THE EUROPEAN OMBUDSMAN

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THE EUROPEAN OMBUDSMAN

P. NIKIFOROS DIAMANDOUROS

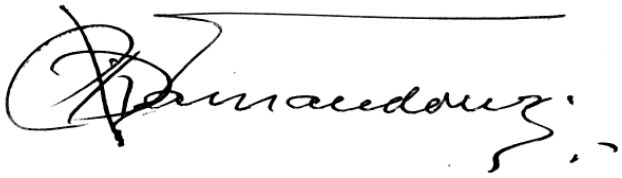
Mr Pat Cox
President
European Parliament
Rue Wiertz
B-1047 Brussels

Strasbourg, 19 April 2004

Mr President,

In accordance with Article 195 (1) of the Treaty establishing the European Community and Article 3 (8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my report for the year 2003.

Yours sincerely,



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Executive summary

The ninth Annual Report of the European Ombudsman to the European Parliament provides an account of the Ombudsman's activities in 2003.

It is the first Annual Report to be presented by P. Nikiforos Diamandouros, whom the European Parliament elected as European Ombudsman on 15 January 2003, following the announcement by the founding European Ombudsman, Jacob Söderman, of his decision to retire. Mr Diamandouros took office on 1 April 2003, and so this report covers the work of Mr Söderman from 1 January to 31 March and of Mr Diamandouros from 1 April to the end of 2003.

STRUCTURE OF THE REPORT

The report consists of six chapters and five annexes. Chapter 1 is a personal introduction by the Ombudsman in which he pays tribute to his predecessor, reviews the year's main activities and achievements and explains his objectives.

Chapter 2 describes the Ombudsman's procedures for analysing and conducting inquiries into complaints and gives an overview of the complaints dealt with in 2003.

Chapter 3, the bulk of the report, consists of a selection of the Ombudsman's decisions following inquiries. The chapter consists mainly of decisions on complaints, organised first by the type of finding or outcome and then by the institution or body concerned. Decisions following own-initiative inquiries and queries from ombudsmen in the Member States are dealt with separately.

Chapter 4 concerns relations with other institutions of the European Union, as well as the Ombudsman's participation as an Observer at the Convention on the future of Europe.

Chapter 5 deals with the European Ombudsman's relations with the community of national, regional and local ombudsmen in Europe, in both current and future Member States.

Chapter 6 deals with information and communication activities. The chapter is divided into five sections, covering the year's highlights, conferences and meetings in current and future Member States, other events such as lectures to visitor groups, media relations and online communications.

Annex A contains statistics on the work of the European Ombudsman in 2003. Annexes B and C give details of the Ombudsman's budget and personnel respectively. Annex D indexes the decisions contained in chapter 3 by case number, by subject matter and by the type of maladministration alleged. Annex E contains information on the process of electing the Ombudsman.

SYNOPSIS

The mission of the European Ombudsman

The office of European Ombudsman was established by the Maastricht Treaty as part of the citizenship of the European Union. The Ombudsman investigates complaints about maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. With the approval of the European Parliament, the Ombudsman has defined "maladministration" in a way that includes respect for human rights, for the rule of law and for principles of good administration.

As well as responding to complaints from individuals, companies and associations, the Ombudsman launches inquiries on his own-initiative and reaches out to empower citizens by informing them of their rights and of how to exercise their rights.

Complaints and inquiries in 2003

The total number of complaints received in 2003 was 2 436, a 10% increase compared to the previous year, due in part to a concerted effort to inform citizens of their rights. Nearly half the complaints were sent to the Ombudsman electronically, either by e-mail or using the complaint form on the Ombudsman's website.

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

A total of 253 new inquiries were opened during the year. The Ombudsman also dealt with a large number of requests for information, of which 2 538 were sent by e-mail.

The results of the Ombudsman's inquiries

The Ombudsman made decisions closing 180 cases following inquiries. Chapter 3 of the Annual Report contains a selection of these decisions, illustrating the range of inquiries in terms of subject matter, type of outcome and the institutions and bodies concerned. For practical reasons, decisions are included in the report only if they contain new findings of law, new material concerning the competence or procedures of the Ombudsman, or findings of fact that are of general importance or interest. All the Ombudsman's decisions, with the exception of a few confidential cases which cannot be satisfactorily anonymised, are published on the Ombudsman's website (http://www.euro-ombudsman.eu.int) in the language of the complainant and in English.

No maladministration

In 87 cases, the Ombudsman's inquiry revealed no maladministration. Such a finding is not always negative for the complainant, who at least has the benefit of a full explanation from the institution or body concerned of its actions. For example:

- A complainant who asked the Council for access to documents of the European Convention accepted the Council's explanation that it did not possess the documents concerned. The complainant also found it useful that the Council had clarified its institutional relationship with the Convention. Furthermore, the complaint led to the agendas and minutes of the Praesidium of the European Convention being published on the Convention's website as soon as it had finished its work (1795/2002/IJH).

- The Court of Auditors acknowledged that a complainant's request for documents had not been dealt with according to its rules on access. The Court undertook to invite the complainant to provide a detailed indication of the information he needed and to examine the request in accordance with the rules (1117/2003GG).

- A complainant drew the attention of the European Anti-Fraud Office (OLAF) to alleged irregularities in an EU-funded project. OLAF investigated but did not report the results to the complainant, who then complained to the Ombudsman. OLAF informed the complainant about the results of the investigation during the Ombudsman's inquiry (1625/2002/IJH).

Cases settled by the institution

In 48 cases, the Ombudsman's inquiry resulted in the institution or body concerned settling the case to the full satisfaction of the complainant. For example:

- Following a complaint to the Ombudsman made on behalf of Stockholm University, the Commission made the final payment due under a research project, apologised for the delay in doing so and agreed to pay interest. The Commission also assured the Ombudsman that the financial procedure in which the delay had occurred was now functioning satisfactorily (1173/2003/(TN)IJH).

- A sub-contractor was paid for its services after the Ombudsman intervened in the case. The Commission explained that it could not pay the main contractor involved in the project because of problems with the final report that it had submitted. Once the main contractor submitted the corrected final report, the Commission made the final payment. The main contractor then paid the sub-contractor, who thanked the Ombudsman for his help (1960/2002/JMA).

Friendly solutions

One of the things that distinguishes an ombudsman from a court is the possibility of mediation, which can lead to a positive-sum outcome that satisfies both parties. When the European Ombudsman finds maladministration, he looks for a friendly solution, if possible. This may involve suggesting that the institution concerned should offer compensation to the complainant, without necessarily admitting liability or setting a precedent.

While seven proposals for friendly solutions were still under consideration at the end of 2003, four were achieved in the course of the year. These included:

- A case in which the Commission agreed to pay additional ex gratia compensation to a complainant in view of the exceptional nature of the case, although it considered that it had no legal obligation to do so. The complainant worked for the institution and alleged that the Commission had failed to pay her the entire amount of the secretarial allowance to which she was entitled (1166/2002/(SM)IJH).

- A case in which the Commission agreed to review its decision to seek reimbursement of over € 37 000 from a grant made to a German association. The Commission expressed its willingness, in the context of a final out-of-court settlement, to abandon its claim if and to the extent it could be shown that the funds had been used in the overall interest of the ultimate beneficiaries of the project. The association maintained its view that there had been no breach of contract on its part, but considered that a friendly solution to its complaint had been brought about (0548/2002/GG).

Critical remarks

When a friendly solution is not possible, the Ombudsman may close the case with a critical remark or make a draft recommendation. A critical remark is used if the maladministration appears to have no general implications, it is no longer possible for the institution concerned to eliminate it, and no follow-up action by the Ombudsman seems necessary. Twenty critical remarks were made during the year. For example:

- The European Anti-Fraud Office (OLAF) published a press release containing allegations of bribery that were likely to be understood as directed against a particular journalist. The journalist complained to the Ombudsman, who took the view that OLAF had acted disproportionately, since no sufficient factual basis for the allegations was available for public scrutiny. The Ombudsman finally considered that a critical remark could constitute adequate satisfaction for the complainant (1840/2002/GG).

- A complainant's contract with the European Union Police Mission in Sarajevo was terminated for alleged misconduct. The Ombudsman took the view that it was the Council's responsibility to ensure that the Mission's actions respected the rule of law and fundamental rights. A fundamental right of the complainant was infringed because he was not given the opportunity to express his views on the supposed facts of his case. Since the contract had been terminated more than a year earlier, it was not appropriate to propose a friendly solution and so the Ombudsman closed the case with a critical remark (1200/2003/OV).

- The Ombudsman criticised the European Parliament for not complying with the obligation to be courteous in relations with the public. The criticism concerned an e-mail sent in response to inquiries about a call for tenders. The complainant had alleged that the tone of the e-mail was inappropriate and created an impression of arrogant behaviour (1565/2002/GG).

Draft recommendations

In cases where maladministration is particularly serious, or has general implications, or if it is still possible for the institution concerned to eliminate the maladministration, the Ombudsman makes a draft recommendation. The institution or body concerned must respond to the Ombudsman with a detailed opinion within three months.

Nine new draft recommendations were made during 2003. While the outcome of four of these was not yet known at the end of the year, the institutions concerned accepted three, as well as another two that had been made in 2002. For example:

- A complainant failed to obtain the pass mark in a written test in a competition organised by the Council. When the Council refused to allow her access to her own marked examination script, she turned to the Ombudsman. After an inquiry, the Ombudsman made a draft recommendation in favour of access, which the Council accepted. This brought the Council into line with the Commission and the Parliament who agreed in 1999 and 2000, respectively, to give candidates access to their own marked examination scripts (2097/2002/GG).

Own-initiative inquiries

Two own-initiative inquiries were closed with positive results during the year:

- The European Personnel Selection Office reversed its decision to exclude a Cypriot citizen from a recruitment competition following a complaint about technical difficulties with its electronic registration system. The Ombudsman opened this case as an own-initiative inquiry, because the complainant was neither a citizen nor resident of the Union (OI/4/2003/ADB).

- The Commission agreed to adopt a new procedure to inform unsuccessful bidders in tender procedures rapidly and provide for a reasonable delay before the contract is signed. This is to give bidders time to request the reasons for the award decision and challenge the decision through legal proceedings. The new procedure is outlined in a Commission Communication of 3 July 2003. The Ombudsman considered that the new procedure complies with the case law of the Court of Justice and suggested that the Commission should systematically inform unsuccessful tenderers of their right to challenge award decisions (OI/2/2002/IJH).

Five own-initiative inquiries were launched in 2003, four of which were still open at the year end. Two are based on complaints which indicated the possibility of a systemic problem. The first concerns the internal dispute resolution procedures available to national experts who are seconded to the Commission. The other concerns the activity of the Commission to promote the good administration of the European Schools.

A third own-initiative into a possible systemic problem concerns the integration of persons with disabilities, in particular as regards the measures implemented by the Commission to ensure that persons with disabilities are not discriminated against in their relations with the institution.

Relations with other European Union institutions and bodies

To help achieve positive results, the Ombudsman has developed constructive working relations with the EU institutions and bodies. In 2003, the Ombudsman met with members and officials of eight institutions, including the Presidents of Parliament, the Court of Justice, the European Investment Bank and the Court of Auditors, the College of Commissioners, and the Directors General of the Commission. During these meetings, the Ombudsman emphasised that his role includes mediation and that friendly solutions are a positive outcome both for the complainant and the institution or body concerned.

The active co-operation of the institutions and bodies is also essential in ensuring that everyone who might have reason to complain to the Ombudsman receives information about their right to do so and how to exercise that right. The Commission responded positively to the Ombudsman's

suggestion to extend its provision of such information to applicants for, and recipients of, grants and subsidies, beginning with those covered by a recent Communication.[1]

The Ombudsman has a close and effective working relationship with the Committee on Petitions of the European Parliament, including a process of mutual transfer of cases when appropriate. The Ombudsman also frequently advises complainants of the possibility to address a petition to the European Parliament, especially if the complainant wants a change in European law or policy.

The Ombudsman participated actively in the Convention on the Future of Europe to ensure that citizens' rights were given a central place in the Draft Treaty establishing a Constitution for Europe. During his tenure, Mr Söderman successfully argued for the incorporation of the Charter of Fundamental Rights in the Draft Constitutional Treaty and both he and Mr Diamandouros pressed for explicit recognition of the role of ombudsmen and other non-judicial remedies. Although this latter goal was not realised within 2003, the Ombudsman will continue to consider it an item of high priority and persist in his efforts to have it included in the final text of the Constitution.

Co-operation with ombudsmen throughout Europe

The European Ombudsman co-operates with an extensive network of ombudsmen and similar bodies in Europe. The network now covers 90 offices in 30 countries, comprising offices at the national and regional levels within the European Union and at the national level in the applicant countries for EU membership, Norway and Iceland.

Co-operation through the network concerns both complaint handling and provision of information to citizens. Many complainants turn to the European Ombudsman when they have problems with a national, regional or local administration. Although these complaints are outside the mandate of the European Ombudsman, in many cases an ombudsman in the State concerned can provide an effective remedy. The European Ombudsman transfers cases directly to national and regional ombudsmen, when possible, or gives suitable advice to the complainant. The ombudsmen in the network are also well placed to help inform citizens about their rights under European law and about how to exercise and defend their rights.

In 2003, the co-operation was intensified, with meetings of national and regional ombudsmen from the Member States and of national ombudsmen from the candidate countries. The 4th Seminar of the National Ombudsmen and Similar Bodies in the EU Member States, on the theme "Ombudsmen and the Protection of Rights in the European Union", was organised jointly by the European Ombudsman and the Greek Ombudsman in Athens in April. The European Parliament was represented by the President of the Committee on Petitions, Mr Vitaliano Gemelli. The 4th Meeting of EU Regional Ombudsmen and similar bodies, at which the office of the European Ombudsman was represented, was held in Valencia in April under the sponsorship of the Sindic de Greuges de Valencia (regional ombudsman). Among the topics discussed were the future of Europe, immigration and asylum and the protection of the environment. In May, the European Ombudsman joined the national ombudsmen from the applicant countries attending the conference organised by the Ombudsman of Poland, Andrzej Zoll, in Warsaw. This meeting was entitled "Ombudsman and the Law of the European Union".

The European Ombudsman's network also consists of liaison officers, nominated in each national ombudsman's offices to act as a first point of contact for other members of the network. In December 2003, the liaison officers came together for a meeting in Strasbourg to discuss "European information, advice and justice for all". This was the first such meeting to include liaison officers from the ten countries that will join the Union in 2004.

Between meetings, the network functions through three communications initiatives of the European Ombudsman: the European Ombudsmen – Newsletter, a bi-annual publication issued jointly with the European Region of the International Ombudsman Institute; Ombudsman Daily News,

[1] Communication relating to a proposal for basic acts for grants currently covered by the Commission's administrative autonomy or institutional prerogatives (COM (2003)274 final).

an electronic news service produced by the European Ombudsman and an interactive Internet Summit.

Reaching out to citizens

A key part of the Ombudsman's work is to reach out to inform citizens of their rights, including the right to complain to the European Ombudsman. At the end of May 2003, the Ombudsman announced his intention to visit all ten accession countries before 1 May 2004, the date of enlargement, and as many of the Member States as possible. By the end of 2003, the Ombudsman had visited 11 of the existing and five of the future Member States, meeting high officials and presenting his work to non-governmental organisations, chambers of commerce, university students, journalists and other interested citizens. The co-operation of the national ombudsman offices in the countries concerned, as well as of the European Parliament and European Commission representations, made an important contribution to the success of these visits.

The Ombudsman and his staff also addressed a total of 80 conferences, meetings and groups all over the Union during 2003, following invitations from regional offices, interest groups, European institutes, universities and non-governmental organisations. These meetings allowed the Ombudsman's work to be presented to potential complainants and interested citizens alike.

Material about the work of the European Ombudsman was distributed widely throughout the year, in particular during the Open Days organised by the European Parliament in May. Information was equally made available on the Ombudsman's website, where decisions, press releases, statistics and details of the Ombudsman's communications activities were posted on a regular basis.

The Ombudsman continued to develop constructive working relations with the media, holding six press meetings and eight press conferences to explain and illustrate his work. A total of 45 journalists interviewed the Ombudsman in Strasbourg and Brussels, as well as in the framework of official visits to Member States and accession countries. Press releases were issued, on average, every seven working days, with a view to drawing attention to the Ombudsman's decisions and communications activities. Journalists' requests for information about the Ombudsman's work were dealt with promptly throughout the year.

Internal developments

During the year, the Ombudsman made intensive preparations for enlargement, so as to be able to serve effectively the citizens of 25 Member States in 21 Treaty languages as from 1 May 2004.

The multi-annual budget plan adopted in 2002 foresees a phased introduction of new posts connected to enlargement in 2003-5. The number of posts in the Ombudsman's establishment plan rose from 27 in 2002 to 31 in 2003, with an increase to 38 foreseen in the 2004 budget adopted by the budgetary authorities in December 2003.

A review of the structure of the office and its deployment of human resources was launched during the year. The Ombudsman also embarked upon a significant upgrading of the information technology infrastructure and complaints-database. These initiatives were undertaken with a view to enabling the office to respond to the anticipated increase in complaints and to enhance the quality and efficiency of service to citizens.

The year 2003 was an exciting year for the office of the European Ombudsman. The number of complaints received increased significantly, due in part to a concerted effort to inform citizens of their rights. We intensified co-operation between ombudsmen throughout Europe, helping to ensure that citizens find an appropriate resolution to their grievances. And we began our final preparations for the enlargement of the European Union. The Ombudsman actively participated in the Convention on the Future of Europe to ensure that citizens' rights were given a central place in the Draft Constitution for Europe.

And, of course, the institution saw a change in leadership in April 2003, following the retirement of the founding European Ombudsman, Jacob Söderman. I would like to pay tribute to his many achievements on behalf of European citizens. Foremost amongst them is the establishment of the European Ombudsman and its rapid evolution, under his sagacious leadership, into an effective and respected institution, capable of systematically and successfully promoting openness, accountability and good administration. During his seven and a half years in office, Jacob Söderman helped over 11,000 citizens find redress, either by resolving their complaints directly, or by advising them of where to turn. His recommendations, reports and remarks to the European Union institutions led to important reforms that substantively improved the quality of service citizens now receive. I will continue to try to live up to the high expectations generated by his achievements.

My priorities as European Ombudsman

When I appeared before the European Parliament's Committee on Petitions as a candidate in November 2002, I identified the main goals towards which I would direct my energies, if elected. Since taking office in April 2003, I have developed these ideas into a programme of activities pursuing three main objectives.

Enhancing the effectiveness of the Ombudsman's office

The first objective of any ombudsman's office should be to ensure that all citizens who turn to it receive help or advice, in a timely and appropriate way. The number of people who addressed their complaints to the European Ombudsman in 2003 rose by 10%. In almost 70% of these cases, we were able to help complainants, either by opening an inquiry, transferring the case to a competent body, or advising them where to turn in search of a prompt and effective solution to their problem.

Such results are only possible, if the Ombudsman maintains constructive working relations with the institutions and bodies that are complained against. In 2003, the European institutions continued to demonstrate their willingness to resolve the complaints that the Ombudsman brought to their attention, by proposing solutions themselves or by accepting and implementing the Ombudsman's recommendations. Throughout the year, I met with members and officials of other institutions, including the College of Commissioners, the Presidents of Parliament, the Court of Justice and the Court of Auditors, as well as the Directors General of the Commission, in order to explain my expectations and, where necessary, to draw attention to areas where improvements were needed.

I am reassured by the fact that these meetings contributed to an enhanced understanding of the dual role of the Ombudsman as an independent, external mechanism of control over the administration and a vehicle for mediation. Increased familiarisation with this latter role has helped demonstrate to the EU institutions the benefits to be derived from more systematic collaboration with the Ombudsman. I am inclined to believe that institutions are becoming increasingly aware that resolving the underlying causes of complaints results in a double benefit: not only does it succeed in removing the possibility of future complaints about the same issue but it also enables the institutions to monitor their capacity to respond appropriately to instances of maladministration involving

their services. The Council demonstrated this clearly in 2003 by improving the transparency of its recruitment procedures following my recommendation.

Mindful of the enlargement of the European Union and the Ombudsman's duty to serve the citizen as effectively as possible, intensive preparations were made throughout 2003, to build up both the structure of the office and its human resources. These changes will enable the Ombudsman better to confront the challenges associated with serving the citizens of 25 Member States in 21 languages as from 1 May 2004. I am happy to report that, by the end of 2003, the office had either recruited or had taken concrete measures to recruit all the legal officers, administrative staff and trainees necessary to meet these challenges. The Ombudsman equally provided for a significant upgrading of his information technology infrastructure and database to enable the office to respond to the anticipated increased demand for his services.

Promoting the rule of law, good administration and respect for human rights

The European Ombudsman has a key role to play in strengthening the democratic life of the Union. In pursuing this task, the European Ombudsman will need to complement attention to the rule of law and good administration, traditionally identified as core preoccupations of an ombudsman, with increased sensitivity to the protection of human rights. Such a rebalancing of the scope of his activities will be in line with ongoing international trends reflected in, among others, the explicit addition of human rights to the mandate of the ombudsman in Finland (1999) and Norway (2003) and noted by the President of the International Ombudsman Institute in a recent keynote address. It will also constitute recognition of the new demands and challenges likely to issue from the Union's biggest and most ambitious enlargement to date. In confronting these challenges, the Ombudsman can have recourse to a dual strategy: he can react to the complaints received, but he can also work proactively through his power to launch inquiries on his own-initiative. The possibility of launching such inquiries is of great value, mainly in tackling possible systemic problems revealed by a series of complaints concerning a particular problem. In autumn 2003, I launched three such inquiries, including one on the integration of people with disabilities by the European Commission.

But the Ombudsman's proactive role goes well beyond this. It is incumbent upon the Ombudsman to use the instruments at his disposal so that citizens are informed of their rights and of the means available for them to ensure that these rights are respected. This is key to empowering citizens, so that their rights deriving from the Union become a living reality. As part of each of the visits to the Member States and accession countries in 2003, the European Ombudsman used public lectures, media interviews and information material to inform citizens of their rights and of how best to use them.

The Ombudsman also worked proactively to ensure that the European Convention place citizens at the heart of its deliberations. Mr. Söderman successfully argued for the incorporation of the Charter of Fundamental Rights in the Draft Constitutional Treaty and both he and I pressed for an explicit recognition of the role of ombudsmen and other non-judicial remedies in the text. Although this latter goal was not realised within 2003, I shall continue to consider it an item of high priority and will persist in my efforts to have it included in the final text of the Constitution.

National and regional ombudsmen provide an effective remedy for citizens whose rights are infringed. In this way, they play a key role in ensuring that Union law is fully respected by the public administrations in their respective countries. In reaching this goal, close co-operation between the European Ombudsman and the ombudsmen in Member States is of paramount importance. In 2003, this co-operation went from strength to strength. In April, ombudsmen from across the European Union met at the national level in Athens and at the regional level in Valencia. In May, national ombudsmen from the candidate countries held a similar meeting in Warsaw, the final such meeting before enlargement. In December 2003, the liaison officers from each national ombudsman's office came together from 26 countries for a meeting in Strasbourg. All four meetings helped to increase knowledge of Union law among participants and enabled colleagues to share their experiences and to exchange best practice. They also substantively complemented the daily exchange of information among offices, assured through three communications initiatives of the European Ombudsman: the European Ombudsmen – Newsletter, a bi-annual publication issued jointly with the European

Region of the International Ombudsman Institute, Ombudsman Daily News, an electronic news service produced by the European Ombudsman, and an interactive Internet Summit. The Summit is a tool available to ombudsmen and their staff throughout Europe, which allows them to discuss issues of common interest, to share documents and to submit queries to their counterparts.

Reaching out to all the Union's citizens – old and new

Of the three priorities that I set for myself when I took office, perhaps the most visible has been the strengthening of the Ombudsman's communications and outreach activities. At the end of May, I announced that I would visit all ten accession countries by the date of enlargement and as many of the Member States as possible, in order to inform citizens of their rights, including the right to complain to the European Ombudsman. Six weeks later, I embarked on the first leg of the information tour and by the end of the year had spread the word from Ireland in the West to Estonia in the East and from Finland in the North to Malta in the South, all in all visiting 16 countries – 11 in the existing and 5 in the future Member States.

As in all ombudsman offices, a large proportion of the complaints received by the European Ombudsman falls outside his mandate. In the case of the European Ombudsman, this is somewhat inevitable, given that only a small fraction of European Union citizens have reason to come into direct contact with the Union's institutions and bodies, to which the Ombudsman's mandate is exclusively confined. Given the high expectations of the Union held by the citizens of the accession countries, this has the potential to increase. With this in mind, I sought to intensify my office's efforts to target information to potential users of the Ombudsman's services.

One way in which I endeavoured to do this was by co-operating with the institutions and bodies themselves. I proposed to the Commission that it should systematically provide information to applicants for, and recipients of, grants and subsidies about the possibility to complain to the European Ombudsman concerning maladministration. The Commission responded positively to this suggestion and promised to take action to implement my proposal, which, once adopted, will complement a similar provision covering citizens involved in competitions for recruitment to the Union's institutions and bodies.

I have equally worked enthusiastically to reach out to potential complainants in my addresses at seminars, meetings and conferences. Non-governmental organisations, chambers of commerce, law and public administration departments in the academic world and other interest groups have given me the opportunity to present my work and have in turn passed on the information to their members. In this way, I hope that citizens and organisations that have a problem with the EU administration are increasingly aware of the service the Ombudsman provides.

Conclusion

All in all, 2003 has been a year of transition for the institution of the European Ombudsman. I believe that strong foundations now exist to enable the institution to pass from the founding and early development stage, managed with distinction by my predecessor, to a period combining consolidation with growth. At this critical juncture in the development of the Union, it behoves the Ombudsman to constantly explore new ways of serving citizens, of informing them about their rights, and of promoting their empowerment, through enhanced respect for the rule of law, systematic combating of maladministration and vigilant defence of human rights.

I do not underestimate the task ahead, but look forward to rising to the challenge with energy, enthusiasm and a deep sense of the heavy burdens and responsibilities that this implies. I am ever mindful of the fact that the Ombudsman has not only a legal but also a moral obligation to serve the citizen and, in so doing, to contribute to the enhancement of the quality of democracy in the evolving European Union.

P. Nikiforos Diamandouros

The most important task of the European Ombudsman is to deal with maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and Court of First Instance acting in their judicial role. Possible instances of maladministration come to the attention of the Ombudsman mainly through complaints made by European citizens. The Ombudsman also has the possibility to conduct inquiries on his own initiative.

Any European citizen, or any non-citizen living in a Member State, can make a complaint to the Ombudsman. Businesses, associations or other bodies with a registered office in the Union may also complain. Complaints may be made to the Ombudsman either directly, or through a Member of the European Parliament.

The Ombudsman seeks to ensure that everyone who might have reason to complain receives information about their right to do so and how to exercise that right. As well as the Ombudsman's own targeted information campaign, the co-operation of the institutions and bodies themselves is of great importance in achieving this objective.

The European Commission systematically informs candidates in recruitment competitions, applicants for public access to documents and people who turn to it as guardian of the Treaties about their right to complain to the European Ombudsman. In a letter sent to the Vice-President of the European Commission, Mrs Loyola de PALACIO on 27 May 2003, the Ombudsman suggested that the Commission could consider also providing such information to applicants for, and recipients of, grants and subsidies. By letter of 27 October 2003, Mrs de PALACIO informed the Ombudsman that the Commission had decided to take action to apply the Ombudsman's proposal, beginning with the specific grants and subsidies covered by a recent Communication from the Commission.[2]

Complaints to the Ombudsman are dealt with in a public way unless the complainant requests confidentiality. It is important that the Ombudsman should act in as open a way as possible, so that European citizens can follow and understand his work and to set a good example to others.

During 2003, the Ombudsman dealt with 2611 cases. Of these, 2436 were new complaints received in 2003. Complaints were sent directly by individual citizens in 2268 cases and 168 complaints came from associations or companies. The number of complaints brought forward from the year 2002 was 170. The Ombudsman also began five own-initiative inquiries.

As noted in the Ombudsman's Annual Report for 1995, there is an agreement between the Committee on Petitions of the European Parliament and the Ombudsman concerning the mutual transfer of complaints and petitions in appropriate cases. During 2003, six complaints were transferred, with the consent of the complainant, to the European Parliament to be dealt with as petitions. In 143 cases the Ombudsman advised a complainant to petition the European Parliament. (See Annex A, Statistics)

2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is carried out in accordance with Article 195 of the Treaty establishing the European Community, the Statute of the Ombudsman[3] and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute. The implementing provisions and the Statute of

2 Communication relating to a proposal for basic acts for grants currently covered by the Commission's administrative autonomy or institutional prerogatives (COM (2003)274 final).

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

the Ombudsman are published on the Ombudsman's website (http://www.euro-ombudsman.eu.int) in all the official languages. The texts are also available in hard copy from the Ombudsman's office.

The implementing provisions deal with the internal operation of the Ombudsman's office. However, in order that they should form a document that will be understandable by and useful to citizens, they also include certain material relating to other institutions and bodies that is already contained in the Statute of the Ombudsman.

In the light of experience in the operation of the Ombudsman's office, the Ombudsman adopted new implementing provisions on 8 July 2002, which came into effect on 1 January 2003. The new implementing provisions are available in all official languages on the Ombudsman's website. The relevant announcement was published in the Official Journal on 19 October 2002 (OJ C 252/24).

2.2 THE MANDATE OF THE EUROPEAN OMBUDSMAN

All complaints sent to the Ombudsman are registered and acknowledged. The letter of acknowledgement informs the complainant of the procedure for considering his or her complaint and includes the name and telephone number of the legal officer who is dealing with it. The next step is to examine whether the complaint is within the mandate of the Ombudsman.

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

1 the complainant is not a person entitled to make a complaint (but see also 2.8.4 below)

2 the complaint is not against a Community institution or body

3 it is against the Court of Justice or the Court of First Instance acting in their judicial role or

4 it does not concern a possible instance of maladministration.

Example of a complaint that was outside the mandate

DEATH OF ILLEGAL IMMIGRANTS IN SPANISH WATERS

The European Ombudsman received a large number of complaints from citizens about the death of immigrants who were being illegally transported from the North African coast to the South of Spain. The complainants mainly referred to the responsibility of the Spanish and Moroccan governments for the deaths resulting from this illegal immigration. They suggested that these authorities and, by extension, the European Union, should address the problem of illegal immigration and adopt the appropriate measures.

The European Ombudsman investigates complaints about maladministration by the institutions and bodies of the European Community. He cannot deal with complaints concerning national, regional or local administrations of the Member States. Complaints concerning the need for, or merits of, Community legislation also fall beyond the scope of his competence.

The European Ombudsman therefore advised the complainants to turn to the Spanish national ombudsman insofar as the activities of the Spanish administration are concerned. As regards the complainants' suggestion that the European Union should take a stance, they were advised to petition the European Parliament, which has both investigatory and legislative powers that could be used in relation to this matter.

2.2.1 "Maladministration"

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

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

In 1998, the European Parliament adopted a Resolution welcoming this definition.

During 1999, there was an exchange of correspondence between the Ombudsman and the Commission which made clear that the Commission has also agreed to this definition.

2.2.2 The Code of Good Administrative Behaviour

The origins of the Code

In November 1998, the Ombudsman began an own initiative inquiry into the existence and the public accessibility, for the different Community institutions and bodies, of a Code of Good Administrative Behaviour for officials in their relations with the public. The own-initiative inquiry asked nineteen Community institutions and bodies whether they had already adopted, or would agree to adopt, such a Code for their officials in their relations with the public.

On 28 July 1999, the Ombudsman proposed a Code of Good Administrative Behaviour in the form of draft recommendations to the Commission, the European Parliament and the Council. Similar draft recommendations were made to the other institutions and bodies in September 1999.

The right to good administration in the Charter of Fundamental Rights

On 2 February 2000, at a public hearing organised by the Convention responsible for drafting the Charter of Fundamental Rights of the European Union, the European Ombudsman called for the Charter to include the right to good administration as a fundamental right.

On 7 December 2000, the Presidents of the European Parliament, the Council and the Commission proclaimed the Charter of Fundamental Rights of the European Union at the meeting of the European Council in Nice. The Charter includes the right to good administration as Article 41.

Towards a European administrative law

On 6 September 2001, the European Parliament adopted a resolution approving a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public. The Parliament's resolution on the Code is based on the Ombudsman's Code of 28 July 1999, with some changes introduced by Mr Roy PERRY as rapporteur for the Committee on Petitions of the European Parliament.

At the same time as approving the Code, the European Parliament also adopted a resolution calling on the European Ombudsman to apply it in examining whether there is maladministration, so as to give effect to the citizens' right to good administration in Article 41 of the Charter of Fundamental Rights of the EU.

The Ombudsman therefore applies the definition of maladministration so as to take into account the rules and principles contained in the Code.

Following a suggestion originally made by Jean-Maurice DEHOUSSE, rapporteur for the Committee on Legal Affairs and the Internal Market, the European Parliament's Resolution of 6 September 2001 on the Code also called on the European Commission to submit a proposal for a Regulation containing the Code of Good Administrative Behaviour, to be based on Article 308 of the Treaty establishing the European Community.

On 25 September 2003, Mrs De PALACIO, Vice-President of the European Commission, referred in the debate in the European Parliament on the Ombudsman's Annual Report for 2002 to the fact that the draft Constitution for Europe contains a legal basis for a future law on good administration, which should apply consistently to all the institutions and bodies of the Union.

In a letter addressed to President PRODI on 24 November 2003, the European Ombudsman proposed that preparatory work should start immediately, to ensure that the future law can be adopted as rapidly as possible following the entry into force of the Constitution.

2.3 ADMISSIBILITY OF COMPLAINTS

A complaint that is within the mandate of the Ombudsman must meet further criteria of admissibility before the Ombudsman can open an inquiry. The criteria as set out by the Statute of the Ombudsman are that:

1 the author and the object of the complaint must be identified (Art. 2.3 of the Statute)

2 the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Art. 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 (Art. 2.4)

4 the complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Art. 2.4)

5 in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Art. 2.8).

Example of a complaint that was not preceded by appropriate administrative approaches

A UK citizen complained against the European Parliament because he could not find out from Parliament's website the name and contact details of the MEP who represents him.

The Ombudsman's office immediately sent the complainant by e-mail a link to the page on the website of the European Parliament's UK office containing the relevant information about UK MEPs.

The complainant thanked the Ombudsman's office for this information and stated that he would be happy to withdraw his complaint if the search engine on the EP website brought up this type of information.

The Ombudsman considered that it would be appropriate for the complainant to put his concerns directly to the EP's webmaster. The complainant was informed accordingly.

Case 761/2003/FA

2.4 GROUNDS FOR INQUIRIES

The Ombudsman can deal with complaints that are within his mandate and which meet the criteria of admissibility. Article 195 of the EC Treaty provides for him to "conduct inquiries for which he finds grounds". In some cases, there may not be sufficient grounds for the Ombudsman to begin an inquiry, although the complaint is admissible. If a complaint has already been dealt with as a petition by the Committee on Petitions of the European Parliament the Ombudsman normally considers that there are no grounds for him to open an inquiry, unless new evidence is presented.

Example of a case where there were no grounds for an inquiry

The complainants were a German couple who were left handicapped by a serious accident. They considered that they had been unfairly treated by the social security insurance and claimed that they were entitled to further treatment.

They turned, without success, to a number of German ministries and other authorities, to German courts, to the Committee on Petitions of the German Parliament (Bundestag) and to the European Court of Human Rights.

The Committee on Petitions of the European Parliament, to which they also turned, informed them that it was not competent to deal with their petition, since it did not concern any EU-related issue. The complainants also addressed the Commission, which informed them in two letters that it was not in a position to help.

Their complaint to the European Ombudsman contested the decision of the Committee on Petitions of the European Parliament and the replies from the Commission.

