Annual report on the activities of the European Ombudsman in 1995

Caption: Annual report on the activities of the first European Ombudsman, Jacob Söderman, who was elected by the European Parliament on 12 July 1995.

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EUROPEAN UNION

THE EUROPEAN OMBUDSMAN

ANNUAL REPORT

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EN

Strasbourg, 22 April 1996

Mr Klaus Hänsch
President
of the European Parliament
97-113, rue Belliard
B - 1047 Bruxelles

Mr President,

On 12 July 1995, the European Parliament elected me as the first Ombudsman of the European Union. On 27 September 1995, I gave a solemn undertaking before the Court of Justice of the European Communities to perform my duties with complete independence and impartiality and to respect the obligations arising therefrom. From that date, I took up my duties.
In accordance with Article 138e (1) of the Treaty establishing the European Community and Article 3 (8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my report for the year 1995.

Jacob Söderman

The European Ombudsman
Report for the year 1995

Contents

PART I
The European Ombudsman

I.1 The origins of the European Ombudsman

The institution of the ombudsman is known throughout the world. It originated in Sweden, where the appointment of an Ombudsman by the Parliament was part of a constitutional reform that took place in 1809. The reason for giving the power of appointment to the parliament was to ensure the independence of the ombudsman's work from the King, the government and the administration. When Finland became an independent state, the ombudsman system was adopted in its first Constitution of 1919. Sweden and Finland remained the only countries to have Ombudsmen with a general remit until 1953. In that year, Denmark established an ombudsman, followed by New Zealand in 1962 and by Norway the following year. According to the President of the International Ombudsman Institute, in November 1995 there were ombudsmen (sometimes known by different names) in 75 countries, including 27 European countries.

The ombudsman institution is strongly established in the Member States of the Union. Ten States have national ombudsman offices. In Germany, Greece and Luxembourg, there are parliamentary committees on petitions operating at the national level that have a similar role. Italy has regional and municipal ombudsmen and there have been several Parliamentary proposals for legislation to establish a national office. As yet, however, these have not been successful. In Belgium, there is an Ombudsman in the Flemish region and legislation has been enacted to establish a national ombudsman office, though the first national Ombudsman has yet to be chosen.

I.1.1 The Treaty on European Union

The historical roots of the ombudsman principle and its modern development in European states led naturally to the idea of an Ombudsman for the European Union. The European Parliament first adopted a resolution calling for the appointment of an ombudsman in 1979[1]. In the 1980s, the issue was again raised by the Adonnino Committee[2]. In the negotiations that led to the Maastricht Treaty on European Union, proposals to establish the office of European Ombudsman were closely linked to those for European citizenship.

The Spanish prime minister Felipe Gonzalez introduced the idea of citizenship of the Union, in a letter of 4 May 1990 to the other members of the European Council. He also suggested the creation of appropriate mechanisms to protect the special rights that would belong to the status of European citizen. One of the possibilities foreseen was to establish a European Ombudsman. In March 1991, draft Treaty Articles on the appointment of an Ombudsman were submitted by the Danish delegation.

Agreement was finally reached to include the right to apply to the European Ombudsman, alongside the right to petition the European Parliament, in the part of Treaty establishing citizenship of the Union. Any citizen of the Union may complain to the Ombudsman about maladministration in the activities of Community institutions or bodies, with the exception of the Court of Justice and Court of First Instance acting in their judicial role. Complaints may also be made by any natural or legal person residing or having its registered office in a Member State.

The Ombudsman was formally appointed by the European Parliament as the "Ombudsman of the European Union"[3]. For everyday purposes, however, he is the "European Ombudsman". This term was in general use

1 OJ 1979 C 140, p. 153

2 A People's Europe, Bulletin of the EC, Supplement 7/85

3 European Parliament Decision of 12 July 1995, OJ 1995 L 225, p. 17

before the election and was also used in the materials published during the preparatory stage of setting up the office. It seems appropriate to retain it for most purposes.

I.2 The Mandate of the European Ombudsman

I.2.1 The Ombudsman's mission

The first and most vital task of the European Ombudsman is to deal with specific instances of maladministration. He must provide an effective means of redress for citizens who are denied their legal rights, or who do not receive proper administrative treatment by Community institutions or bodies.

The Ombudsman should also help secure the position of citizens by promoting good administrative practices. This involves co-operation with administrative authorities to seek solutions that will improve their relations with citizens.

As the Committee on Petitions of the European Parliament has made clear, protecting the rights of citizens and enhancing relations between the Community institutions and European citizens go hand in hand[4].

The Ombudsman also helps to relieve the burdens of litigation, by promoting friendly settlements and by making recommendations that avoid the need for proceedings in courts.

Finally, given the background to the establishment of the office, the Ombudsman must acknowledge an obligation to promote - within the limits of his mandate - both the effective implementation of the rights of citizens at all levels of governance in the Union and transparency in the work of Community institutions and bodies.

The Ombudsman's mission is firmly grounded in law. His work is carried out in accordance with Article 8d and Article 138e of the Treaty establishing the European Community[5] and the decision of the European Parliament, adopted on 9 March 1994, on the regulations and general conditions governing the performance of the Ombudsman's duties[6.]

This decision is generally known as the "Statute of the European Ombudsman".

The highest authority on the meaning and interpretation of Community law is the Court of Justice. The jurisprudence of the Court of Justice and of the Court of First Instance establishes and applies principles of European administrative law requiring, for example, that: administrative authorities should act consistently and in good faith, reply to requests and act in due time; that decisions should be reasoned and explanations given; that proportionality and legitimate expectations should be respected; and that fair procedures should be followed.

I.2.2 Independence

Article 138e of the Treaty and Article 9 of the Statute emphasise that the European Ombudsman shall be completely independent. The Ombudsman must swear before the Court of Justice to perform his duties with complete independence. He must not seek or take instructions from any person, government or body. During his term of office the Ombudsman may not engage in political or administrative duties, or any other occupation. He must refrain from any act incompatible with the nature of his duties.

