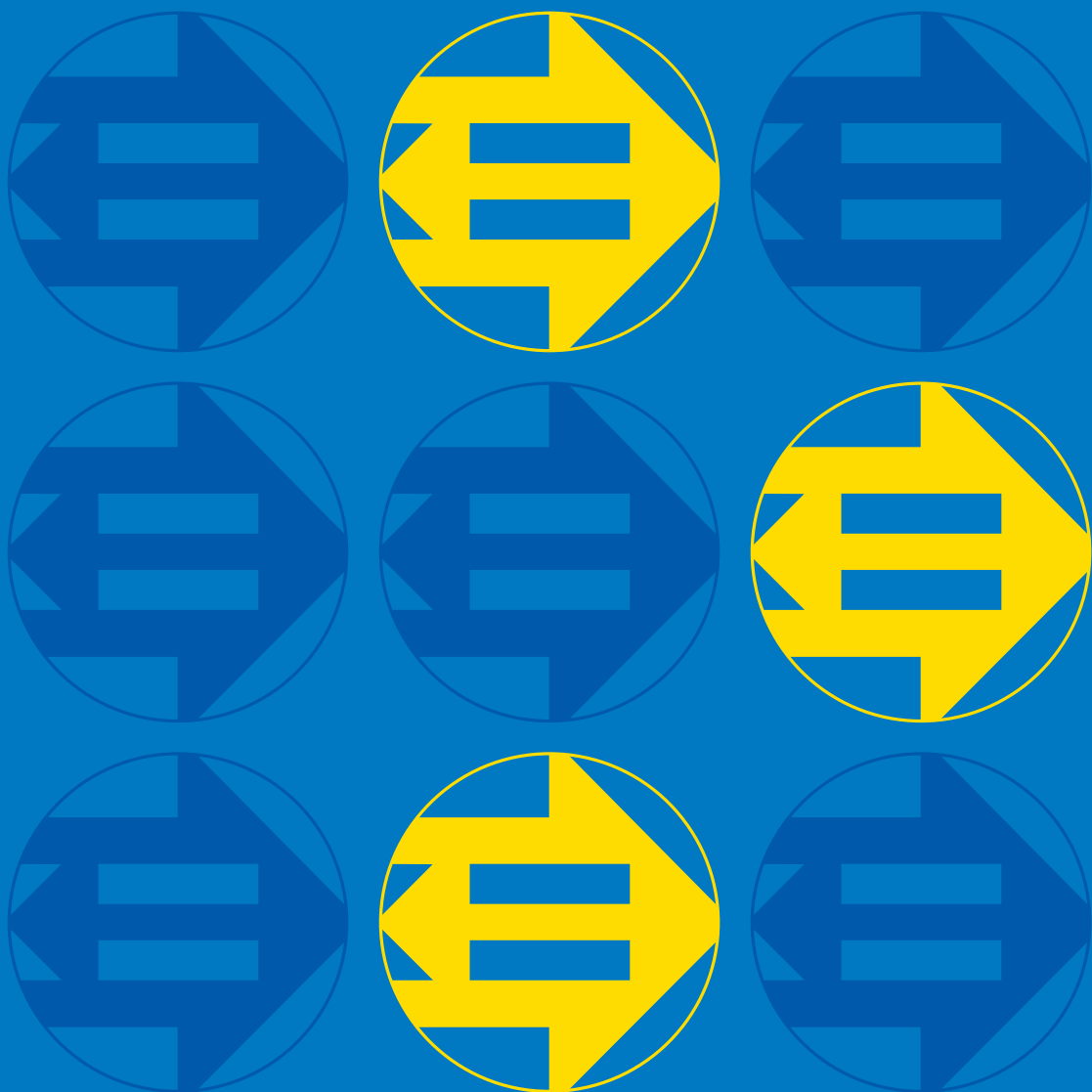
## Relations with institutions, ombudsmen, and other stakeholders

As described in section 2.2 of this Report, the European Network of Ombudsmen helps the European Ombudsman to work closely with national and regional ombudsmen in the Member States. With a view to identifying and sharing best practices in the area concerning the rights of persons with disabilities, the European Ombudsman will make use of the Network's communication tools to launch an exchange of information with the national and regional ombudsmen about all the above aspects of the CRPD's implementation.

During 2013, the European Ombudsman also intends to consult the other members of the EU Article 33(2) Framework, with a view to developing a multi-annual work programme, based on an analysis of needs and available resources, defining his role in promoting and monitoring the implementation of the CRPD at the level of the EU institutions.