The Ombudsman considered that the complaint against the decision of the Committee on Petitions did not concern possible maladministration, because the work of that Committee is part of the political activity of the European Parliament.

As regards the Commission, the Ombudsman considered that the position it had taken appeared to be reasonable and that there were no grounds, therefore, for an inquiry.

Case 526/2003/GG

2.5 ANALYSIS OF THE COMPLAINTS

Of the 13 533 complaints registered from the beginning of the activity of the Ombudsman, 17% originated from Germany, 14% from Spain, 13% from France, 10% from Italy and 7% from the UK. A full analysis of the geographical origin of complaints registered in 2003 is provided in Annex A, Statistics.

During 2003, the process of examining complaints to see if they are within the mandate, meet the criteria of admissibility and provide grounds to open an inquiry was completed in 95% of the cases. Of all the complaints examined, 25% appeared to be within the mandate of the Ombudsman. Of these, 338 met the criteria of admissibility, but 90 did not appear to provide grounds for an inquiry. Inquiries were therefore begun in 248 cases.

Most of the complaints that led to an inquiry were against the European Commission (66%). As the Commission is the main Community organ that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 29 complaints

against the European Parliament, 25 against the European Communities Personnel Selection Office (EPSO) and 11 complaints against the Council of the European Union.

The main types of maladministration alleged were lack of transparency (90 cases), unfairness or abuse of power (48 cases), discrimination (39 cases), unsatisfactory procedures (33 cases), avoidable delay (33 cases) negligence (16 cases), failure to ensure fulfilment of obligations, that is failure by the European Commission to carry out its role as "Guardian of the Treaties" vis-à-vis the Member States (15 cases) and legal error (15 cases).

2.6 ADVICE TO CONTACT OTHER BODIES AND TRANSFERS

If a complaint is outside the mandate or inadmissible, the Ombudsman always tries to give advice to the complainant as to another body which could deal with the complaint. If possible, the Ombudsman transfers a complaint directly to another competent body with the consent of the complainant, provided that there appear to be grounds for the complaint.

During 2003, advice was given in 1289 cases, most of which involved issues of Community law. In 616 cases, the complainant was advised to take the complaint to a national or regional Ombudsman or similar body. The Ombudsman advised 143 complainants to petition the European Parliament and, additionally, six complaints were transferred to the European Parliament, with the consent of the complainant, to be dealt with as petitions, seven cases were transferred to the European Commission and 25 cases were transferred to a national or regional ombudsman. In 189 cases, the advice was to contact the European Commission. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches had not been made to the Commission. In 341 cases, the complainant was advised to contact other bodies.

Example of a case transferred to another institution or body

In March 2003, Mr A. complained to the European Ombudsman about the failure of his bank to reimburse a sum of money that had been wrongly withdrawn from his account.

Since the complaint was not against a Community institution or body, the European Ombudsman could not deal with it. He therefore transferred the case to the Italian banking ombudsman, an institution that deals with disputes between banks and their clients. The complainant was informed accordingly.

In April 2003, the Italian banking Ombudsman informed the European Ombudsman that the case had been settled to the complainant's full satisfaction.

Case 427/2003/IP

2.7 THE OMBUDSMAN'S POWERS OF INVESTIGATION

2.7.1 The hearing of witnesses

According to Article 3.2 of the Statute of the Ombudsman:

"Officials and other servants of the Community institutions and bodies must testify at the request of the Ombudsman; they shall speak on behalf of and in accordance with instructions from their administrations and shall continue to be bound by their duty of professional secrecy".

The general procedure applied for the hearing of witnesses is the following:

1 The date, time and place for the taking of oral evidence are agreed between the Ombudsman's services and the Secretariat General, which informs the witness(es). Oral evidence is taken on the Ombudsman's premises, normally in Brussels.

2 Each witness is heard separately and is not accompanied.

3 The Ombudsman's services and the Secretariat General agree the language or languages of the proceedings. If a witness so requests in advance, the proceedings are conducted in the mother tongue of the witness.

4 The questions and answers are recorded and transcribed by the Ombudsman's services.

5 The transcript is sent to the witness for signature. The witness may propose linguistic corrections to the answers. If the witness wishes to correct or complete an answer, the revised answer and the reasons for it are set out in a separate document, which is annexed to the transcript.

6 The signed transcript, including any annex, forms part of the Ombudsman's file on the case.

Point 6 also implies that the complainant receives a copy of the signed transcript and has the opportunity to make observations.

During 2003, the Ombudsman's power to hear witnesses was invoked in one case (1889/2002/GG).

2.7.2 Inspection of documents

During 2003, the Ombudsman's powers to inspect files and documents relating to an inquiry were invoked in 10 cases.

According to Article 3.2 of the Statute of the Ombudsman:

"The Community institutions and bodies shall be obliged to supply the Ombudsman with any information that he has requested of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of secrecy.

They shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement.

They shall give access to other documents originating in a Member State after having informed the Member State concerned."

The Ombudsman's instructions to his staff concerning inspection of documents include the following points:

The legal officer is not to sign any form of undertaking or any acknowledgement other than a simple list of the documents inspected or copied. If the services of the institution concerned make such a proposal, the legal officer transmits a copy of it to the Ombudsman.

If the services of the institution concerned seek to prevent or impose unreasonable conditions on the inspection of any documents the legal officer is to inform them that this is considered as a refusal.

If inspection of any document is refused the legal officer asks the services of the institution or body concerned to state the duly substantiated ground of secrecy on which the refusal is based.

The first point was added following a case in which the Commission services proposed that the Ombudsman's staff should sign an undertaking to indemnify the Commission in respect of any damage caused to a third party by release of information contained in the document.

2.8 INQUIRIES BY THE OMBUDSMAN AND THEIR OUTCOMES

2.8.1 Inquiries following a complaint

When the Ombudsman decides to start an inquiry into a complaint, the first step is to send the complaint and any annexes to the Community institution or body concerned for an opinion. When the opinion is received, it is sent to the complainant for observations.

In some cases, the institution or body itself takes steps to settle the case to the satisfaction of the complainant. If the opinion and observations show this to be so, the case is then closed as "settled by the institution". In some other cases, the complainant decides to drop the complaint and the file is closed for this reason.

If the complaint is neither settled by the institution nor dropped by the complainant, the Ombudsman continues his inquiries. If the inquiries reveal no instance of maladministration, the complainant and the institution or body are informed accordingly and the case is closed.

2.8.2 Friendly solutions and compensation

One of the things that distinguishes ombudsmen from courts is the possibility of mediation. Mediation can lead to a friendly solution, which satisfies both the complainant and the institution complained against.

When the European Ombudsman's inquiries reveal an instance of maladministration, he seeks a friendly solution if possible. In some cases, this involves suggesting to the Institution or body concerned that it make an offer of compensation to the complainant. Any such offer from the institution is made ex gratia: that is, without admission of legal liability and without creating a precedent.

2.8.3 Critical remarks, draft recommendations and special reports

If a friendly solution is not possible, or if the search for a friendly solution is unsuccessful, the Ombudsman either closes the file with a critical remark to the institution or body concerned, or makes a draft recommendation.

A critical remark is considered appropriate for cases in which it is no longer possible for the institution concerned to eliminate the instance of maladministration, the maladministration appears to have no general implications and no follow-up action by the Ombudsman seems necessary.

Responding to a suggestion made by the European Parliament in dealing with the Report on the activities of the Ombudsman for the year 2000, the Ombudsman established a register of critical remarks made from the beginning of 2002 and informed the Community institutions and bodies of his intention periodically to request information about any follow-up action taken by the institution or body itself.

In January 2003, the Ombudsman asked the Commission to inform him of any follow up given to 21 of the critical remarks made in 2002, in relation to which he had not already received information from the Commission. In its reply of 26 March 2003, the Commission expressed its regrets for the

delays or lack of reply which had given rise to 15 of these critical remarks. It also informed the Ombudsman that its services had been reminded to apply the provisions of the Commission's code of conduct strictly and listed a number of areas in which it had reinforced its internal procedures so as to avoid similar cases of maladministration in the future.

In cases where follow-up action by the Ombudsman does appear necessary (that is, where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications), the Ombudsman makes a draft recommendation to the institution or body concerned. In accordance with Article 3 (6) of the Statute of the Ombudsman, the institution or body must send a detailed opinion within three months.

If a Community institution or body fails to respond satisfactorily to a draft recommendation, Article 3 (7) provides for the Ombudsman to send a report to the European Parliament and to the institution or body concerned. The report may contain recommendations.

2.8.4 Own initiative inquiries

Article 195 EC also provides the Ombudsman with power to open inquiries on his own initiative. Such inquiries are mainly used to tackle possible systemic problems, often based on a series of complaints. One such inquiry (OI/2/2002/IJH – see chapter 3 below) led the Commission to adopt a new procedure in 2003 to give unsuccessful bidders in its tender procedures time to challenge contract award decisions through legal proceedings. The new procedure is outlined in a Commission Communication dated 3 July 2003.[4]

Three new own-initiative inquiries of this kind were launched in 2003. OI/1/2003 deals with the internal dispute resolution procedures available to national experts who are seconded to the Commission. OI/3/2003 concerns the integration of persons with disabilities, in particular as regards the measures implemented by the European Commission to ensure that persons with disabilities are not discriminated against in their relations with the institution. OI/5/2003 concerns the activity of the Commission to promote the good administration of the European Schools.

In addition, the own-initiative power can be used to investigate issues raised by complaints from persons who are not citizen or residents. Two such inquiries were opened in 2003, one of which was also closed during the year.

Example of the use of the own-initiative power

A citizen of Cyprus applied to enter a competition organised by the European Personnel Selection Office (EPSO) to establish a reserve list of Cypriot assistant administrators. He complained to the European Ombudsman that technical problems with EPSO's server meant that applicants could not register electronically up to the latest time announced in the notice of competition.

Since the complainant was neither a citizen nor a resident of the Union, the Ombudsman could not deal with the complaint as such. However, given the seriousness of the issues raised, the Ombudsman decided to open an own-initiative inquiry.

EPSO argued that applicants had enough time to register and, in view of possible technical difficulties, had been expressly instructed not to wait until the last few days before the closing date. It reviewed the case, however, after the Ombudsman intervened, and invited the complainant to the pre-selection tests.

Case OI/4/2003/ADB

[4] Communication from the Commission. COM(2003)395 final (03.07.03). Procedure for informing candidates and tenderers, after a contract has been awarded and before the actual contract has been signed, in respect of public procurement contracts awarded by the Commission under Article 105 of the Financial Regulation.

2.8.5 Analysis of inquiries

In 2003, the Ombudsman began 253 inquiries, 248 in relation to complaints and five own-initiatives. (For further details, see Annex A, Statistics)

During the course of the year, 48 cases were settled by the institution or body itself. Of this number, 34 were cases in which the Ombudsman's intervention succeeded in obtaining a reply to unanswered correspondence (see the 1998 Annual Report section 2.9 for further details of the procedure used in such cases). Five cases were dropped by the complainant. In 87 cases, the Ombudsman's inquiries revealed no instance of maladministration.

A critical remark was addressed to the institution or body concerned in 20 cases. A friendly solution was reached in four cases. Five draft recommendations were accepted by the institutions in 2003 and two cases were closed following a special report made to the European Parliament in 2002 (see section 3.6).

The full texts of the special reports are published on the Ombudsman's website in all official languages.

3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND

3.1.1 The European Parliament

ALLEGED LACK OF SERVICE-MINDEDNESS IN RECRUITMENT

Decision on complaint 406/2003/(PB)IJH (Confidential) against the European Parliament

THE COMPLAINT

A complaint was made to the Ombudsman concerning the European Parliament's procedure for recruitment of a high post within its services.

The complaint was classified as confidential, at the complainant's request, in accordance with Article 2 (3) of the Statute of the Ombudsman.

According to the complainant, the relevant facts are, in summary, the following:

Long before the closing date, the complainant submitted to the European Parliament an application for a high post, which was published in a Recruitment Notice. The complainant received an answer from Parliament saying that the Advisory Committee would not proceed with his application since his file could not be assessed due to lack of documentary proof of, among other things, his qualifications, as required by the recruitment notice.

The complainant accepts that Parliament has certain rules pertaining to applications. Nevertheless, he is of the opinion that Parliament should have informed him that they would have needed more documentation.

In substance, the complainant alleges that the European Parliament, in dealing with his application for recruitment under a particular Contract Notice, has not been service-minded enough, since it did not contact him to request more documentation.

The complainant claims that his application should be reopened.

THE INQUIRY

The European Parliament's opinion

The opinion of the European Parliament was, in summary, as follows:

When examining an application, the Advisory Committee is bound by the text of the recruitment notice, which in the current case stipulated that candidates had to enclose, with their letter of application, a detailed curriculum vitae and evidence of their education, professional experience and current post. When examining the complainant's application, the Advisory Committee found no documentary evidence of the statements made in the complainant's CV. The Advisory Committee was therefore unable to evaluate the complainant's application. It is for an applicant for a post advertised by recruitment notice to provide the Committee with all the information necessary

to verify whether the applicant meets the conditions in the recruitment notice. According to firmly established case law, neither the administration, nor the Committee, is required to conduct inquiries with a view to verifying whether the applicants meet all the conditions in the contract notice.

The complainant was invited to submit observations on the European Parliament's opinion. No observations appear to have been submitted by the complainant.

THE DECISION

1 Alleged lack of service-mindedness

1.1 The complainant alleges that the European Parliament, in dealing with his application for recruitment, has not been service-minded enough, since it did not contact him to request more documentation.

1.2 The European Parliament argues that the Advisory Committee, when examining an application, is bound by the text of the recruitment notice, which in the current case stipulated that candidates had to enclose, with their letter of application, evidence of their education, professional experience and current post. The Parliament also points out that according to firmly established case law, it is not required to conduct inquiries with a view to verify whether the applicants meet all the conditions in the contract notice.

1.3 The Ombudsman notes that the right to good administration is one of the fundamental rights stemming from European citizenship[5] and that good administration includes, as the complainant points out, the requirement to be service-minded.[6] In considering the application of the principles of good administration in the present case, the Ombudsman points out that recruitment to the Community institutions is governed by specific rules laid down in the Staff Regulations and in the case law of the Community courts, respect for which is necessary to ensure equality of treatment of candidates.

1.4 According to the case law, a candidate in a competition must provide the Selection Board with all the information and documents necessary to enable it to check that the candidate satisfies the conditions laid down in the notice of competition.[7] The Selection Board cannot be required to make enquiries itself in order to ensure that candidates satisfy all these conditions.[8] Moreover, the Selection Board is bound by the wording of the notice of competition.[9] In this case, the published notice stated that, by the closing date, candidates must have produced the supporting documents for their diplomas and/or professional experience. In these circumstances, for Parliament to ask a candidate for more documentation could be inequality of treatment as regards, for instance, those candidates who complied with the notice of competition. The Ombudsman therefore considers that, in the present case, the European Parliament has respected the principles of good administration and therefore finds no maladministration. In view of this finding, the complainant's claim cannot be sustained.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman therefore closes the case.

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5 Article 41 of the Charter of Fundamental Rights of the European Union.

6 Article 12 (1) of the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: http://www.euro-ombudsman.eu.int).

7 See e.g. Case 225/87, *Patricia Belardinelli and others v. Court of Justice of the European Communities* [1989] ECR 2353, paragraph 24, and Case T-133/89, *Jean-Louis Burban v. European Parliament* [1990] ECR II-245, paragraph 34.

8 See e.g. Case T-133/89, *Jean-Louis Burban v. European Parliament* [1990] ECR II-245, paragraph 34.

9 See e.g. Case T-54/91, *Nicole Almeida Antunes v. European Parliament* [1992] ECR II-1739, paragraph 39.

3.1.2 The Council of the European Union

ACCESS TO EUROPEAN CONVENTION AGENDAS AND MINUTES

Decision on complaint 1795/2002/IJH as it relates to the Council of the European Union

THE COMPLAINT

In October 2002, Mr V. made a complaint to the Ombudsman on behalf of the European Citizen Action Service (ECAS) against the European Convention and the Council of the European Union.

The present decision deals only with the complaint against the Council. The Ombudsman's inquiry into the complaint against the European Convention is the subject of a separate decision (see section 3.1.5).

According to the complainant, the relevant facts are, in summary, as follows:

In May 2002, the complainant applied to the Council for access to the agendas and minutes of the Praesidium of the European Convention. The Council did not reply within the 15 days laid down by Regulation 1049/2001. On 19 June 2002, the complainant submitted a confirmatory application, to which the Council replied on 12 July 2002. The reply stated, amongst other things, that the European Convention is a body distinct from the Council; that its documents are outside the scope of application of Regulation 1049/2001; and that the General Secretariat had forwarded the application to the Secretariat of the European Convention.

The complainant expresses his complaint to the Ombudsman in the form of requests to investigate, ascertain or establish certain matters. In summary, the complaint contains the following allegations against the Council:

- The Council failed to reply to the complainant's initial application for access to the agendas and minutes of the Praesidium of the European Convention within the 15 days laid down by Regulation 1049/2001 and failed to inform him of his rights of appeal;
- The documents concerned are in the Council's possession and the Council should therefore give access to them in accordance with Regulation 1049/2001.

THE INQUIRY

The Council's opinion

In summary, the Council's opinion made the following points:

The Convention was created by the European Council rather than by the Council, which is not represented as an institution in the Convention. The Council provides certain facilities to the Convention such as office space and, like the European Parliament and the Commission, staff on secondment. The Praesidium of the Convention operates in a completely independent way from the Council and its General Secretariat.

The fact that the Convention Secretariat works on the premises of the Council does not mean that the documents produced by the Convention are Council documents or even within its cognisance. The Secretariat of the Convention is independent from the General Secretariat of the Council. It is under the autonomous direction of a Secretary General who is not a member of the Council's staff and who is under the authority of the President of the Convention.

The Council does not hold the documents requested by the complainant. Although the Council is kept informed of the progress of the Convention, the agendas and minutes of the Praesidium are not made available to the Council or its General Secretariat.

As regards the allegation of delay in replying to the complainant and failure to inform of rights of appeal, the Council pointed out that the complainant's original request was sent by e-mail on 29 April 2002. Rather than merely informing the complainant that the Council did not hold the documents, which would have forced him to re-send his application to the Convention, thus entailing an unnecessary delay, the Council General Secretariat took a pragmatic approach and forwarded his e-mail as speedily as possible to the Convention Secretariat.

The General Secretariat's computer system sent an automatic acknowledgement of receipt to the complainant upon receipt of his e-mail. This automatic reply did not contain a reference to the right to make a confirmatory application. In the present case such a reference would not have made sense, since the complainant was informed that the Council does not hold the documents. Suggesting that a confirmatory application in the Council could possibly lead to another conclusion would have been misleading.

In its reply to the confirmatory application, the Council indeed failed to inform the complainant of the remedies open to him. The Council General Secretariat has taken steps to avoid this administrative omission recurring.

The complainant's observations

The complainant considers that Council's opinion clarified the relationship between the Institution and the European Convention by explaining that Council does not hold the documents requested. For this reason, the complainant acknowledges that the complaint is unfounded on this point.

The complainant accepts that the Council took a pragmatic approach in forwarding the complaint to the Convention Secretariat and that the Council Secretariat's responded promptly in accordance with Article 7 (1) of Regulation 1049/2001. It would have been helpful, however, if the Council had sent a copy to the complainant. As regards the failure to inform about remedies, the complainant stated that he acknowledges and appreciates the Council's General Secretariat efforts to avoid this recurring. As an advisory and advocacy service for NGOs and individuals with the EU Institutions, ECAS emphasises that it is of utmost importance for citizens to know their rights. In a telephone conversation with the Ombudsman's services on 7 March 2003, ECAS' staff clarified on the complainant's behalf that he is satisfied with the Council's response.

THE DECISION

1 The allegation of late reply to an application for access to documents and failure to inform of remedies

1.1 The complainant alleges that the Council failed to reply to his initial application for access to the agendas and minutes of the Praesidium of the European Convention within the 15 days laid down by Regulation 1049/2001 and failed to inform him of his rights of appeal.

1.2 According to the Council, its General Secretariat took a pragmatic approach and forwarded the complainant's e-mail as speedily as possible to the Convention Secretariat. In its reply to the confirmatory application, the Council indeed failed to inform the complainant of the remedies open to him. The Council General Secretariat has taken steps to avoid this administrative omission recurring.

1.3 The evidence available to the Ombudsman is that the Council made a genuine effort to deal promptly and effectively with the complainant's application. It has acknowledged the failure to inform the complainant of available remedies and taken steps to avoid this recurring in future. The Ombudsman understands that the complainant is satisfied with the Council's response.

The Ombudsman therefore considers that this aspect of the complaint has been settled by the institution.

2 The allegation that the documents are in the Council's possession

2.1 The complainant alleges that the agendas and minutes of the Praesidium of the European Convention are in the Council's possession and the Council should therefore give access to them in accordance with Regulation 1049/2001.

2.2. The Council states that the Praesidium of the Convention operates in a completely independent way from the Council and its General Secretariat and that the Council does not hold the documents requested by the complainant. Although the Council is kept informed of the progress of the Convention, the agendas and minutes of the Praesidium are not made available to the Council or its General Secretariat.

2.3 The Ombudsman is not aware of anything that could case doubt on the Council's explanation of its relationship to the Praesidium of the European Convention. The Ombudsman notes that the complainant accepts the Council's explanation and acknowledges that this aspect of the complaint is unfounded. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to be no maladministration by the Council. The Ombudsman therefore closes the case.

3.1.3 The European Commission

LIFE PROGRAMME: COMMISSION'S REFUSAL TO COMPLETE PAYMENT OF A PROJECT

Decision on complaint 1826/2001/JMA against the European Commission

THE COMPLAINT

In June 1996, the complainant's organisation (CTFC) submitted a proposal to the Commission, under the LIFE programme, to carry out a project for the development of edible mushrooms in the framework of afforestation initiatives (ref.: LIFE/ ENV/E/512). CTFC was to develop the project in co-operation with a number of individual forestry owners. In December 1996, the Commission approved the proposal. CTFC subsequently received Community assistance of 208.749,58 €.

In October and November 1997, the complainant held several discussions with the Commission services concerning how the project's budget should reflect the expenses incurred by individual forestry owners. As a result of these discussions, it was decided to define the relationship between CTFC and third party forestry owners through individual agreements, drawn up on the basis of a standard agreement. These agreements were to spell out both the areas of co-operation between the different parties and the budget implications of their work. On 30 October 1997, the complainant faxed the standard agreement to the Commission official in charge of the financial aspects of the project. On 4 November 1997, the contract was also faxed to Mr dB, the Commission official generally responsible to monitor and evaluate the project.

Following this communication, Mr dB phoned the complainant and approved the content of the standard agreement. In the course of the conversation, Mr dB insisted that for the sake of efficiency, future contacts be made directly with him, and always by telephone.

In February 1999, the complainant submitted the project's intermediate report, in which the budget implications of the forestry owners' work followed the model discussed with the Commission services in October and November 1997. In June 1999, Mr dB phoned the complainant and requested that the expenses linked to the forestry owners' work be consolidated and treated as external assistance. Despite the complainant's initial reluctance to alter the agreed financial criteria, he was obliged to accept the changes as a condition for the release of the intermediate payment. In October 1999, the complainant delivered the new version of the report to the Commission by hand. The Commission made the intermediate payment in April 2000.

In February 2000, the complainant submitted the final report, in which the budget implications of forestry owners' work were dealt with in the same way as in the intermediate report. The Commission requested additional information in October 2000. Upon the receipt of the complainant's reply, the institution sent him a fax dated 30 January 2001 questioning the way in which costs incurred by forestry owners had been reflected, and claiming their reimbursement. According to the complainant, the Commission's request did not respect his right of defence since it did not allow for a hearing as foreseen in Art. 11 (2) of Regulation 1973/92 regarding the LIFE programme.

In the ensuing controversy, Mr dB declined any responsibility, and the Commission's financial services were unwilling to meet the complainant.

On the basis of the above, the complainant alleges that (i) the Commission services misled him and did not provide the necessary assistance, and (ii) the procedure followed by the Commission for the handling of his project was unclear and did not comply with the applicable rules. The complainant therefore claims (iii) that the Commission should halt its request for reimbursement and hand over the last payment for the project as well as the corresponding interests.

The Commission's opinion

Neither the Commission's decision granting financial assistance to the project (C896)/3058/final/0037) [henceforth the Decision] nor its proposed budget foresaw any role for third party forestry owners. Their involvement in the project required therefore a prior amendment of the Decision and the Commission's approval of the new relationship.

Although the complainant faxed on 30 October 1997 a draft agreement aimed at governing CTFC's working relationship with forestry owners, the document was never formally submitted for approval to the Commission, as required by the Decision.

In February 1999, and upon the submission of his intermediate report, the complainant expressed his wish to include the costs incurred by third party forestry owners within the project's budget. The Commission stated that its services made it clear to the complainant that this possibility demanded both a prior amendment of the Decision and the Commission's approval of the new relationship. At this occasion, the complainant was also reminded that any such change could not alter the financial conditions of LIFE assistance as defined in Arts. 2 and 3 of the Decision's Annex 2.

In May 2000, the Commission made the intermediate payment. It underlined that this financial operation only depended upon the level of expenditure, and that it did not prejudge the final eligibility of expenses.

The final report was received on 19 May 2000. Even though the aims of the project had been attained, its budget structure and contents, in particular as involved the costs incurred by forestry owners, did not respect the conditions set out in the Decision.

The Commission stated that the complainant had been unable to show that expenses incurred by third party forestry owners (147.867 €) had been in fact disbursed, as required by Arts 3 (4) and 4 (1) of the Decision. No proof of a cash flow between CTFC and any third party had been furnished. The

Commission stressed that the provisions of Art. 3 (3) of the Decision are clear and unconditional. It added that its services could not have induced the complainant to believe that those legal provisions could be disregarded.

On 25 October 2000, the Commission requested additional information, which was forwarded by the complainant on 13 November 2000. The Commission considered that the new information did not add any new element, and thus gave notice to the complainant by fax dated 30 January 2001 that the amount of assistance corresponding to these expenses would not be paid, and accordingly that part of the grant already paid (37.040 €) would have to be reimbursed. The institution granted the complainant a short period to have his views heard. On the basis of the information forwarded by the complainant on 8 February 2001, the Commission reduced the request for reimbursement to an amount of 30.429 €, and issued the recovery order on 6 March 2001. The Commission considered that the procedure followed by its services in this process was consistent with the criteria laid down in Art 7 of Annex 2 of the Decision.

The complainant had a meeting with the Commission services on 4 April 2001. Since he was unable to provide any further evidence, the Commission confirmed its previous stand on 26 April 2001. The Commission's final request for reimbursement was issued on 30 August 2001, and referred to the means of appeal available to the complainant.

The complainant's observations

In his observations of 30 July 2002, the complainant repeated the allegations made in his complaint. He stressed that the relationship with forestry owners as well as the accounting of the related expenses had been thoroughly discussed with the Commission services.

The complainant explained that the need for forestry owners to get involved in the work of the project had been reflected in three different chapters of CTFC's initial proposal, namely in section A13/4 (section on reforestation of the project's summary); section A14/7 (plant growing) and in several economic sections (A5, A6, A9 and A11).

He described the negotiations which, since July 1997, had taken place with the responsible Commission services to reflect the costs incurred by third party forestry owners into the project's budget. Two different models were considered: the first one whereby forestry owners were to be directly paid for the specific tasks performed; the other based on the conclusions of individual contracts. In agreement with the responsible Commission services it was decided to opt for the second option in which no cash flows were to be reflected. The faxes sent on 30 October 1997 and on 4 November 1997 illustrated this fact. The complainant underlined that the financial structure of the intermediate report, in particular the methodology for the accounting of third party expenses, had been changed in response to the suggestions made by the Commission.

On 16, 22, 29, 30 and 31 October 2002, the complainant forwarded additional information concerning meetings held with Commission officials which, in his view, supported his allegations.

FURTHER INQUIRIES

In view of the observations submitted by the complainant, the Ombudsman wrote to the Commission on 31 October 2002. In his letter, the Ombudsman referred to the factual details described in the complainant's observations, which appeared to support his allegations, and requested the Commission to comment on these matters.

The Commission's second opinion

The Commission argued that the observations made by the complainant did not add any new element to the case. The institution stressed that no instructions had been given by its services involving the amendment of the financial rules governing the contract. It explained that the complainant had never submitted any evidence to demonstrate that a Commission official made

the alleged instructions in relation to the project. Moreover no such instructions appear in the Commission's file (neither in electronic nor in paper form).

The Commission referred to the faxes sent by the complainant to its services on 30 October and 4 November1997, suggesting modifications to the financial convention. It pointed out that these communications had no contractual value, and had been submitted for information. Although the need for an official request had been made clear various times to the complainant, this request has never been introduced to the Commission. Under these circumstances, the Commission believed the complainant had no other choice than respecting the contract in all its parts.

The institution noted that the complainant had already benefited from the LIFE programme in the past, and was well aware of its financial rules. In its view, the complainant should have known that all financial verifications are carried out at the final stage of the project. Accordingly, he could not have assumed that the Commission's intermediate payment implied the acceptance of his financial amendments.

The Commission underlined its willingness to consider paying the costs claimed by the complainant, and thus to halt its recovery order, provided that he submit evidence that these costs were effectively incurred. The Commission pointed out that it had requested, on several occasions, proof of the existence of payments made by the beneficiary to the organisations that executed the work. Despite these requests, the information has not been supplied. For this reason, the Commission had decided to proceed with a recovery order for € 30.429, in application of Art. 3.3c of the Grant Decision. It added that should the complainant fail to provide such evidence, however, the Commission would continue with the implementation of the recovery order.

The complainant's observations on the Commission's second opinion

In his observations on the Commission's second opinion dated 20 December 2002 and 10 January 2003, the complainant insisted that the format of the financial section of his reports had arisen from suggestions from the Commission services, which had not later on expressed any formal disagreement. Whilst the complainant could not put forward any written evidence, he referred to a number of formal statements made by participants in the project confirming his point of view. The complainant expressed his willingness to testify before the Ombudsman, if necessary.

The complainant enclosed different documents, which showed that the Commission had accepted, at least as regards LIFE project 97/ENV/E/260, the use of bilateral agreements between the beneficiary and several subcontractors in which no cash flows took place.

To conclude, the complainant stated the CTFC might be ready to reformulate the financial section of the project in line with the Commission's requests, if necessary. He requested the Ombudsman to supervise the procedure, in order to ensure that a fair solution should be reached and that CTFC is not unjustly penalised.

THE DECISION

1 Attitude of the responsible Commission's services towards the complainant

1.1 The complainant alleges that the Commission services misled him and did not provide the necessary assistance. He argues that the relationship with forestry owners as well as the accounting of the related expenses had been thoroughly discussed with the Commission services.

1.2 The Commission argues that its services could not possibly have induced the complainant to believe he could disregard the rules of the project. It states that no evidence had been put forward by the complainant to demonstrate that Commission officials made the alleged instructions in relation to the project, and that no such instructions appear in the Commission's file.

1.3 The Ombudsman notes that the complainant has submitted a large amount of documentary evidence, which reflects his continuous exchanges with the responsible Commission services.

Having reviewed these documents, it appears that the responsible officials were well aware of the complainant's work, and therefore should have known of the financial criteria being used to account for the work of sub-contractors. However, the Ombudsman is of the view that there appears to be no direct evidence, which could lead to the conclusion that the Commission misled the complainant.

The Ombudsman therefore concludes that there is no maladministration by the Commission as regards this aspect of the case.

2 The Commission's procedure for the reimbursement of part of the assistance

2.1 The complainant alleges that the procedure followed by the Commission for the handling of his project was unclear and did not comply with the applicable rules. He argues that his rights of defence has not been respected and that the Commission's request for reimbursement of part of the assistance did not allow for a hearing as foreseen in Art. 11 (2) of Regulation 1973/92 regarding the LIFE programme.

2.2 The Commission argues that the procedure followed by its services in this process was consistent with the applicable rules (Art 7 of Annex 2 of the decision granting financial assistance to the project [the Decision]). It explained that its first request of 30 January 2001 allowed the complainant to have his views heard before a final decision was to be adopted, and also that its final request of 30 August 2001 included information on the means of appeal.

2.3 The Ombudsman notes that the rules governing the implementation of projects financed through the LIFE programme are set out in Council Regulation 1973/92[10], as well as in each Commission's Decision granting assistance to individual projects.

The procedure to be followed by the Commission in cases of undue payment is laid down in Art. 11 (2) of Regulation 1973/92, which reads as follows,

" [...] if only part of the allocated financial assistance is justified by the progress in implementation of an action, the Commission shall request the beneficiary to submit its observations within a specified period. If the beneficiary does not give a satisfactory answer, the Commission may cancel the remaining financial assistance and demand repayment of sums already paid."

Art. 7 of Annex 2 of the Decision reproduces identical procedural requirements.

2.4 The Ombudsman also notes that the first request for reimbursement issued by the Commission on 30 January 2001, indicated in its last paragraph that a note would be submitted for prior approval to the financial controller on 9 February 2001, at the latest, so that the complainant could send his observations as foreseen under Art. 11 (2) of the LIFE Regulation. The final debit note was sent to the complainant on 6 March 2001. Even though the note did not mention any possible means of appeal, the Commission referred to these means in its further correspondence with the complainant dated 30 August 2001.

2.5 On the basis of the above, the Ombudsman does not consider that the Commission infringed the complainant's rights of defence when issuing its request for reimbursement of part of the assistance. In these circumstances, the Ombudsman takes the view that the procedure followed by the Commission for the handling of his project did not appear to be unclear, and accordingly, that the institution appeared to comply with the applicable rules. The Ombudsman therefore concludes that there appears to be no maladministration by the Commission as regards this aspect of the case.

3 Commission's request for reimbursement of part of the funds

3.1 The complainant claims that the Commission should halt its request for reimbursement, and hand over the last payment of the project as well as the corresponding interests.

[10] Council Regulation (EEC) No 1973/92 of 21 May 1992 establishing a financial instrument for the environment (LIFE); OJ L 206, 22/07/1992 p.1.

3.2 In its first opinion, the Commission justified its request for reimbursement on the grounds that the complainant never formally submitted a request for an amendment to the Decision in order to allow third party property owners to participate in the project. The institution pointed out that the complainant had not been able to show that the expenses incurred by third party forestry owners had in fact been disbursed.

3.3 As regards the participation of third party property owners, the Ombudsman notes that the technical description of the project, included in the beneficiary's proposal, foresaw their co-operation. On 30 October and 4 November 1997, the complainant formally notified the Commission services of the forthcoming participation of third party forestry owners in the implementation of the project. The Ombudsman notes that the Commission has not provided any proof that its services raised any objections to the complainant's initiative.

In relation to the accounting of expenses incurred by these third parties, the Ombudsman considers that the Commission did not appear to be entirely unaware of the criteria used by the complainant, as shown by the text of his faxes to the institution of 30 October and 4 November 1997[11]. The Ombudsman takes notice of the fact that the accounting scheme used by the complainant in his final report followed the pattern of the intermediate report. Upon the receipt of the intermediate report, not only did the Commission fail to object to its contents, but also proceeded with the mid-term payment. By so doing, and as set out in Art. 3 (2) of the Decision's Annex 2, the Commission seemingly accepted the contents of the financial statement and the mid-term report submitted by the beneficiary[12].

3.4 In its reply to the Ombudsman's further inquiries, the Commission underlined its willingness to consider paying the costs claimed by the complainant, and thus to halt its recovery order, provided that he submit evidence that costs incurred by third party property owners were effectively incurred. In his latest observations, the complainant has expressed his readiness to reformulate the financial section of the project in line with the Commission's requests, and has asked the Ombudsman to supervise the procedure in order to ensure a fair solution. In view of this situation, the Ombudsman considers that there are no grounds to inquire further into this aspect of the case.