The Ombudsman acts in the general interest of the Communities and of the citizens of the Union. His independence is essential so that both citizens and Community institutions and bodies can have confidence in

4 Report on the Role of the European Ombudsman appointed by the European Parliament, rapporteur Mr Newman, A4 0083/94 PE 209.768/fin

5 Art. 20d ECSC Treaty, Art. 107d Euratom

6 EP Decision 94/262, OJ 1994, L 113, p. 15

the fairness and impartiality of his work.

Important guarantees of independence are that the European Parliament appoints the Ombudsman for the duration of its term of office and that the budget of his office is annexed to that of the Parliament and should be treated in the same way.

I.2.3 Powers of inquiry

The European Ombudsman, like national ombudsmen, is not empowered to order an administrative authority to change a decision or to give redress, even if a complaint is found to be justified. If a friendly settlement cannot be reached, the Ombudsman is limited to making reports and recommendations.

The Ombudsman does, however, have wide powers to conduct inquiries:

- The Community institutions and bodies must supply the Ombudsman with any information he has requested of them and give him access to the files concerned.
- The Member states must also provide the Ombudsman with any information that may help to clarify instances of maladministration by Community institutions or bodies

The Community institutions and bodies may refuse information or access to files only on duly substantiated grounds of secrecy. If documents originate in a Member State and are classed as secret by law or regulation, access may be given only with the prior agreement of the Member State. The authorities of Member States may refuse information if it is covered by laws or regulations on secrecy, or by provisions preventing its being communicated.

If the assistance which he requests is not forthcoming, the Ombudsman shall inform the European Parliament which “shall make appropriate representations”.

I.3 Complaints to the European Ombudsman

Any citizen of the Union may complain to the European Ombudsman about maladministration in the activities of a Community institution or body, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. The same right may be exercised by any person, of whatever nationality, who resides in a Member State. A “legal person” - for example a company or an association - may make a complaint if it has its registered office in a Member State.

Complaints may be made to the Ombudsman either directly by the complainant, or through a member of the European Parliament. If the complainant so requests, his complaint is treated confidentially.

The Statute contains a number of provisions about how the Ombudsman should deal with complaints. Within this framework, the following procedure has been developed:

- all documents identified as complaints are acknowledged by letter to their author
- the Ombudsman then assesses whether the complaint is admissible and whether there are grounds to conduct an inquiry.
- if the complaint is deemed inadmissible, or there seem not to be sufficient grounds to conduct an inquiry, the complainant is informed accordingly.

If the object of the complaint cannot be identified, the complainant may be sent a copy of the brochure “How to complain to the European Ombudsman” with a view to helping him re-formulate the complaint.

Where appropriate, the complainant is advised to contact another authority which may be able to help. He could, for example, be advised to address a petition to the European Parliament, or to complain to the European Commission in its capacity of supervision of the application of Community law by Member States,

or a national ombudsman or similar body.

- If the complaint is admissible and there seem to be sufficient grounds to conduct an inquiry, the Ombudsman carries out a preliminary investigation. He informs the institution or body against which the complaint has been made and asks it to give a preliminary opinion ("first opinion") on the complaint within three months.
- When the first opinion is received, a copy is normally sent to the complainant, who has the opportunity to make comments on it within one month.
- After considering the first opinion and any comments on it by the complainant, the Ombudsman may decide that no further inquiries are justified, or that the institution has acted satisfactorily to resolve the matter. In either case, the file is closed and the complainant and the institution are informed accordingly.
- If, however, the Ombudsman considers that there is a *prima facie* case of maladministration, he tries to find a solution with the institution or body concerned that satisfies the complainant. None of the cases held admissible in 1995 had reached this stage by the end of the year, but some friendly settlements had been agreed at time of finalising this report (31 March 1996).
- If further inquiries lead the Ombudsman to decide that there is an instance of maladministration, he informs the institution or body concerned, making draft recommendations where appropriate. The institution or body must then send the Ombudsman a detailed opinion within three months.
- Unless the institution or body has taken adequate steps to resolve the matter, the Ombudsman sends a report, which may include recommendations, to the European Parliament and to the institution or body concerned. He informs the complainant of the outcome of the inquiries, of the opinion expressed by the institution or body and of any recommendations that he has made.

I.3.1 Transparency and confidentiality

It is important that the Ombudsman should act in as open and transparent a way as possible, both so that European citizens can follow and understand his work and to set a good example to others. The Ombudsman's reports to the European Parliament, including the Annual Report, will be published in the *Official Journal*. The register of complaints is open to the public and the decision which finally closes each complaint will also be publicly available.

Inquiries following the "first opinion" from an institution or body are carried out in private, however, so as to ensure full co-operation and promote the possibility of a friendly solution.

In some cases, confidentiality is required by the Statute of the European Ombudsman. The Statute provides:

- that the complainant may request that his complaint remains confidential;
- for the release to the Ombudsman of documents considered as confidential by Community institutions or bodies or by Member States.
- In these cases, neither the Ombudsman nor his staff may divulge the contents of the relevant documents.
- Information and documents obtained during the course of the Ombudsman's inquiries are not to be divulged. The ombudsman and his staff are also required to treat in confidence any information which could harm the person lodging the complaint or any other person involved.

In practice, these provisions mean that complaints are not confidential unless the complainant requests confidentiality. If confidentiality is requested, then all documents relating to the complaint are treated as confidential. Any report or recommendations to the European Parliament arising out of the complaint, as well as the publicly available decision of the Ombudsman that finally closes the complaint, will be anonymised so

that the complainant cannot be identified.

The Ombudsman may also decide that a complaint shall be dealt with in confidence if this is necessary to protect personal information relating to the complainant or any other person.

I.3.2 The admissibility of complaints

No specific procedure or form is required to submit a complaint, but it must be possible to identify both who is complaining and the object of the complaint.

- Other criteria of admissibility are laid down by Article 138e of the Treaty and the Statute of the European Ombudsman. In summary these conditions are:
- the Ombudsman may not intervene in cases before courts, nor question the soundness of a court's ruling;
- the judicial activities of the Court of Justice and Court of First Instance are excluded from his remit;
- the complaint should be made within two years of the date on which the facts came to the attention of the complainant;
- the complaint must have been preceded by appropriate administrative approaches to the institutions and bodies concerned;
- in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint;
- the Ombudsman can only consider complaints about the activities of Community institutions and bodies. He has no power to deal with complaints about any other authority or person;
- the complaint must allege an instance of maladministration.