## 3 Resources

This Chapter gives an overview of the resources that were at the disposal of the Ombudsman institution in 2012. It outlines the structure of the office, and describes the efforts made to ensure a smooth flow of information among staff, and to promote professional development opportunities. The second part of the Chapter is devoted to the Ombudsman's budget, while the final part concerns the use of the institution's resources.



## Resources

### 3.1 Staff

The institution has a highly qualified, multilingual staff. This ensures that it can properly carry out the tasks assigned to it by the Treaty on the Functioning of the European Union, that is, to deal with complaints about maladministration in the 23 official EU languages, and to raise awareness about the Ombudsman's work. Regular staff meetings, combined with an annual staff retreat, help inform all staff of developments within the office and encourage them to reflect on how their work contributes to achieving the institution's objectives as set out in its mission statement.

#### Staff retreat and staff meetings

The European Ombudsman's staff retreats form an integral part of the institution's strategic planning, and serve as a forum providing inspiration and useful guidance for policy-making. They form part of an annual cycle of events which provide staff and trainees with an opportunity to reflect and share their views on chosen subjects that are directly linked to the work and activities of the institution. Their objective is to help strengthen and deepen the staff's reflective capacity better to understand and internalise the institution's values and mission and to contribute towards their effective delivery.

For the second year running, the staff retreated to Bad Herrenalb, Germany, from 28 to 30 March 2012. For one of the sessions, the Ombudsman invited trainers from the European School of Administration, who organised team-building activities for the staff, with an eye to exploring potential synergies for effective teamwork.

The Ombudsman also convenes regular staff meetings to ensure that information flows smoothly among the members of his staff. In addition, staff members participate in both external and internal training sessions designed to further their professional development. In terms of internal training, staff participated in, among others, a session on ethics and good conduct and another on plain English.

#### The Ombudsman and his staff

In 2012, the European Ombudsman's establishment plan contained 66 posts. At the end of the year, the structure of the Ombudsman's office was as follows:

#### **European Ombudsman:** **Mr P. Nikiforos Diamandouros**

#### **The Ombudsman's Cabinet**

Head of Cabinet:  
Ms Zina Assimakopoulou

#### **Secretariat-General**

Secretary-General:  
Mr Ian Harden

#### **Communication Unit**

Head of Unit:  
Mr Ben Hagard

#### **Directorate A**

Director:  
Mr João Sant'Anna

#### **Complaints and Inquiries Unit 1**

Head of Unit:  
Ms Marta Hirsch-Ziemińska

#### **Complaints and Inquiries Unit 2**

Head of Unit:  
Mr Fergal Ó Regan

#### **Registry**

Head of Registry:  
Mr Peter Bonnor

For one of the sessions, the Ombudsman invited trainers from the European School of Administration, who organised team-building activities for the staff, with an eye to exploring potential synergies for effective teamwork.



The European Ombudsman convenes regular staff meetings, with a view to ensuring a smooth flow of information among staff, and to enhancing professional development opportunities. The Ombudsman's staff met in Strasbourg in July and December to hear about the latest administrative, legal, and policy developments affecting the institution.

### **Directorate B**

Director:  
Mr Gerhard Grill

### **Complaints and Inquiries Unit 3**

Head of Unit:  
Mr Lambros Papadias

### **Complaints and Inquiries Unit 4**

Acting Head of Unit:  
Mr Bernhard Hofstötter

### **Personnel, Administration, and Budget Unit**

Head of Unit:  
Mr Loïc Julien

### **Data Protection Officer**

Ms Rosita Agnew

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

## Resources

### 3.2 Budget

#### The budget in 2012

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

In 2012, budgeted appropriations amounted to EUR 9 516 500.

#### Budgetary control

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

As is the case with other EU institutions, the European Court of Auditors also audits the Ombudsman institution.

#### Interinstitutional cooperation

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

- European Parliament, as regards internal audit and accounting, as well as technical services, including buildings, information technology, communication, medical services, training, translation, and interpretation;
- Publications Office of the European Union on various aspects of publications;
- Paymaster's Office (PMO) of the European Union as regards pensions and other aspects relating to the termination of services of officials and agents; and
- Translation Centre for the Bodies of the EU, which provides many of the translations that the Ombudsman requires in his work for citizens.

1. Council Regulation (EC, ECSC, Euratom) 2673/1999 of 13 December 1999 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities; OJ 1999 L 326, p. 1.




### 3.3 Use of resources

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

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





## How to contact the European Ombudsman

**By post**

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CS 30403  
F - 67001 Strasbourg Cedex

**By telephone**

+33 (0)3 88 17 23 13

**By fax**

+33 (0)3 88 17 90 62

**By e-mail**

[eo@ombudsman.europa.eu](mailto:eo@ombudsman.europa.eu)

**Website**

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



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