3.5 The complainant has asked the Ombudsman to supervise the procedure. The Ombudsman points out that, under Community financial procedures, the Commission is responsible for administration of the contract in question. The complainant has the possibility, however, to make a new complaint to the Ombudsman in future, if he should consider it necessary to do so.

4 Conclusion

On the basis of the European Ombudsman's inquires into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

11 The text of the fax sent by the complainant to the Commission official in charge of the financial aspects of the project dated 30 October 1997 is particularly illustrative:

"Dear J., As we agreed last July, please find enclosed a proposed "agreement" in order to account for the contribution to project LIFE' 96 ENV/E/512 of forestry owners, both in terms of time and resources. I would appreciate if you could inform us about the type of documentary evidence, if necessary, we should keep, and the constraints, if any, we should be aware of. [...]"

12 *"[...] an intermediate payment shall be made once the Commission accepts the financial statement and the corresponding report submitted by the beneficiary [...]".*

ANNULMENT OF QUESTIONS AND ALLEGED FAILURE TO RESPECT COMPETITION NOTICE

Decision on complaint 647/2002/OV against the European Commission

THE COMPLAINT

According to the complainant the relevant facts were as follows:

The complainant participated in open competition COM/A/6/01 but did not pass pre-selection test b) where he obtained only 16.842/40. The complainant made 2 appeals to the Selection Board, on 10 January 2002 in order to ask the re-examination of test b), and on 11 February 2002 in order to contest the correction method. The Selection Board decided to annul three questions of the pre-selection test. The complainant contested this, but the Selection Board replied that the questions were annulled for everybody and that the principle of equality had thus been respected. Further to the appeal, the Selection Board sent to the complainant a copy of the multiple choice questions list with the right answers and the complainant's answers. The complainant is of the opinion that 5 of his replies on test b) were also correct, and that therefore he would have obtained 22,105/40 instead of 16.842/40.

As the Selection Board rejected the complainant's appeals, he complained to the Ombudsman on 25 March 2002. He made 3 allegations:

1 by annulling questions 9 and 37 of test b), the Selection Board did not respect the principle of equality between the candidates;

2 the Selection Board did not reason its reply on the complainant's claim that his answers on questions 5, 8, 11, 13 and 25 of test b) could also be deduced from the text which was submitted to the candidates;

3 the complainant alleges that the Selection Board did not respect the conditions of point VI.D of the competition notice, as he obtained information that a number of candidates who did not obtain the minimum marks on the pre-selection tests were nevertheless included in the list of 600 candidates foreseen by the competition notice.

THE INQUIRY

The Commission's opinion

By letter of 14 December 2001, the unit Admin.A.2 informed the complainant of the results of the pre-selection tests. As the complainant obtained 16,842 out of 40 for test b) concerning verbal and numerical reasoning, and the minimum required mark was 20, the Selection Board did not proceed with the correction of his written test, in accordance with point VI.D of the competition notice according to which every mark below the minimum mark is eliminatory.

The complainant was also informed that the Selection Board had decided to annul a question of test a) and questions 9 and 37 of test b) because of errors discovered after the tests took place. In order to guarantee equality between candidates, the decision to annul these questions was applied to all linguistic versions.

Further to his request of 18 December 2001, the complainant was provided with a copy of his optical answer sheet and of the sheet with the correct answers of the pre-selection tests.

By letter of 10 January 2002, the complainant questioned the quality of test b) as well as the annulment of questions, considering that it had in fact created an inequality, which affected his legitimate expectations. In its answer, the Selection Board explained to the complainant the aim of the verbal and numerical reasoning test and the reason, which led to the annulment of the questions.

As regards now the allegation of the complainant concerning the annulment of the questions, the Commission referred to the case law of the Court of First Instance[13] and the Court of Justice[14]. According to this case law, the candidates are supposed to answer all questions and not only to those questions which they would like to choose. The number and the contents of the questions for which an answer is necessary are therefore identical for all candidates. The chances of the candidates remain unchanged if at a later stage a certain number of questions are eliminated.

The Commission also pointed out that there had not been a different appreciation of the questions as such, as the same number of points were attributed to each question.

As regards the allegation that the Selection Board did not take into account that the complainant's answers to questions 5, 8, 11, 13 and 25 of test b) could also be deduced from the contents of the test, the Commission observed that the Selection Board examined them, but that this did not allow to change its decision on the marks.

As regards the complainant's allegation that the Selection Board did not respect point VI.D of the competition notice, the Commission observed that all the conditions of the competition notice have been respected and that, after the correction of the pre-selection tests, the written tests were corrected of only those candidates who had obtained the minimum mark for every test and the best marks for the entire tests. The number of candidates who obtained the minimum required marks for the pre-selection test of field 02 of the competition was superior to the 600 candidates foreseen in the competition notice.

The complainant's observations

As regards the annulment of questions 9 and 37 of test b), the complainant observed that the principle of equality of treatment was violated because the annulment has advantaged the candidates who had given the wrong answer, whereas it has penalised the candidates who had given the correct answer.

As regards the second allegation, the complainant gives the example of the reply he gave to question n° 13 and which could, according to him, also be deduced from the text and was therefore not wrong: He chose answer (b), namely *"en faisant attention à sa technique de respiration, il est possible de réduire sa tension artérielle"*. He chose answer (b) on basis of the following information in the text *"il est possible d'obtenir des résultats remarquables par la simple application de techniques respiratoires : diminution de la tension artérielle"*. The complainant wants to know why his answer was not correct.

As regards the third allegation, the complainant wants the Ombudsman to check that the Selection Board did respect point VI.D of the competition notice, by asking from the Commission the list of the candidates (and their results) who have passed all the pre-selection tests.

FURTHER INQUIRIES

After having considered the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary to help take a decision on the third allegation of the complainant. According to this allegation, the Selection Board would not have respected the conditions of point VI.D of the competition notice if, according to the information he obtained, a number of candidates who would not have obtained the minimum marks for the pre-selection tests of field 02 would nevertheless have been included in the list of 600 successful candidates.

The inspection of the file

The Ombudsman therefore wrote to the Commission to inspect the Commission's file, and more particularly the list of successful candidates of the pre-selection tests in field 02. The inspection was

13 Judgement of 17 January 2001, T-189/99, *Gerochristos*.

14 Order P. Giulietti C-263/01 of 13 December 2001 (points 35 and 36).

carried out by the Ombudsman's staff on 24 January 2003 in the Commission's premises in Brussels (DG ADMIN).

THE DECISION

1 The annulment of questions of the pre-selection test

1.1 The complainant alleges that by annulling questions 9 and 37 of test b), the Selection Board did not respect the principle of equality between the candidates. He observes that by annulling these two questions, an inequality is created between the candidates who replied correctly and those who replied wrongly to the said questions.

1.2 The Commission refers to the case law of the Court of First Instance and the Court of Justice, according to which the candidates are supposed to answer all questions and the chances of the candidates remain unchanged if at a later stage a certain number of questions are eliminated.

1.3 In his previous decisions in cases 761/99/BB and 729/2000/OV which take into account the established case-law of the Community Courts, the Ombudsman has considered that, in the case where a question of a test proves to be ambiguous, the decision to eliminate this question from the test is reasonable, provided that this elimination is carried out in such a way as to ensure that the interests of candidates are not negatively affected. On the basis of the evidence submitted to him, the Ombudsman takes the view that there is nothing to suggest that this condition was not complied with in the present case, given that the Commission appears to have eliminated questions 9 and 37 of test b) for all the candidates.

1.4 On basis of the above, there appears to be no maladministration on the part of the Commission with regard to this allegation.

2 The alleged failure to reason its reply to complainant's claim

2.1 The complainant alleges that the Selection Board did not reason its reply on his claim that his answers on questions 5, 8, 11, 13 and 25 of test b) could also be deduced from the text which was submitted to the candidates.

2.2 The Commission observes that the Selection Board examined the complainant's answers, but that this did not allow to change its decision on the marks.

2.3 The Ombudsman notes that the dispute between the complainant and the Commission concerns the fact whether the text put to the candidates could be understood in such a way that several correct answers were possible. The dispute therefore concerns a question of interpretation of the relevant text. This question – which concerns the content itself of the test – falls within the discretionary power of the Selection Board.

2.4 Taking further into account that, according to the case-law of the Court of Justice, the communication of the marks obtained in the various tests constitutes an adequate statement of the reasons on which the board's decisions are based[15], the Ombudsman considers that the Selection Board has acted within the limits of its legal authority. No instance of maladministration was therefore found with regard to this aspect of the case.

3 The alleged infringement of the competition notice

3.1 The complainant alleges that the Selection Board did not respect the conditions of point VI.D of the competition notice, as he obtained information that a number of candidates who did not obtain the minimum marks on the pre-selection tests of field 02 were nevertheless included in the list of 600 candidates foreseen by the competition notice.

15 Case C-245/95 P, *Parliament v. Innamorati*, ECR [1996] I-3423, paragraph 31.

3.2 The Commission observes that the number of candidates who obtained the minimum required marks for the pre-selection test of field 02 of the competition was superior to the 600 candidates foreseen in the competition notice.

3.3 With regard to this allegation, the Ombudsman office has inspected the Commission's file on 24 January 2003. During the inspection, the Commission officials first informed the Ombudsman's office that a corrigendum to the competition notice had been published in the Official Journal of 17 October 2001 (C 291 A) in which the numbers of the lists of successful candidates were amended. As for point VI.D.1 of the competition notice, the number was amended from 510 to 600 candidates who had obtained the best marks on pre-selection tests a), b) c) and d).

3.4 From the inspection, it appeared that more than 600 candidates had obtained the minimum marks for the pre-selection tests a), b), c) and d). There was a first list of the 600 best candidates which had all obtained the minimum marks. Moreover there was another list of candidates who had also obtained the minimum marks, but were not among the 600 best candidates.

3.5 On basis of the above, the Ombudsman can confirm the accuracy of the information provided by the Commission. No instance of maladministration was therefore found with regard to this aspect of the case.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

ALLEGED LINGUISTIC DISCRIMINATION

Decision on complaint 659/2002/IP against the European Commission

THE COMPLAINT

In April 2002, Mr C. complained on behalf of the Universala Esperanto-Asocio (hereinafter UEA), concerning the alleged linguistic discrimination by several European organisations, financed partially or wholly by the European Commission, which in their advertising of vacancies require "English mother tongue" or "English native speakers". The complainant took the view that, as a consequence, thousands of people appear to be discriminated against; although they have a good knowledge of English, they cannot be recruited.

In his complaint to the Ombudsman, the complainant claimed that the Commission should: *(i)* recognise the discriminatory nature of recruitment announcements for posts officially open to all citizens but which are unofficially reserved for native English speakers; *(ii)* ensure that it will no longer finance the companies or organisations that exercise discrimination against European citizens that are not of English mother tongue; *(iii)* study the means and solutions to prevent linguistic discrimination exercised by organisations that it partially or fully finances.

THE INQUIRY

The Commission's opinion

In its opinion on the complaint, the Commission made in summary the following points:

As regards the complainant's first claim, all recruitment announcements for posts which are officially or unofficially reserved for "native speakers" are not acceptable under Community rules on free movement of workers and discriminatory. The question whether a post has been unofficially reserved for a "native speaker" has to be evaluated by the competent court in each individual case.

However, a requirement for a "perfect knowledge" cannot be seen, in principle, as contrary to Community law[16]. In such a case, the employer has to justify the need of a very high knowledge of a specific language for the job in question.

The Commission's services had given this information on several occasions directly to UEA via their representatives (by letters of 14 May 2001, 20 July 2001, 5 October 2001, 24 January 2002 and during a meeting held on 11 March 2002). Furthermore, in a meeting of 24 May 2002, the Commission had informed the members of the Advisory Committee on Free Movement of Workers about the need to avoid all discrimination when drafting job advertisements. It had urged them to inform all the parties possibly involved, in both the private and the public sectors.

As regards the complainant's second claim, the Commission stated that the rules and principles governing the award of grants, contained in the Commission's vade-mecum on grant management, are enshrined in the new Financial Regulation[17], to enter into force on 1 January 2003. Article 109 reads that *"the award of grants shall be subject to the principles of transparency and equal treatment. (...)"*. Concerning the financing of an executive agency, foreseen by Article 55 of the new Financial Regulation, the Commission stressed that the staff of these agencies will be agents subjected to the Staff Regulations. The rules applicable to them include the general principle of non-discrimination.

As regards the complainant's third claim, the fight against any kind of discrimination is a priority in the Commission's policies. As regards the possible discrimination caused by a requirement for "native speakers" of a specific language in job advertisements published by employers from the private sector or from non-governmental associations, the Commission cannot intervene in these cases , which must be evaluated individually by national courts.

Furthermore, the Commission informed the Ombudsman that, on the basis of the information sent by UEA in July 2002, concerning a list of job advertisements linked to the Belgian State which appeared to be discriminatory, it registered this information as a formal complaint and the Belgian authorities would be contacted in this respect.

Again, the Commission pointed out that whenever its services had been informed about possible discriminatory job advertisements by organisations partially or fully financed by the institution, it had intervened asking them to take the necessary steps to correct them. Directorates General had sent letters to the organisations closely connected with the institution in which they had strongly recommended them to ensure that: *(i)* language qualifications for any post are consistent with the actual level of knowledge required to perform the job in question; *(ii)* where a complete command of any language is an essential requirement for a particular post, descriptions such as "a complete command of" or "a thorough knowledge" are used in preference to "native speaker" or "mother tongue"; *(iii)* they apply a policy of equal opportunities in recruitment with no undue bias in favour of any linguistic or national group. Furthermore, the Commission recalled that its Directorate General for Employment and Social Affairs would insert in all its calls for tender and call for projects a clause drawing the potential contractors' attention to the illegality of "native-speaker" clauses. Again, the institution drew the attention to the fact that Eurostat was considering including in its standard tender specifications, a clause to the effect that *"tenderers are reminded that Community rules on freedom of movement of workers prohibit discrimination based on nationality and that it is discriminatory to require a mother tongue knowledge of a specific language as a condition for access to a job"*.

16 The Commission gave its opinion on this topic already in its replies to several written questions, i.e. in its answer of 21 February 2002 to written question E-4100/00: " The Community rules on freedom of movement for workers prohibit not only overt discrimination based on nationality but also covert discrimination which, by applying seemingly neutral criteria, in fact produces the same result. Nevertheless, there is no discrimination in the case of conditions relating to linguistic knowledge required by reason of the nature of the post to be filled (...)". The Commission's answer has been published in the OJ C 174 E of 19 June 2001, p. 233.

17 Council Regulation (EC/Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p.1.

The complainant's observations

In his observations, the complainant considered the Commission's opinion to be unsatisfactory and maintained his original claims.

THE DECISION

1 Alleged linguistic discrimination

1.1 The complaint was based on the alleged linguistic discrimination by several European organisations, financed partially or wholly by the European Commission, which in their advertising of vacancies require "English mother tongue" or "English native speakers". The complainant claimed that the Commission should: *(i)* recognise the discriminatory nature of recruitment announcements for posts officially open to all citizens but which are unofficially reserved for native English speakers; *(ii)* ensure that it will no longer finance the companies or organisations that exercise discrimination against European citizens that are not of English mother tongue; *(iii)* study the means and solutions to prevent linguistic discrimination exercised by organisations that it partially or fully finances.

1.2 In its opinion, the Commission pointed out that all recruitment announcements for posts which are officially or unofficially reserved for "native speakers" are not acceptable under Community rules on free movement of workers and discriminatory. Nevertheless, a requirement for a "perfect knowledge" cannot be seen, in principle, as contrary to Community law, and the employer has to justify the need of a very high knowledge of a specific language to be necessary for the job in question.

As concerns the rules and principles governing the award of grants, the Commission stated that they are contained in the Commission vade-mecum on grant management, and enshrined in the new Financial Regulation[18], to enter into force on 1 January 2003. Article 109 reads that *"the award of grants shall be subject to the principles of transparency and equal treatment. (...)"*. Concerning the financing of an executive agency, foreseen by Article 55 of the new Financial Regulation, the Commission stressed that the staff of these agencies will be agents submitted to the Staff Regulations. The rules applicable to them include the general principle of non-discrimination.

As regards the third claim put forward by the complainant, the Commission gave a detailed explanation of the measures it has taken on this issue. A copy of the relevant documents showing the actions taken by the Commission was enclosed with the institution's opinion.

1.3 The Ombudsman considered that the Commission had addressed the claims put forward by the complainant and that the reply provided by the institution appeared to be adequate. The Ombudsman welcomed the fact that the Commission had taken actions to avoid job announcements that discriminate on the grounds of language being published in the future. He further encouraged the institution to continue and enhance its struggle against any discrimination on the grounds of language and obstacles against the principle of free movement of workers.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

[18] Council Regulation (EC/Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p.1.

STATUS OF THE 'EU PILLAR' OF THE UN ADMINISTRATION IN KOSOVO

Decision on complaint 1256/2002/GG (Confidential) against the European Commission

THE COMPLAINT

According to the complaint lodged in June 2002, the complainant, a German national, worked as a consultant in Kosovo, first for the European Agency for Reconstruction (on the basis of two contracts) and then for the 'EU Pillar of the UN Mission in Kosovo'.

The complainant alleged that the 'EU Pillar' had failed to provide him with a contract and to pay the invoice he had sent to it. This invoice of 7 May 2002 was addressed to Mr Andy Bearpark, Special Representative of the Secretary-General of the UN Mission in Kosovo and amounted to 55.936,16 €.

A first complaint (1010/2002/GG) was rejected on the grounds that the identity of the complainee had not been clarified sufficiently (Article 2 (3) of the Ombudsman's Statute).

The complainant then submitted a new complaint (1141/2002/GG) directed at both the European Agency for Reconstruction and the 'EU Pillar', submitting a number of documents in two faxes of 17 June (documents relating to the Agency) and 18 June 2002 (documents relating to the 'EU Pillar'). The complaint was forwarded to the Agency for its comments. In so far as the 'EU Pillar' was concerned, the complainant was informed that the identity of the complainee had still not been clarified sufficiently.

The complainant subsequently informed the Ombudsman that his complaint regarding the 'EU Pillar' was directed at the Commission. In order to avoid complications, this letter was registered as a new complaint under the above-mentioned reference.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The 'EU Pillar' is an integral part of the United Nations Interim Administration mission in Kosovo (UNMIK), which was established by United Nations Security Council Resolution 1244 of 10 June 1999. UNMIK is headed by a Special Representative of the Secretary-General of the UN and consists of four components ("pillars") led by different expert international entities.

The four pillars are:

- Pillar I: Humanitarian Affairs, under the responsibility of the UN High Commissioner for Refugees (UNHCR). Pillar I was phased out at the end of June 2000 and is now replaced by an operation responsible for Justice and Police led by the United Nations;
- Pillar II: Civil Administration, led by the United Nations;
- Pillar III: Democratisation and institution building, led by the OSCE;
- Pillar IV: Economic Reconstruction, recovery and development, led by the EU. Pillar IV is known as the 'EU Pillar'.

The EU Pillar, led by Mr A. Bearpark, Deputy Special Representative of the Secretary-General of the UN, is entrusted with providing the legal, institutional and policy framework for economic reconstruction, recovery and development of Kosovo.

The Deputy Special Representative of the Secretary-General of the UN is responsible for implementing the proposed activities of the EU Pillar through his administration of the Pillar's operational budget which is funded by the Community.

Council Regulation (EC) no. 1080/2000 stipulates in Article 1 that the Community shall contribute financially to the establishment and operation of the UNMIK. In accordance with this, the Community's contribution is to finance the operating costs of the EU Pillar, including the salary costs of local and international staff.

The Grant Agreement between the European Commission and the EU Pillar of UNMIK foresees the EU contribution and its implementation and control mechanisms. Grant agreements have been signed every year since 2000.

According to Article 1 (3) of the Special Conditions of these Agreements, "[t]he Organisation accepts the grant and undertakes to carry out the Operation under its own responsibility. Besides, Article 1 (1) of the General Conditions applicable to these Agreements stipulates that "[t]he Community recognises no contractual link between itself and the Organisation's partner(s) or between itself and a subcontractor."

Moreover, Article 3 (2) of the General Conditions states that "the Organisation shall assume sole liability towards third parties" and that "[t]he Organisation shall discharge the Community of all liability associated with any claim or action brought as a result of an infringement by the Organisation or the Organisation's employees or individuals for whom those employees are responsible of rules and regulations, or as a result of violation of a third party's rights."

Given the above, the Commission took the view that the contractual relationship between the complainant and the EU Pillar of UNMIK did not involve its services which contribute to the running costs of one of the four components of the UN Interim Administration in Kosovo, but are not responsible for implementing the EU Pillar's activities.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 EU Pillar's alleged failure to provide contract and to pay invoice

1.1 The complainant, a German consultant, alleges that the 'EU Pillar' failed to provide him with a contract and to pay the invoice he had sent to it. He suggests that the European Commission should be held responsible for the EU Pillar's behaviour.

1.2 The Commission explains that the 'EU Pillar', led by Mr A. Bearpark, Deputy Special Representative of the Secretary-General of the UN, is an integral part of the United Nations Interim Administration mission in Kosovo (UNMIK), which was established by United Nations Security Council Resolution 1244 of 10 June 1999. It adds that the Deputy Special Representative of the Secretary-General of the UN is responsible for implementing the proposed activities of the EU Pillar through his administration of the Pillar's operational budget which is funded by the Community. The Commission points at the Grant Agreements between the European Commission and the EU Pillar of UNMIK according to which the EU Pillar shall assume sole liability towards third parties whereas the EU does not recognise any contractual link between itself and the EU Pillar's partners and subcontractors. On the basis of the above, the Commission takes the view that the contractual relationship between the complainant and the EU Pillar of UNMIK does not involve its services that are not responsible for implementing the EU Pillar's activities.

1.3 The Ombudsman considers that in the light of the explanations provided by the Commission, the latter's position appears to be reasonable.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

TRAVELLING AND SUBSISTENCE EXPENSES OF CANDIDATES IN RECRUITMENT COMPETITIONS

Decision on complaint 1358/2002/IP against the European Commission

THE COMPLAINT

In July 2002, Ms C. made a complaint to the Ombudsman against the European Commission, alleging that that the rules adopted by the Commission for the reimbursement of travel expenses for candidates in open competitions discriminate against candidates from distant Member States. According to the complainant, these candidates are disadvantaged compared to those who live close to the place of competitions, which is normally Brussels. She claimed that the Commission should adopt new rules for the reimbursement of travel expenses in order to guarantee a concrete equality of opportunities to potential candidates in open competitions.

THE INQUIRY

The European Commission's opinion

The Commission recalled that the complainant participated in open competition COM/A/9/01, to constitute a reserve list of administrators in the field of economics and statistics. After the preselection tests, the complainant was among the 500 best candidates. According to point I.5 of the notice of competition, she was asked to complete the application form, which was sent to her by post. The Selection Board then examined the complainant's dossier and informed her that she was admitted to the written tests, foreseen on 19 July 2002. The complainant did not take part in these tests.

As regards the reimbursement of travel expenses, the relevant rules are laid down in conclusion 211/95 that was adopted by the Heads of administration at interinstitutional level on 28 March 1996 and that entered into force on 1 April 1996. By an internal directive of 15 April 1996, the European Commission implemented conclusion 211/95. Both texts establish the general principles for contributions towards travelling and subsistence expenses for external candidates admitted to participate in the written tests of a recruitment competition. In case the distance between the place of residence of the candidate and the place of the competition is more than 300 kilometres, candidates will receive a flat-rate contribution calculated on the basis of such distance. In case the distance is equal or superior to 1500 kilometres, candidates will receive 180 €. At this stage of the competition, the financial participation is only a flat-rate contribution and not a full reimbursement which is only foreseen for candidates admitted to the oral test.

All this information had been contained in the letter sent to the complainant with the invitation to the written tests. She was therefore informed thereof.

The complainant's observations

In her observations on the Commission's opinion, the complainant stressed that the Commission had not commented on the allegation that the rules on the reimbursement to candidates in open competitions discriminate against candidates from distant Member States and favour those who live close to the place of competitions, which is normally Brussels.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. On 29 January 2003, the Ombudsman therefore wrote to the Commission. In his letter, he asked the institution to comment on the complainant's observations, in which she had taken the view that the Commission had not addressed her allegation that the relevant rules discriminate against candidates from distant Member States.

The Commission's second opinion

The institution recalled that the financial contribution given to candidates admitted to the written tests of an open competition for their travel expenses is calculated on the basis of the distance between the place of residence of the candidate and the place of the competition, as long as such a distance is at least 300 kilometres. The contribution is going up according to the distance (for a distance between 301 and 800 kilometres candidates receive 60 €; when it is between 801 and 1500 kilometres they receive 120 € and when the distance is higher than 1500 kilometres candidates receive 180 €).

These are objective criteria applied to all candidates in an identical way and on the sole basis of the distance, without taking into account any other changeable parameter like the cost of living in the different countries or the transport connections between the place of residence of each candidate and the place of the competition.

On this basis, the Commission rejected the complainant's allegation regarding the discriminatory nature of these rules.

THE DECISION

1 Travelling and subsistence expenses of candidates in recruitment competitions

1.1 The complainant, who had participated in competition COM/A/9/01, alleged that the rules adopted by the Commission for the reimbursement of travel expenses for candidates in open competitions discriminate against candidates from distant Member States. According to the complainant, these candidates are disadvantaged compared to those who live close to the place of competitions, which is normally Brussels.

1.2 In its opinion, the Commission explained that the relevant rules are laid down in conclusion 211/95 that was adopted by the Heads of administration at interinstitutional level on 28 March 1996 and that entered into force on 1 April 1996. By an internal directive of 15 April 1996, the European Commission implemented conclusion 211/95. Both texts establish the general principles for contributions towards travelling and subsistence expenses for external candidates admitted to participate in the written tests of a recruitment competition. In case the distance between the place of residence of the candidate and the place of the competition is more than 300 kilometres, candidates will receive a flat-rate contribution calculated on the basis of such distance. In case the distance is equal or superior to 1500 kilometres, candidates will receive 180 €. At this stage of the competition, the financial participation is only a flat-rate contribution and not a full reimbursement. The complainant should be aware of this, since this information was contained in the letter sent to her with the invitation to the written tests.

1.3 In its second opinion, the Commission recalled the rules governing the financial contribution given to candidates admitted to the written tests of an open competition for their travel expenses. It pointed out that they are based on objective criteria applied to all candidates in an identical way and on the sole basis of the distance, without taking into account any other changeable parameter like the cost of living in the different countries or the transport connections between the place of residence of each candidate and the place of the competition.

1.4 The Ombudsman is not aware of any legal rule or Community law provision that would require the Commission to reimburse candidates in open competitions their travelling and

subsistence expenses. However, if the Commission decides to contribute to the payment of such expenses, it has to ensure respect for the principle of equal treatment. The criteria adopted by the Commission to contribute to the payment of candidates' travelling and subsistence expenses appear to be applied to all candidates in the same way and based on the objective parameter of the distance between their place of residence and the place of the examination. The system chosen by the Commission for the relevant financial contribution appears to be reasonable and not discriminatory against any of the candidates.

1.5 On the basis of the above, there appeared to be no maladministration by the Commission as regards this aspect of the case.

2 The complainant's claim

2.1 The complainant claimed that the Commission should adopt new rules for the reimbursement of travel expenses in order to guarantee a concrete equality of opportunities to potential candidates in open competitions.

2.2 In view of the conclusions at point 1.5 of the present decision, the Ombudsman did not consider it necessary to deal with this point.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

ALLEGED DISCRIMINATION IN GRADING OF NUCLEAR INSPECTOR

Decision on complaint 1365/2002/OV (Confidential) against the European Commission

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The complainant participated in open competition COM/B/1015 (B5/B4 Euratom nuclear inspectors) organised in 1996 by the Commission for nationals from the new Member States. When appointed in May 2000, the complainant was graded B4, which was the maximal grading foreseen by this competition. The complainant has a very long working experience and an education of university engineer, which is higher than the one needed for the post.

According to the complainant, by being appointed to a B4 grade post, he was discriminated against for the following reasons:

Firstly, the Commission applied a higher age-limit in this competition, as it was organised for nationals from the new member states. The complainant observes that a wider grade range (B5-B1) should thus have been applied, to take into account persons with a longer working experience.

Secondly, approximately one year earlier there were three open competitions for nationals of the new member states (with an economics/administrative or practical computer background – COM/B/951, COM/B/952 and EUR/B/72) in which the grading ranged from B1 to B5. In spring 2002, Euratom recruited a B1 official from the list COM/B/951. If the complainant had participated in this earlier competition, he would probably have been graded B1 because of his working experience.

In order to support his claim to obtain a higher grading, the complainant refers to the decision of the European Ombudsman in case 109/98/ME in which the Commission accepted the Ombudsman's

recommendation in a similar case of alleged discrimination in the grading of fishery inspectors from various competitions.

The complainant made a complaint to the Commission on basis of Article 90 of the Staff Regulations. On 25 May 2002 he was informed that the Commission had rejected his request for reconsidering his grading. In its reply the Commission stated that case 109/98/ME concerned temporary agents and that there was no need for B3/B2 or B1 officials for the Euratom competition. The complainant therefore lodged the present complaint with the Ombudsman claiming that, according to the principle of equal treatment, he should receive a higher grading.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first recalled the facts of the case. The complainant had been successful in competition COM/B/1015 (OJ C 179 A of 22 June 1996) organised for nuclear inspectors at the B 5/4 level and limited to Austrian, Finnish and Swedish nationals. The reserve list of successful candidates was established on 17 July 1997. The complainant was recruited in May 2000, after the end of the enlargement period, and, on basis of his professional experience, was classified in B4 step 3, the statutory maximum for the career bracket.

In his complaint, the complainant makes reference to other enlargement competitions that were organised at the B1 and B 3/2 levels and to the decision 109/98/ME that was applied to three temporary agents employed as fishery inspectors. He also mentions the competitions that were organised at the time of the Spanish and Portuguese enlargement.

At the time of an enlargement, the Commission has to strike a balance between the needs of the service and the requirements to recruit nationals from the new Member States at different levels within the career structure. For these reasons, the Commission organised competitions at the B1, B3/2 and B5/4 levels covering more general fields (general administration, information technology, accountancy, public finances and audit, and archives, documentation and library). As a general measure, higher age limits were allowed for the Austrian, Finnish and Swedish enlargement competitions. In organising these competitions, it was foreseen that the majority of successful candidates would be found in the B 5/4 competitions. In addition to these competitions, more specialised ones were organised at the B5/4 level for laboratory technicians, nurses and nuclear inspectors. It should be noted that the same approach was adopted at the time of the Spanish and Portuguese enlargement.

The parallel drawn by the complainant with the case of the three fishery inspectors cannot be considered as being comparable. In this case, the Commission, whilst maintaining that it had acted in complete legality, exceptionally accepted, in view of the differing levels of selections for fishery inspectors, the friendly solution proposed by the European Ombudsman. Furthermore the Commission noted that the complainant does not mention if he even applied to participate in one of the more general competitions organised at the B1 or B 3/2 levels. The Commission concluded that the complainant's classification was correct on the basis of the competition

The complainant's observations

The complainant stated that the requirement – to which the Commission refers – to recruit nationals from the new Member States at different levels within the career structure, is to ensure that experienced staff from new Member States will get a grading that rewards experience acquired before the member state joined the EU and before the individual could get a post within the EU.

The complainant observed that the explanation given by the Commission for its decision to apply this rule to eight competitions and restrict three other competitions to the grade B5/B4 is that more general fields would necessitate a wider grading whereas more specialised fields, like the complainant's one of nuclear inspector, would have a narrow grading. The complainant stated

that this explanation is not consistent and not a relevant objective ground to justify a difference in treatment. Therefore there is a breach of the principle of equality.

The complainant further observed that the "needs of the service" mentioned by the Commission for restricting the grading to B5/B4 for some enlargement competitions can not be considered as a relevant objective ground for justifying a difference in treatment. The complainant mentioned that Euratom continuously employs experienced inspectors at B1/B2 grades and that all services benefit from experienced employees. One cannot claim that there was a larger need for B1/B2 officers in other services than there was in Euratom.

The complainant stated that the Commission had accepted the Ombudsman's friendly solution in case 109/98/ME and agreed to re-grade the fishery inspectors, because they had an exceptionally long working experience. The complainant therefore asked the Commission to do the same for him, as he had also an exceptionally long working experience. Because of his relatively high age, he has been put in a particularly bad position due to the discriminatory grading policy of the Commission.

THE DECISION

1 The claim for a higher grading than B4

1.1 The complainant claims that, according to the principle of equal treatment, he should receive a higher grading than B 4. To support his claim, the complainant observes that the Commission applied a higher age-limit in this competition, as it was organised for nationals from the new member states, and that approximately one year earlier there were three open competitions for nationals of the new member states (with an economics/administrative or practical computer background – COM/B/951, COM/B/952 and EUR/B/72) in which the grading ranged from B1 to B5. The complainant also refers to the Ombudsman's decision in case 109/98/ME.

1.2 The Commission observes that, at the time of an enlargement, it has to strike a balance between the needs of the service and the requirements to recruit nationals from the new Member States at different levels within the career structure. For the nationals of the new Member States, the Commission organised competitions at the B1, B3/2 and B5/4 levels covering more general fields (general administration, information technology, accountancy, public finances and audit, and archives, documentation and library). In addition to these competitions, the Commission organised more specialised ones at the B5/4 level for laboratory technicians, nurses and nuclear inspectors. The Commission further pointed out that the parallel drawn by the complainant with the case of the three fishery inspectors cannot be considered as being comparable.

1.3 The Ombudsman notes that the principle of equality of treatment laid down in Article 5(3) of the Staff Regulations is a general rule forming part of the law applicable to the Community civil service. Discrimination contrary to that rule occurs where identical or comparable situations are treated in an unequal way and the discrimination is not objectively justified[19].

1.4 In case 109/98/ME – to which the complainant refers -, the Ombudsman found that there was a breach of the principle of equality of treatment, because fishery inspectors had been recruited in grades B5/B4, whereas a) other fishery inspectors already employed by the Commission on basis of earlier competitions were placed in grades B3, B2 and B1, and b) a newly published competition foresaw the recruitment of fishery inspectors in grades B3/B2. The complainant claims that the Ombudsman's findings in this case should be applied by analogy to his own case.

1.5 The Ombudsman considers that the Commission's explanation of the difference in grading foreseen for specialised and general B-grade competitions appears reasonable. Furthermore, from the information available to the Ombudsman, there appears to be no indication that nuclear inspectors from different competitions would have been treated differently. The comparison drawn

[19] See Case T-92/96, *Monaco v. Parliament*, [1997] ECR-SC IA-195; II-573, paragraph 54; Case T- 109/92, [1994] ECR-SC, II-105, paragraph 87.

by the complainant concerns, on the one hand, the recruitment of nuclear inspectors in B grade, and on the other hand, the recruitment of B grade officials with an economics/administrative or practical computer background (COM/B/951, COM/B/952 and EUR/B/72). It appears that these situations are not comparable and can therefore not be considered as a basis for a judgement on the respect of the principle of equality of treatment.

1.6 In these circumstances, the Ombudsman does not consider that the Commission's decision on the complainant's grading violates the principle of equality of treatment. The Ombudsman therefore finds no maladministration by the Commission.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

REFUSAL OF A CONFIRMATORY APPLICATION FOR PUBLIC ACCESS IN ARTICLE 226 PROCEDURE

Decision on complaint 1437/2002/IJH against the European Commission

THE COMPLAINT

In July 2002, a complaint was made to the Ombudsman against the Commission's refusal of a confirmatory application for public access to a document.

The complainant had suffered financial loss in the Lloyd's insurance market in the UK. He filed a complaint with the Commission against the UK authorities for failure to implement properly Directive 73/239.

The Commission investigated the complaint in its role as guardian of the Treaty. On 20 December 2001, the Commission sent a letter of formal notice to the UK government, in accordance with the procedure of Article 226 EC.