Maladministration

Neither the Treaty nor the Statute defines the term "maladministration". Clearly, there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance.

For example, the European Ombudsman must take into account the requirement of Article F of the Treaty on European Union that Community institutions and bodies are to respect fundamental rights.

Many other things may also amount to maladministration, including:

- administrative irregularities
- administrative omissions
- abuse of power
- negligence
- unlawful procedures
- unfairness
- malfunction or incompetence

- discrimination
- avoidable delay
- lack or refusal of information

This list is not intended to be exhaustive. The experience of national ombudsmen shows that it is better not to attempt a rigid definition of what may constitute maladministration. Indeed, the open ended nature of the term is one of the things that distinguishes the role of the Ombudsman from that of a judge.

There are limits, however, to what may count as maladministration. All complaints against decisions of a political rather than an administrative nature are regarded as inadmissible; for example, complaints against the political work of the European Parliament or its organs, such as decisions of the Committee on Petitions. Nor, for example, is it the task of the Ombudsman to examine the merits of legislative acts of the Communities such as regulations and directives.

Even if a complaint is technically admissible, Art. 138e (1) of the Treaty provides that the Ombudsman is only to conduct inquiries "*for which he finds grounds*". This provision requires complaints to be excluded if they are manifestly ill founded, or if the complaint does not appear to contain sufficient grounds to form the basis for further inquiries.

I.3.3 Inadmissible complaints

Compared with most national ombudsmen, the European Ombudsman has received an unusually high proportion (nearly 80%) of inadmissible complaints. Most such complaints concerned alleged instances of maladministration by **national** authorities.

It is clear from the Treaty and the Statute that the Ombudsman has no power to deal with these complaints. Article 2 (1) of the Statute provides that:

"The Ombudsman shall help to uncover maladministration in the activities of the Community institutions and bodies (...). No action by any other authority or person may be the subject of a complaint to the Ombudsman"

The Ombudsman cannot make inquiries into actions taken by authorities of the Member States (whether at national, regional or local level). Nor can he examine the actions of international organisations. This exclusion applies even when the authority concerned is responsible for implementing Community law or policies.

The Ombudsman's remit is strictly limited to Community institutions and bodies. The *institutions* are listed in Art. 4 of the Treaty establishing the European Community. They are; the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. The *bodies* include all those established by the Treaties (for example; the Economic and Social Committee, the European Investment Bank, the European Monetary Institute and the future European Central Bank, the Committee of the Regions) and the whole range of bodies that have been created by Community legislation (for example; the European Environment Agency, the European Training Foundation, the European Agency for Evaluation of Medicinal Products, the European Monitoring Centre for Drugs and Drug Addiction).

Many of the complaints against bodies that are outside the Ombudsman's remit alleged the incorrect implementation of Community law by national administrations.

They concerned a wide variety of subjects, including pension rights, taxation, rights of residence, social security benefits, employment, the environment, recognition of diplomas, housing and family allowances. For example, one inadmissible complaint (n° 90) alleged that the French authorities had wrongly refused to recognise a driving licence obtained in Portugal.

Two complaints that questioned rulings by the European Commission of Human Rights were held inadmissible because that body is part of the Council of Europe, not the European Union (n°.s 54, 116).

Complaints have been held inadmissible under Art 1 (3) of the Statute (the Ombudsman may not intervene in cases before courts, or question the soundness of a court's ruling) in the following circumstances:

- A journalist complained about the refusal of the Council to communicate minutes of its meetings. He had at the same time submitted his case to the Court of First Instance (complaint no. 110)
- A complaint was made by a person who had been dismissed by the Secretariat of the Council. However, her case had already been judged by the Court of Justice (complaint no. 105)

Complaint n° 281 about the position taken by the European Parliament in respect of French nuclear tests in the Pacific was held inadmissible because it concerned a political decision, not a possible instance of maladministration. Complaints referring to petitions that had already been dealt with, or were pending before, the Committee on Petitions of the European Parliament were inadmissible for the same reason (n°.s 36, 39).

The provision that a complaint must have been preceded by appropriate administrative approaches to the institutions and bodies concerned requires that the complainant must have made contact with the institution or body, for example by letter or through a telephone call, to give it the possibility of dealing with the question that forms the object of the complaint.

In view of the fact that the Ombudsman's office has only recently been established, it would be harsh to apply strictly the provision in Article 2 (4) of the Statute that a complaint should be made within two years of the date on which the facts on which it is based came to the attention of the complainant. In most national ombudsman systems there is power to waive such time limits where it is necessary to do so in the interests of justice. A further point worthy of note is that the two year time limit under Article 2 (4) of the Statute applies only to complaints made to the Ombudsman, not to his own initiative inquiries. However, a complaint (n° 47) by a former official concerning a dispute with the Parliament dating back to 1982 was held inadmissible.

In general, the interpretation of the criteria of admissibility must take into account that Articles 8d and 138e of the Treaty create rights for European citizens. Furthermore, it is important to recall that the Ombudsman has no power to annul a decision or to order an institution or body to give any form of redress to a complainant. His powers are to make inquiries, reports and recommendations. In this context, an unduly technical or legalistic approach to the admissibility of complaints about possible instances of maladministration by Community institutions or bodies would be inappropriate. If there is any doubt, for example, concerning whether there has been sufficient prior contact, or whether the time limit is applicable, such doubt should normally be resolved in favour of the complainant. If a complaint is wrongly deemed inadmissible, the citizen's rights are put at risk. The consequences of any possible error in the other direction are much less grave.

It is also important to remember that part of the Ombudsman's mission is to enhance relations between the Community institutions and European citizens. The creation of his office was meant to underline the commitment of the Union to open, democratic and accountable forms of administration. Better relations between citizens and the institutions cannot be achieved if the citizen's route to the Ombudsman becomes an obstacle course of technical objections that only a trained lawyer can negotiate successfully. For the same reason, although Community institutions and bodies will make their views known to him, it is essential that decisions about admissibility are made by the Ombudsman.

I.4 Own initiative inquiries

Art. 138e of the Treaty provides for the European Ombudsman to conduct inquiries "either on his own initiative or on the basis of complaints." Not all national ombudsmen may conduct own initiative inquiries. It is particularly appropriate for the European Ombudsman to have this power, since citizens may be less aware of their rights in relation to Community institutions and bodies than against national administrative authorities.

The Ombudsman's primary duty, however, is to deal with the complaints that are addressed to him. The right to conduct own initiative inquiries, though important, should not be used too frequently. It might be used, for example, where a series of complaints had focused attention on a specific body or a particular type of administrative activity, providing grounds to think that a more general inquiry should be conducted.

I.5 The Ombudsman and other processes for redress of citizens' grievances

The Ombudsman is not the only person with responsibility for ensuring the protection of citizens' rights under Community law and for redressing their grievances. The creation of an effective and comprehensive system of protection and redress requires the Ombudsman to establish good working relationships with other bodies. In particular, there needs to be mutual trust and regular contact between the Ombudsman and the following:

The European Parliament

- Although he is appointed by and reports to the Parliament, the Ombudsman carries out his mission in complete independence. His role is separate from the Parliament's own mechanisms of control.
- Besides the traditional tools of questioning and censure, the role of the Parliament in relation to petitions is long-established. The right of the Parliament to "receive petitions on a matter which comes within the Community fields of activity" was given formal recognition by the Treaty on European Union and embodied in Art 138d of the EC Treaty. Both the right to petition the Parliament and the right to apply to the Ombudsman are embodied in the same Article (8d), in the part of the Treaty that concerns citizenship of the Union. The Ombudsman and the Committee on Petitions of the Parliament are thus intended to be complementary institutions.
- The Maastricht amendments to the EC Treaty also created the possibility for the Parliament to establish a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred (...) on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law (...)

The Commission

- The Commission ensures that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied. It has power to bring proceedings in the Court of Justice for this purpose. From the perspective of the citizen, the Commission's control operates through an informal system of complaints bearing mainly on the activities of the Member States. To facilitate such complaints the Commission has published a standard complaint form in the Official Journal[7].

The Court of Justice and the Court of First Instance

- The Court of Justice and the Court of First Instance have jurisdiction to ensure the proper interpretation and application of Community law by the Member states and by the institutions. The Court of First

7 OJ 1989 C 26, p. 6, 1.2.89

Instance is particularly responsible for cases brought by individuals (material or legal persons) against the decisions of the Community institutions.

- National courts and other national institutions also have an important role in ensuring the correct implementation and application of Community law. National ombudsmen and similar bodies are also of particular importance.

Part II

The Ombudsman's Work in 1995

On 12 July 1995, the European Parliament elected Mr Jacob Söderman as the first Ombudsman of the European Union. At the beginning of September, he began dealing with the practical issues involved in setting up this new office. He made the solemn undertaking before the Court of Justice that is required of an Ombudsman before taking up his duties on 27 September. From that date, he began to deal with complaints that had already been received. His speech on the occasion of the solemn undertaking before the Court of Justice is contained in annex C.

Preparatory work for setting up of the Ombudsman's office had already begun under the authority of the Secretary General of the European Parliament. This work was carried out by M. Jean-Guy Giraud, formerly Registrar of the Court of Justice. It included preliminary organisation, the planning of a computerised system for dealing with complaints and the printing of a brochure entitled "The European Ombudsman", containing the official texts. At the beginning, the Ombudsman was assisted by two persons. Later on, they were joined by two lawyers to help deal with the complaints.

The first task was to set up the office. In accordance with Article 13 of the Statute, the Ombudsman decided to establish the office in the Parliament's Buildings in Strasbourg and was helped to do so by the Secretary General of the Parliament. The office is located in IPE II. For missions to Brussels, a *bureau de passage* has also been opened in the Eastman building. To maximise the effectiveness of the Ombudsman's activities, it would be valuable to establish a Brussels outpost with a small permanent staff. The Ombudsman himself and most of his staff should, of course, continue to be based at the seat of the European Parliament in Strasbourg.

The 1995 budget provided for ten posts in the Ombudsman's office. The process of filling these posts was made as open and transparent as possible. The vacancies were publicised in all the Union institutions, within the Council of Europe and in all the national ombudsman offices and similar bodies. Because of the temporary nature of the posts, appointments were made on the basis of interviews. As well as legal and secretarial skills, linguistic ability and knowledge of different European cultural backgrounds were taken into account in making the appointments. Most of the staff took up their duties only from the beginning of 1996. A complete list of the staff is presented in annex D.

The effect of the Statute is that the Ombudsman's office is an autonomous administrative unit with the status of an institution in matters concerning its staff and its budget. He is therefore assisted by his own secretariat and his office has its own budget, which is annexed to the Parliament's budget and should be treated in the same way. During the preliminary period after the nomination of the first Ombudsman (financial years 1995 and 1996), Parliament made provision for his staff and material needs. An agreement securing this support was signed between the Parliament and the Ombudsman on 22 September 1995 and has operated with satisfactory results. From the financial year 1997 onwards, all operating costs of the Ombudsman's Secretariat will be covered by its own budget; however the European Parliament will still provide the assistance necessary for avoiding unnecessary duplication of staff and expenditure.

II.1 Case load survey and statistics

When the first European Ombudsman was elected, 53 complaints had already been registered, the first dating back to 8 April 1994. By the end of 1995, the total number of registered complaints had reached 298. At the time of finalising this report on 31 March 1996, the total had reached 537.

Statistics of the complaints received and examined in 1995 are shown in annex A.

Of the 298 complaints registered up to the end of 1995, some 45% (that is 131 complaints) had been examined before 31 December 1995 to see if they were admissible and if there were grounds for further inquiries. Almost 80% of these complaints were inadmissible because they did not concern matters within the Ombudsman's mandate.

The complaints that were admissible and based on sufficient grounds were dealt with using the procedure described in the first part of this Report (I.3). A list of all the admissible complaints is contained in annex B. None of these complaints had been finally dealt with by the end of 1995.