The complainant applied for public access to the letter of formal notice in accordance with Regulation 1049/2001. The Commission refused the application on the grounds that disclosure of the letter could undermine the proper conduct of infringement procedures based on Article 226 EC.

In his complaint to the Ombudsman, the complainant contests the Commission's refusal of public access to the letter of formal notice and argues that the UK Treasury has stated that it has no objection to the letter being made public.

The complainant emphasises that his complaint to the Ombudsman is confined to the question of public access and does not concern the Commission's handling of his complaint against the UK authorities.

The Ombudsman understands that the complainant has also petitioned the European Parliament concerning the UK authorities and Lloyd's.

THE INQUIRY

The Commission's opinion

The Commission's opinion made, in summary, the following points:

The complainant is one of the private investors in the Lloyd's insurance market ("Names") who suffered considerable financial losses and filed a complaint against the UK authorities for not implementing properly the non-life insurance Directive 73/239/EEC.

On 11 January 2002, the complainant wrote expressing relief that the Commission had started formal infringement proceedings against the UK. He also asked which aspects of Directive 73/239 were in question and whether the Commission's letter of formal notice to the UK authorities was in the public domain.

In reply, the Director General of DG Internal Market sent the complainant a copy of the relevant press release and explained that disclosure of the letter of formal notice would undermine the conduct of the infringement investigation. This exception to the right of access is foreseen in Article 4 (2), third indent, of Regulation 1049/2001.

On 5 February 2002, the complainant made a confirmatory application, arguing that there is an overriding public interest in disclosure. At that stage, the Commission had not received the UK authorities' reply to its letter of formal notice. The Secretary General upheld the initial decision.

The Lloyd's case is very complicated and sensitive. The Commission's investigation into a possible infringement by the UK is still ongoing. Disclosure of documents exchanged with the UK authorities would adversely affect the conduct of this investigation. The Commission is currently examining new legislation introduced as part of a comprehensive reform of UK financial regulation under the Financial Services and Markets Act 2000. The Commission should not simply check whether the directive has been correctly transposed into national legislation, but rather whether national law is applied correctly. The ultimate objective is to ensure full compliance with Community law. This process requires a climate of mutual confidence that would be jeopardised by disclosing the documents related to the investigation.

The complainant's argument that the UK Treasury does not object to disclosure of the letter of formal notice is incorrect. The complainant sent a report from *The Mail on Sunday* newspaper of 10 March 2002, containing the following: *"The Treasury, which will respond to the Commission's charges by the end of April, denied that it was refusing to hand over its reply unless secrecy was guaranteed"*. This clearly refers to the UK authorities' reply, not the Commission's letter. Furthermore, the Commission asked the UK authorities to waive confidentiality in the framework of other requests for access to documents linked to these infringement proceedings, but they have not done so.

In several judgements, the Court of First Instance has recognised the need for confidentiality in infringement investigations and, hence, justified the refusal to grant access to documents related to such investigations.[20] Although this case law refers to the provisions of Commission Decision 94/90, it remains valid, since the wording of the relevant exception has been maintained in Regulation 1049/2001. The only new feature is the need to balance the harm caused by releasing a document against the public interest in its disclosure.

Compliance with Community law is a vital public interest, which clearly outweighs the interest of the general public in obtaining access to the documents produced and exchanged in the course of the investigation. The public is informed, through press releases, of the fact that infringement proceedings have been launched and of the key questions at stake.

The interest of Names or other parties involved in obtaining access to the documents relating to the infringement procedure is not a public interest in disclosure. The complainant has a right to be informed on the progress of the proceedings that were launched as a result of his complaint, in accordance with the code of conduct adopted by the Commission with regard to the treatment of complaints.[21]

20 Case T-105/95, *WWF UK v. Commission*, [1997] ECR II-313, point 63; Case T-309/97 *Bavarian Lager v. Commission*, [1999] ECR II-3217, point 46; Case T-191/99, *Petrie and Others v. Commission*, [2001] ECR II-3677, point 68.

21 Commission Communication to the European Parliament and the European Ombudsman on Relations with the Complainant in respect of infringements of Community Law COM(2002) 141 final of 20 March 2002, 2002 OJ C 244/5.

Legal action to obtain compensation for the losses suffered by the complainant and other Names should be taken before the English courts. The Commission can only try to ensure that the UK complies with Community law and ultimately take the UK to the Court of Justice. The Court may state that the UK has acted in breach of the Treaty provisions. A Court judgement stating such an infringement would strengthen the complainant's case before an English court. In the meantime, the Commission has made clear that it would cooperate fully with the English judicial authorities if summoned to witness or to produce evidence.

The complainant's observations

In summary, the complainant's observations made the following points:

There have been many complaints to the Commission and petitions to the European Parliament concerning possible breaches of Directive 73/239. By refusing transparency, the Commission prevents complainants and petitioners furthering their case, because they do not know what defence the UK government has entered and so are unable to offer counter arguments or correct misleading statements.

The replies to the Commission from the UK government will, inevitably, rely heavily on information provided by Lloyd's. This is of great concern to complainants and petitioners because Lloyd's have, in the past, been economical with the truth.

The continuing non-disclosure of the correspondence leads to the suspicion that it would not stand up to public scrutiny. If there has been a breach, how has it been possible for it to have continued (and still continue) for so long? Publication of the correspondence would remove the impression that the aggrieved Names are being deliberately put at a considerable disadvantage.

Furthermore, the exchanges in 1977/78 between the Commission and the UK government concerning the transposition of Directive 73/239 are now 25 years old and can hardly be secret.

The complainant's understanding is that it is not now possible to obtain compensation in UK national courts without a judgement of the Court of Justice in favour of the Names. An alleged breach of the Directive has already been raised in the UK courts and dismissed as irrelevant. This issue is *res judicata*, which means that it cannot be overturned other than by the Court of Justice.

The complainant's additional letter

On 18 February 2003, the complainant asked the Ombudsman to take account of, in summary, the following:

At a hearing of the Committee on Petitions, Commissioner Bolkestein stated that the Commission would only investigate current alleged breaches of Directive 73/239 and that past failings would not be taken into account. The many complaints and petitions to the Commission and European Parliament from financially damaged members of Lloyd's relate to past irregularities. Justice for Lloyd's members cannot be won in the UK courts without a prior verdict from the Court of Justice that the UK government was at fault.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

The Ombudsman wrote to the Commission concerning the complainant's argument that the replies to the Commission from the UK government will inevitably rely heavily on information provided by Lloyd's. The Ombudsman pointed out that, if correct, the complainant's argument implies that confidentiality could adversely affect the conduct of the Article 226 procedure, since the information that the Commission receives via the UK authorities is not subject to critical scrutiny.

The Ombudsman therefore requested the Commission to provide further information concerning the procedures used to check the accuracy of the information that it receives in the Article 226 procedure.

By letter dated 6 March 2003, the Ombudsman asked the Commission also to respond to the complainant's letter of 18 February 2003.

The Commission's reply

The Commission's reply contained, in summary, the following points:

The general issue

As far as the general question regarding the possibility for complainants to comment on Member States' arguments is concerned, the Commission wishes to recall that the Court[22] has clearly stated that individuals are not parties to proceedings under Article 226 EC and for that reason cannot invoke rights to a fair hearing involving application of the *audi alteram partem* principle.

In the framework of proceedings under Article 226, information provided by Member States is examined by the Commission services as well as any other sources of information, including those provided by the complainant, so as to allow the institution to come to a decision on the conformity of a situation with Community law.

As the Court has stated in the above mentioned case-law, the Community institutions, when adopting decisions, make use of documents originating with third parties, given that the transparency of the decision-making process and the confidence of citizens in Community administration can be assured by adequate reasoning of those decisions. Adequate reasoning means that, basing itself on a document originating with a third party, the institution must explain the content of that document in that decision and justify that document's choice as a basis for that decision.

The Commission is of the view that the confidentiality which the Member States are entitled to expect of the Commission in infringement investigations, must not be deprived of its substance and therefore the right balance should be found when disclosing information in application of the above mentioned obligation.

The complainant's case

The original infringement case, with which the complainant's case is associated, concerns alleged failure to apply properly requirements under Directive 73/239 to the prudential regulation and supervision of Lloyd's, in particular with regard to the auditing arrangements and the verification of solvency.

This kind of case is more difficult than those concerning transposition of a Directive, because the issue is not one of simply determining whether a legal text has been properly promulgated, but rather whether national law implementing EU requirements has been properly applied by the competent national authorities.

The Commission raised its concerns with the UK authorities, primarily through two detailed questionnaires, followed by a letter of formal notice and a supplementary letter of formal notice issued in January 2002. Although the Commission's information is received from the UK authorities, not from Lloyd's, the Commission understands the complainant's concern that the UK authorities would rely heavily on information provided by Lloyd's.

Although the Commission has no reason to doubt the accuracy of information received from the UK authorities, the Commission is able to check its accuracy by the following means:

22 Case T-191/99, *Petrie and Others v. Commission*, [2001] ECR II-3677.

- The Commission services can seek further information and clarification from the complainant. This can be obtained through normal communication, e.g. mail, fax, and typically telephone or e-mail. In some cases, Commission officials have met with complainants.
- The Commission has received complaints from a large number of parties. Although complainants generally make the same points, some parties are better informed on specific points than others. Having regard to the need to use limited resources efficiently, the Commission has often concentrated its checking or clarification of specific items with those complainants who have the most information for that point. Commission officials have met with other complainants, including their specialist advisors, to discuss specific aspects. Typically, when seeking information, an official has had a lengthy telephone discussion or an extended exchange of correspondence by e-mail. Furthermore, the fact that information has been provided from a variety of sources means that the Commission often has more information than any individual complainant.
- There are further sources of information for checking accuracy. The most important of these are the judgements of UK courts in cases concerning Lloyd's. Although these cases concern different parties and different issues, the judgements can nevertheless provide important factual information. Mention should also be made of the petitions to the European Parliament concerning Lloyd's. Some are very extensive: one petition extends to seven A4 lever arch files.
- The Commission has also examined or made reference to a wide series of other documents including Official Reports prepared by the UK Parliament, Reports commissioned by the UK Government into Lloyd's, Reports prepared on behalf of Lloyd's, Reports on Lloyd's Disciplinary proceedings, expert books, as well as newspaper or magazine articles.
- The Commission has also been able to access in-house expertise on technical matters such as auditing arrangements and legal issues.

Thus, notwithstanding its obligation to respect confidentiality in the conduct of Article 226 EC proceedings and the absence of formal powers to call witnesses and sub-poena documents, the Commission has been able to corroborate to a very great extent the accuracy of information it has received.

The issue of past failings

The Commission recognises that improvements to the regulatory and supervisory framework for Lloyd's have been achieved through the Financial Services and Markets Act 2000, which came into effect on 1 December 2001.

The objective of infringement proceedings under EU law is to establish or restore the compatibility of national law with EU law, not to rule on past compatibility or incompatibility. Consequently, the thrust of the current Commission inquiries relates to the examination and analysis of the application of the new framework under the Financial Services and Markets Act 2000.

When he appeared before the Committee on Petitions on 22 January 2003, Commissioner Bolkestein emphasised that actions for damages can only be taken at national level. Furthermore, the case law of the Court of Justice confirms that infringement procedures under Article 226 EC aim solely to put an end to the failure to comply with Community law by a Member State, and not to record *in abstracto* that a failure existed in the past.

The complainant's observations

In summary, the complainant's observations made the following points:

Lack of transparency means the complainant has no defence against any incorrect statements in the replies from the UK government to the Commission.

The Commission's recognition that the Financial Services and Markets Act 2000 has achieved improvements to the regulatory and supervisory framework is, in effect, a feeble admission that Directive 73/239 was breached before the Act.

Article 226 EC uses mandatory wording: "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion…" Although the complainant does not seek financial redress from the Commission, the latter is clearly culpable for the delay in ensuring enforcement of Community law. The Commission should issue a reasoned opinion stating that the UK government has not complied with Community law over a period of nearly 30 years.

THE DECISION

1 Preliminary remark

1.1 The complainant's final observations make a new allegation that the Commission is culpable for the delay in ensuring enforcement of Directive 73/239 in relation to the Lloyd's insurance market. The complainant claims that the Commission should issue a reasoned opinion stating that the UK government has not complied with Community law over a period of nearly 30 years.

1.2 The Ombudsman considers that it is not appropriate to delay a decision on the present case in order to inquire into this new allegation and claim. The complainant has the possibility to make a new complaint to the Ombudsman.

2 Refusal of access to the letter of formal notice of 20 December 2001

2.1 The complainant applied to the Commission for public access to a letter of formal notice sent by the Commission to the UK government on 20 December 2001, concerning breaches of Directive 73/239 in relation to the Lloyd's insurance market. The complainant contests the Commission's refusal to release the letter and argues that the UK Treasury has stated that it has no objection to the letter being made public.

The complainant also argues that replies to the Commission from the UK government will rely heavily on information provided by Lloyd's, which has, in the past, been economical with the truth.

2.2 According to the Commission, disclosure of the letter of formal notice would undermine the conduct of its investigation into the supposed infringement. The exception to the right of access foreseen in Article 4 (2), third indent, of Regulation 1049/2001 [23] therefore applies.

The Commission argues that the Lloyd's case is very complicated and sensitive and that its investigation into a possible infringement by the UK is still ongoing. Disclosure of documents exchanged with the UK authorities would adversely affect the conduct of this investigation. The ultimate objective is to ensure full compliance with Community law. This process requires a climate of mutual confidence that would be jeopardised by disclosing the documents related to the investigation. The complainant's argument that the UK Treasury does not object to disclosure of the letter of formal notice is incorrect. The Commission asked the UK authorities to waive confidentiality in the framework of other requests for access to documents linked to these infringement proceedings, but they have not done so.

The Commission also argues that it has checked the accuracy of information supplied by the UK authorities using a number of identified external sources, as well as in-house expertise on technical matters.

2.3 The Ombudsman notes that Article 4 (2) of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of "the purpose of inspections, investigations and audits", unless there is an overriding public interest in disclosure. In a judgement concerning Commission Decision 94/90 (which Regulation 1049/2001 replaced) the

[23] Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, 2001 OJ L 145/43.

Court of First Instance considered that the preservation of the objective of an amicable resolution of the dispute between the Commission and the Member State could justify refusal of access to letters of formal notice drawn up in connection with Article 226 proceedings.[24] Subject to the question of possible overriding public interest, which is dealt with in point 2.5 below, the Ombudsman takes the view that, in the light of the above-mentioned case law, the Commission could reasonably conclude that it was justified in refusing public access to the letter of formal notice in question. The Ombudsman recalls, however, that the Court of Justice is the highest authority on Community law.

2.4 As regards the arguments concerning the attitude of the UK authorities, the Ombudsman considers that, whilst it is for the Commission to apply the relevant exception under Regulation 1049/2001, it seems unlikely that preservation of the objective of an amicable resolution could justify a refusal of access if the Member State concerned was willing to accept disclosure. The Ombudsman finds no basis, however, to question the Commission's argument that the UK authorities are not willing to accept disclosure in the present case.

2.5 As regards the fact that the complainant is unable to correct possibly misleading information supplied to the Commission, the Ombudsman first points out that the Court of First Instance has stated that individuals are not parties to proceedings under Article 226 EC and for that reason cannot invoke rights to a fair hearing involving application of the *audi alteram partem* principle.[25]

The Ombudsman notes, however, that the relevant exception under Regulation 1049/2001 applies *"unless there is an overriding public interest in disclosure."* The Ombudsman takes the view that the complainant has succeeded in establishing a significant public interest in disclosure, which would make it possible for the public to check the accuracy of information supplied to the Commission and thereby enhance the effectiveness of the Article 226 procedure. The Ombudsman considers that, in the present state of Community law and in view of the other possibilities for checking to which the Commission refers, the Commission could reasonably conclude, in this case, that the public interest in disclosure is not overriding. The Ombudsman recalls, however, that the Court of Justice is the highest authority on Community law.

2.6 In view of the above, the Ombudsman finds no maladministration in relation to this aspect of the complaint.

2.7 The Ombudsman recalls that the complainant has applied for public access only to the Commission's letter of formal notice of 20 December 2001 and that the Commission has explained that the thrust of the current Article 226 proceedings relates to the position following the entry into force of the Financial Services and Markets Act 2000.

The Ombudsman points out that the complainant has the possibility to apply to the Commission, in accordance with Regulation 1049/2001, for access to documents which, insofar as they relate to the position before the entry into force of the Financial Services and Markets Act 2000, may no longer be relevant to the current Article 226 proceedings.

3 The scope of the Commission's Article 226 investigation

3.1 In an additional letter sent during the inquiry, the complainant argues that the Commission's Article 226 investigation should deal with past irregularities, as well as current alleged breaches of the Directive.

3.2 The Commission argues that the objective of infringement proceedings under Article 226 EC is to establish or restore the compatibility of national law with EU law, not to rule on past compatibility or incompatibility.

24 Case T-191/99, *Petrie and Others v. Commission*, [2001] ECR II-3677, paragraph 68.

25 *Ibid*. paragraph 70.

3.3 The Ombudsman notes that, according to the Court of Justice, the purpose of that pre-litigation procedure under Article 226 EC is to enable the Member State to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position.[26] The Ombudsman therefore considers that the Commission is entitled to focus its Article 226 investigation on whether there is an infringement of Community law following the entry into force of the Financial Services and Markets Act 2000. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

4 Conclusion

On the basis of the Ombudsman's inquiries, there appears to be no maladministration by the Commission. The Ombudsman therefore closes the case.

ALLEGED INDIRECT AGE DISCRIMINATION IN OPEN COMPETITION

Decision on complaint 1536/2002/OV (Confidential) against the European Commission

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The complainant wanted to participate in open competition COM/A/2/02 organised by the Commission (Agriculture, Fisheries and Environment DG's) for the recruitment of assistant administrators (A8). The competition notice provided that candidates needed to have obtained the required university degree after September 1997. The complainant observed that this constitutes age discrimination, as he obtained his diploma in 1994 and could thus not participate in the competition.

He therefore complained to the Ombudsman on 28 August 2002 alleging that the requirement in the competition notice to have obtained the university degree required for admission to the competition after September 1997 constitutes age discrimination.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission indicated that open competition COM/A/2/02, published in the Official Journal of 25 July 2002, was organised for the recruitment of A8 assistant administrators. The deadline for submitting applications was 27 September 2002. Point II.2 of the competition notice provides that no professional experience is requested, but the condition is that candidates have obtained their university diploma, which gives access to the competition after 27 September 1997, or a post-university diploma in direct relation with the sectors of activities after 27 September 1999.

The Commission observed that, as regards the inclusion of a clause on "fresh diplomas" for competitions for the A8 career, the provisions of the present competition notice are larger than those previously handled in that sense that the diploma giving access to the competition (i.e. a diploma of end of studies in direct relation with the sectors of activities mentioned in the competition notice) needs to have been obtained within the last 5 years. Previously this was 3 years. Furthermore, the present competition notice foresees an alternative condition consisting in having obtained a specialisation diploma within the last three years. It is not necessary that this specialisation diploma

[26] Case C-191/95, *Commission v. Germany* [1998] ECR I-5449, paragraph 44.

has to be obtained just after the first diploma, but can be part of the complementary education in the framework of the professional career of the candidate.

The Commission also wanted to recall that the competition in question was aimed at recruiting A 8 assistant administrators, which is the basic career in grade A. The requirement of a recently obtained diploma is a condition based on the nature of the posts to be filled, as the Ombudsman indicated in his conclusions in point 1.4 of his decision on joined complaints 428/98/JMA and 464/98/JMA. For the basic grades the Commission is looking for recent or "fresh" knowledge.

As regards the alleged age discrimination resulting from the condition of "freshness" of the diploma, the Commission wanted to underline that not only young people but also less young persons having started studies during their lives fulfil the conditions if they have obtained their diploma during the last five years.

Moreover, as the competition was parallel to competition COM/A/1/02, every person who had not obtained his or her initial diploma within the last 5 years or the specialisation diploma within the last 3 years, could be candidate for the competition COM/A/1/02. The condition of professional experience is linked to the post of an administrator which requires 3 years of professional experience. No age-limit being applied, there is no age discrimination, but only requirements based on the nature of the posts.

The complainant's observations

No observations have been received from the complainant.

THE DECISION

1 The alleged discrimination on basis of age

1.1 The complainant alleged that the requirement in the competition notice to have obtained the university degree required for admission to the competition after September 1997 constitutes age discrimination.

1.2 The Commission argued that open competition COM/A/2/02 was organised for the recruitment of A8 assistant administrators. The Commission observed that this "fresh diplomas" clause is a condition based on the nature of the posts to be filled. As regards the alleged age discrimination resulting from this condition, the Commission observed that not only young people but also older people having started studies in the course of their lives fulfil the conditions if they have obtained their diploma during the last five years. The Commission further argued that persons, who had not obtained their diploma within the last 5 years or the specialisation diploma within the last 3 years, could still be candidate for the parallel competition COM/A/1/02 that required professional experience.

1.3 As the Community courts have consistently held, the process for the recruitment of Community officials should respect the principle of equality, as one of the basic tenets of EC law. This principle demands that comparable situations not be treated differently unless such differentiation is objectively justified. Thus, candidates in similar situations should not be treated differently, unless there are justifiable grounds[27].

1.4 The use by the Commission of an alleged indirect discriminatory clause in the conditions for the admission to competition COM/A/2/02, namely the date in which A8 applicants obtained their academic degree or a specialised degree, should be based on objective reasons. This reasoning should allow the Ombudsman to assess whether the Commission has acted within the limits of its legal authority in imposing this type of condition.

27 Case T-42/91, *Hoyer v. Commission* [1994], ECR-SC II-297; case T-44/91, *Smets v. Commission* [1994] ECR-SC II-319.

1.5 The Commission has justified the application of this clause on the basis of the nature and functions to be carried out by assistant administrators. Since A8 officials are not deemed to have any relevant professional experience prior to their joining the Commission, the institution has set a date for the completion of their studies or specialised studies. The "freshness" of the diploma appears thus as a specific condition based on the nature of the posts to be filled.

1.6 It further appears that older candidates who have obtained their diplomas or specialised diplomas recently could also participate in the competition. Moreover, candidates who have not obtained their diploma or specialised diploma within respectively the last 5 or 3 years could participate in the parallel competition COM/A/1/02 requiring professional experience. The Ombudsman therefore considers that the arguments put forward by the Commission seem reasonable. Also, the limitations imposed by this clause appear to be proportional to their purported aim, namely to enable the institution to better target prospective A8 candidates.

1.7 By imposing a condition based on the "freshness of the diploma" to A8 candidates, the Ombudsman has concluded that the Commission acted within the limits of its legal authority. The Ombudsman therefore finds that there is no evidence of maladministration in relation to this case.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

COMMISSION'S REFUSAL TO GRANT ACCESS TO DOCUMENTS SUBMITTED BY MEMBER STATES

Decision on complaint 1753/2002/GG (Confidential) against the European Commission

This is a short summary of the decision which could not be published in full due to its length. The complete text of the decision in German and English can be found on the Ombudsman's website at: http://www.euro-ombudsman.eu.int/decision/en/021753.htm

In March 2002, the complainant, an Irish citizen, applied to the Commission for access to certain documents in accordance with Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents[28].

The documents were supplied, with the exception of two letters sent by Ireland to the Commission under Article 27 (1) of the Sixth Directive and of a notification by Ireland under Article 27 (5) of the said directive. The Commission informed the complainant that access could not be granted since the Irish tax authorities had requested that the documents should not be disclosed.

The complainant alleged that the Commission was wrong to refuse access to these documents since their disclosure would not harm any of the interests set out in Regulation 1049/2001 and that the Commission failed to comply with the procedural rules laid down in Decision 2001/937[29]. The complainant claimed that the Commission should therefore review its decision.

During the Ombudsman's inquiry, the Commission expressed the view that it had followed correct procedures and that it had not only been entitled to decide to consult the originating national authorities, but that it had even been under an obligation to do so. It also put forward that, if the Commission had considered that disclosure would be harmful, it would not have consulted the Irish authorities and would have denied access. The right of Member States to refuse their permission to the disclosure by the institutions of documents originating from them was not intended to restrict

28 OJ L 145/43 of 31 May 2001.

29 Decision 2001/937/EC, ECSC, Euratom of 5 December 2001 adopting detailed rules for the application of Regulation 1049/2001 by the Commission OJ 2001 no. L 345, page 94.

access to the document as such but to restrict access to it *under the Community rules*. This restriction was designed to take into account the status of the document under national law and policy and thus avoid discrepancies between the Community and the various national systems of transparency.

In his decision on the case, the Ombudsman first considered that the complainant had not succeeded in showing that the Commission's decision to refuse access was wrong and found no maladministration in so far as this aspect of the case was concerned.

The Ombudsman also considered that the Commission, whilst failing to comply with its own procedural rules laid down in Decision 2001/937, acted correctly as regards the substance of the case. As a matter of fact, it could well be argued that if the Commission had complied with its own procedural rules, it would have been guilty of maladministration. The Ombudsman therefore considered that it would not be appropriate to find, in the present case, that the Commission's failure to comply with its own procedural rules constituted maladministration. In order to help prevent similar situations arising in the future, the Ombudsman made the following further remark:

On the basis of the Ombudsman's inquiries, it appears that the procedural rules adopted by the Commission in its Decision 2001/937/EC, ECSC, Euratom of 5 December 2001 amending its rules of procedure, and in particular Article 5 (4) of these rules, are not drafted with the precision necessary to reflect the substantive provisions laid down in Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The Ombudsman would therefore consider it useful if the Commission could review these provisions. The corresponding rules adopted by the Council in its Decision of 29 November 2001 amending the Council's Rules of Procedure[30] *(and in particular Article 2 (1) of Annex III added to the Council's Rules of Procedure by this Decision) may serve as useful guidance in this context.*

EUROPEAN COMMISSION'S HANDLING OF AN APPLICATION FOR A POST OF SECONDED NATIONAL EXPERT

Decision on complaint 172/2003/IP against the European Commission

THE COMPLAINT

The complaint concerns the Commission's handling of an application for a post of Seconded National Expert.

In September 2001, the Directorate General Internal Market (hereinafter DG MARKT) of the European Commission circulated to the Commission's Permanent Representations in the Member States four notices of vacancy for posts of Seconded National Experts (hereinafter SNE) in four separate Units. The complainant applied for the post available in Unit D/1, "Free Movement of Goods".

By letter of 16 January 2002, the complainant was informed that his application had not been successful. The letter stated that *"we have circulated your CV within the DG but I regret to inform you that your application has not been successful. However, your details will be kept on file for one year"*.

On 11 February 2002, the complainant wrote to the Commission and asked the institution: *(i)* to give him reasons for its decision not to select his application; *(ii)* to communicate the name of the selected candidate and *(iii)* to give him access to a copy of any related document.

In its reply of 13 March 2002, the Commission stated that the letter sent on 16 January 2002 had been a holding letter sent to inform applicants that their data would be kept for a year. The institution

30 OJ L 313/40 of 30 November 2001.

pointed out that no selection had been carried out at that moment and that, due to an internal restructuring of the services concerned, it was not sure that the post of SNE would be filled shortly. Furthermore, the Commission stated that the publication of a post is not binding for the institution that can decide not to fill the post.

On 2 April 2002, the complainant wrote a further letter to the Commission. He pointed out that the letter of 16 January 2002 clearly stated that his application had not been successful. In the complainant's view, this meant that a selection procedure had been carried out. Furthermore, he took the view that the Commission should have informed candidates of any decision taken in the framework of the relevant procedure. In its reply of 8 May 2002, the Commission repeated the points made in its letter of 13 March 2002.

In its letter of 4 September 2002, in reply to a further letter from the complainant of 18 June 2002, the Commission stated that: *(i)* for the post in Unit D/1 three applications had been received, including the complainant's; *(ii)* following a change in DG MARKT's internal structure and reconsideration of the allocation of human resources, it had been decided not to proceed to the filling of the post of SNE in Unit D/1; *(iii)* no SNE had been recruited by DG MARKT following the notice of vacancy in question; *(iv)* since there was no written decision about the decision not to fill the post, it was not possible to give the complainant access to such a document requested in his letter of 11 February 2002. Furthermore, DG MARKT regretted that the letter sent to applicants in January 2002 had been a standard letter normally sent to inform candidates that their application has been rejected. In the present case, it would have been preferable to explain that the Commission had decided not to fill the post and give reasons therefore.

In his complaint to the Ombudsman, the complainant alleged that the European Commission had failed to follow principles of good administration when sending him the letter of 16 January 2002, because the information therein was incorrect. Furthermore, the Commission did not grant access to the documents related to the Commission's decision not to fill the post of SNE.

The complainant also claimed a compensation of 100.000 € for the material and moral damage he alleged to have suffered.

THE INQUIRY

The European Commission's opinion

In its opinion, the Commission recalled the factual background of the complaint and made the following points:

The complainant was one of the three applicants who had applied for a post of SND following the publication of a vacancy in September 2001 by DG MARKT. All candidates who applied for the post had been informed through a standard letter that their candidature had not been successful. The Commission accepted that the information given in this letter was misleading for the complainant, who could have concluded that another candidate had been selected.

However, in its letter of 13 March 2002, in reply to the complainant's letter of 11 February 2002, the Commission's services had provided the complainant with a detailed explanation concerning the decision not to fill the post of SNE.

The complainant wrote a further letter on 2 April 2002, in which he stated that the advertisement of vacancy had created legitimate expectations to be chosen for the post. He also stated that he had been informed that another candidate had been appointed. He therefore asked again to have access to the documents related to the decision not to fill the post of SNE.

On 8 May 2002, the Commission's responsible services replied to the complainant and confirmed the content of the letter of 13 March 2002. Furthermore, they added that the Commission could not be bound by the publication of a vacancy.

On 18 June 2002, the complainant made a complaint to the Commission under the Code of Good Administrative Behaviour, which was acknowledged by the Secretary General and registered under reference number A/330162. The Director General of DG MARKT replied to this complaint on 4 September 2002. He confirmed the information given in the letter of 13 March 2002 and pointed out that no SNE had been recruited in Unit D/1 of DG MARKT following the notice of vacancy of September 2001. The Director General apologised again for the fact that the complainant had only received a standard letter informing him that his application had not been successful. However, he also underlined that the information that the complainant's data would be kept in the database of DG MARKT was correct.

By letter of 7 October 2002, the complainant appealed against the reply to his complaint (A/330162) and made a request for access to certain documents.

In his reply of 12 November 2002, the Secretary General of the Commission stated that, although he could accept that some deficiencies had occurred in the handling of the concerned procedure, they had been rectified by the explanation given to the complainant later on.

On 15 November 2002, DG MARKT provided the complainant with the following documents: a copy of a note from Mr M., Director General of DG MARKT, to Mr R., Director General of Directorate General Administration (DG ADMIN), of 24 October 2001, concerning the change in DG MARKT's structure which resulted in the merging of Unit D/1 and D/2; a copy of a note from DG ADMIN to DG MARKT of 19 November 2001, transmitting the three applications for the post of SNE in Unit D/1 and anonymised copies of the letters to the two other candidates for the SNE post, identical to that sent to the complainant on 16 January 2002.

As a general comment, the Commission accepted that the reply given to the complainant on 16 January 2002 failed to give the complainant a full and accurate account of the reasons why he had not been selected. The Commission had apologised already in its letter of 13 March 2002. Nevertheless, it underlined that the publication of a SNE vacancy cannot create a legitimate expectation on the part of applicants that they will be appointed. SNEs are funded from Budget line A-7003. Each Directorate General is allocated a budgetary envelope which it manages in a decentralised manner. Decisions to create or to transfer SNE posts do not require any particular formality. The decision to recruit a SNE is normally taken on the basis of a request from the DG in question to Directorate General for Personnel and Administration. In this particular case, since it was decided not to proceed to the recruitment, such a request was not made.

Finally, the Commission stated that, as regards the registration number on the letters sent to unsuccessful candidates for the post of SNE on 16 January 2002, it was unable to explain the existence of an identical registration number (238) for two of them. According to the Commission, the most probable explanation was that two of the letters were presented for signature in the same file and the third (with registration number 240) in a separate one.

The complainant's observations

In his observations, the complainant basically maintained his complaint.

Furthermore, he pointed out that it was unacceptable that the Commission had not been able to give a reasonable explanation of the reason why two of the letters sent to the unsuccessful candidates on 16 January 2002 had the same registration number and the third one had a different number. The complainant took the view that this could be explained by the fact that the content of the letters was not the same.

He repeated the allegations he had made in his complaint and maintained his claim for compensation.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. By letter of 10 November 2003, the Ombudsman therefore asked the Commission to grant him access to its file.

On 25 November 2003, the Ombudsman's services inspected the Commission's file. The Commission's file contained relevant documents relating to the modification of DG MARKT's organisation chart, documents relating to SNE posts in DG MARKT, the internal correspondence related to the case among different Commission services and the correspondence between the Commission and the complainant. Although they were not in the file, the Commission's services provided the Ombudsman's services with a list of SNE posts since the year 2000. From this list, it appeared that no SNE had been recruited in unit D/1. The Ombudsman's services also received a copy of all outgoing letters from DG MARKT of 16 January 2002, with registration numbers 238,239,240. As regards these documents, which according to the Commission's request, should be considered as being confidential, the representatives of the Commission explained that if several outgoing letters are based on the same standard letter with the same wording, the same registration number is used for all those letters. However, a "gap" in the registration numbers as regards correspondence from one unit, or even from one official, may occur. The reason for this is that the whole DG uses the same ADONIS system, that is to say the same system of registration numbers. This means that whenever someone registers an outgoing letter, the number next in line is taken.

THE DECISION

1 The Commission's handling of the complainant's application

1.1 The complainant applied for a post of Seconded National Expert in DG MARKT, Unit D/1 "Free Movements of Goods", following a notice of vacancy published by DG MARKT and circulated to the Commission's Permanent Representations in September 2001. By letter of 16 January 2002, he was informed that his application had not been successful.

In his complaint, the complainant alleged that the European Commission had failed to follow principles of good administration when sending him the letter of 16 January 2002, because the information therein was incorrect.

1.2 In its opinion, the Commission accepted that the information given in the letter of 16 January 2002 had been misleading and that this letter could have led the complainant to think that another candidate had been selected to occupy the post of SND.

1.3 Principles of good administration require that the institutions should give clear and precise reasons for their decisions. As regards the present case, the Commission accepted that its letter of 16 January 2002 was misleading for the complainant.

However, the Ombudsman notes that in the letter of 4 September 2002 and then in its opinion to the Ombudsman, the Commission explained to the complainant the reasons why it had been decided not to fill the post of SNE and apologised for the misleading letter of 16 January 2002.

1.4 The inspection of the Commission's file carried out by the European Ombudsman's services has not revealed any elements that would call into doubt the Commission's explanations.

1.5 On the basis of the above, the Ombudsman does not consider it necessary to inquire further into this aspect of the case.

2 The complainant's request for access to documents

2.1 In his complaint, the complainant alleged that the Commission did not give him access to the documents related to the Commission's decision not to fill the post of SNE.

2.2 In its opinion, the Commission stated that on 15 November 2002 DG MARKT forwarded to the complainant all the existing documents related to the concerned procedure, thus a copy of a note from Mr M., Director General of DG MARKT, to Mr R., Director General of Directorate General Administration (DG ADMIN), concerning the change in DG MARKT's structure which resulted in the merging of Unit D/1 and D/2, a copy of a note from DG ADMIN to DG MARKT of 19 November 2001, transmitting the three applications for the post of SNE in Unit D/3 and anonymised copies of the letters to the two other candidates for the SNE post, identical to that sent to the complainant on 16 January 2002.