Of the total of 298 complaints, 20% originated from the UK. (Half of these complaints referred in fact to two cases only). 16% of the complaints were from Germany, 13.5% from Spain and 10% from France. Complaints were usually made by private citizens and not by companies or associations.

Art. 138e of the Treaty provides that complaints may be made to the Ombudsman directly or through a Member of the European Parliament. Of the 298 complaints registered by the end of 1995, 8 had been made by MEPs.

There were 24 complaints against the European Commission; 2 against the Council; 3 against the European Parliament and 1 against another Community body. The Commission is the main Community organ that makes decisions having a direct impact on citizens. It is normal, therefore, that it should be the principal object of citizens' complaints.

There were many complaints about alleged lack of transparency and refusal of access to information. There were complaints, for example, concerning access to the minutes of the Council, to the list of presence of Members of the European Parliament and to figures relating to the funding of a Community programme.

Other complaints concerned work relationships between the institutions and their agents. There were complaints, for example, about the conduct of competitions and the recruitment of temporary agents or trainees. There were also complaints related to contractual relations between the institutions and private firms, for example concerning the abrupt termination of contracts.

II.2 Relations with Community institutions and national ombudsmen

II.2.1 The Committee on Petitions of the European Parliament

European citizens have the right to petition the European Parliament under Articles 8d and 138d of the EC Treaty. Art 138d provides that:

"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Articles 8d and 138e create for the same persons the right to apply to the European Ombudsman.

In principle, it is for the citizen to choose whether to address a petition to the Parliament or to apply to the Ombudsman. However, it may not always be obvious to the citizen which course of action is the more appropriate in his circumstances. The Committee on Petitions and the Ombudsman have therefore co-operated

closely in order to clarify their respective functions and to establish methods of co-operation. A procedure has been established for the transfer of cases between the Committee on Petitions and the Ombudsman, with the agreement of the petitioner or complainant.

It has been agreed that the Ombudsman will not deal with a matter pending before the Committee on Petitions unless, with the consent of the petitioner, that Committee transfers it to the Ombudsman.

Nor will the Ombudsman deal with a case that has already been examined and dealt with by the Committee on Petitions unless there are relevant new elements that justify recourse to the Ombudsman. Finally, the Ombudsman will consider inadmissible any complaint about decisions of the Committee on Petitions itself, since its decisions (like those of the European Parliament) are political matters.

A first meeting between the Ombudsman and the Committee on Petitions of the European Parliament took place on 30 January 1996. The Ombudsman appears before the Committee to speak on his annual or special reports and to give general information about his work within the mandate, if requested to do so. He may also ask for the permission of the Committee to appear before it.

The Ombudsman is always ready to discuss possibilities of improving co-operation between the Committee on Petitions and the European Ombudsman, as two independent bodies, to the benefit of European citizens.

II.2.2 The European Commission

Relations between the European Ombudsman and the European Commission are of particular importance since a large majority of admissible complaints refer to alleged acts of maladministration by the Commission. It is therefore essential to ensure a good and efficient working relationship between the two bodies, so that complaints can be examined and, as often as possible, problems be solved quickly. Practical arrangements relating to time limits for answers and to translation of documents have been agreed for this purpose.

Many complaints addressed to the Ombudsman concern allegations that a Member State has failed to implement Community law correctly, or is otherwise acting in breach of Community law. These complaints are not within the Ombudsman's remit, but he may advise the complainant to apply to the Commission, which as "Guardian of the Treaties" is responsible for monitoring the fulfilment by the Member States of their Treaty obligations. The Commission has power under Article 169 to deliver an opinion on a Member State's failure to fulfill a Treaty obligation and, eventually, to bring the matter before the Court of Justice.

Where a complaint alleges an infringement by national authorities of the rights of Union citizenship that are contained in Part Two of the EC Treaty the Ombudsman will normally advise the complainant to petition the Parliament. If the infringement seems to be of a grave nature, he may also notify the Commission of the complaint.

II.2.3 The national ombudsmen

Article 5 of the Statute of the European Ombudsman provides that

"Insofar as it may help to make his enquiries more efficient and better safeguard the rights and interests of persons who make complaints to him, the Ombudsman may cooperate with authorities of the same type in certain Member States (...)"

A close and permanent relationship between national and European ombudsmen is necessary because citizens do not always make a clear distinction between acts of *national* and of *European* administrations. Many of the complaints received by the European Ombudsman concern alleged wrongs caused by national administrative authorities. Furthermore, the national ombudsmen are increasingly involved in dealing with matters that concern the implementation of Community law by national administrations.

The first steps towards establishing co-operation were taken in 1995. Most of the national ombudsmen had a meeting with the European Ombudsman in Luxembourg, on the occasion of the oath of Mr Jacob Söderman before the Court of Justice. They also met at the Fifth Conference of European Ombudsmen on 10-11 November 1995 in Spain (Las Palmas). On these occasions, preliminary discussions took place about the forms of their future co-operation.

These meetings will be followed by a seminar in Strasbourg 12-13 September 1996, organised by the European Ombudsman. The seminar will examine methods of supervising the implementation of Community law. During the seminar, there will be discussion of practical arrangements for the reciprocal exchange of information and for other forms of co-operation. Representatives from the Parliament, the Committee on Petitions and the legal service of the European Parliament, the Council and its legal service, the Commission and its legal service and the Court of Justice will also be invited.

II.3 Public relations

II.3.1 Meetings and activities

Right at the beginning of his period of office, on 27 September 1995, the Ombudsman had a first meeting in Luxembourg with his national counterparts and with the Chairpersons of similar bodies from other Member States.

The Slovenian Ombudsman, Mr. BIJZAK paid a visit to the European Ombudsman on 3 November 1995.

The European Ombudsman participated in the First Tricontinental Conference of Institutions for the Protection and Promotion of the Human Rights on 7- 9 November 1995 in La Laguna, Tenerife, Canary Islands and delivered the closing address of the Conference.

The Fifth Conference of the European Ombudsman Institute took place on 10- 11 November 1995 in Las Palmas. The European Ombudsman gave the opening speech and a presentation of his role and duties. He was assisted by Mr Jean-Guy Giraud.

An international seminar on the theme “the Citizens of the European Union: toward review of the Maastricht Treaty” was held in Rome on 23 November 1995. The European Ombudsman presented a paper on the subject of “European Citizenship and rights in Europe, the present position and proposals for reform”. During his stay in Rome, Mr. Söderman held discussions with the under-secretary of State for Justice, Mr. Edilberto RICCIARDI, with the President of the 2nd Commission for Justice at the Chamber of Deputies, Mrs. Tiziana MAIOLO, and with the President of the 1st Commission for Constitutional Affairs of the Prime Minister and the Home Secretary, Mr. Gustavo SELVA.

Mr. Söderman had meetings on 27-28 November 1995 in Brussels with the President of the Commission, Mr. Jacques SANTER; the Commissioner in charge of relations with the European Ombudsman, Mrs. Anita GRADIN; the Secretary General of the Commission, Mr. David WILLIAMSON; the Secretary General of the Council, Mr. Jürgen TRUMPF; the Director General of the Legal Services of the Commission, Mr. Jean-Louis DEWOST; and the Director General of the Legal Services of the Council, Mr. Jean-Claude PIRIS.

On 4-5 December 1995 Mr. Söderman met in Luxembourg with Directors General of the European Parliament, with the Secretary of the Committee on Petitions and with Mr. Gregorio GARZÓN CLARIANA, Director General of the Legal Services of the European Parliament.

·II.3.2 Information campaign

Public awareness of the existence of the European Ombudsman and of the kind of complaints with which he can deal is essential to the fulfilment of his mission.

A brochure containing the official texts relating to the European Ombudsman (Articles of the Treaty and the Statute of the European Ombudsman) has been published in all the official languages and widely distributed.

Both the election of Mr Söderman and his taking up of his duties were notified in the Official Journal of the European Communities[8].

A leaflet entitled "How to complain to the European Ombudsman" has been published, including a standard form for complaints. The leaflet has been widely distributed through the national offices of the European Parliament and the Commission, through the offices of the national ombudsmen and similar bodies and through a large number of organisations engaged in European affairs. The Ombudsman has also been personally engaged in conferences, interviews and the writing of articles designed to publicise his office.

II.3.3 Press Coverage

The European Parliament held public hearings of the six candidates for the post of European Ombudsman on 28 and 29 June 1995 in Brussels. The election was held on 12 July 1995. The hearings and the election were transmitted live in four languages by the satellite of the European Commission. Reports were carried by a number of television channels, such France 2 and France 3, the German ARD and WRD, the English language ITN and the Finnish channels MTV and YLE. The latter also broadcast an interview with Mr. Söderman.

The election also received extensive press coverage, particularly in States whose nationals were candidates for the post.

During the Autumn of 1995 reports about the new institution were carried by many European newspapers, such as the Financial Times, The Times, The European, the Guardian, El Páis, The Irish Times, la Croix, Dernières Nouvelles d'Alsace, Dagens Nyheter, Sonntag, the Bulletin, Tribune pour l'Europe, Europe 7 jours, Europe, Eur'Op, EURinfo, Insider, Euclide, Eurokonsument, Il Cittadino, Donna Moderna, Turun Sanomat, Ilta-Sanomat, Iltalehti and Aamulehti. Reports were also broadcast by Deutsche Welle, Sveriges TV, Rai and Austrian television channels.

Since the beginning of November 1995, Mr. Söderman has contributed a regular column to the weekly newspaper "The European".

8 OJ 1995 L 225, p. 17 and OJ 1995 C 267, p. 16.

Final remarks by Mr. Söderman

Creating a new institution always takes time. There are many practical questions to deal with, as well as important decisions of principle to be made. So far, the establishment of the office of the European Ombudsman has proceeded relatively smoothly. This is in large part because of the helpful and co-operative attitude shown by the European Parliament and its administration, by the Commission and Council and by other institutions and bodies within the Union.

Improving the quality of administration and thereby enhancing relations between the Community and European citizens depends in large part on the administration itself. The valuable initiatives of the Commission in publishing a standard form for complaints about breaches of Community law and of the Council and the Commission in adopting a Code of Conduct concerning public access to documents[9] point the way towards greater transparency and an eventual Community Code of Good Administrative Practice.

A question that needs some further consideration is the significance of the high number of inadmissible complaints that I have received. Does this mean that the mandate of the Ombudsman as set out in the Treaty is too narrow? Ombudsmen at all levels receive many complaints that are inadmissible. The phenomenon as such is nothing unusual. Furthermore, it is understandable that European citizens will need time and information to understand what the Ombudsman can do and what he cannot. I believe that the information campaign, launched with the help of the information offices of the European Parliament and Commission and of the national ombudsman and similar institutions, is of crucial importance for the Ombudsman's work in the near future.

In considering the Ombudsman's mandate, one must take into account that the right to petition the Parliament and the right to apply to the Ombudsman together constitute a unique possibility to promote the rights of the European citizen. In cases where the mandate of the Ombudsman is too narrow, the European Parliament (in practice the Committee on Petitions) often has the power to act.

It is also important to consider the role of the European Commission as guardian of the treaties. The Commission's complaints procedure also has great potential to help European citizens to protect their rights under Community law when national authorities are involved.

Finally, co-operation with national ombudsmen and similar bodies, in accordance with the principle of subsidiarity, will be of fundamental importance in promoting the full and fair implementation of Community law at all levels of the Union.

I believe, therefore, that an appropriate moment to take stock of the mandate and powers of the Ombudsman might be after a few years experience with the new institution. One possibility might be to discuss the matter when the Committee on Petitions and the Parliament receive the Ombudsman's annual report for the year 1998, at the end of the 1999 session.

The formal mandate and powers of the European Ombudsman are only one element in the process of ensuring that European citizens enjoy the benefits of open, democratic and accountable administration. The Ombudsman's office can only succeed if the Community institutions and bodies are firmly committed to these principles and to full cooperation with the Ombudsman.

From my experience in the office of European Ombudsman so far, I believe that this commitment does exist. I look forward with confidence to continuing to develop a partnership with the other Community institutions and bodies to protect the rights and advance the interests of European citizens.