2.3 The Ombudsman's services carried out an inspection of the Commission's file. No written decision by the Commission concerning the decision not to fill the post of SNE was found in the Commission's file. It further appeared that there were no other documents related to this decision apart from the documents the Commission had disclosed to the complainant. The inspection also showed that the anonymised copies of letters the complainant had received corresponded to the letters that the Commission had sent to the other two candidates.

2.4 On this basis, the Ombudsman considers that there has been no maladministration by the Commission in relation to this aspect of the case of the case.

3 The complainant's claim for compensation

3.1 The complainant claimed a compensation of 100.000 € for the material and moral damage.

3.2 In its opinion, the Commission underlined that the publication of a SNE vacancy cannot create a legitimate expectation on the part of applicants that they will be appointed.

3.3 In view of the above conclusions regarding the complainant's allegations, the Ombudsman considers that the complainant has not provided any evidence to establish the damage which the misleading letter of 16 January 2002 had allegedly caused him.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

ACCESS TO MARKED EXAMINATION SCRIPTS IN COMPETITIONS ORGANISED BY THE COMMISSION

Decision on complaint 324/2003/MF against the European Commission

THE COMPLAINT

The complainant lodged a complaint with the European Ombudsman on 7 February 2003.

According to the complainant, the relevant facts are as follows:

The complainant is an official of the European Commission. He took part in competition COM/C/1/01 published in the Official Journal No C 251A of 11 September 2001 and organised by the European Commission in order to constitute a reserve list of clerical assistants in the field of financial management and accounting. He passed the pre-selection tests and participated in the written tests. In a letter dated 13 December 2002, the Commission informed the complainant that he was not admitted to the oral examination because he had obtained only 17 out of 40 points in test d) when the minimum required was 20 points.

By e-mail dated 18 December 2002, the complainant requested from the Commission the copy of his marked examination paper and the corrected version of the written examination in order to know

the errors he had made. On 10 January 2003, the Commission sent to the complainant the copy of his written paper, without any corrections, together with the evaluation sheet.

By e-mail dated 16 January 2003, the complainant informed the Commission that he had requested the copy of his marked exam paper and that he only received the copy of his written tests without any corrections. By letter of 29 January 2003, the Commission replied that it had disclosed all the information relating to the written tests that was accessible to the candidates.

On 7 February 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the European Commission had failed to disclose his own marked examination paper concerning competition COM/C/1/01. He further alleged that the documents sent by the European Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made.

THE INQUIRY

The European Commission's opinion

The opinion of the European Commission on the complaint was, in summary, as follows:

The Commission acknowledged that, in a letter from President Prodi dated 7 December 1999 sent to the European Ombudsman, it had committed itself to give candidates access to their own marked examination scripts on request, in competitions published after 1 July 2000.[31] The Commission argued that the access to the marked examination scripts had been made possible only after the adoption of legal and administrative arrangements.

The procedure adopted consisted in the drafting of a provisional evaluation sheet containing the remarks and the proposed marking of each examiner for each part of the tests. The Selection Board then set the final mark, added its own assessment on the evaluation sheet and signed it. Such an evaluation sheet could be disclosed to candidates on request.

Test d) of competition COM/C/1/01 consisted of a case study to assess the specialised knowledge and organisational and administrative skills of the candidates in the field of financial management and accounting. Following the written tests, all the examination scripts were corrected anonymously by two examiners at least, in accordance with criteria established beforehand by the Selection Board. The latter then checked the correct application of these criteria and reviewed the remarks and assessments made by the examiners. The Selection Board finally set the final marks, which were communicated to the candidates.

Concerning the allegation of the complainant that the documents sent by the Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made, it must be stated that the examination scripts of the candidates who had sat the written tests did not contain any annotations. Such annotations made by the examiners were written down in the provisional evaluation sheet in accordance with the procedure described above. The Selection Board could consult this provisional evaluation sheet when preparing the assessment of the candidates. Given that this provisional evaluation sheet did not contain the assessment of the Selection Board but only formed part of its deliberations, it was not communicated to the candidates.

The assessment of the Selection Board only appeared on the evaluation sheet which was communicated to the complainant. In addition to the indication of the mark given to the complainant, the Selection Board also wrote its comments on this evaluation sheet. The aim of such comments was to inform the complainant of the reasons why the Selection Board decided to give him a mark lower than the pass mark, so as to help the complainant, should he decide to participate in another competition in the future.

31 Press release no. 16/99 of the European Ombudsman of 15 December 1999.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. No observations were received from the complainant.

THE DECISION

1 The Commission's alleged failure to disclose to the complainant his marked examination paper

1.1 The complainant alleged that the European Commission had failed to disclose his own marked examination paper in competition COM/C/1/01.

1.2 The European Commission argued that it had disclosed all the information relating to the written tests that was accessible to the candidates. It also pointed out that the examination scripts of the candidates who had sat the written tests did not contain any annotations. Such annotations made by the examiners were written down in the provisional evaluation sheet in accordance with the current procedure. The Selection Board could consult this provisional evaluation sheet when preparing the assessment of the candidates. Given that the provisional evaluation sheet did not contain the assessment of the Selection Board but only formed part of its deliberation, it was not communicated to the candidates.

1.3 On 18 October 1999, the European Ombudsman sent a Special Report to the European Parliament following the own-initiative inquiry into the secrecy which formed part of the Commission's recruitment procedure[32]. The Special Report included a formal recommendation that in future recruitment competitions, the Commission should give candidates access to their own marked examination scripts on request. On 7 December 1999, the President of the European Commission wrote to the European Ombudsman to inform him that:

"The Commission welcomes the recommendations you made in this report and will propose the necessary legal and organisational arrangements to give candidates access to their own marked examination papers, upon request, from 1 July 2000 onwards." [33]

1.4 The European Ombudsman notes that the complainant asked the Commission to disclose his own marked examination paper. On 10 January 2003, the Commission sent to the complainant copies of his written paper and of the evaluation sheet. The Selection Board wrote its comments relating to its assessment of the examination paper of the complainant on this evaluation sheet. The European Ombudsman is not aware of any rule that would oblige the Selection Board to write its comments relating to the assessment of a candidate on the examination paper. The European Ombudsman therefore considers that the position adopted by the Commission appears to be reasonable.

1.5 In these circumstances, the European Ombudsman considers that there appears to have been no maladministration on the part of the Commission.

2 The allegation that the documents sent by the Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable the complainant to know the errors he had made.

2.1 The complainant alleged that the documents sent by the European Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made.

2.2 The European Commission stated that the assessment of the Selection Board appeared on the evaluation sheet which was communicated to the complainant. In addition to the indication of

32 *Special Report of the European Ombudsman to the European Parliament following the own-initiative inquiry into the secrecy which forms part of the Commission's recruitment procedure:* http://www.euro-ombudsman/special/en/default.htm.

33 See press release no. 16/99 of the European Ombudsman of 15 December 1999.

the mark given to the complainant, the Selection Board also wrote its comments on this evaluation sheet.

2.3 The European Ombudsman notes that, from the copy of the evaluation sheet which has been submitted to him by the Commission, the evaluation sheet appears to contain specific remarks concerning the assessment by the Selection Board of the examination paper of the complainant relating to test d) of the competition. In this evaluation sheet, the Selection Board also highlighted what it seems to have considered to be mistakes or weaknesses in the examination paper. The European Ombudsman therefore considers that the information provided to the complainant appears to be detailed enough to enable him to understand the errors he had made.

2.4 From the above, the European Ombudsman concludes that there appears to have been no maladministration by the Commission in this aspect of the case.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

3.1.4 The European Central Bank

ACCESS TO STATISTICS ABOUT STOCKS AND FLOWS OF EURO BANKNOTES

Decision on complaint 1939/2002/IJH against the European Central Bank

THE COMPLAINT

In November 2002, the complainant renewed his complaint to the Ombudsman against the refusal by the European Central Bank (ECB) to provide him with statistics about stocks and flows of Euro banknotes. His earlier complaint, made in July 2002, was deemed inadmissible under Article 2 (4) of the Statute of the Ombudsman, because the complainant had not followed the procedures laid down in the ECB's rules on public access to documents.[34] Specifically, he had not made a confirmatory application and waited the prescribed time for an answer.

The complainant subsequently made a confirmatory application, which the Executive Board of the ECB rejected by letter dated 5 November 2002. The ECB justified its decision by reference to the exceptions contained in the first and fourth indents of Article 4 of Decision ECB/1998/12, which provide that access to an administrative document shall not be granted where its disclosure could undermine:

– the protection of the public interest, in particular public security, international relations, monetary and exchange rate stability, court proceedings, inspections and investigations.

  (…)

– the protection of the ECB's financial interests.

34 Decision of the European Central Bank of 3 November 1998 (ECB/1998/12), concerning public access to documentation and the archives of the European Central Bank 1999 OJ L110/30.

In his complaint to the Ombudsman, the complainant contests the ECB's rejection of his confirmatory application. The complainant argues that none of the exceptions contained in Article 4 of Decision ECB/1998/12 applies to the statistics to which he claims access.

THE INQUIRY

The European Central Bank's opinion

In summary, the ECB's opinion made the following points:

The ECB has provided the complainant with the most recent information on aggregated volumes of Euro banknotes in circulation and in stock, broken down by denomination. Furthermore, annual banknote production figures are published on the ECB's website. Monthly data on the volume of Euro banknotes returned to the national central banks of the Eurosystem are also available on request.

In partially rejecting the complainant's request for information, the ECB acted on the basis of and in accordance with Article 4 of Decision ECB/1998/12 in that the disclosure of the information could have undermined the interests set out in that Article.

If information on the stocks and flows of banknotes in the territories of different Euro area Member States were to be made available to the public, it could jeopardise the security of both the storage of banknotes and their subsequent transfer between national central banks: these transfers are made to compensate for any (potential) shortages. Furthermore, such information could undermine the security of the persons responsible for the stocks and/or involved in the transportation of banknotes. This reasoning would hold true even if information were to be made public after the actual transportation had taken place, since certain trends can still be identified. This point is particularly relevant for smaller Member States, which might have a limited number of banknote storage locations.

Banknote stocks and transports are security sensitive issues because of the possible large values that can be involved. The Executive Board of the ECB carefully weighed the interests of the general public in having access to this kind of information against the public interest in being protected in such cases, and in particular the issue of public security. On the basis of this consideration, the Executive Board concluded that information relating to the stocks and transportation of banknotes must not be disclosed. This decision also applies to information on past transports, since this kind of information may attract significant criminal attention.

In light of the above security concerns, the national central banks of the Eurosystem, which in practice manage the stocks and flows of Euro banknotes, and other parties responsible for and/or involved with stocks and transportation (e.g. police and military forces in a number of Euro area Member States) have asked the ECB to keep such information confidential.

The ECB attaches particular importance to giving citizens the greatest possible access to information in order to strengthen the democratic nature of public authorities and to bolster public confidence in the administration. Nevertheless, an important reason for denying access to information on stocks and flows of banknotes in different Member States is the risk that third parties could misinterpret the information and thus make a false assessment of the availability of certain banknote denominations. This could prompt the general public and retailers to hoard certain banknote denominations, thus leading to a shortage of such denominations (creating, in effect, a "self-fulfilling prophecy"). This argument would also hold true were country-specific stock data to be published after their actual availability, because certain trends could still be identified. Based on the past experience of Eurosystem national central banks, the ECB has concluded that such information might worry the public unnecessarily and therefore lead to irrational behaviour. Furthermore, the ECB considers that information relating to specific Member States has become less relevant given both the legal status of the single currency in all Euro area Member States and the fact that Euro banknotes are

used for cross-border transactions. The European System of Central Banks (ESCB) has established mechanisms to compensate for regional shortages by building up surplus stocks.

In this context, the Executive Board of the ECB has carefully weighed the interests of the general public in having access to this kind of information against the public interest to be protected. It concluded that the above-mentioned risks, based on past experience, are significant enough to justify not publishing the requested information.

The complainant's observations

The complainant's observations on the ECB's opinion made, in summary, the following points:

For the avoidance of doubt, the information that the complainant seeks is data on country-specific stocks, that is, the value of Euro banknotes in circulation from time to time within the territory of each of the participating Member States, expressed either in absolute terms or in relative terms, as proportions of the aggregate value of Euro banknotes in circulation in the Euro area.

The complainant is not seeking information about the transfer of Euro banknotes from the territory of one participating Member State to another, nor about the ECB's decisions or criteria concerning such transfers.

In rejecting the complainant's confirmatory application, the ECB cited the first and fourth indents of Article 4 of Decision ECB/1998/12. The fourth indent concerns the protection of the ECB's financial interests. However, it appears from the ECB's opinion that it intended to cite not the fourth, but the fifth, indent. This concerns the "protection of confidentiality as requested by any natural or legal person who supplied any of the information contained in the document or as required by the law applicable to such person."

The ECB's opinion mentions that other parties responsible for and or involved with stocks and transportation (e.g. police and military forces in a number of Euro area Member States) have asked the ECB to keep such information confidential. However, parties such as police and military forces, are not "persons who supplied any of the information." Therefore, the fifth indent cannot apply to them.

Furthermore, confidentiality does not arise simply by virtue of a person requesting it. There has to be actual confidentiality within the meaning of Article 8 of Regulation 2533/98.[35] For such purposes, the national central banks (NCBs) are not "reporting agents" but collectors of information pursuant to their obligations under Articles 5.1 and 5.2 of the Statute of the ESCB and ECB. Therefore, although the information would, by its nature, allow the NCBs to be identified, it would not be confidential.

As regards the issue of security, the complainant points out that variations in country-specific stocks of Euro banknotes would not normally lead to transfers of banknotes between national central banks and that Article 3 (4) of Decision ECB/2001/15 makes clear that such transfers are the exception and not the rule.[36] Therefore, it cannot be concluded, from data on country-specific stocks or variations in them, either that such transfers have occurred or that exceptional circumstances, giving rise to future transfers, have arisen. Even if such conclusions could be drawn, no trends could be identified because exceptional circumstances are, by definition, not subject to trends.

The ECB's argument that "such information might worry the public unnecessarily and therefore lead to irrational behaviour" is a highly dangerous notion. If it was accepted, there would be no limit to its application and it would substantially undermine the Declaration on the Right of Access to Information annexed to the Final Act of the Treaty on European Union.

35 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, 1998 OJ L 318/8.

36 Decision of the European Central Bank of 6 December 2001 on the issue of euro banknotes (ECB/2001/15) 2001 OJ L 337/52: "NCBs shall not transfer euro banknotes accepted by them to other NCBs and shall keep such euro banknotes available for reissue. As an exception, and in accordance with any rules laid down by the Governing Council of the ECB: (...) (b) euro banknotes held by NCBs may, for logistical reasons, be redistributed in bulk within the Eurosystem."

THE DECISION

1 Statistics about stocks and flows of Euro banknotes

1.1 The complainant contests the rejection by the European Central Bank (ECB) of his confirmatory application for access to statistics about stocks and flows of Euro banknotes. The complainant argues that none of the exceptions contained in Article 4 of Decision ECB/1998/12[37] applies to the statistics to which he claims access.

1.2 The ECB argues that it has provided the complainant with the most recent information on aggregated volumes of Euro banknotes in circulation and in stock, broken down by denomination. Disclosure of statistics about stocks and flows of Euro banknotes in the territories of different Euro area Member States could undermine the interests set out in Article 4 of Decision ECB/1998/12, because it could jeopardise the security of both the storage of banknotes and their subsequent transfer between national central banks. Furthermore, such information could undermine the security of the persons responsible for the stocks and/or involved in the transportation of banknotes. This reasoning also applies to information on past transports, since this kind of information may attract significant criminal attention. In light of the above security concerns, the national central banks and other parties such as police and military forces have asked the ECB to keep such information confidential.

Moreover, according to the ECB, information on stocks and flows of banknotes in different Member States could be misinterpreted, leading to a false assessment of the availability of certain banknote denominations. This could prompt the general public and retailers to hoard certain banknote denominations, thus leading to a shortage of such denominations thus creating, in effect, a self-fulfilling prophecy. This argument would also hold true were country-specific stock data to be published after their actual availability, because certain trends could still be identified.

Also according to the ECB, based on the past experience of Eurosystem national central banks, such information might worry the public unnecessarily and therefore lead to irrational behaviour.

1.3 In observations on the ECB's opinion, the complainant clarifies that he seeks data on country-specific stocks; i.e. the value of Euro banknotes in circulation from time to time within the territory of each of the participating Member States, expressed either in absolute terms or in relative terms, as proportions of the aggregate value of Euro banknotes in circulation in the Euro area.

According to the complainant, the ECB is not entitled to rely on the exception concerning requests for confidentiality contained in the fifth indent of Article 4 of Decision ECB/1998/12. As regards the issue of security, no information on transfers of Euro banknotes can be derived from data on country-specific stocks or variations in them. If accepted, the ECB's argument that such information might worry the public unnecessarily and therefore lead to irrational behaviour would substantially undermine the Declaration on the Right of Access to Information annexed to the Final Act of the Treaty on European Union.

1.4 The Ombudsman first notes that the complainant's observations clarify the information that he wishes to obtain from the ECB. The Ombudsman considers, however, that the ECB's interpretation of the complainant's application was reasonable. The present decision therefore examines whether the ECB was entitled to refuse to supply the information which it understood the complainant to be seeking.

The Ombudsman points out that the complainant could make a new application to the ECB in accordance with Decision ECB/1998/12, specifying precisely the information that he wishes to obtain.

1.5 The Ombudsman understands the reference in the ECB's opinion to requests for confidentiality from national central banks, police and military forces as being intended to provide evidence to

[37] Decision of the European Central Bank of 3 November 1998 (ECB/1998/12), concerning public access to documentation and the archives of the European Central Bank 1999 OJ L110/30.

support the ECB's reliance on the exception for public security in the first indent[38] of Article 4 of Decision ECB/1998/12, not as a reference to its fifth indent[39]. The Ombudsman considers that the arguments advanced by the ECB concerning public security are reasonable and justify the ECB's decision to refuse access to the information which it understood the complainant to be seeking.

1.6 As regards the ECB's argument concerning the risk of a self-fulfilling prophecy leading to shortage of certain banknote denominations, the Ombudsman first notes that Article 106 EC gives the ECB the exclusive right to authorise the issue of banknotes within the Community and that Article 12 (1) of the Statute of the ESCB and ECB provides that the Executive Board of the ECB shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council of the ECB. The Ombudsman is aware that the concept of a self-fulfilling prophecy is used in the literature of economics. The Ombudsman points out that in carrying out the above-mentioned responsibilities, the ECB is entitled to take into account economic analysis of the possible effects of self-fulfilling prophecies on monetary developments. The Ombudsman therefore considers that such analysis is also relevant to the exception for protection of the public interest contained in the first indent of Article 4 of Decision ECB/1998/12. The Ombudsman does not accept, however, that the ECB is entitled to rely on the argument that information about country-specific stocks might worry the public unnecessarily and therefore lead to irrational behaviour. The Ombudsman points out that the ECB offers no evidence to substantiate this argument which, moreover, does not appear to relate to any of the exceptions contained in Article 4 of Decision ECB/1998/12.

1.7 For the reason given in 1.5 above, the Ombudsman considers that the ECB was entitled to refuse access to the information which it understood the complainant to be seeking. The Ombudsman therefore finds no maladministration in the ECB's rejection of the complainant's confirmatory application.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Central Bank. The Ombudsman therefore closes the case.

3.1.5 The European Court of Auditors

COURT OF AUDITORS CORRECTS FAILURE TO APPLY RULES ON ACCESS TO DOCUMENTS

Decision on complaint 1117/2003/GG against the European Court of Auditors

THE COMPLAINT

In June 2003, the complainant, a UK citizen, wrote to Mr R., a member of the Court of Auditors, in order to ask for access to documents in relation to an audit carried out in 2001 in Niger. The complainant noted that his request was made on the basis of the "EU access to information regulation".

38 "the protection of the public interest, in particular public security, international relations, monetary and exchange rate stability, court proceedings, inspections and investigations."

39 "the protection of confidentiality as requested by any natural or legal person who supplied any of the information contained in the document or as required by the law applicable to such person."

Access to documents held by the Court is governed by Decision No 18/97 laying down internal rules for the treatment of applications for access to documents held by the Court (OJ 1998 no. C 295 page 1). According to Article 2 of the Decision, all applications are forwarded to the Director of the External Relations Department and Legal Service who decides on their admissibility. Where appropriate, the applicant shall be asked to formulate the application in greater detail. The Court may refuse access on the basis of the criteria set out in Article 4 (3) of the Decision. Applicants shall be informed within one month of receipt of the application of the Court's response to it.

According to Article 3 (1) of Decision No 18/97, all appeals shall be submitted to the President of the Court of Auditors, and the applicant must be notified of the decision on the appeal within two months. The decision must state the reasons for the rejection and inform the complainant of the channels of appeal open to him.

By e-mail of 17 June 2003 sent by Mrs L. on behalf of Mr R., the complainant was informed that an audit had indeed taken place in Niger in June 2001. However, the sender pointed out that the Court's rules prevented the latter from disclosing internal documents concerning audits. In this context, reference was made to point 6 of the Communications Policies and Standards that the Court had adopted at its meeting on 25/26 September 2001 and that is worded as follows: "In order to protect the professional relationship between auditor and auditee, the Court cannot provide a greater level of specific information to the outside world than is provided in its adopted reports." Mr R. added that to the extent that the relevant audit formed the basis of Special Report No 2/2002 on the implementation of the food security policy in developing countries financed by the general budget of the European Union, information that could be of interest to the complainant was to be found on the Court's website.

In his complaint to the Ombudsman, the complainant made the following allegations:

(1) The Court's refusal to grant access to the relevant documents was in breach of the relevant rules, namely Regulation No 1049/2001 and Article 23 of the Code of Good Administrative Behaviour.

(2) There was a breach of Article 19 of the Code of Good Administrative Behaviour, since no information on how to appeal was provided.

THE INQUIRY

The European Court of Auditors' opinion

In its opinion, the Court noted that it was clear that the complainant's request had not been treated in accordance with the procedures laid down in Decision No 18/97. The President of the Court had therefore decided to contact the complainant again in order to invite him to provide the Court with a detailed indication of any additional information he may need, in order to enable the services of the Court to examine the request in accordance with the Court's internal rules.

The Court submitted a copy of its letter to the complainant dated 17 July 2003 in which it apologised for its first e-mail reply of 17 June 2003.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Failure to grant access to document and information on how to appeal

1.1 On 6 June 2003, the complainant, a UK citizen, wrote to Mr R., a member of the European Court of Auditors, in order to ask for access to documents in relation to an audit carried out in 2001

in Niger. By e-mail of 17 June 2003 sent by Mrs L. on behalf of Mr R., the complainant was informed that an audit had indeed taken place in Niger in June 2001 but that the Court's rules prevented the latter from disclosing internal documents concerning audits. In his complaint to the Ombudsman, the complainant alleged that the European Court of Auditors had wrongly failed to grant him access to the document concerned and had failed to inform him how to appeal against the decision rejecting his application.

1.2 In its opinion, the European Court of Auditors noted that it was clear that the complainant's request had not been treated in accordance with the procedures set out in Decision No 18/97 laying down internal rules for the treatment of applications for access to documents held by the Court of Auditors[40]. The President of the Court had therefore decided to contact the complainant again in order to invite him to provide the Court with a detailed indication of any additional information he may need, in order to enable the services of the Court to examine the request in accordance with the Court's internal rules.

1.3 The Ombudsman considers that the Court of Auditors has thus taken adequate steps in response to the complaint.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, and taking into account the steps taken by the institution after it was informed of the complaint, there appears to be no maladministration by the European Court of Auditors. The Ombudsman therefore closes the case. The complainant is of course free to lodge a new complaint if the Court should, after having re-examined his application, refuse to grant access to the relevant document.

3.1.6 The European Convention

ACCESS TO EUROPEAN CONVENTION AGENDAS AND MINUTES

Decision on complaint 1795/2002/IJH as it relates to the European Convention

THE COMPLAINT

In October 2002, a complaint was made to the Ombudsman on behalf of the European Citizen Action Service (ECAS) against the European Convention and the Council.

The present decision deals only with the complaint against the Convention. The Ombudsman's inquiry into the complaint against the Council was dealt with in a separate decision (see section 3.1.2).

According to the complainant, the relevant facts are, in summary, as follows:

The complainant applied to the Council for access to the agendas and minutes of the Praesidium of the European Convention. In July 2002, the Council replied to the complainant stating, amongst other things, that the European Convention is a body distinct from the Council and that the Council's General Secretariat had forwarded the applicant's request to the Secretariat of the Convention.

[40] OJ 1998 no. C 295 page 1.

The complainant then wrote to the Secretary General of the Convention, Sir John KERR, referring to the above-mentioned request to the Council for access to the agendas and minutes of the Praesidium. The Secretary General replied to the complainant on 18 September 2002 stating, amongst other things, that he would *"see a real problem about publishing draft material produced by this Secretariat which the Praesidium has not, or has not yet approved, or its instructions to the Secretariat for amendments. The Convention recognises that in order to do its job the Praesidium has to enjoy a degree of ex ante confidentiality; its product is totally public but the preparatory process has to be reasonably private."*

The complainant expresses his complaint to the Ombudsman in the form of requests to investigate, ascertain or establish certain matters. The complainant also explains that the reason for the request for access to agendas and minutes of the Praesidium is to give NGOs adequate advance warning of what is coming up in the Convention.

In summary, the complaint seems to contain the following allegation against the European Convention:

The Secretariat of the European Convention failed to respond correctly to the complainant's request for access to agendas and minutes of the Praesidium.

THE INQUIRY

The Ombudsman first examined the admissibility of the complaint. For the reasons stated in section 1 of the Decision below, the Ombudsman came to the provisional conclusion that the European Convention is a Community body in the sense of Article 195 EC and thus within the mandate of the Ombudsman as regards possible maladministration in its activities.

The Ombudsman therefore forwarded the complaint to the President of the European Convention, M. Valéry GISCARD D'ESTAING, for an opinion. The Ombudsman stated that the views of the President on the question of the admissibility of the complaint would be welcome and expressed the hope that he would, in any event, respond to the complainant's allegation.

The opinion of the President of the European Convention

In summary, the President of the European Convention gave the following opinion:

The Convention's documents do not fall within the scope of application of Regulation 1049/2001 on public access to documents of the European Parliament, Council and Commission. Nevertheless, it has been the continuous policy of the Convention to make as much material as possible (including all official Convention documents) available to the general public, largely through prompt publication on the website.

The Praesidium's role is to prepare the work of the Convention. It can only carry out this function effectively if it has the possibility to deliberate in private. All documents which result from the Praesidium's discussion are made available immediately through publication on the Convention website. If the agendas and minutes of the Praesidium were also to be made available, this would run the risk of it becoming the object of, rather than a stimulus to, the Convention's debates. Experience so far suggests that this is largely understood and accepted by Members of the Convention, who do not themselves have access to the agendas and minutes of the Praesidium.

The complainant also states that, without access to Praesidium agendas and minutes, NGOs have difficulty in obtaining advance warning of what is coming up in the Convention. I do not accept this. I invariably announce at the end of each plenary session the main issues for the following (and sometimes even subsequent) session. These are recorded in the summary notes prepared by the Secretariat and published on the website. Furthermore, detailed agendas for each plenary session are published as soon as they are approved by the Praesidium. The public is therefore as well informed as Convention members on the future schedule and content of plenary sessions.

The complainant's observations

In summary, the complainant made the following points on the opinion given by the President of the Convention:

The European Convention is a body subject to the Treaty and Regulation 1049/2001 should apply to it. Although Article 255 EC is limited to European Parliament, Council and Commission documents, this should be placed in the historical context, which is that codes of conduct on access to documents have spread, with the encouragement of the European Ombudsman, from the three Institutions to agencies they set up. The Council and the European Parliament therefore took care in the legislation based on Article 255 EC to extend its scope beyond the three Institutions.

Paragraph 8 of the preamble to Regulation 1049/2001 states that *"In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the Institutions should apply the principles laid down in this Regulation."* This highlights the intention of the Council and the European Parliament to ensure the widest possible access to documents by extending the scope of the Regulation to cover all activities.

This intention is supported by the Joint Declaration of 30 May 2001, paragraph two of which makes clear that the aim is to ensure that all institutions and bodies, and thus the Convention, are covered by the Regulation.

As regards the ability of NGOs to obtain advance warning of what is coming up in the Convention, the complainant acknowledges and appreciates the fact that the President announces at the end of each plenary session the main issues for the following (and sometimes even subsequent) session, but it can still be extremely difficult to obtain advance warning of what is coming up in the Convention. Warning from one session to the next is insufficient. This problem should also be considered with particular reference to NGOs outside of Brussels and in the candidate countries. If such organisations wish to attend a Convention plenary session, far more advance warning of what will be coming up would be desirable.

The complainant understands that the Praesidium is only able to prepare the work of the Convention and function effectively if it retains the possibility of deliberating in private. The complainant also understands the need for confidentiality in the drafting of texts at the formative stage. It is more difficult to understand how the Praesidium's agendas could be so controversial that publishing them could disturb the work of the Convention. The minutes are perhaps more susceptible to such problems. However, these could be overcome by allowing partial access. The complainant is not seeking to ascertain views of individual members of the Praesidium, but simply to obtain advance warning of what is coming up.

It has become apparent that a number of Convention members are not satisfied with the situation as it stands in relation to access to documents and the secrecy of the Praesidium. A number of Convention members, whose parties are the four smallest parties in the Convention and are not represented in the Praesidium, have circulated a complaint about access to Praesidium documents.

In the light of the above, the complainant requests the European Ombudsman:

- To consider that the Convention is not outside the scope of the Treaties and to investigate whether Regulation 1049/2001 applies to it.
- To consider the complainant's request for full access to the agendas of the Praesidium meetings and the complainant's suggestions in respect of access to the minutes or reports of the Praesidium meetings.
- To consider that at the end of the Convention's work in June, full access should be granted to all documents not in the public domain at present. This will be to the benefit of many, particularly the large number of academics and researchers following the Convention's work.

Further inquiries

After carefully considering the opinion given by the President of the European Convention and the complainant's observations, the Ombudsman considered it necessary to make further inquiries. He asked the President of the European Convention to comment on the complainant's point concerning the difficulties which may arise for NGOs in obtaining information about what will be coming up in the Convention sufficiently far in advance to plan their activities. The Ombudsman also asked to be informed whether the agendas and minutes of the Convention's Praesidium will be made publicly available at the end of the Convention's work.

The European Convention's reply

The Secretary General of the Convention, Sir John KERR, replied to the Ombudsman's request for further information.

As regards the possibility for NGOs to obtain advance information, the Secretary General's reply notes that the complainant fairly acknowledges that it has been the practice of the President of the Convention systematically to announce at the end of each plenary session the main issues for the next session, or sessions. The nature of the Convention means that it is difficult for the Praesidium to programme its work very far ahead with any degree of certainty (whether a specific issue addressed in a Convention paper, or by a Working Group, or raised by a Praesidium proposal, will need extended plenary debate depends on the Convention's reaction to it). However insofar as such planning has been possible, the Convention has been informed, and all such information has been publicly available on the Convention website.

As regards the question whether, at the end of the Convention's work, the Praesidium's agendas and minutes will be made available to the public, the Secretary General of the Convention stated that he sees no reason why these documents should not be made public at that stage. This is, however, an issue on which the Praesidium itself will need to take a view at the end of the Convention, when it decides on how best to ensure that the workings of the Convention, which have been highly transparent to participants and those concerned now, remain accessible and comprehensible to those who follow us, and to the historians who will judge how well we responded to the responsibilities laid on us.

The complainant's observations

In summary, the complainant made the following points:

The complainant fully recognises and appreciates the open way the Convention operates, including the rapid publication of Praesidium papers. The complaint is limited to the confidentiality of agendas and minutes of Praesidium meetings.

The complainant welcomes the suggestion by the Secretary General that, subject to a decision by the Praesidium, its agendas and minutes could be made available at the end of the Convention's work.

The complainant requests the Ombudsman to recommend to the Convention Praesidium that, after the end of the Convention's work, all the documents should be classified and organised in such a way as to facilitate public access. For example, the public should be advised where they can consult Convention documents in paper or electronic form at a central library or through the registers of documents. The complainant also expresses the fear that in the final stages of negotiations in the Convention this important issue may not be satisfactorily solved.

THE DECISION

1 The admissibility of the complaint against the European Convention

1.1 The present case concerns a complaint made on behalf of the European Citizen Action Service (ECAS) against lack of public access to agendas and minutes of the Praesidium of the European Convention.

1.2 In examining the admissibility of the complaint, the Ombudsman noted that the origin of the European Convention is the Laeken declaration of the European Council and that there appears to be no legal instrument under national, international, or Community law that formally establishes the Convention. However, the Convention has its own structure and functions and should thus be considered as separate from both the European Council and the Council of the European Union. Moreover, the Convention seems to be funded, indirectly at least, from the Community budget. The Ombudsman therefore came to the provisional conclusion that the Convention is a Community body in the sense of Article 195 EC and thus within the mandate of the Ombudsman as regards possible maladministration in its activities.

1.3 The Ombudsman recognises, however, that the Convention, like the European Parliament, is engaged in political work and that a complaint against its political work would not raise an issue of possible maladministration. The present case concerns the Secretariat's response to a request for access to documents, which is an administrative matter.

1.4 The Ombudsman informed the President of the European Convention of the above analysis and invited his views on the admissibility of the complaint. The President's reply did not comment on this point. The Ombudsman therefore sees no reason to revise his provisional conclusion that the European Convention is a Community body in the sense of Article 195 EC and thus within the mandate of the Ombudsman as regards possible maladministration in its activities.

2 The complainant's request for access to the agendas and minutes of the European Convention's Praesidium

2.1 The complainant alleges that the Secretariat of the European Convention failed to respond correctly to his request for access to agendas and minutes of the Praesidium. The reason for the complainant's request is to give NGOs adequate advance warning of what is coming up in the Convention.

2.2 In his observations, the complainant argues that the aim of the Joint Declaration of 30 May 2001 is to ensure that all institutions and bodies, and thus the Convention, are covered by Regulation 1049/2001. The complainant requests that, at the end of the Convention's work, full access should be granted to all documents not in the public domain at present.

2.3 According to the President of the Convention, the Convention's documents do not fall within the scope of application of Regulation 1049/2001. Nevertheless, it has been the continuous policy of the Convention to make as much material as possible available to the public. The role of the Praesidium is to prepare the work of the Convention. It can only carry out this function effectively if it retains the possibility to deliberate in private. If the agendas and minutes of the Praesidium were to be made available, this would run the risk of it becoming the object of, rather than a stimulus to, the Convention's debates. The wider public is as well informed as Convention members on the future schedule and content of plenary sessions.

As regards the question whether, at the end of the Convention's work, the Praesidium's agendas and minutes will be made available to the public, the Secretary General of the Convention sees no reason why these documents should not be made public at that stage. This is, however, an issue on which the Praesidium itself will need to take a view at the end of the Convention.

2.4 The Ombudsman notes that Regulation 1049/2001[41] applies to documents held by the European Parliament, Council and Commission and that Regulation 58/2003 extends its provisions to executive agencies.[42] The Convention is not part of the European Parliament, Council or Commission, nor is it an agency in the sense of Regulation 58/2003. The Ombudsman therefore considers that Regulation 1049/2001 does not, as such, apply to documents held by the Convention.

2.5 The Ombudsman recalls, however, that following two own initiative inquiries, draft recommendations were addressed to Community institutions and bodies to adopt rules on public access to documents as a matter of good administration.[43] Almost all of them have done so.[44]

2.6 The Ombudsman notes that the Convention's declared policy is to make as much material as possible available to the public. The Ombudsman points out that this policy accords with the aim of Regulation 1049/2001, which is to ensure the widest possible access to documents. In this context, the Ombudsman notes that the Joint Declaration of 30 May 2001[45] of the European Parliament, Council and Commission calls on institutions and bodies to adopt internal rules on public access to documents which take account of the principles and limits in Regulation 1049/2001.

In the light of the foregoing, the European Ombudsman considers that, in examining whether there is maladministration in the implementation of the Convention's declared policy of making as much material as possible available to the public, it is useful to refer, by analogy, to the exceptions contained in Regulation 1049/2001.

2.7 According to the first paragraph of Article 4 (3) of Regulation 1049/2001, access to a document drawn up by an institution for internal use which relates to a matter where the decision has not been taken by the institution shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

The Ombudsman considers that the President of the Convention has given a reasonable explanation as to why disclosure of the agendas and minutes of the Praesidium before the Convention completes its work would seriously undermine the Convention's decision-making process. Furthermore, the Ombudsman does not consider that the complainant's arguments establish an overriding public interest in disclosure. The Ombudsman therefore finds no maladministration in the refusal of public access to the agendas and minutes of the Praesidium before the Convention completes its work.

The Ombudsman points out that the above finding relates only to the refusal of public access to agendas and minutes of the Praesidium. The Ombudsman takes no position as regards disputed questions of openness in the relationship between the Praesidium and Members of the Convention, since these questions relate to the Convention's political work.

2.8 As regards the question whether, at the end of the Convention's work, the Praesidium's agendas and minutes should be made available to the public, the Ombudsman notes that the second paragraph of Article 4 (3) of Regulation 1049/2001 provides that access to a document containing opinions for internal use as part of deliberations and preliminary consultations within

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

42 Council Regulation 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, 2003 OJ L 11/1.

43 See the Special Report by the European Ombudsman to the European Parliament following the own initiative inquiry into public access to documents, 15 December 1997, as well as the decisions concerning the European Central Bank, the European Agency for Safety and Health at Work, the Community Plant Variety Office and Europol, following own initiative inquiry OI/1/99/IJH.

44 For example, the Court of Auditors, 1998 OJ C 295/1; the European Central Bank, 1999 OJ L110/30; the European Investment Bank, 1997 OJ C 243/13; the Economic and Social Committee, 1997 OJ L 339/18; and the Committee of the Regions, 1997 OJ L 351/70.

45 Joint declaration relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145/43 of 31.5.2001) 2001 OJ L 173/5.

the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

It seems difficult to argue that the Convention's decision-making process could be undermined once it has reached the end of its work. The Ombudsman therefore agrees with the Secretary General of the Convention that there is no reason why the documents concerned should not be made public at that stage.

2.9 In his final observations, the complainant expresses the fear that in the final stages of negotiations in the Convention this important issue may not be satisfactorily solved.

The Ombudsman understands that the Convention is expected to complete its work by the end of June 2003. For this reason, the Ombudsman considers that it would not be useful to delay a decision in order to inquire into the fear expressed by the complainant.

The Ombudsman's letter to the President of the Convention informing him of the present decision will mention the finding, set out in the second paragraph of 2.8 above, concerning public access to the Convention's documents once the Convention has finished its work. The letter will also express the Ombudsman's view that it would be in accordance with the principles of good administration for the Convention to make the appropriate arrangements as soon as possible to ensure such access. The Ombudsman will also forward to the President of the Convention the complainant's practical suggestions, made in his final observations, concerning future public access to the Convention's documents.

3 Conclusion

For the reasons explained in paragraphs 2.7 and 2.9 above, the European Ombudsman considers that there has been no maladministration by the European Convention and that no further inquiries into the complaint are justified. The Ombudsman therefore closes the case.

Note : After the conclusion of the Convention's work on 10 July 2003, the Praesidium agendas and summaries of proceedings were posted on the Convention's website at the following address : http://european-convention.eu.int/docpraes.asp?lang=EN

3.1.7 The European Anti-Fraud Office

ALLEGED FAILURE TO CARRY OUT PROPER INQUIRY

Decision on complaint 1625/2002/IJH against the European Anti-Fraud Office

THE COMPLAINT

In September 2002, a former Commission official made a complaint to the European Ombudsman against the European Anti-Fraud Office (OLAF).

According to the complainant, the relevant facts are, in summary, as follows:

On 3 November 2000, whilst working as a head of Unit in the Commission Directorate General for Research, the complainant drew OLAF's attention to certain irregularities in the financing of a project.

On 23 July 2001, the complainant had an interview with two OLAF officials and signed a protocol of the interview. She was never informed of the outcome of OLAF's investigation. She subsequently learnt that the two officials who interviewed her had left OLAF, that the scientific manager of the project had not been interviewed and that the contract for the project had been signed at the beginning of the year 2002, after very extensive changes to the technical annex. The complainant queries whether the OLAF unit that replied to the inter-service consultation on this project was aware of her complaint about the project.

The complainant alleges that OLAF has failed to carry out a proper inquiry into the matter and that it has never informed her of the outcome. She claims that OLAF should inform her whether it conducted an inquiry, what was the result and whether the OLAF unit which replied to the inter-service consultation before the project was approved at the beginning of the year 2002 was aware of her complaint.

THE INQUIRY

The opinion of the European Anti-Fraud Office (OLAF)

The opinion received from OLAF contained, in summary, the following points:

The allegation that OLAF failed to carry out a proper inquiry

According to the complainant's note to OLAF of 3 November 2000, the scientific and technical evaluation of the project proposal dated 24 July 2000 was negative.

The Director-General of the Commission Directorate General for Research (DG RTD) had informed the responsible Commissioner's Chief of Cabinet by note of 25 October 2000 that negotiations under the authority of the complainant in September 1999 had led to unsatisfactory results. He had therefore decided to ask Mr B., Advisor to the Director, to reach an agreement with the project coordinator to conclude the project in a satisfactory manner by the end of November 2000.

The complainant's note stated that, in light of the contradiction between the two considerations mentioned above, the complainant was filing a complaint under Article 90 (2) of the Staff Regulations.

The Director General of OLAF acknowledged receipt of this information by note dated 11 December 2000, and requested the complainant to supply all available information regarding the alleged irregularities. On 22 January 2001, the complainant submitted numerous additional documents related to the negotiations and discussions on the project. The information was inconclusive as to whether irregularities had occurred. Accordingly, on 27 February 2001, OLAF opened an internal investigation. The following information was thereafter collected:

- On 24 March 2001, the Director-General of DG RTD sent an extensive information note to OLAF;
- On 23 July 2001, OLAF investigators interviewed the complainant. She confirmed that to her knowledge there were no indications of fraud, but that the project had been allowed to proceed notwithstanding the shortcomings identified in the scientific evaluation;
- On 27 August 2001, the complainant sent a written supplement to her interview.
- Based on this information, a final case report was adopted on 1 February 2002, which recommended closure of the case without follow-up. The Director-General of OLAF adopted this recommendation. OLAF thus conducted an entirely proper investigation into the complainant's allegations, after which it concluded that no irregularities had occurred and no follow-up action was required.

The allegation that OLAF did not inform the complainant

Regulation 1073/1999 contains rules on who should be informed of the results of an OLAF investigation. Article 8 provides that information obtained in the course of an internal investigation is subject to professional secrecy and may not be communicated to persons other than those within the institutions of the European Communities or the Member States whose functions require them to know. Article 9 provides that the final case report, which contains a synopsis of the information gathered during the investigation, shall be sent to the judicial authorities of the Member State concerned and the institution, body, office or agency concerned, for follow up action.

On 12 July 2002, the complainant sent a note to OLAF requesting to be informed of the outcome of the investigation. On 5 August 2002, OLAF prepared a reply, but it was never sent because the complainant had retired from service as of 1 August 2002. On 9 August 2002, OLAF sent a note to the Head of Unit at DG RTD, setting forth the conclusions of the investigation.

The inter-service consultation

OLAF has no record of having been consulted as part of an inter-service consultation on this project. There is, however, an exchange of letters between the Directors General of DG RTD and OLAF on whether financing of the project should continue while the investigation was ongoing. The Director General of DG RTD sent a letter to the Director General of OLAF on 14 May 2001, explaining that he would propose financing of the project to the Commission, absent advice to the contrary. On 20 May 2001, the Director General of OLAF replied that the investigation was still ongoing, but that the information in OLAF's possession at that time did not suggest a reason for advising against continued financing for the project.

OLAF annexed copies of the relevant documents to its opinion.

The complainant's observations

The complainant's observations on OLAF's opinion contained, in summary, the following points:

The investigator in charge of the investigation asserts in his conclusions that no element in OLAF's possession demonstrates the existence of irregularities falling within OLAF's competence. Three elements, included in the file with supporting evidence, were not taken into account during the investigation:

(a) The evaluation of the proposal was irregular because :

- the procedure in force was not followed,
- concerning the eligibility form which explicitly mentioned the request for the proposal to be anonymous, two experts out of four replied in the negative to one substantive eligibility criterion and the expert from the beneficiary country did not sign the form guaranteeing anonymity,
- the expert from the beneficiary country was also involved in both steps of the evaluation, scientific and regional.

(b) The instruction to close the file positively is also irregular and perhaps illegal.

(c) It is surprising, if not irregular, that the granting of a subsidy depends solely on a temporary agent. In fact, a temporary agent who was responsible for the file at the time of the evaluation mentioned under (a) above, also followed up the file, despite the change in her duties within the unit, to the detriment of the complainant's former duties as Head of Unit. At present, the same temporary agent is again responsible for operational aspects of the project, although the unit to which she is allocated does not carry out operational tasks and should not manage projects.

THE DECISION

1 The allegation that OLAF failed to carry out a proper inquiry

1.1 The complainant was a Head of Unit in the Commission Directorate General for Research. In November 2000, she drew the attention of the European Anti-Fraud Office (OLAF) to certain irregularities in the financing of a project. The complainant alleges that OLAF failed to carry out a proper inquiry into the matter and identifies three elements which, she argues, were not taken into account, although they were included in the file with supporting evidence.

1.2 According to OLAF, its Director General requested the complainant to supply all available information regarding the alleged irregularities. Since the information provided was inconclusive as to whether irregularities had occurred, OLAF opened an internal investigation. The investigation collected information from the Director-General of DG RTD and from the complainant. The Director-General of DG RTD sent an extensive information note. The OLAF investigators interviewed the complainant, who confirmed that to her knowledge there were no indications of fraud, but that the project had been allowed to proceed notwithstanding the shortcomings identified in the scientific evaluation. The complainant later sent a written supplement to her interview. Based on this information, a final case report was adopted on 1 February 2002, which recommended closure of the case without follow-up. The Director-General of OLAF adopted this recommendation. OLAF annexed copies of the relevant documents to its opinion.

1.3 The Ombudsman points out that the present complaint is against OLAF. The Ombudsman has not, therefore, carried out an inquiry into the European Commission's handling of the project. The Ombudsman's inquiry concerns the question whether there was maladministration by OLAF in relation to the administrative investigation which it launched following the information supplied to it by the complainant.

1.4 The Ombudsman notes that Article 1 (3) of Regulation 1073/1999[46] provides for OLAF to conduct internal administrative investigations for the purpose of:

"– fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,

– investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, (…)"

1.5 The Ombudsman considers that principles of good administration require administrative investigations by OLAF to be carried out carefully, impartially and objectively. The Ombudsman finds nothing in the documentary evidence supplied by the complainant and by OLAF to suggest that OLAF's investigation in the present case failed to comply with the principles of good administration. Furthermore, the Ombudsman considers that it was reasonable for OLAF to conclude that the information available to it did not demonstrate the existence of irregularities falling within OLAF's competence. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

2 The allegation that OLAF did not inform the complainant

2.1 The complainant alleges that OLAF never informed her of the outcome of its inquiry. She claims that OLAF should inform her whether it conducted an inquiry and of the result.

2.2 OLAF argues that Regulation 1073/1999 contains rules on who should be informed of the results of an OLAF investigation. Article 8 of the Regulation provides that information obtained in the course of an internal investigation is subject to professional secrecy and may not be communicated to persons other than those within the institutions of the European Communities

46 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office OJ L 136/1 of 31.5.1999.

or the Member States whose functions require them to know. Article 9 provides that the final case report, which contains a synopsis of the information gathered during the investigation, shall be sent to the judicial authorities of the Member State concerned and the institution, body, office or agency concerned, for follow up action. On 12 July 2002, the complainant sent a note to OLAF requesting to be informed as to the outcome of the investigation. On 5 August 2002, OLAF prepared a reply, but it was never sent because the complainant had retired from service as of 1 August 2002. On 9 August 2002, OLAF sent a note to the Head of Unit at DG RTD, setting forth the conclusions of the investigation.

2.3 The Ombudsman points out that OLAF annexed a copy of the final case report to its opinion on the complaint, in the knowledge that the opinion and its annexes would be forwarded to the complainant as part of the Ombudsman's normal inquiry procedure. The Ombudsman does not therefore understand OLAF to argue that the provisions of Regulation 1073/1999 prevented it from communicating the results of its investigation to the complainant. The Ombudsman concludes that OLAF has taken appropriate action to settle this aspect of the complaint, by informing the complainant of the results of its investigation during the Ombudsman's inquiry. No further inquiries by the Ombudsman are therefore necessary.

3 The claim to be informed of the inter-service consultation

3.1 The complainant claims that OLAF should inform her whether the OLAF unit which replied to the inter-service consultation before the project was approved at the beginning of the year 2002 was aware of her complaint.

3.2 According to OLAF, it has no record of having been consulted as part of an inter-service consultation on this project. However, the Director General of DG RTD sent a letter to the Director General of OLAF, explaining that he would propose financing of the project to the Commission, absent advice to the contrary. The Director General of OLAF replied that the investigation was still ongoing, but that the information in OLAF's possession at that time did not suggest a reason for advising against continued financing for the project.

3.3 The Ombudsman considers that OLAF's opinion provides the information claimed by the complainant and that no further inquiries by the Ombudsman are therefore necessary.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Anti-Fraud Office. The Ombudsman therefore closes the case.

3.1.8 The European Agency for Reconstruction

CONSULTANCY WORK FOR THE EUROPEAN AGENCY FOR RECONSTRUCTION

Decision on complaint 1141/2002/GG (Confidential) against the European Agency for Reconstruction

THE COMPLAINT

According to the complaint lodged in June 2002, the complainant, a German national, worked as a consultant in Kosovo on the basis of two contracts.

The first contract (OBNOVA Service Contract no. 99/KOS04/03/001) concerned a project entitled "ATA for an expert on Waste, Water and Sanitation Project Management". It was signed by the

complainant and the European Commission on 26 January 2000. According to Article 5 of the contract, the complainant was to be paid a remuneration of up to 196.970 € for his services. Article 6 (1) of the contract provided that payments were to be made "when the Services have been performed to the satisfaction of the contracting Authority". Article 6 (2) stipulated that the remuneration was to be paid in quarterly instalments "upon submission of an invoice and approval by the Contracting Authority of the required reports and work as defined in the Terms of Reference. The last payment (balance) shall be paid within 60 days of the Contracting Authority acceptance of the final report."

According to Addendum no. 1 to this contract that was subsequently signed by the complainant and the European Agency for Reconstruction (that appears to have taken over the contract from the Commission), the maximum remuneration was increased to 268.090 €.

On 12 July 2001, the complainant submitted a request for a final payment amounting to 59.387 € to the Agency. According to the complainant, there was a dispute as to how and by whom one of the complainant's assistants was to be paid which concerned a total sum of approximately 5000 €. The complainant alleged that for reasons unknown and never communicated to him the Agency had decided to bring this case to the attention of the European Anti-Fraud Office (OLAF), using this procedure in order to withhold the remainder of the undisputed and due payment of nearly 50.000 €.

The second contract ("Supervisory Board Expert at Pristina – 99/KOS04/03/016") was signed by the complainant and the Agency on 1 August 2001. According to Article 3 of the contract, the maximum contract value was to be 70.500 €.

On 28 February 2002, the complainant requested the Agency to make a second interim payment of 19.387 € and a final payment of 7050 €. According to the complainant, there was a dispute about the number of days that he worked which concerned a sum of approximately 8000 €.

The complainant claims that the Agency should quickly finalise its review of his invoices and pay the relevant sums.

THE INQUIRY

The Agency's opinion

In its opinion, the European Agency for Reconstruction made the following comments:

The Agency had suspended payments on the two contracts concerned due to identified anomalies regarding the presentation of the invoices. To date, the Agency had not received satisfactory answers from the complainant to queries that the Agency had put to him. On the contrary, the Agency had received from the United Nations Interim Administration Mission in Kosovo (UNMIK), and more particularly from the latter's EU Pillar (the section of the UN administration where the complainant was engaged), information that had given cause for suspicion about possible fraudulent intentions of the complainant. The information had related to irregularities that had been of such a nature that the Agency had decided to forward this case to OLAF. A copy of the Agency's letter to OLAF of 12 December 2001 (without its enclosures) that summarised the questions concerning the perceived irregularities was annexed to the Agency's opinion.

During its own investigation, OLAF had discovered other irregularities that potentially related to the complainant's activities in Kosovo, and these irregularities might have occurred whilst he had been under contract with the Agency. These other serious irregularities related to a transfer of about 4.500.000 € to a bank account in Gibraltar. This transfer had been related to a payment being made for the export of electricity from Kosovo to Serbia. The complainant had been managing the export procedure on behalf of UNMIK.

Furthermore, there was some doubt with regard to the complainant's academic qualifications, which were currently being checked by OLAF in conjunction with UNMIK.

The European Commission's own Financial Controller, appointed on a full-time basis to the Agency, had consequently decided on 14 July[47] 2002 to suspend payments on both contracts. The outstanding amounts would therefore remain withheld until the Agency and the Financial Controller had received the conclusions of OLAF that had opened an external investigation into the above-mentioned contracts on 1 February 2002.

The complainant had been informed, in an e-mail sent on 12 October 2001, that his invoice would be put on hold until the queries had been resolved. On 10 July 2002, he had furthermore been informed that the Agency had requested an investigation by OLAF.

The Agency's further letter

On 6 December 2002, the Agency forwarded a press release to the Ombudsman that had been published on 5 December 2002 by Mr Bearpark of UNMIK. According to this press release, the complainant had been arrested in Germany on 4 December 2002 and the judicial process would now take its course.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Introductory remark

1.1 The European Agency for Reconstruction annexed five documents to its opinion in this case. It subsequently informed the Ombudsman that the opinion of the European Anti-Fraud Office (OLAF), the author of the documents contained in annexes 3 and 4 of the opinion, should be sought before disclosing these documents.

1.2 The Ombudsman therefore wrote to the Agency and asked it to clarify the matter by 23 November 2002, pointing out that if the relevant documents were to be treated as confidential they would be returned to the Agency and could not be used in the present inquiry. On 20 November 2002, the Agency informed the Ombudsman that it was seeking confirmation from OLAF that the relevant documents were of a sensitive nature and could not be disclosed until OLAF's investigations were finalised.

1.3 In these circumstances, the Ombudsman decided to return the relevant documents to the Agency. These documents will therefore not be considered in the present inquiry.

2 Failure to process invoices and to pay outstanding amounts

2.1 The complainant, a German consultant, carried out work in Kosovo for the European Agency for Reconstruction on the basis of two contracts signed in 2000 (Contract no. 99/KOS04/03/001) and 2001 (Contract no. 99/KOS04/03/016) respectively. According to the complainant, the Agency had failed to finalise its review of his invoices (of 12 July 2001 and of 28 February 2002) and to pay the outstanding sums. The complainant alleged that he was still owed some 80.000 € by the Agency.

2.2 The Agency pointed out that payments on the two contracts concerned had been suspended due to identified anomalies regarding the presentation of the invoices and that no satisfactory answers from the complainant to the Agency's queries had yet been received. According to the Agency, the latter furthermore received information from the United Nations Interim Administration Mission in Kosovo (UNMIK) that gave cause for suspicion about possible fraudulent intentions of the complainant. Still according to the Agency, the information related to irregularities that were of such a nature that the Agency decided to forward this case to the European Anti-Fraud Office (OLAF).

[47] 'July' should probably read 'June', since the document to which the Agency refers in this context is dated 14 June 2002.

On 1 February 2002, OLAF decided to open an external investigation into the above-mentioned contracts. The Agency pointed out that during its own investigation, OLAF had discovered serious other irregularities that potentially related to the complainant's activities in Kosovo. These other irregularities related to a transfer of about 4.500.000 € to a bank account in Gibraltar. According to the Agency, the competent Financial Controller thereupon decided to suspend payments on both contracts until the results of OLAF's investigations became available.

2.3 The present complaint concerns the obligations arising under contracts concluded between the Agency[48] and the complainant.

2.4 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it[49]. Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the institutions or bodies of the Communities is concerned.

2.5 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. In particular, the Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

2.6 The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Community institution or body 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.

2.7 In the present case, the Agency has put forward a coherent and reasonable account of the reasons for which it believes that the complainant's claims cannot be complied with for the time being.

2.8 In these circumstances, there appears to be no maladministration on the part of the Agency.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Agency for Reconstruction. The Ombudsman therefore closes the case.

48 The first contract was originally concluded by the European Commission, but subsequently taken over by the Agency.

49 See Annual Report 1997, pages 22 sequ.

3.2 CASES SETTLED BY THE INSTITUTION

3.2.1 The European Parliament

ALLEGED FAILURE TO STATE REASONS FOR REJECTION OF TRANSLATION BIDS

Decision on complaint 2024/2002/OV against the European Parliament

THE COMPLAINT

In November 2002, Mrs J. lodged a complaint with the European Ombudsman on behalf of a Brussels based company concerning the rejection by the European Parliament of several bids for translation works. According to the complainant, the relevant facts are as follows:

In April 2002, the complainant sent 11 bids further to various calls for tenders for translation services launched by the European Parliament. Several of the complainant's bids were rejected.

As regards the bids for Swedish and French, Parliament informed the complainant in July 2002 that there were too many linguistic mistakes. Given that the tender specifications mentioned a rejection of a bid in case of more than five linguistic mistakes, the complainant sent an e-mail on 7 August 2002 requesting clarification from Parliament concerning the mistakes. In its reply of 3 October 2002, Parliament summed up the mistakes, without however indicating what they consisted of.

As regards the bid for Italian, it was first rejected because of financial reasons. When the complainant wrote back to Parliament, the latter replied on 3 October 2002 stating that it had re-evaluated the bid but that this time it was eliminated because of linguistic mistakes: namely, spelling, grammatical and punctuation errors. No details were given, however, concerning the nature of these mistakes.

Finally, as regards the bid for Greek, it was rejected without an exact explanation. There were apparently five bids for Greek, three of which were selected. The complainant has obtained information that the first selected bidder did not accept the tender. The complainant has however no information about who is in the third and fourth positions. The complainant wrote to Parliament on 7 October 2002 and sent a reminder letter on 31 October 2002, but received no reply.

On 19 November 2002, the complainant lodged the present complaint with the Ombudsman making the following three allegations :

1 Parliament has not explained in detail why the complainant's bids for Swedish and French have been rejected because of linguistic mistakes.

2 Parliament gave a new reason for the rejection of the bid for Italian, but gave no details concerning the linguistic mistakes that were the reason for this rejection.

3 Parliament gave no exact reason for the rejection of the bid for Greek.

On 29 January 2003, the complainant wrote to the Ombudsman informing him that, since lodging the complaint, Parliament had provided more information concerning the linguistic mistakes in the complainant's bids.

As regards the Swedish and French bids, the complainant accepted the mistakes pointed out by Parliament.

As regards the Italian bid, the complainant observed that it could agree with certain corrections, some of which were matters of style. However, Parliament gave two different reasons.

As regards the Greek bid, the complainant still had no information concerning the rejection.

THE INQUIRY

The European Parliament's opinion

As regards the first allegation, Parliament stated that it informed the complainant on 22 July 2002 that its offers for the calls for tenders ref. CRE-0207-FR-EP and CRE-0211-SV-EP had been rejected at the selection stage due to the poor linguistic quality of the offer. Parliament referred to Article 2.2 of the General Specifications, which mentions that the *"presentation of a tender which contains more than five spelling, punctuation or grammar errors will lead to exclusion"*. Following a request for more detailed information as to why it had reached this decision, Parliament informed the complainant by letter of 30 September 2002 of the exact number and type of errors in the two bids. Following an e-mail from the complainant of 19 November 2002 requesting evidence of the errors, Parliament replied by return mail that it would send photocopies of those pages of the bids with the errors clearly indicated. This proof was sent by registered letter of 13 December 2002 after the complainant's request. The complainant's letter to the Ombudsman is dated 19 November 2002, i.e. the same date as the request for evidence of the errors in the bids.

As regards the second allegation, Parliament stated that, further to the complainant contesting the exclusion from the calls for tenders ref. CRE-0205-ES-EP and CRE-0208-IT-EP on the basis of inadequate turnover, both offers were re-examined.

By letter of 30 September 2002, Parliament acknowledged that the offer for Italian had been excluded erroneously at the selection stage since proof was indeed given of adequate turnover. In the same letter, Parliament informed the complainant of the outcome of the re-evaluation of the offer, namely the non-selection due to the poor linguistic quality of the bid, i.e. a total of 15 spelling and grammar errors. The complainant's claim that there were no details of the nature of the errors is therefore unfounded. Parliament subsequently offered to provide photocopies of the Italian bid with the errors indicated. The complainant's bid for Italian was excluded at the selection stage in accordance with the selection criteria (namely Article 2.2 of the General Specifications).

As regards the third allegation, Parliament stated that it had informed the complainant by registered letter of 22 October 2002 that its bid for the call for tenders ref. CRE-0203-EL-EP had been rejected at the award stage because it did not represent a sufficiently high quality/price ratio. All bidders whose offers were rejected received such a letter informing them of the reasons for the rejection. In addition, in accordance with the legal requirements, Parliament published a contract award notice in the Official Journal J 2002/S 178-140831 and on its web-site. It is clear from this notice that one main contract and two reserve contracts were awarded. The awarding authority decided to offer only 2 reserve contracts rather than the maximum possible of 4 announced in the tender specifications. This decision is fully in accordance with the applicable legislation, which imposes no obligation to award contracts after a tender procedure. Parliament decided, on the basis of an opinion from its Legal Service, not to award the contract to the first contractor proposed.

The complainant's observations

The complainant made no observations on Parliament's opinion.

THE DECISION

1 The alleged failure of explanation for the rejection of the bids for Swedish and French

1.1 The complainant is a Brussels based company, which sent 11 bids further to various calls for tenders for translation services launched by the European Parliament. The complainant alleges that Parliament has not explained in detail why the complainant's bids for Swedish and French have been rejected because of linguistic mistakes.

1.2 In its opinion, Parliament stated that, further to an e-mail from the complainant requesting evidence of the errors, it replied that it would send photocopies of those pages of the bids with

the errors clearly indicated. This proof was sent by registered letter of 13 December 2002 after the complainant's request, which was made on the same date as the complaint to the Ombudsman.

1.3 In her letter of 29 January 2003, the complainant indicated that it accepted the mistakes pointed out by Parliament. This aspect of the complaint therefore appears to have been settled by Parliament.

2 The alleged failure of explanation for the rejection of the bid for Italian

2.1 The complainant alleges that Parliament gave a new reason for the rejection of the bid for Italian, but gave no details concerning the linguistic mistakes that were the reason for this rejection.

2.2 Parliament explained that, by letter of 30 September 2002, it acknowledged that the offer for Italian had been excluded erroneously at the selection stage since proof was indeed given of adequate turnover. Parliament at the same time informed the complainant of the outcome of the re-evaluation of the offer, namely the non-selection due to the poor linguistic quality of the bid, which contained a total of 15 spelling and grammar errors. Parliament subsequently offered to provide photocopies of the Italian bid with the errors indicated.

2.3 The Ombudsman notes from the above that Parliament has explained to the complainant why a new reason was given for the non-selection of the complainant: Parliament clarified to the complainant that the bid had initially been excluded erroneously and has also offered to provide concrete information about the errors, which the complainant indeed appears to have received. In her letter of 29 January 2003, the complainant observed that it could agree with certain corrections. Since Parliament appears to have taken appropriate action to correct the error that it has acknowledged, no further inquiries appear to be necessary with regard to this aspect of the case.

3 The alleged failure of explanation for the rejection of the bid for Greek

3.1 The complainant alleges that Parliament gave no exact reason for the rejection of the bid for Greek. In its letter of 29 January 2003, the complainant observes that it still had no details concerning this rejection.

3.2 Parliament observes that it informed the complainant by registered letter of 22 October 2002 that its bid for the call for tenders had been rejected at the award stage because it did not represent a sufficiently high quality/price ratio. Furthermore, an award notice was published in the Official Journal, from which it appears that one main contract and two reserve contracts were awarded. Parliament also explains that it had decided, on the basis of an opinion from its Legal Service, not to award the contract to the first contractor proposed.

3.3 It appears from the above that Parliament did take steps to inform the complainant of the reason for the rejection of the bid. Parliament also provided further information in its opinion to the Ombudsman. No instance of maladministration was thus found with regard to this aspect of the case.

4 Conclusion

It appears from Parliament's comments and the complainant's observations that Parliament has taken steps to settle part 1 of the complaint and has thereby satisfied the complainant.

No further inquiries appear to be necessary into part 2 of the complaint.

On the basis of the Ombudsman's inquiries into part 3 of this complaint, there appears to have been no maladministration by Parliament. The Ombudsman therefore closes the case.

ACCESS TO EXAMINATION PAPERS IN OPEN COMPETITION

Decision on complaint 342/2003/IP against the European Parliament

In February 2003, Mr M. made a complaint to the European Ombudsman against the European Parliament concerning his participation in open competition EUR/A/158/2000. This complaint was forwarded to the Ombudsman by an MEP.

The complainant failed test 1.A.d) and was excluded from the competition. He was informed of his exclusion by letter of 17 July 2002 from the Parliament's recruitment services.

On 23 July 2002, he asked the Selection Board to re-examine his test. By letter of 21 October 2002, the Selection Board informed the complainant that the Selection Board had carried out a re-examination of test 1.A.d) in its meeting of 11 October and confirmed its original decision not to admit him to the next tests.

On 28 October 2002, the complainant wrote a further letter to the Selection Board, asking for a copy of both the test he had failed and of the correction grid. On 12 November 2002, the Selection Board replied to the complainant and refused to give him a copy of the requested documents because the request had not been made within the period prescribed for that purpose. In accordance with Parliament's reply, the complainant should have made his request within 30 days from the notification of the Selection Board's decision to exclude him from the competition.

On 19 November 2002, the complainant wrote a further letter to the Selection Board, in which he contested the above decision. The complainant pointed out that on 23 July 2002, he had asked the Selection Board for the re-examination of the test he had failed. A request for access to the documents concerned was therefore not justified at that moment, since it was still possible for the Selection Board to modify its decision. In the complainant's view, the period of 30 days to make the request for access to documents started to run from 21 October 2002, when the Selection Board took the final decision to confirm his exclusion from the competition. The complainant received no reply to his letter of 19 November 2002.

In his letter to the Ombudsman, the complainant alleged that the Selection Board's refusal to allow him access to the requested documents was unfair and that the Parliament had failed to reply to his letter of 19 November 2002.

The complainant claimed that he should have access to test A.1.d), which he had failed, and to the correction grid.

THE INQUIRY

The European Parliament's opinion

As regards the complainant's allegation that its services had failed to reply to his letter of 19 November 2002, the Parliament regretted this and explained that due to unfortunate circumstances related to the move of the competition services, it appeared that the complainant's letter had been mislaid.

As regards the complainant's request to have access to test 1.A.d) and to the correction grid, the Parliament recalled that according to the rules concerning candidates' access to their marked tests, which had been distributed to all candidates during the written tests, candidates had to make the relevant request in writing and within one month from the communication of the final results. The complainant was informed of the results of his tests on 17 July 2002 and he required to have access to the documents concerned on 28 October 2002. The complainant's request had therefore not been made in accordance with the relevant rules on the matter. Nevertheless, the Parliament agreed to forward to the Ombudsman the documents requested by the complainant.

The complainant's observations

In his observations, the complainant informed the Ombudsman that the Parliament had forwarded to him the requested documents already on 26 May 2003, together with a letter explaining the reasons for the failure to reply to his letter of 19 November 2002. He expressed his satisfaction at the outcome of the case and thanked the Ombudsman and his staff for their efforts in dealing with his case.

THE DECISION

1 The complainant's allegations and claim

1.1 In his complaint, the complainant, a candidate in open competition EUR/A/158/2000, alleged that the Selection Board's refusal to allow him access to his test A.1.d) and to the correction grid was unfair and that the Parliament had failed to reply to his letter of 19 November 2002. The complainant claimed that he should have access to test A.1.d), which he had failed, and to the correction grid.

1.2 In its opinion, the Parliament regretted that its services had failed to reply to the complainant's letter of 19 November 2002. It explained that due to unfortunate circumstances related to the move of the competition services, it appeared that the complainant's letter had been mislaid.

As regards the complainant's request to have access to test 1.A.d) and to the correction grid, the Parliament recalled that according to the rules concerning candidates' access to their marked tests, which had been distributed to all candidates during the written tests, candidates had to make the relevant request in writing and within one month from the communication of the final results. The complainant was informed of the results of his tests on 17 July 2002 and he required to have access to the documents concerned on 28 October 2002. The complainant's request had therefore not been made in accordance with the relevant rules on the matter. Nevertheless, the Parliament agreed to forward to the Ombudsman the documents requested by the complainant.

1.3 In his observations, the complainant confirmed that Parliament had forwarded to him the requested documents already on 26 May 2003, together with a letter explaining the reasons of the failure to reply to his letter of 19 November 2002. He expressed his satisfaction at the outcome of the case and thanked the Ombudsman and his staff for their efforts in dealing with his case.

2 Conclusion

It appears from the Parliament's opinion and the complainant's observations that Parliament has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

3.2.2 The European Commission

LATE PAYMENT OF GRANT FOR AIDS' RELATED PROJECT

Decision on complaint 1960/2002/JMA against the European Commission

THE COMPLAINT

In November 2002, a complaint was lodged with the Ombudsman, on behalf of the Colectivo de Lesbianas, Gays, Transexuales y Bisexuales de Madrid (COGAM). According to the complainant, the relevant facts were as follows:

During 1996 and 1997, the complainant jointly with other contributors, participated in an AIDS' related project called EUROVITHA, which was co-ordinated by the Department of Psychology of the University of Tuebingen in Germany.

On 7 October 1997, the Commission agreed to finance part of the project (Agreement SOC 97 20113505F02 "Evaluation of Guided Group Programmes for People with HIV/AIDS, Creation of a Network of Therapists in D.E.I."). The parties to the contract were the Commission and the Department of Psychology of the University of Tuebingen, whereas COGAM appeared as an associated contractor.

Despite the fact that its contribution to the contract had been concluded in February 1999, COGAM has not received its payment of 8200 €. In reply to COGAM's requests to the project's main contractor, it was informed that the situation resulted from the Commission's failure to honour its financial commitments.

The complainant wrote to the Commission on 7 June 2002 asking for information on the state of the file, and requesting the payment of its outstanding fees. COGAM did not receive a reply to its letter.

On the basis of the above, the complainant alleged, in summary, that the Commission had not replied to COGAM's request for information of 7 June 2002. Since the project was completed in February 1999, she claimed that the Commission should make the final payment, so that all subcontractors can receive their dues.

THE INQUIRY

The European Commission's opinion

In its opinion, the Commission made the following comments:

On 7 October 1997 the complainant, as a subcontractor, and the Eberhard Karls Universität, as the main contractor, entered into an agreement with the Commission for the implementation of a project on the "Evaluation of Guided Group Programmes for People with AIDS/VIH". The project received Community assistance through the EUROVITHA Community Programme on the fight against AIDS. In his capacity as project co-ordinator, Professor H. of the Eberhard Karls Universität was responsible for selecting sub-contractors for specific parts of the project, and concluding individual contracts. The Commission noted that COGAM was one of these sub-contractors, with which the institution did not have any direct contractual relationship.

The Commission's financial contribution was to be paid to the main contractor, namely Eberhard Karls Universität, following the submission of the necessary reports. The first technical and financial reports had been presented to its services in October 1999. The final report, however, was only received three years later, in November 2002. Whilst the technical aspects of the final report seemed satisfactory, its financial section could not be approved by the Commission services as a result of the lack of justifying documents.