Jacob Söderman

9 OJ 1993, L 340, p. 41

ANNEX A

COMPLAINTS RULED ADMISSIBLE IN 1995

	By 31.12.95	By 31.12.96
1 - Number of complaints registered	**298** [1]	**537** [2]
2 - a) Complaints ruled :	**131**	**436**
•Non admissible :	102	350
•Admissible :	29	86
Referral of non admissible complaints to :		
•National/regional Ombudsman or Petitions Committee	9	38
•Petitions Committee of the European Parliament	10	25
•Citizen's mail service of the European Parliament		1
•European Commission	3	18
•Court of Justice		11
•Court of Auditors	1	1
•Other	2	8
•**Total**	**25**	**92**
3 - Authors of admissible complaints :		
•Natural persons	28	81
(of which complaints lodged by MEP)	(3)	(4)
•Legal persons	1	5
4 - Community institution/body concerned by admissible complaints:		
•European Parliament	3*	6*
•Union Council	2	2
•European Commission	24*	78*
•Court of Justice		
•Court of auditors		
•Other : European Environment Agency (Copenhagen)	1	1
5 - Processing of admissible complaints :		
•Complaints settled		3
•Complaints under consideration	29	83
6 - Outcomes of admissible complaints :		
•amicable solution[3]		3
•established case of maladministration		
•recommendations sent to Community institutions or bodies		
•report sent to European Parliament		

1 Of which 5 transferred by the Committee on Petitions, and 15 concerning the same subject

2 Of which 43 concerning one subject, and 24 concerning another subject

3 The solution was reached directly between the institution concerned and the complainant

* One complaint concerns two institutions (European Parliament and European Commission)

GEOGRAPHICAL ORIGIN OF THE COMPLAINANTS AND LANGUAGE OF THE COMPLAINTS

		ALL COMPLAINTS		ADMISSIBLE COMPLAINTS	
		By 31.12.95	*By 31.3.96*	*By 31.12.95*	*By 31.3.96*
Number		***298***	***537***	***29***	***86***
Distribution by states :	*Austria*	4	10	1	3
1 - States belonging to the European Union	*Belgium*	33	55	7	19
	Denmark	5	9	1	2
	Finland	6	16		
	France	32	55	1	1
	Germany	44	75	3	4
	Greece	6	9		1
	Ireland	6	15	1	1
	Italy	30	46	1	3
	Luxembourg	2	10		3
	Netherlands	11	19	1	2
	Portugal	9	13		2
	Spain	37	59		2
	Sweden	11	15		
	United Kingdom	51	112	13	42
2 - From outside the European Union	*Algeria, Colombia, Czech Republic, Gibraltar, Kenya, Norway, Rumania, Slovakia, Switzerland, USA, Bosnia*	11	19		1
Distribution by language :	*Danish*	6	10	1	3
	Dutch	15	23	2	3
	English	85	189	16	51
	Finnish	9	22	1	2
	French	49	85	3	10
	German	61	101	5	9
	Greek	4	6		
	Italian	20	32	1	3
	Portuguese	8	9		2
	Spanish	29	43		2
	Swedish	12	17		1

ANNEX B

COMPLAINTS RULED ADMISSIBLE IN 1995

CODE OF COMPLAINT	SUMMARY OF COMPLAINT
5/9.11.94/FE/B-EN	A Belgian firm organized a conference on behalf of the European Commission. Shortly before its beginning, the conference was cancelled by the European Commission, which allegedly refused to compensate for financial losses.
11/3.1.95/DK/UK-EN	A British citizen was working with a firm on contract with the European Parliament and had to leave this position following an alleged disagreement with the service.
22/3.5.95/AP/DE-DE	A German citizen repeatedly requested information from the European Commission about social Community programs but allegedly never received any answer.
23/3.6.95/SL/UK-EN	An Italian citizen requested information about Community competitions at the Parliament and Commission offices in Rome. She alleged that the information she had obtained was incorrect.
26/13.7.95/MAJQCS/FR-FR	Three French journalists wished to consult the list of presence of the members of the European Parliament, placed outside of the debating chamber, but they were allegedly refused access.
30/19.7.95/AC/IT-IT	An Italian citizen carried out a project under contract with ISPRA Institute for a period of eleven months. After the achievement of his contract, he allegedly did not receive his salary.
34/21.7.95/PMK/IRL-EN	An Irish Member of the European Parliament complains about the alleged lack of action by the Commission under art. 34 of Euratom Treaty regarding the French nuclear tests in Polynesia.
45/26.7.95/JPB/DK-DK	A Danish Member of the European Parliament filed a complaint regarding the alleged lack of transparency at the Council of Ministers in particular as regards the secrecy of the minutes.
46/27.7.95/FVK/B-DE	A Danish citizen complains about the alleged lack of transparency in the recruitment of the agents of the European Environment Agency in Copenhagen.
52/27.7.95/JL/B-FR	A Belgian citizen complains about the alleged lack of transparency in the decisions taken on PHARE and TACIS programs by the European Commission.
69/16.8.95/WDR/DE-DE	Two German journalists complain about the same subject : the impossibility to obtain an interview at the European Commission concerning the request for information about the alleged misuse of Community funds in a project in Portugal.
70/16.8.95/SF/DE-DE	
71/16.8.95/JD/B-NL	A Belgian citizen succeeded in a Community competition but was never recruited; allegedly, an external agent was recruited for the post in question.
217/8.11.95/JD/B-NL	
95/30.8.95/IMI/NL-EN	An institute alleges that it was not paid by the European Commission for the organization of seminars on European elections on its behalf.
104/1.9.95/IDS/B-FR	The chairman of a Belgian firm complains that they repeatedly requested information from the European Commission about Social Fund programs on handicapped persons, but allegedly never received any answer.
111/11.9.95/NK/A-DE	A German citizen alleges that his professional qualifications were not taken into account in the examination of his candidature for a position of trainee in the European Commission.
129/19.9.95/TK/B-FIN	A Finnish candidate in a Community competition complains about the alleged lack of transparency in the recruitment of translators at the Council of Ministers.
132/21.9.95/AH/UK-EN	Two British citizens complain about the alleged failure of the European Commission to make a full diligent searching on the alleged violation of Community legislation by the United Kingdom; the British authorities had allegedly proceeded with the widening of the M40 motorway without making the compulsory environmental assessment.
150/29.09.95/DL/UK-EN	
242/20.11.95/DS/UK-EN	There were 9 supplementary complaints about the alleged lack of action by the European Commission regarding the French nuclear tests in Polynesia.
243/20.11.95/JF/UK-EN	
244/20.11.95/RSS/UK-EN	
246/22.11.95/JML/UK-EN	
247/22.11.95/HW/UK-EN	
248/22.11.95/DT/UK-EN	
249/23.11.95/AB/UK-EN	
250/22.11.95/GMA/UK-EN	
251/22.11.95/MG/UK-EN	