On 27 March 2002, the Commission wrote to Professor H. and requested him to submit the final report, so that all the Community assistance could be paid. In its letter, the Commission suggested that the contractor inform all his subcontractors of the state of play. On 7 June 2002, the Commission received a request from COGAM for the payment of its outstanding fees. It emerged from that request that the co-ordinator of the project had not explained the situation to all its sub-contractors, as the Commission had requested.

Since the Commission could not make any payment to parties with which it did not have a direct contractual relationship, it urged the Eberhard Karls Universität to submit the justifying documents required for the final payment by letter of 15 October 2002.

On 14 November 2002, the Commission received the final report from the Eberhard Karls Universität. On 20 December 2002, the institution proceeded to make the final payment to the contractor for an amount of 59.859,30 €.

The complainant's observations

On 5 May 2003, the Ombudsman received the complainant's observations.

COGAM explained that, on the basis of the information submitted in the Commission's opinion, they had contacted the project's co-ordinator. As a result, the Eberhard Karls Universität had proceeded to pay COGAM its contribution to the project for an amount of 8200 €.

The complainant concluded by expressing COGAM's gratitude to the Ombudsman for his assistance in finding a solution to the problem.

THE DECISION

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

PAYMENT OF AMOUNT DUE UNDER CONTRACT

Decision on complaint 205/2003/IJH against the European Commission

THE COMPLAINT

The complainant is Managing Director of a company WWP Ltd. The complaint is against the Commission, DG Agriculture.

In summary, the relevant facts according to the complainant are as follows:

Between January 1998 and December 2001, WWP Ltd. produced a monthly television programme called "CONTACT Europe". Each edition had four stories, which were sponsored by Directorates General of the Commission under specific contracts, paid for by Member States, or co-funded. In April 2000, WWP Ltd. delivered a story about organic agriculture. The budget was € 25 036, funded half by DG Agriculture and half by the UK Foreign Office. The UK Foreign Office paid its half. However, as was often the case, the Commission was very slow in getting the specific contract out. In this case, the contract was not issued until June 2000. The Commission paid 60% of its half of the funding on signature. WWP Ltd. subsequently invoiced the Commission for the final 40% and continued to press for payment throughout 2001 and into 2002. On 8 February 2002, the Commission informed WWP Ltd. that an EU financial Regulation had been broken because WWP Ltd. had made the programme before the contract was issued, that the final 40% would not be paid and that WWP Ltd. would have to repay the 60% already paid.

WWP Ltd. met with DG Agriculture and requested a meeting with the relevant financial and legal services to discuss the Regulation in question. DG Agriculture undertook to provide WWP Ltd. with a copy of the Regulation and to arrange a meeting if WWP Ltd. felt the matter required further clarification. However, despite numerous follow-up requests, WWP Ltd. has not been informed of the Regulation and its latest requests have received no response.

It had been made clear to WWP Ltd. from the pre-contract stage that it would need to produce work whilst the bureaucracy caught up with the reality of the deadlines. This situation continued for three years and was accepted by the responsible officials in various Commission DGs.

On the basis of the above, the complainant argues that either a change in the applicable EU Regulation was applied retrospectively, or that the breach of the Regulation, if any, was by the responsible Commission officials.

The complainant claims that the Commission should reverse its position and pay the remaining 40% due with interest, as well as compensation for the complainant's time spent on the matter.

THE INQUIRY

The Ombudsman forwarded the complaint to the Commission for an opinion.

In view of the complainant's statement that the United Kingdom's Foreign and Commonwealth Office had duly paid its half of the funding for the project, the Ombudsman also invited the UK authorities to provide, in accordance with Article 3 (3) of the Statute of the Ombudsman[50], any information which could be useful for the Ombudsman's inquiry into the complaint. No reply was received.

The Commission's opinion

In May 2003, the Commission stated that having re-examined the file in the light of the complaint to the Ombudsman, the competent departments of the Commission have decided to pay the requested sum and that the necessary administrative steps will be made as soon as possible.

In July 2003, the Commission sent a copy of a letter that it had addressed to the complainant confirming payment of the contested amount to the complainant's bank account.

The complainant's observations

The complainant confirmed to the Ombudsman's services by telephone that he has received the amount due, with interest, and that he is satisfied. He thanked the Ombudsman for his assistance. The complainant also sent a copy of his letter dated 2 September 2003 to the head of unit AII.1 of Commission DG Agriculture, thanking him for the payment of € 5 008 and the interest due of € 659,83 and stating that the matter is settled.

THE DECISION

1 Failure to pay the amount due under a contract

1.1 The complainant is Managing Director of a company which produced a story that was co-funded by the Commission. According to the complainant, Commission DG Agriculture informed the company that an EU financial Regulation had been broken because the company had made the story before the relevant contract was issued, that the final 40% would not be paid and that the company would have to repay the 60% already paid. The complainant claims that the Commission should reverse its position and pay the remaining 40% due with interest, as well as compensation for the complainant's time spent on the matter.

1.2 The Commission's opinion states that, having re-examined the file in the light of the complaint to the Ombudsman, the competent departments of the Commission decided to pay the requested sum and that the necessary administrative steps will be made as soon as possible. The Commission subsequently sent a copy of a letter confirming payment of the contested amount to the complainant's bank account.

50 *"The Member States' authorities shall be obliged to provide the Ombudsman, whenever he may so request, via the Permanent Representations of the Member States to the European Communities, with any information that may help to clarify instances of maladministration by Community institutions or bodies unless such information is covered by laws or regulations on secrecy or by provisions preventing its being communicated. Nonetheless, in the latter case, the Member State concerned may allow the Ombudsman to have this information provided that he undertakes not to divulge it."*

1.3 The complainant confirms that he is satisfied with the payment of € 5 008 and interest of € 659,83 that he has received from the Commission and that the matter is settled.

1.4 In view of the above, the Ombudsman considers that the Commission has taken adequate steps to settle the complaint and has thereby satisfied the complainant.

2 Conclusion

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

ALLEGED FAILURE TO MAKE FINAL PAYMENT IN RESEARCH PROJECT

Decision on complaint 1173/2003/(TN)IJH against the European Commission

In June 2003, a complaint was made to the Ombudsman on behalf of Stockholm University. The complaint concerned the Commission's alleged failure to make a final payment in a research project with contract number ERBBIO 4 CTT 960158.

According to the complainant, the relevant facts are, in summary, as follows:

Stockholm University was one of the participants in a research project, which was co-ordinated by the Italian company CHIRON and funded by the Commission. At the time of lodging the complaint, CHIRON had been waiting for the Commission's final payment under the project for six months. Part of the final payment was owed to Stockholm University. The total sum due to CHIRON was 196,528 €, 60,000 € of which was intended for Stockholm University.

In June 2002, the complainant tried to find out why there had been no final payment. In December 2002, Stockholm University sent the Commission supplementary documentation and the Commission subsequently confirmed that the payment should be made to CHIRON within a couple of weeks. No payment was made and the complainant subsequently contacted the Commission regarding the matter about ten times by telephone. The Commission informed him that because of internal reorganisation, an "operational verificator" was missing and that was why the payment could not be made. In May 2003, the complainant wrote to the Commission regarding the matter, but received no reply.

The complainant alleges that the Commission has failed to make a final payment in the research project with contract number ERBBIO 4 CTT 960158.

The complainant claims that the final payment should be made to the co-ordinator CHIRON in Italy, together with interest for the delay.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The contract in question is managed by the Commission's Directorate-General for Research (DG RTD). The scientific deliverables of the contract were approved on 29 July 2002, and the file was then transmitted to the Directorate in charge of the relevant budget. On 31 July 2002, the financial initiator within this Directorate contacted the co-ordinator CHIRON, requesting corrections in the cost statements. The requested corrections did not arrive until 5 December 2002 and the payment was processed on 19 December 2002, but by then the budget for 2002 was already closed.

Following the opening of the 2003 budget, the financial initiator again initiated the payment on 28 February 2003. Due to organisational problems within DG RTD, the necessary signatures, including those of the financial verificator and the authorising officer, could not be obtained until 11 July 2003. The payment was then transferred to CHIRON's bank account on 21 July 2003.

The Commission recognises that as of 5 December 2002, the payment was due and should have been executed within 60 days, i.e. by 5 February 2003. It will therefore initiate the payment of interest for the period from 6 February 2003 to 21 July 2003, as soon as it receives a direct claim from the complainant, which is necessary to authorise the payment. The complainant has already been contacted in this respect.

The Commission apologises for the late payment and assures the Ombudsman that the financial circuit is now functioning satisfactorily.

The complainant's observations

The complainant confirmed to the Ombudsman's services by telephone that Stockholm University had received the final payment and that the payment of interest was on its way, if not already at CHIRON's bank account. He was therefore satisfied with the outcome of the case and thanked the Ombudsman for his assistance.

THE DECISION

1 Failure to make a final payment in a research project

1.1 The complaint concerns the Commission's alleged failure to make a final payment to the co-ordinator of a research project with contract number ERBBIO 4 CTT 960158, to which Stockholm University is a party. The complainant, who complains on behalf of Stockholm University, therefore claims that the final payment should be made to the co-ordinator, together with interest for the delay.

1.2 The Commission recognises that as of 5 December 2002, the payment was due and should have been paid within 60 days. However, due to organisational problems within DG RTD, the payment could not be transferred to CHIRON's bank account until 21 July 2003. The Commission apologised for the late payment and assured the Ombudsman that the financial circuit is now functioning satisfactorily. The Commission undertook to initiate the payment of interest for the period from 6 February 2003 to 21 July 2003.

1.3 The complainant confirms that Stockholm University has received the final payment, that the payment of interest is underway and that he is therefore satisfied.

1.4 In view of the above, the Ombudsman considers that the Commission has taken adequate steps to settle the complaint and has thereby satisfied the complainant.

2 Conclusion

It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

3.2.3 The European Court of Auditors

ALLEGED LACK OF INFORMATION ABOUT EXCLUSION FROM COURT OF AUDITORS' COMPETITION

Decision on complaint 207/2003/OV against the Court of Auditors

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The complainant is a candidate in open competition CC/A/12/02 organised by the Court of Auditors for the recruitment of administrators (career A7/A6) in the field of information technology (OJ C 145 A of 18 June 2002).

By letter of 29 November 2002, the Secretariat of the Selection Board informed the complainant that unfortunately it could not accept the complainant's participation because *"after a comparative examination of the titles, degrees and the professional experience of all the candidates, your name is not included among the best candidates that are asked to compete, as stipulated in part VII of the competition notice"* (translation by the Ombudsman's services).

Part VII of the competition notice provides that *"once the qualifications have been marked, the 50 candidates with the highest marks will be admitted to the written tests"*. Part VI of the competition notice provides that the qualifications of the candidates will be awarded a maximum of 40 marks (10 marks for degrees or diplomas additional to that required for admission to the competition, and 30 marks for professional experience additional to that referred to in section III(B)(3) of the competition notice).

On 8 December 2002, the complainant wrote to the Selection Board to have his candidature re-examined. He asked to be informed about a) the criteria used for the evaluation (marking) of the titles, degrees and professional experience, b) his mark and c) the mark of the last successful candidate. He received no reply.

On 29 January 2003, the complainant lodged the present complaint with the Ombudsman, claiming:

1 that the Court of Auditors should inform him of a) the evaluation (marking) criteria of the titles, degrees and professional experience of the candidates, b) his mark and c) the mark of the last successful candidate;

2 that his candidature should be re-examined.

On 14 February 2003, the complainant sent additional information concerning his complaint. He had received a reply from the Selection Board, which communicated the marks he obtained (0/10 for his degrees and 14.64/30 for his professional experience). But the Selection Board communicated neither the specific criteria used for evaluating the degrees and professional experience of the candidates, nor the mark of the last successful candidate.

The Selection Board stated that candidates with better marks had obtained at least one more degree above the one that was required for participating in the competition. The complainant however pointed out that both degrees he had obtained give access to doctoral studies and are relevant to the nature of the tasks.

As regards the professional experience, the complainant stated that the Selection Board has answered that candidates with a better ranking had around 10 years of experience or more. Point III.B.3 of the competition notice however provides that the required experience should be of at least 3 years. The complainant had 7 years of experience, but he obtained a mark of only 14.64/30.

The complainant finally indicated that he was aware of a candidate without an additional diploma and without 10 years of experience who was accepted in the written examinations. Taking into account that the written examinations will take place on 28 February 2003, the complainant asked for his complaint to be dealt with as soon as possible.

THE INQUIRY

The Court of Auditors' opinion

In its opinion, the Court of Auditors observed that, by letter of 8 December 2002, the complainant asked the President of the Selection Board for information on a) the evaluation (marking) criteria of the titles, degrees and professional experience of the candidates, b) his mark and c) the mark of the last successful candidate. By letter of 30 January 2003, the President of the Selection Board responded to the complainant's request providing him with some more general information and with his own mark.

After having reviewed the matter further, the Court decided to provide the complainant in addition with the information he had asked for under a) and c). In a letter of 2 May 2003, the President of the Selection Board outlined to the complainant the detailed evaluation criteria of the titles, degrees and professional experience and informed him that he had obtained 14.64/30 points on the basis of that calculation. In addition, the complainant was informed that the last successful candidate obtained 32 points. The Court enclosed with its opinion the correspondence between the President of the Selection Board and the complainant.

The President of the Selection Board has recalculated the points obtained by the complainant and confirmed that no error occurred. In view of the fact that the complainant obtained less than half of the points of the last successful candidate, the decision not to admit him to the written examinations of the competition was maintained. The complainant has now received all the information he requested.

The complainant's observations

The complainant made no observations on the opinion of the Court of Auditors.

THE DECISION

1 Information concerning the selection procedure

1.1 The complainant claims that the Court of Auditors should inform him of a) the evaluation (marking) criteria of the titles, degrees and professional experience of the candidates, b) his mark and c) the mark of the last successful candidate.

1.2 In its opinion, the Court of Auditors observes that, by letter of 30 January 2003, the President of the Selection Board responded to the complainant's request by providing him with some more general information and with his own mark. In an additional letter of 2 May 2003, the President furthermore provided the complainant with the information requested under a) and c), namely the detailed evaluation criteria of the titles, degrees and professional experience and the fact that the complainant obtained a mark of 14.64/40 points. The complainant was also informed that the last successful candidate obtained a mark of 32/40 points.

1.3 It appears from the above that the complainant has obtained all the information that he asked for. This aspect of the complaint therefore appears to have been settled by the Court of Auditors to the satisfaction of the complainant.

2 The claim for a re-examination of the complainant's candidature

2.1 The complainant claims that his candidature should be re-examined.

2.2 The Court of Auditors observes that the Selection Board has recalculated the points obtained by the complainant and confirmed that no error occurred. As the complainant obtained less than half of the points of the last successful candidate, the decision not to admit him to the written examinations of the competition was maintained.

2.3 The Ombudsman notes that, in its letter of 2 May 2003, the Selection Board first explained to the complainant how his marks had been calculated, both for the additional diploma and the additional professional experience. For the latter, the Selection Board explained that for each period of professional experience a mark was given equal to the number of months, multiplied by a coefficient of relevance according to certain fields of experience.

2.4 The Ombudsman considers that the explanations provided to the complainant by the Selection Board appear to be reasonable. The Ombudsman therefore finds no instance of maladministration as regards this aspect of the complaint.

3 Conclusion

It appears from the Court of Auditors' comments that it has taken steps to settle part 1 of the complaint and has thereby satisfied the complainant.

On the basis of the Ombudsman's inquiries into part 2 of this complaint, there appears to have been no maladministration by the Court of Auditors. The Ombudsman therefore closes the case.

3.2.4 The European Commission and the Court of Auditors

COMMISSION AGREES TO MAKE FINAL PAYMENT

Decision on complaint 1915/2002/BB against the European Commission and the Court of Auditors

THE COMPLAINT

The European Commission and the Interdisciplinary Centre for Comparative Research in the Social Sciences (hereafter: "the ICCR") as one of the principal contractors, signed a contract on 22 December 1999. The contract was called Thematic Network contract No. 1999-TN.10869 "TRANS-TALK" under the Fifth Framework Programme. This contract covered a period of 18 months, from January 2000 until the end of June 2001. The total estimated costs of the project were € 601,015 and the initial advance payment was fixed at € 180,305 to be distributed amongst the five principal contractors. The ICCR submitted cost statements at regular six-month intervals.

On 31 October 2001, the ICCR was notified that the Court of Auditors would carry out an audit of the project. The audit took place during 16-18 January 2002. According to the complainants, the auditors stated that they would be submitting their report to the Commission by the end of January 2002.

The ICCR submitted the final cost statement to the Commission in August 2001. On 11 December 2001, the Commission DG TREN approved it. As the ICCR had not heard from the Commission, the project coordinator contacted the financial officer of the Commission on 26 February 2002, via e-mail, to inquire about the status of the final payment. By e-mail of 28 February 2002 she was notified that the final payment could not be made prior to receipt of the Court of Auditors' report.

On 13 June 2002, the financial officer of the Commission forwarded, by e-mail, the report of the auditors with a request for some clarifications. The auditor's report was dated 15 April 2002. The ICCR supplied the Commission with the requested information, via e-mail, on 14 June 2002. On 8 July 2002, the ICCR sent, on its own initiative, a full opinion on the Court of Auditors' report to the financial officer of the Commission.

In a letter addressed to the Commission and dated 12 July 2002, the ICCR requested formal clarification regarding the status of the final payment of the contract. The Commission sent an undated reply in August 2002 stating that the payment would be suspended with reference to Article 3.2 of Annex II of the contract. On 29 August 2002, the ICCR informed the Commission that it could not accept Article 3.2 as a reason for suspension of the final payment. According to the complainants, the Commission did not reply to this letter.

On 24 October 2002, the complainants made a complaint on behalf of the ICCR to the Ombudsman against the European Commission and the Court of Auditors. The complaint concerns the outstanding final payment of € 80,671.61 for Thematic Network contract No. 1999-TN.10869 "TRANS-TALK" and the audit carried out by the Court.

As regards the European Commission, the complainants made the following allegations:

1) Lack of information regarding the status of the audit and of the final payment; and

2) Non-payment of the outstanding final payment of € 80,671.61.

The complainants claimed settlement of the final payment with interest and an official European Commission position on the audit carried out by the Court of Auditors and on the procedures followed by both institutions.

As regards the Court of Auditors, the complainants alleged that the report drew false conclusions and ignored the input provided by the ICCR, and that there was undue delay in submitting the report to the Commission.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following points:

In the context of the management of indirect RTD actions under the Fifth Framework Programme, the Court of Auditors carried out an audit of the Thematic Network contract No. 1999- TN.10869 "TRANS-TALK" at the ICCR in Vienna. The auditor's report raised certain complex and serious matters which required careful consideration by the financial services of the Commission.

The Court of Auditors came to the conclusion that some declared costs were non-eligible and were without supporting evidence. This included especially: overcharging by the beneficiary for cost statements; non-compliance with the contract by the beneficiary regarding the use of budget rates; subcontracted consultant declared as a permanent employee.

On the basis of the Court of Auditors' report, the Commission decided to suspend payments to the beneficiary until its final examination of additional documents provided by the beneficiary.

On 28 February 2002, the Commission informed the ICCR of the situation regarding the final payment and its examination in the context of this audit. The ongoing discussions with the ICCR started in the summer 2002. In the meantime, discussions between the Commission and the Court of Auditors were completed in the autumn of 2002. While undertaking these additional investigations, the Commission confirmed to the ICCR in August 2002 that all payments were suspended. The Commission requested additional information by letter dated 5 December 2002. The reply from the ICCR dated 24 January 2003 was received and the Commission informed the ICCR that this reply was under examination with a view to an early resolution of the final payment.

On 13 May 2003, the Commission informed the ICCR that the final payment of € 50,821.03 had been made. According to the Commission, the amount of € 29,799.63 could not be taken into account, since this would involve transfer between cost categories that require prior authorisation.

The complainants' observations on the Commission's opinion

The complainants made, in summary, the following points:

This case raises general issues concerning delays by the Community institutions in responding to repeated requests for information and the length of the procedure. According to the complainants, the principle of transparency requires that these general issues should be addressed.

Following the complainants' reply to the Commission dated 27 May 2003, the Commission had proceeded to pay the remaining sum of € 20,447.79.

The Court of Auditors' opinion

The Court of Auditors made, in summary, the following points:

The document at the centre of this complaint is not a report adopted by the Court of Auditors but a sector letter. The objective of a sector letter is to present the preliminary findings obtained in the course of an audit to the auditee, which in the internal policies area, is the Commission. Following further analysis of the Commission's reaction to the factual information and related remarks stated in the sector letter, these findings may then form the basis of observations presented in reports of the Court of Auditors. In some cases, it may also require corrective action by the Commission. Since the findings and observations are preparatory at the stage of a sector letter and are, in principle, subject to further verification work, they remain confidential between the Court and the Commission.

In the present case, the sector letter N° 740/02 reporting the audit findings resulting from the audit of the contract "TRANS-TALK", was addressed to the Commissioner in charge of DG Energy & Transport (TREN). Following normal practice, the electronic version of this sector letter was then dispatched to the liaison officer at DG TREN. It appears, however, that an electronic copy of the confidential sector letter was then forwarded to the ICCR by an official of the Commission.

As regards the allegation of false conclusions, the auditors of the Court follow the Court's Audit Policies and Standards (CAPS) and internationally recognised audit standards, such as those of the International Organization of Supreme Audit Institutions (INTOSAI). Also, the Court's procedures provide for an extensive internal quality control before audit findings and observations are submitted to the auditee. Those standards and procedures were followed in the present case.

As to the allegation that the input provided by the ICCR was ignored, the audit team took all information provided by the complainants into account to the extent considered relevant for the audit. All findings in the sector letter addressed to the Commission are supported by sufficient and appropriate audit evidence, based on information collected and received during and after the audit at the premises of the ICCR, as well as from the Commission.

Regarding the allegation of undue delay, the Audit Manual of the Court states that a sector letter should be sent within two months of the completion of the mission. However, this internal rule has no binding character on the Court with regard to the complainants. Furthermore, the fact that the sector letter was sent in the present case with a slight delay, which by no means can be considered as undue, does not affect the interests of the complainants in any way.

The complainants' observations on the Court of Auditors' opinion

The complainants made, in summary, the following remarks:

According to the complainants, the auditor of the Court of Auditors told the ICCR that it is up to the Commission to decide whether the report is transmitted to the ICCR.

The complainants maintain that the points of view of the ICCR were not taken into account by the auditors.

The complainants stress that the ICCR never claimed that the delay in handling their case was only the fault of the Court of Auditors, but rather the combined effect of the non-transparent procedures of the Commission and the Court of Auditors and their interfaces. The complainants maintain that the delays affected the ICCR's interests as the present case had not been settled more than one year after the audit took place.

Further inquiries

On 14 October and 5 November 2003, the European Ombudsman's secretariat contacted by telephone one of the complainants who spoke on behalf of both complainants regarding the observations received on 29 September 2003. The complainants confirmed that the Commission had proceeded to pay the outstanding final payment. The complainants had accepted the Commission's interpretation of transfers between cost categories which require prior authorisation according to Article 17(4) of the General Conditions . Therefore, the amount of about € 9,000 could not be included in the final payment. The complainants informed the Ombudsman's secretariat that the ICCR had not sent any comments on the Commission's letter of 14 July 2003, in which the Commission offered a settlement and informed that unless it receives comments from the complainants within one month, the project will be officially closed and no further costs can be claimed. The complainants confirmed that by not commenting on the settlement offer made by the Commission, the ICCR had de facto accepted that no interest would be paid for the suspended final payment. The complainants were satisfied with the settlement of the final payment.

THE DECISION

1 Preliminary remark

1.1 In their observations, the complainants argue that this case raises general issues concerning delays by two Community institutions in responding to repeated requests for information and the length of the procedure.

1.2 The Ombudsman understands the complainants to be concerned about the general issue of procedures where two or more Community institutions conduct simultaneous inquiries or procedures affecting the handling of a case. The Ombudsman considers that this general issue cannot be dealt with effectively in the framework of the present inquiry. The complainants have the possibility to present a new complaint to the Ombudsman, if they wish to do so.

2 Alleged lack of information by the Commission regarding the status of the audit and of the final payment

2.1 The complainants allege lack of information by the Commission regarding the status of the audit and the final payment.

2.2 According to the Commission, it informed the complainants on 28 February 2002 about the situation regarding the final payment and its examination in the context of this audit after the complainants had sent an e-mail on 26 February 2002. Ongoing discussions with the ICCR were initiated in the summer 2002. On 12 July 2002, the complainants requested information about the status of the final payment. In August 2002, the Commission confirmed to the complainants that all payments were suspended due to an audit by the Court of Auditors. On 29 August 2002, the complainants made a request to the Commission to reconsider their case. On 5 December 2002, the Commission requested additional information from the complainants. On 11 February 2003, after having received the requested additional information, the Commission sent an acknowledgement of receipt containing a holding letter. On 13 May 2003, the Commission informed the complainants that it had initiated the procedure for the final payment.

2.3 The Ombudsman considers that the Commission has provided the complainants with information about the status of the audit to the extent that the audit affected the Commission's procedure for making the outstanding final payment. Furthermore, the Commission appears to have adequately informed the complainants about the suspension of the final payment. Therefore, there appears to be no instance of maladministration by the Commission as regards this allegation.

3 Alleged non-payment of the outstanding final payment with interest and the claim for settlement

3.1 The complainants allege that the Commission has not made the outstanding final payment of € 80,671.61 for Thematic Network contract No. 1999-TN.10869 "TRANS-TALK" under the Fifth Framework Programme.

3.2 The Commission states that the final payment of € 50,821. 03 was made on 13 May 2003. According to the Commission, the amount of € 29,799.63 could not be taken into account since this would involve transfer between cost categories, which requires prior authorisation.

3.3 In the observations, the complainants inform the Ombudsman that, following their reply to the Commission dated 27 May 2003, the Commission had proceeded to pay the sum of € 20,447.79.

3.4 The European Ombudsman's secretariat contacted by telephone one of the complainants who spoke on behalf of both complainants regarding the observations. The complainants had accepted the Commission's interpretation of transfers between cost categories which require prior authorisation according to Article 17(4) of the General Conditions. Therefore, the amount of about € 9,000 could not be included in the final payment. The complainants informed the Ombudsman that by not sending any comments to the Commission regarding the settlement offer, the ICCR had de facto accepted that no interest would be paid on the suspended final payment. The complainants were satisfied with the settlement.

3.5 Based on the information provided by the European Commission and the complainants, the Ombudsman finds that the Commission has settled the matter and has thereby satisfied the complaint.

4 Claim for an official Commission position on the audit and the procedures followed

4.1 The complainants claim that the Commission should take an official position on the audit and the procedures followed.

4.2 The European Ombudsman considers that this aspect of the case is covered by the settlement reported in part 3 of the decision.

5 The allegations against the report of the Court of Auditors

5.1 The complainants allege that the report of the Court of Auditors drew false conclusions and ignored the input provided by the ICCR.

5.2 The Court of Auditors argues that it took into account all information provided by the complainants to the extent considered relevant for the audit and that all findings in the sector letter are supported by sufficient and appropriate audit evidence. The Court of Auditors also argues that it did not reach false conclusions.

5.3 The Ombudsman considers that there appears to be no evidence to suggest that the Court of Auditors ignored the input of the complainant. Furthermore, there is nothing to suggest that the conclusions of the Court were wrong or unreasonable. Therefore, there appears to be no maladministration regarding these aspects of the case.

6 Alleged undue delay by the Court of Auditors

6.1 The complainants allege undue delay in submitting the Court of Auditors' report to the Commission. According to the complainant, the audit mission was completed on 18 January 2002 and the auditor's report was dated 15 April 2002.

6.2 In its opinion, the Court of Auditors states that its Audit Manual provides that a sector letter should be sent within two months of the completion of the mission. The Court acknowledges that the sector letter was sent in the present case with a slight delay, but that the delay could not be considered as excessive.

6.3 The Ombudsman notes that the Audit Manual of the Court of Auditors is an unpublished internal guide, which is not intended to establish any entitlements for third parties. In these circumstances, the Ombudsman does not consider the slight delay acknowledged by the Court of Auditors to constitute maladministration.

6.4 The Ombudsman therefore finds no maladministration regarding this aspect of the case.

7 Conclusions

The Ombudsman finds no maladministration in relation to the complainants' first allegation against the European Commission. As regards the complainants' second allegation and their claim, it appears from information provided by the European Commission and the complainants that the Commission has settled the matter and has thereby satisfied the complaint. Furthermore, the Ombudsman finds no maladministration by the Court of Auditors. The Ombudsman therefore closes the case.

3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN

FAILURE TO PAY GRANT DESPITE ORAL ASSURANCES

Decision on complaint 548/2002/GG against the European Commission

THE COMPLAINT

The complainant is the director of the "Europäisches Kultur- und Informationszentrum in Thüringen", an association that has its seat in Germany ("the association").

On 31 May 1998, the association submitted an application for a grant amounting to 90 000 Ecu to the European Commission. The various activities to be financed by this grant were to take place in September and October 1998. The person in charge of the matter on the Commission's side was Mr H., Adviser in Directorate-General X (now DG Education and Culture).

According to the complainant, the association had tried to obtain, as from July 1998, clarification as to whether the Commission would accept the application, given that in the absence of other funds the proposed activities would otherwise have to be cancelled. The complainant alleged that Mr H. had assured the association several times over the telephone that the amount requested would be granted. Still according to the complainant, Mr H. had informed the association towards the end of July 1998 (the latest date by which the activities could have been cancelled) that the application had been accepted and that the relevant document would be signed at the first meeting of the Commission after the summer break. The complainant alleged that Mr H. had advised the association that it could begin to implement its project. He further claimed that in September 1998, Mr H. had informed the association that due to an overly charged agenda it had not yet been possible for the Commission to sign the document in question but that it would do so within the coming two weeks. According to the complainant, it had been on the basis of these assurances that the association had begun to realise its project.

The complainant claimed that since then there had been nearly daily contacts by telephone with Mr H. who had always confirmed that the letter granting the money was imminent. In November 1998, the association had applied to its bank for a credit. It appears that the bank insisted on obtaining written confirmation that the Commission would provide the grant. The complainant therefore turned to the Commission's representation in Germany. In a letter of 25 November 1998, Dr. B. (at that time the acting head of the Commission's representation in Germany) confirmed that the Commission had approved the grant of 90 000 Ecu and that the relevant formalities would be finalised before the end of the year.

However, in a letter dated 23 December 1998 the Commission informed the complainant that a grant of only 20 000 Ecu had been approved by the Commission.

According to the complainant, Mr H. thereupon advised the association to submit a new application for a grant in 1999 that should cover the balance of 70 000 Ecu. This application was lodged in February 1999. However, in its decision of 28 January 2000 the Commission rejected the application. It appears that this decision was based on the consideration that funds provided in 1999 could not be used to finance activities carried out in 1998.

Several contacts took place subsequently between the complainant, his local MEP, the member of the Commission in charge and the Commission's services. On 30 June 2000, the Director-General of DG X informed the complainant that on the basis of the assumption that Dr. B.'s letter of 25 November 1998 had given rise to legitimate expectations, the Commission was ready to cover expenditure that had occurred between that date and 5 January 1999 (the date of receipt of the Commission's letter of 23 December 1998). The Commission argued, however, that this should only cover expenditure in relation to contracts that contained a 'risk clause', i.e. a clause to the effect that payment should only

become due when the Commission decided to provide its grant. The Commission also accepted to cover arrears of salaries of employees of the association, provided that payment had been made within the said period. On this basis, the Commission calculated that a sum of € 21.988,54 could be paid to the complainant on account of the extra-contractual liability to which the letter of 25 November 1998 had given rise. The sum of € 20.000 was to be deducted from this amount.

The complainant objected to this proposal and insisted that the full balance of € 70.000 should be paid out. Several further efforts to make the Commission change its mind were unsuccessful, however. The complainant then turned to another MEP who forwarded the complaint to the Ombudsman.

In his complaint to the Ombudsman lodged in March 2002, the complainant pointed out that all the grants it had received from the EU so far had been based on good faith. The complainant alleged that when the association had applied for a grant for a project in 1995, it had been informed orally that the money had been granted and that the association had begun to carry out its concomitant obligations whilst the written confirmation was received months later when the project was long terminated. According to the complainant, the same pattern had prevailed with regard to later applications for grants.

The complainant thus claimed that the Commission had failed to pay the balance of a grant that in his view the Commission had accepted to provide to the association. He basically alleged that the association had been entitled to rely on the assurances that he claimed had been made by Mr H. of the Commission's services.

The complainant added that the association had no other funds and that if no solution could be found, it would have to cease its activities.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission gave a detailed description of the sequence of events and actions, in particular in so far as the period after the dispatch of the letter of 23 December 1998 was concerned. With specific regard to the allegation made by the complainant, the Commission made the following comments:

On 31 May 1998, the association had applied for a grant of € 90.000 under budget line A-3024. The project had been pre-selected for a grant of € 20.000 by the competent selection committee in the autumn of 1998. During that period, the complainant had frequently telephoned with the official in charge of that budget line, Mr H. According to the complainant, Mr H. had promised him over the telephone that a grant of € 90.000 would be provided. Given that Mr H. had died in November 1999, it was no longer possible to verify what had in fact been said. The file of DG X did however not contain any trace of these promises.

After having consulted the Commission's Legal Service, DG Education and Culture had taken the position that over and above the amount of € 20.000 already paid, the Commission was legally obliged to cover only those financial commitments that had been entered into by the association between 25 November 1998 and 5 January 1999. On 22 June 2000, the Director-General of DG Education and Culture had received the complainant and explained that the DG would cover the expenses incurred between 25 November 1998 and 5 January 1999. In a letter of 30 June 2000, the Director-General had explained that the sum that could be taken in charge amounted to € 1988,54.

FURTHER INQUIRIES

Inspection of the Commission's file

In the light of the Commission's opinion, the Ombudsman considered that he needed further information to deal with the complaint. He therefore wrote to the Commission on 15 July 2002 to

ask for access to the Commission's file. On 19 September 2002, the Ombudsman's services inspected the file of DG X as well as the file of the Commission's representation in Germany.

It emerged that the file of DG X did not contain any originals of documents for the period up to 23 December 1998. As a matter of fact the only document from this period that seemed to be available was a copy of the application of 31 May 1998.

The file of the Commission's representation in Germany appeared to be well kept and complete. It contained the correspondence between the representation and the complainant, including a letter from the complainant dated 2 July 1998 and a copy of the letter of 25 November 1998. This copy contained a manuscript note by its author according to which the wording of the letter had been "agreed with Mr [H.]" ("mit H. [H.] abgestimmt").

Request for further information

In a letter sent on 26 September 2002, the Ombudsman informed the Commission that the file of DG X appeared to be incomplete. He therefore asked the Commission to ascertain the location of the missing parts of the file and to grant him access to the complete file. In case the Commission should be unable to find the missing parts of the file, the Ombudsman asked for written confirmation to this effect.

On 8 November 2002, the Commission informed the Ombudsman that to its regret it had been unable to find any other documents in relation to the complainant's application. The Commission asked the Ombudsman to consider this deplorable situation with leniency.

The complainant's observations

In his observations on the Commission's opinion and its letter of 8 November 2002, the complainant maintained his complaint and made inter alia the following comments:

In its opinion, the Commission first noted that DG Education and Culture had taken the position that it was legally obliged to cover only those financial commitments that had been entered into by the association between 25 November 1998 and 5 January 1999. It then confirmed, however, that the Director-General of DG Education and Culture had informed the complainant that the DG would cover the expenses incurred between 25 November 1998 and 5 January 1999. These statements were contradictory. The result of the discussion with the Director-General on 22 June 2000 had indeed been that the latter accepted that the Commission should take in charge the expenses incurred between 25 November 1998 and 5 January 1999.