ANNEX C

SPEECH OF THE EUROPEAN OMBUDSMAN, Mr JACOB SÖDERMAN,

ON THE OCCASION OF HIS SOLEMN OATH,

GIVEN BEFORE THE COURT OF JUSTICE,

27 September 1995

Mr President of the Court of Justice,
Mr President of the European Parliament,
Honourable Members of the Court of Justice,
Fellow Ombudsmen of the Member States of the European Union,
Chairmen of the National Committees on Petitions,
Ladies and Gentlemen,

It is a great honour to speak to such a distinguished audience, gathered to witness this solemn act for the new institution designed to serve the peoples of Europe.

I would particularly like to thank the President of the Court of Justice for his kind words and good wishes for the success of this mission, which, as he has rightly noted, is intended to strengthen the feeling among European citizens of belonging to a Union whose steadfastness and solidarity in all areas is ever increasing.

Mr President, you also referred to the symbolic significance of the Ombudsman. In general, countries establish the office of the Ombudsman to strengthen and promote democracy and the rule of law. Spain did so after successfully making the transition to democracy almost twenty years ago. Numerous countries in Latin America and in Central and Eastern Europe have done so recently. But what prompted the European Union to do so? The activities of the Community and the Union have always been lawful. Moreover, Europeans have enjoyed the right to submit petitions to Parliament, which it has actively followed up.

The idea behind the office of European Ombudsman was to promote the concept of European citizenship, so as to enhance relations between citizens and the European institutions. In other words, the work of the Ombudsman should focus on helping European citizens and others entitled to apply to the Ombudsman, to exercise their rights fully and, in so doing, to give the European administration a more human face. In performing this task, an approach based on law is to be adopted.

Critics may ask: is this feasible? Does the office of the European Ombudsman have sufficient powers, given that it is weaker than its original counterpart, established in Sweden in 1809? Is his mandate not too narrow, given that he only has authority to inquire into maladministration within European Community institutions and bodies?

I am confident that the powers and the mandate of the European Ombudsman - partly modelled on the French 'Médiateur de la République', the British 'Parliamentary Commissioner for Administration' and the Nordic systems - offer the potential to carry out these tasks successfully. After all, most of the European Ombudsman's work will consist in arguing convincingly and appropriately in favour of reasonable solutions.

Naturally this task will have to be carried out in conformity with the law. The essence of European law concerning good or bad administration is to be found in the numerous cases heard in this very Court of Justice. These will guide the work of the Ombudsman and constitute in fact a veritable treasure trove of resources.

The work ahead will also benefit from cooperation with the European Parliament's Committee on Petitions, the national ombudsmen and parliamentary committees on petitions in the Member States, who play an important role in this area. Cooperation between the European Ombudsman and these institutions will be essential for a just application of European law at all levels of the Union.

A great deal has been said about the importance of the European Ombudsman's independence. For me, independence is an attitude, a concept of honesty regarding my own work. When the Latin American writer Carlos Fuentes received the Príncipe de Asturias Prize last year, he chose to speak on the topic of the 'embrace between cultures', making reference to Greek philosophy, the cradle of western culture, to illustrate his thoughts. He quoted three of Pindar's maxims:

do not admire power,

do not hate the enemy

and do not despise those who suffer

Thank you.

ANNEX D

SECRETARIAT OF THE EUROPEAN OMBUDSMAN

SECRETARY GENERAL

Jean-Guy Giraud	Registrar of the Court of Justice (1988-1994) Advisor to the President of the European Parliament (1984-988) Official of the Secretariat General of the European Parliament (1973-1984)

PRINCIPAL LEGAL OFFICERS

Ian Harden	Professor of Public Law, University of Sheffield, UK (1995-1996) Formerly Reader in Law (1993-1995) Senior Lecturer (1990-1993) Lecturer (1976-1990)
Peter Dyrberg	Legal service of the European Parliament (1994-1995) Official of the Court of Justice (1987-1994) Lawyer (1985-1987)

LEGAL OFFICERS

Kyriakos Tsirimiagos	Legal Officer at the European Commission-DGXXIV (1992-1995) Adviser in a law firm in Greece (1990-1991)
Elena Fierro[10]	Lecturer at the DG III - Public Relations and Information of the European Parliament (1995)

INFORMATION OFFICER

Ilta Helkama	Information Officer, Office of the Parliamentary Ombudsman of Finland (1991-1995); Government of the Province of Uusimaa, Helsinki, Finland (1989-1991); Institute of Occupational Health, Helsinki, Finland (1986-1989)

ASSISTANTS

Daniela Tirelli	Official of the European Parliament (1982-1995)
Francesca Mancini	Public Relations officer - Italy (1988-1994) Advertising assistant - France (1986-1987)

SECRETARIES

Nathalie Christmann	Official of the Secretariat General of the European Parliament (1991-1995); Official of the European Commission (1989-1991)
Anna Ruscitti	Secretary - Court of Auditors and Court of Justice of the EC; European Parliament 1993-1995); Travel Agent (1983-1993)
Murielle Richardson	Translator and secretary (1994-1995) Front Office Manager and Convention Coordinator (1983-1991)
Isabelle Foucaud[11]	Assistant export manager and secretary (1988-1995)

[10] Part time assistant, Autumn 1995; full time legal officer from 1 January 1996 to 31 March 1996

[11] Auxiliary secretary