In 1998, the association had applied to work as an info point for the Commission. On 20 February 1998, it had submitted a declaration according to which it would comply with its contractual obligations, notwithstanding the fact that at that time there were only oral agreements and no written contract. The association had however relied on oral assurances that this contract would be signed. On 26 June 1998, the association was informed by the Commission that the file in Brussels was considered to have been lost and that therefore the application had not been processed for some time. Given that these events confronted the association with a dilemma similar to the one in the present case, the association asked the Commission's service in charge of matters relating to info points to provide advance confirmation of the contract that was to be concluded. This confirmation was provided on 17 September 1998. The relevant contract was signed on 16 September 1998 and formally notified to the association on 5 October 1998. The association thus never had reason to doubt the assurances that had been given to it in both matters.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinions and observations, the Ombudsman was not satisfied that the Commission has responded adequately to the complainant's allegation.

The proposal for a friendly solution

In accordance with Article 3 (5) of his Statute, the Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The European Commission should consider reviewing its decision to refuse to pay the Europäisches Kultur- und Informationszentrum in Thüringen the full sum of € 90.000.

This proposal was based on the following considerations:

1 The complainant was the director of a German association that had applied to the Commission for a grant of € 90.000. In the end, only an amount of € 21.988,54 had been granted. The complainant claimed that the Commission had failed to pay the balance of the grant that in his view the Commission had accepted to provide to the association. He basically alleged that the association had been entitled to rely on the assurances that he claimed had been made by Mr H. of the Commission's services and according to which the full amount of € 90.000 would be granted. The complainant stressed that it was on this basis that the association had begun to realise its project and incurred expenditure or entered into financial commitments.

2 The Commission accepted that the complainant had frequently telephoned with Mr H. during the relevant period. It took the view, however, that since Mr H. had died in November 1999, it was no longer possible to verify what had in fact been said. The Commission added that the file of DG X did not contain any trace of the promises to which the complainant had referred.

3 The Ombudsman noted that the complainant argued that the Commission had refused to provide the association with the full amount of € 90.000 it had requested although the association had incurred expenditure or entered into financial commitments on the basis of assurances that this amount would be granted. The complainant was thus in effect relying on the principle of the protection of legitimate expectations. According to the case law of the Community courts, however, a breach of this principle cannot be invoked unless the administration has given precise assurances to the person concerned[51]. In the present case, the complainant submitted that the Commission's case-handler had assured him that the Commission would grant the full amount of € 90.000 that the association had requested. This would appear to be a precise assurance. It had to be noted, however, that the Ombudsman was unable to verify this allegation with the means that the Statute of the Ombudsman[52] put at his disposal. The Commission's file that had been inspected by the Ombudsman's services did not contain any trace of such assurances. The only person that could probably have shed light on the issue and that could have been heard as a witness by the Ombudsman, i.e. Mr H. himself, was dead.

4 The Ombudsman considered, however, that this lack of corroborative evidence could not be held against the complainant in the present case. The Commission accepted that there had been numerous contacts over the telephone between the complainant and Mr H. It would therefore have been appropriate for the official concerned to make a record of these conversations or at least of the most important points that had been discussed on these occasions. The Ombudsman considered that in the absence of such records lesser demands had to be made in so far the need for the complainant to establish his allegation was concerned.

5 The Ombudsman considered that there were at least three elements that would appear to support the complainant's case. First, given that the project had been due to start in September 1998, the association obviously had a vital interest to learn in good time (and at the latest at the beginning of September 1998) whether the Commission would provide the grant it had requested. This was confirmed by the complainant's letter of 2 July 1998 to the Commission's representation in Germany. The complainant there noted that in the case of a negative reply, the association would have to cancel the project since it was unable to compensate amounts not granted by funds from

51 See for example Case T-72/99 *Meyer v Commission* [ECR] 2000, II-2521 paragraph 53.

52 Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, 1994 OJ L 113/15.

other sources. Since the project was not cancelled but carried out the complainant's allegation that he obtained satisfactory assurances from Mr H. appeared to be credible. Second, the complainant had explained that already in the past the association had implemented (and had had to implement) projects on the basis of merely oral assurances. The Ombudsman noted that the Commission had not made any comments on this aspect of the case. Third, the fact that the complainant had obtained and relied on assurances from Mr H. was given added credibility by the fact that other Commission officials themselves had relied on the word of this person. The letter of 25 November 1998 sent by the Commission's representation in Germany had, as the inspection of the file had shown, been based on information by Mr H.

6 The Ombudsman noted that the Commission had not put forward any arguments to establish why the complainant should not have been entitled to rely on such assurances by the Commission's case-handler.

7 In the light of these circumstances, the Ombudsman considered that the Commission's refusal to pay the association the full amount of € 90.000 that the latter had applied for on 31 May 1998 could be an instance of maladministration.

The Commission's opinion

In its opinion, the Commission pointed out that the Ombudsman's conclusions were not based on facts that had been clearly established by tangible evidence, but only on assumptions and deductions arrived at by way of analogy to other situations. The Commission also stressed that the position it had maintained so far simply reflected its obligation to comply with the principle of sound financial management. In this context, it appeared useful to reiterate that the Commission could only be bound to provide financial assistance by a written commitment to the future beneficiary that had been drawn up in accordance with the relevant rules.

The Commission added, however, that in order to preserve the image of the European institutions in the eye of the citizen and to avoid causing damage to the beneficiary in the present case, it was by way of exception ready to accept the Ombudsman's proposal.

It would therefore check the account of expenses linked to the relevant project as quickly as possible in order to ascertain the expenses that were eligible and, consequently, the balance due to the beneficiary. The Commission pointed out, however, that the complainant had to be aware of the fact that the final amount of the subsidy would not necessarily correspond to the sum of 90.000 € that had been claimed.

The complainant's observations

On 20 March 2003, the complainant informed the Ombudsman's services by telephone that a friendly solution could be considered as having been brought about.

THE DECISION

1 Failure to pay balance of grant

1.1 The complainant was the director of a German association that had applied to the Commission for a grant of € 90.000. In the end, only an amount of € 21.988,54 had been granted. The complainant claimed that the Commission had failed to pay the balance of the grant that in his view the Commission had accepted to provide to the association. He basically alleged that the association had been entitled to rely on the assurances that he claimed had been made by Mr H. of the Commission's services and according to which the full amount of € 90.000 would be granted.

1.2 In its opinion, the Commission basically took the view that there was no evidence to support the complainant's claim.

1.3 After careful examination of all the relevant facts and arguments, the Ombudsman submitted a proposal for a friendly solution to the Commission according to which the latter should consider reviewing its decision to refuse to pay the full sum of € 90.000.

1.4 In its opinion, the Commission informed the Ombudsman that it was, by way of exception, ready to accept the Ombudsman's proposal. It would therefore quickly check the eligibility of the expenses declared by the complainant. The Commission pointed out, however, that the complainant had to be aware of the fact that the final amount of the subsidy would not necessarily correspond to the sum of 90.000 € that had been claimed.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the European Commission and the complainant. The Ombudsman therefore closes the case.

COMMISSION ACCEPTS TO PAY COMPENSATION TO FORMER AUXILIARY AGENT

Decision of the European Ombudsman on complaint 1166/2002/(SM)IJH against the European Commission

THE COMPLAINT

The complaint was made by a former agent of the Commission. From 1 May 1995 to 30 April 1998, she worked as an auxiliary agent. From 15 May 1998 to 15 May 2001, she worked as a temporary agent. During her period as an auxiliary agent, the complainant received a secretarial allowance under Article 4a of Annex VII of the Staff Regulations and Article 21 of the Conditions of Employment of Other Servants of the European Communities. At the start of her temporary contract, the Commission ceased to pay the secretarial allowance. The complainant did not notice this omission.

Approximately one month before the end of her temporary contract, the complainant received an official note informing her that she should have received the secretarial allowance during her temporary contract. However, the secretarial allowance was in fact granted to her only from 1 January 2001 to 15 May 2001.

The complainant submitted an appeal under Article 90 of the Staff Regulations against the decision to pay her the secretarial allowance only from 1 January 2001 rather than from the beginning of her temporary contract, that is to say 15 May 1998. In response, the Commission agreed to pay to the complainant half of the secretarial allowance for the period from 15 May 1998 to 31 December 2000.

On 17 June 2002, the complainant complained to the Ombudsman against the Commission's refusal to pay her the whole amount of the secretarial allowance to which she was entitled from 15 May 1998 to 31 December 2000. She claimed that the Commission should pay her this amount retrospectively.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made, in summary, the following points:

The complainant's tasks over the period 1995-2001 remained unchanged. She received the secretarial allowance as an auxiliary (1995-1998) but not as a temporary agent (1998-2000). In April 2001, her Directorate General made a request for her to be paid the allowance and it was paid for the year 2001.

The complainant is time-barred from contesting the decision, clearly notified to her in a document she signed in May 1998, not to pay her a secretarial allowance when she became a temporary agent. Moreover, her pay slips from June 1998 onwards differed in that respect from her pay slip of April 1998.

Furthermore, in terms of personal responsibility and liability in negligence in failing to notice the contents of the document setting out her rights she signed in May 1998, the change to her pay slip and the corresponding reduction of her earnings and on the basis of the test of the reasonable and prudent person, the complainant contributed to the failure to pay her the sums due to her at the time.

However, in the decision addressed to her on 29 April 2002 replying to her complaint, she was granted half the value of the allowance on the grounds that, although, in terms of a potential claim in negligence, she had contributed to her loss, the Commission's services also bore a share of responsibility in failing to secure her the allowance at the time.

The complainant's observations

In her observations, the complainant made the following points:

For the complainant's first contract, all steps were correctly taken in order for her to benefit from the allowances due. She thus had no reason to doubt the accuracy of the encoding of her data when she signed the temporary contract. She honestly believed that all information given to the responsible official would be taken into account, in particular the fact that she was to perform the same tasks as before, that she would continue to work in the same unit and that it was only a change in contract.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman did not consider that the Commission had responded adequately to the complainant's claim. In accordance with Article 3 (5) of the Statute[53], he therefore wrote to the President of the Commission to propose a friendly solution on the basis of the following analysis of the issues in dispute between the complainant and the Commission.

1 The claim for retrospective payment of a secretarial allowance

1.1 The complainant alleges that the Commission failed to pay her the entire amount of the secretarial allowance to which she was entitled from 15 May 1998 to 31 December 2000. She claims that the Commission should pay her this amount retrospectively.

1.2 The Commission acknowledges that the complainant's tasks remained unchanged when her contract changed from auxiliary to temporary. The Commission argues that the complainant is time-barred from contesting the decision not to pay the secretarial allowance to her as a temporary agent and that, in terms of a potential claim in negligence, she contributed to her loss because she signed a document which confirmed that the secretarial allowance would not be paid. She also received pay slips which did not mention the secretarial allowance. However, since the Commission's services also bore a share of responsibility, the Commission granted the complainant half the value of the allowance.

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

1.3 The Ombudsman notes that the Commission accepts that the complainant was entitled to claim the secretarial allowance during the whole period in question and that the Commission has not argued that any rule or principle prevents it from paying retrospectively the whole allowance to which the complainant was entitled.

1.4 The Ombudsman also notes the Commission's argument that the complainant was guilty of contributory negligence. The Commission does not argue, however, that the complainant failed to perform any of her tasks as an auxiliary or temporary agent, or to comply with her obligations under the Staff Regulations. From the available evidence, it appears that the Commission initiated the complainant's change of status from auxiliary to temporary agent. Finally, the Ombudsman notes that the complainant has not claimed interest. Thus, even if the Commission pays the full allowance, as the complainant claims it should, the complainant will still suffer financial loss as a result of her failure to use earlier opportunities to correct the Commission's error.

1.5 In the light of the above, the Ombudsman's provisional conclusion was that the Commission's decision to award the complainant only half the allowance could appear arbitrary and unfair and that the Commission should therefore carefully re-examine its position in the specific circumstances of this case.

The proposal for a friendly solution

The European Ombudsman suggested that the Commission should take action to avoid the appearance of arbitrariness and unfairness by considering, in the specific circumstances of this case, whether to pay the full amount of the secretarial allowance for the period in question.

The Commission's response

In reply to the Ombudsman's proposal, the Commission points out that it has no legal obligation towards the complainant, who did not contest the decisions within the prescribed deadlines. The Commission considers, however, that in view of the points made by the European Ombudsman, the present case is exceptional and justifies the granting of an additional *ex gratia* compensation.

The complainant's observations

On 2 June 2003, the complainant informed the Ombudsman's services by telephone that she considers that a friendly solution has been achieved.

THE DECISION

1 The claim for retrospective payment of a secretarial allowance

1.1 The complainant alleges that the Commission failed to pay her the entire amount of the secretarial allowance to which she was entitled. She claims that the Commission should pay her this amount retrospectively.

1.2 After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman wrote to the President of the Commission to propose a friendly solution in accordance with Article 3 (5) of the Statute.

1.3 In reply to the Ombudsman's proposal, the Commission pointed out that it had no legal obligation towards the complainant, who did not contest the decisions within the prescribed deadlines. The Commission considered, however, that in view of the points made by the European Ombudsman, the present case was exceptional and justified the granting of an additional *ex gratia* compensation.

1.4 The complainant informed the Ombudsman that she considers that a friendly solution has been achieved.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the Commission and the complainant. The Ombudsman therefore closes the case.

COMMISSION AGREES TO PROVIDE INFORMATION TO JOURNALIST AFTER OMBUDSMAN'S PROPOSAL FOR FRIENDLY SOLUTION

Decision on complaint 1402/2002/GG against the European Commission

THE COMPLAINT

The complainant is the Brussels correspondent of the "Stern", a German weekly. Since February 2002, the publication has covered a number of alleged financial irregularities concerning the European Commission, particularly at Eurostat, the Statistical Office of the European Communities (one of the Directorates-General of the Commission). The complainant submitted copies of written questions and letters that he had sent to the Commission on 12 March 2002, 26 March 2002, 28 March 2002, 5 April 2002, 8 July 2002, 22 July 2002, 26 July 2002 and 7 August 2002 as well as some replies from the Commission. Several of these questions concerned the contracts that a company called Eurogramme had concluded with Eurostat.

The complainant alleged that time and again the Commission had refused to provide information on the grounds that the relevant questions concerned ongoing investigations by OLAF, the European Anti-Fraud Office. According to the complainant, the Commission on occasions even refused to provide basic information such as what contracts the Commission had entered into with a particular company. The complainant considered that the Commission's behaviour was incorrect and impeded the publication's efforts to inform the public about the relevant issues.

The complainant put forward a number of arguments to support his case. First, he took the view that the Commission had given no explanations as to how providing the information requested could affect the investigations carried out by OLAF. In his view, publications in the press would on the contrary rather appear to have speeded up such investigations. Second, the complainant submitted that there was no evidence to suggest that OLAF had asked the Commission to withhold the relevant information. Third, the complainant argued that investigations by OLAF sometimes took an extraordinary amount of time. According to him, some of the allegations concerning Eurostat were being investigated since 1998. The complainant stressed that the Commission would thus be able to withhold basic information for years, not to mention subsequent criminal or administrative investigations that could also be used as a reason for not disclosing information. Fourth, the complainant argued that the Commission behaved in an arbitrary way, given that on occasions it answered questions relating to issues that were the subject-matter of investigations by OLAF whilst on other occasions it refused to do so. Finally, the complainant argued that the Commission sometimes arbitrarily changed the reasons it gave for refusing to provide the information requested. According to the complainant, in one case the Commission had first informed him that the relevant issues were being verified, then written that the relevant questions could not be answered "at present" before finally informing him that it could not provide the relevant information "as it partly relates to an ongoing OLAF investigation".

The complainant claimed that the Commission should answer the questions that had been submitted to it without success since March 2002.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission's Code of good administrative behaviour applied equally to requests for information by citizens and to requests for information by the media. Media (i.e. journalists) were not entitled under the present Code to any particular and/or additional rights beyond what the Code foresees for dealing with inquiries from the general public.

The Press and Communication Service had been scrupulous in adhering to the deadlines stipulated, that is to say, a reply has to be sent within fifteen working days of the receipt of inquiries. However, the Commission acknowledged that no reply had been given to the complainant's message of 5 April 2002 and apologised for this omission.

The perception that the Commission had been arbitrary in its decisions regarding requests for sensitive information arose from the fact that there had to be a case by case approach. The inquiries of the complainant for factual information had been properly answered by the Commission. However, most of the inquiries cited in the complaint did not relate to straightforward existing information, but required that the Commission in its reply take formal positions on very specific issues. In this respect the Commission had a discretionary power over the position it wanted to take and when to take it and could, therefore, reserve the right not to make statements on an issue.

In respect of the allegation that the Commission had refused to answer questions on the grounds that the information related to an OLAF investigation, the Commission wished to note that questions concerning a matter under such investigation should be directed to OLAF.

All requests for documents were dealt with under Regulation No. 1049/2001 on access to documents. The Commission was of the opinion that the specific inquiry by the complainant – requesting a list of all existing contracts concluded with a specific company – fell within the remit of this regulation. There was no database which provided a comprehensive list of contracts. A list of "commitments" to companies called "Eurogramme" did however exist, and this had been used to produce the contract list manually, in co-operation with the different Directorates-General. The Commission considered that in this specific case, the requested list did not constitute a document that would fall under one of the exceptions provided under the regulation and could therefore be released to the complainant.

A copy of the list of contracts with Eurogramme was attached to the Commission's opinion.

The complainant's observations

In his observations, the complainant maintained his complaint and made the following further comments:

The duty of public authorities to provide information was enshrined in the press law of the Member States and had its foundation also in the principle of the freedom of the press recognised throughout the Union. The Charter on Fundamental Rights also mentioned the right to "freedom of information".

The Commission was of course free to decide as to how and when it should take a position. The questions put to the Commission however did not concern any expressions of opinion by the Commission but were aiming at facts such as Commission decisions, administrative acts and allegations that had been made in public or in documents and in respect of which a confirmation or rebuttal was asked for. The question as to what conclusions the Commission had drawn from cases of bad management of Community funds was not a question aiming at an expression of opinion but had the purpose of finding out what the Commission had in fact done. If the Commission should have done nothing, this was also a fact the public was entitled to learn about.

The Commission's suggestion that inquiries could be put directly to OLAF was misleading. OLAF practically always refused to provide information in relation to pending investigations. Moreover the relevant questions did not concern investigations by OLAF but facts within the sphere of the Commission.

It was also misleading to allege that the Commission had, apart from one exception, always complied with its Code of good administrative behaviour. As a matter of fact, the Commission often left questions concerning sensitive issues (like the Commission's accounting system or legally disputed elements of the remuneration of members of the Commission) unanswered. This applied to the inquiries of 7 June 2002, 16 June 2002 and 22 July 2002 (concerning the submission of a report) in their entirety and to part of the inquiry of 2 June 2002.

The complainant claimed that the Commission should change its administrative practice and answer his questions.

Copies of the questions of 2 June 2002, 7 June 2002, 16 June 2002 and 22 July 2002[54] were attached to the complainant's observations.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Commission to comment on the complainant's observations.

The Commission's second opinion

In its second opinion, the Commission made the following comments:

The complainant did not specify to which article of the Charter he referred by mentioning the right to "freedom of information". The Commission nevertheless presumed that the complainant referred to article 11 ("freedom of expression and information") and article 42 ("right of access to documents") of the Charter.

Article 42 of the Charter had exactly the same wording as Article 255 of the EC Treaty. The principles and limits of the public's right of access to European Parliament, Council and Commission documents had been laid down in Regulation No. 1049/2001.

The Commission's Code of good administrative behaviour contained a commitment to answer inquiries in the most appropriate manner and as quickly as possible. It did not oblige Commission staff to provide all the information requested. According to the Code, a member of staff could consider that it was not in the Community interest for the information to be disclosed. In this case, the refusal to provide information should be justified.

Concerning the alleged lack of reasoning for the refusal to provide information, the Commission was of the opinion that both the existence of ongoing OLAF and Commission-internal investigations represented sufficient grounds for the refusal.

All inquiries by the complainant for purely factual information had been properly answered or had been referred to as currently being the object of an investigation and that, therefore, the Commission could not answer at that specific point in time.

Questions relating to issues under investigation by OLAF should be addressed to OLAF. It should be stated, however, that it was OLAF's policy never to comment on ongoing investigations. Likewise the Commission considered that it was not appropriate to provide information that could prejudice the proper conduct of investigations. Moreover, the protection of the purpose of investigations was a specific exception to the right of access to documents under Regulation No. 1049/2001.

54 It should be noted that this question is not identical with the question of the same date mentioned in the complaint.

With regard to the inquiries of 2 June 2002, 7 June 2002, 16 June 2002 and 22 July 2002, the first of these had been answered in writing on 5 June 2002. The questions raised in the notes of 7 June and 22 July 2002 had been answered orally by telephone. In so far as the note of 16 June 2002 was concerned, the complainant had been asked to address the questions relating to corrective coefficients to Mr M., the spokesman responsible. Mr M. had not received the questions and had been personally unaware of them. This was the reason why no response had been sent. The Commission noted, however, that the complainant's questions were almost identical to some of the questions raised by Mrs Gabriele Stauner MEP in questions P-1805/02 and E-2807/02.

Excerpts from the Commission's answer to Mrs Stauner's questions were enclosed with the Commission's second opinion.

The complainant's observations

In his observations on the Commission's second opinion, the complainant made the following comments:

If the Commission should be of the opinion that on the European level there was no duty to provide information to journalists, it would point at a notable gap in Community law and the Commission would be called upon to submit a legislative proposal to stop that gap. On the other hand, this would not free the Commission of its obligation to act on the basis of clear and coherent principles when it did provide information.

However, this was not the case at present. The Commission used the reference to investigations by OLAF in an arbitrary manner. On occasions, the Commission did provide information, on others it did not. This was done not because of ongoing investigations by OLAF but for reasons that were not explained.

The Commission was of course entitled to refuse to provide information in certain clearly defined cases (for example, disciplinary proceedings) in order to protect for example personality rights. However, detailed reasons should be given for such refusals instead of a mere reference to an investigation by OLAF.

It was pleasing to note that one of the questions – the one concerning Eurogramme – had been answered. It was however a reason for criticism that a complaint to the Ombudsman had been necessary to achieve this outcome.

Neither the questions of 7 June 2002 nor those of 22 July 2002 had been answered, either in writing or orally. It was telling that the Commission had neither submitted any evidence to prove that it had answered these questions nor named the person who had answered them or the day when this had happened. In his note of 22 July 2002, he had referred to the fact that the inquiry of 7 June 2002 had not yet been answered. At the time, the Commission had not denied this.

Regarding the inquiry of 16 June 2002, he had assumed that the relevant questions would be passed on to Mr M.

The inquiry of 2 June 2002 had indeed been replied to. However, the reply had left open most of the questions. He had pointed this out in his messages of 7 June 2002 and 22 July 2002.

The complainant concluded by claiming that written replies should be sent to the relevant questions.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinions and observations, the Ombudsman was not satisfied that the Commission had responded adequately to all the complainant's allegations.

The proposal for a friendly solution

Article 3 (5) of the Statute of the Ombudsman[55] directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complaint. The Ombudsman's provisional conclusion was that the Commission's refusal to answer the complainant's questions, in so far as the latter requested the Commission to provide information, could be an instance of maladministration.

The Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The European Commission should consider providing the information requested by the complainant, unless there are valid reasons for not doing so.

This proposal was based on the following considerations:

1 On the basis of the complainant's comments and the Commission's opinions, the Ombudsman assumes that the complainant still wishes to receive a reply to questions 6 to 9 of the inquiry of 12 March 2002, questions 1 to 8 and 10 of the inquiry of 26 March 2002, questions 1 to 4 of the inquiry of 28 March 2002, questions 2 to 8 of the inquiry of 2 June 2002, to the inquiry of 7 June 2002 and to the inquiry (concerning the submission of a report) of 22 July 2002.

2 The Ombudsman considers that it is good administrative practice for the administration to provide information that has been requested by citizens, unless there are valid reasons for refusing to do so. It appears useful to recall that Article 1 of the Treaty on European Union stipulates that decisions should be taken as openly as possible and as closely as possible to the citizen. The Ombudsman takes the view that only a transparent and service-minded administration will do justice to this requirement. Account should furthermore be taken in this context of the vital role of the media in informing citizens about the work of the EU, thus allowing citizens to hold the institutions and bodies of the EU to account.

3 The Ombudsman considers that a distinction has to be drawn in this context between a request for information and a request to take a position on a certain issue. Given that the complainant accepts that the Commission is free to decide as to how and when it should take a position on a specific issue, only the Commission's alleged failure to reply to requests for information needs to be discussed here. The Commission argues that many of the questions did not relate to straightforward existing information but required it to take a position on very specific issues. An examination of the documents submitted by the complainant shows that this argument is not without merit. The Ombudsman notes, however, that there are also various questions asking for straightforward information, for example question 10 of the inquiry of 26 March 2002 (in which the complainant asked whether it was true that tasks previously carried out by a certain company for 1.5 Mio € a year had now been entrusted to another company for 500 000 € a year) or question 3 of the inquiry of 28 March 2002 (asking what the Commission had done to recover a debt owed to it by a certain company).

4 If a citizen asks for information that the administration considers cannot be given to him, it is good administrative practice to inform the applicant of the reasons why the information that he has requested cannot be provided to him. In the present case, the Commission has limited itself to stating that the relevant information cannot be provided since it concerned a matter under investigation by OLAF.

5 The Ombudsman considers that it is legitimate for the administration to refuse to provide information that could prejudice the proper conduct of investigations, be they carried out by OLAF or the Commission itself. He is not convinced, however, that the Commission has shown that it was entitled to refuse to provide all the information requested by the complainant on the basis of this

[55] Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113/15.

consideration. To cite only one example in addition to those already mentioned in point 1.5 above, question 8 of the inquiry of 2 June 2002 asks the Commission to specify how many persons are authorised to handle the Sincom system and what their names are. It has not been explained how answering such questions could prejudice the proper conduct of the investigation carried out by OLAF. The Ombudsman accepts that there may be cases where the administration cannot provide more detailed reasoning because doing so would already jeopardise the aim which justifies the refusal of information. It does not appear, however, that this would be the case with all the requests for information submitted by the complainant in the present case.

6 In his observations on the Commission's second opinion, the complainant accepted that there may be other reasons that could justify a refusal to provide information. The Ombudsman notes, however, that the Commission has not relied on any other reasons in order to justify its refusal to provide the information that had been requested.

The Commission's reply

In its reply, the Commission stated that it appreciated the proposal for a friendly solution. The Commission noted that it had reviewed all the questions that had been addressed to it by the complainant and that a complete list of the Commission's replies thereto was enclosed.

The complainant's observations

In his observations, the complainant noted that he regretted the fact that many of his questions had been answered only now. The complainant stressed that this had seriously impeded his work as a journalist. He also listed a number of questions that in his view had still not been answered.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Commission to comment on the complainant's view that some questions had still not been answered.

The Commission's reply

In reply to the Ombudsman's letter, the Commission submitted an amended list of its replies to the complainant's questions.

The complainant's observations

No written observations on this reply were received from the complainant. In a telephone conversation with the Ombudsman's office on 17 November 2003, the complainant stressed that he found it regrettable that he had had to turn to the Ombudsman in order to obtain the relevant information. The complainant confirmed, however, that a friendly solution had been brought about.

THE DECISION

1 Failure to provide information requested by the complainant

1.1 The complainant, the Brussels correspondent of the "Stern", a German weekly, alleged that the Commission had refused to provide information that he had requested on a number of occasions on the grounds that the relevant questions concerned ongoing investigations by OLAF, the European Anti-Fraud Office. In his observations on the Commission's opinion, the complainant further alleged that some inquiries had not been answered at all.

1.2 The Commission took the view that it had complied with its Code of Good Administrative Behaviour and that its Press and Communication Service, which was responsible for contacts

with the media, had been scrupulous in answering within the deadline stipulated, that is to say within fifteen working days of the receipt of inquiries. It admitted, however, that no reply had been given to a message sent by the complainant on 5 April 2002 and apologised for this omission. The Commission further provided the complainant with a list of contracts it had entered into with a company called Eurogramme that the complainant had requested.

1.3 The Ombudsman came to the conclusion that the Commission's refusal to answer the complainant's questions, in so far as the latter requested the Commission to provide information, could be an instance of maladministration. On 21 May 2003, he therefore submitted a proposal for a friendly solution to the Commission according to which the latter should consider providing the information requested by the complainant, unless there were valid reasons for not doing so.

1.4 In its reply to this proposal and in its reply to a subsequent request for further information, the Commission submitted an amended list of its replies to the complainant's questions.

1.5 In a telephone conversation with the Ombudsman's office on 17 November 2003, the complainant stressed that he found it regrettable that he had had to turn to the Ombudsman in order to obtain the relevant information. The complainant confirmed, however, that a friendly solution had been brought about.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the Commission and the complainant. The Ombudsman therefore closes the case.

3.4 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN

3.4.1 The European Parliament

FAILURE TO COMPLY WITH DUTY TO BE COURTEOUS

Decision on complaint 1565/2002/GG against the European Parliament

THE COMPLAINT

At the beginning of 2002, the European Parliament published a call for tenders (CRE-0203-EL-EP) for the translation of verbatim reports of the European Parliament's sessions ("CRE") into Greek. Corresponding calls for tenders were also published with regard to the ten other official languages. Eight candidates responded to this call. Five of these were members of the complainant, an association of Greek translation companies.

On 2 July 2002, the tenderers were informed via an e-mail sent by Mrs T., an official of the EP, that the call for tenders had been cancelled "due to technical reasons" and would be re-published. No date or time frame was indicated, however.

Some members of the complainant thereupon wrote to Parliament in order to ask for clarifications. On 3 July 2002, the following e-mail reply was sent in the name of Parliament's Translation Planning

Division: "We are not going to elaborate on the reasons for cancellation in so far as we do not have to."

In a further e-mail sent on 5 July 2002, Mrs T. informed the recipients that the official results for nine of the calls for tenders would be published in the Official Journal the following week. She further noted that the call for tenders for the translation of verbatim reports of the European Parliament's sessions into German (CRE-0202-DE-EP) had been cancelled due to discrepancies in the award criteria between the notice published in the Official Journal and the tender specifications posted on the EP's website. Finally, Mrs T. pointed out that call for tenders CRE-0203-EL-EP had been cancelled "due to technical problems".

In its complaint to the Ombudsman lodged in early September 2002, the complainant took the view that the cancellation of the call for tenders was a serious matter. It pointed out that bidders had spent a considerable number of man-hours in order to prepare their applications. The complainant further pointed out that it would be highly important to know when the call for tenders had been cancelled, i.e. before or after the assessment of the bids, given that in the latter case the bidders' offering prices would already be known to a number of people. This meant in turn that their confidentiality was now invalidated and that the tender was exposed to the risk of being contested.

The complainant therefore took the view that Parliament should inform it and all participants in the tender of the reasons for the cancellation and answer all questions arising from it.

It further took the view that the tone of the answer from the head of the Translation Planning Division at the EP had been inappropriate and had created an impression of arrogant behaviour.

The complainant thus in substance made the following allegations:

1 The EP had failed to explain the reasons for cancelling the said call for tenders.

2 The tone of the e-mail from the head of Parliament's Translation Planning Division of 3 July 2002 had been inappropriate and had created an impression of arrogant behaviour.

THE INQUIRY

The European Parliament's opinion

In its opinion, the European Parliament made the following comments:

On 2 July 2002, bidders for the relevant call for tenders had been erroneously informed by e-mail that the call for tenders had been cancelled for technical reasons. This e-mail had not been sent by one of the officials responsible for the call for tenders but by a member of their staff who had acted somewhat zealously. In fact, in the meantime, the consultation of the Legal Service had resulted in the decision that it was not necessary to cancel the call for tenders. Bidders had never officially been informed of the cancellation and no notice indicating cancellation had been published.

The consultation of the Legal Service had been on-going when the e-mail requesting the reasons for cancellation had been sent. The head of Parliament's Translation Planning Division had given instructions that no information was to be given. Subsequently, on publication of the award notice, an official apology for the erroneous e-mail of 2 July 2002 had been sent to all bidders by the official responsible.

In so far as the tone of the e-mail sent on 3 July 2002 was concerned, the head of Parliament's Translation Planning Division had been at the Strasbourg plenary session when a member of his staff had asked him how to reply to the e-mail that had been received. The question had been put to him at 12.15 p.m., a particularly busy time for him, since the deadline for tabling urgent resolutions was 1 p.m. The instructions of the head of Parliament's Translation Planning Division had therefore necessarily been rather terse. The resulting e-mail had not been drafted by himself but had been an interpretation of his instructions drafted in English by a non-native speaker. There had been no intention to offend or to appear arrogant.

The EP enclosed a copy of an e-mail of 26 September 2002 in which bidders for the relevant call for tenders were informed that the contract award notice had been published on 13 September 2002 and which conveyed the EP's apologies for any inconvenience the erroneous e-mail sent on 2 July 2002 could have caused.

The complainant's observations

In its observations, the complainant expressed the view that it was unacceptable for an EU service to "erroneously inform" citizens. The complainant added that the member of staff that according to Parliament had not been one of the "officials responsible" had been the very person that had always informed participants about matters concerning the call for tenders. It further considered it quite extraordinary that the instructions given by the head of Parliament's Translation Planning Division had been misinterpreted and that an EU service responsible for translations was not able to ensure the linguistic quality of written answers sent to bidders.

The complainant noted that its criticism regarding the tone of the e-mail of 2 July 2002 had not been directed at the head of Parliament's Translation Planning Division personally. It pointed out that other letters with a similar tone had been sent by the latter's staff. The complainant stressed that it would like an assurance from Parliament that it would be more cautious in the future when dealing with such sensitive matters and when communicating with external collaborators on which it counted.

The complainant finally noted that it wished to be informed about the nature of the "technical" problem that had occurred and the relevant opinion of the Legal Service. It pointed out that one of its members that had been excluded from the said tender had asked to be informed about the reasons for exclusion but had not yet received the answer that the Legal Service had promised. In the complainant's view, this delay raised doubts about the transparency of tender procedures.

FURTHER INQUIRIES

Request for further information

In the light of the complainant's observations, the Ombudsman considered that he needed further information in order to deal with the complaint. He therefore forwarded a copy of the complainant's observations to Parliament for the latter's comments. The Ombudsman further asked Parliament to explain why the erroneous information contained in the e-mail of 2 July 2002 had not been corrected as soon as the error had come to the knowledge of the officials responsible.

Parliament's reply

In its reply, Parliament made the following comments:

When the e-mail in question had been sent on 2 July 2002, the consultation of the Legal Service had still been ongoing. As the officials responsible had initially been (informally) advised that the call for tenders would probably have to be cancelled and then subsequently informed (again informally) that this might in fact not be the case, it had been clear that the result of this consultation was far from being a foregone conclusion. They had therefore taken the decision that, in view of the fact that the e-mail had had no legal value, they would await the outcome of the official consultation of the Legal Service rather than take the risk of informing bidders that the e-mail of 2 July 2002 had been erroneous and that the tender procedure was in fact still open only to have, some weeks later, to inform them that the tender procedure had in fact been cancelled after all. The matter had only been resolved on 12 August 2002.

The officials responsible for the call for tenders had been named in the letter of invitation to tender/ tender specifications in accordance with the rules. In addition, it was clearly stated in the tender specifications that the only point of contact was Mrs W. The official who had sent the erroneous

e-mail was employed in the freelance unit secretariat and regularly exchanged e-mails with contractors. She had however not been named in the tender documentation.

Whilst the translation service of Parliament was clearly responsible for the institution's written communications, this e-mail had not in any way constituted an official document. The freelance unit of the Planning Division was a purely administrative service. Its staff, mostly C-grade, exchanged on average fifty e-mails per day with contractors. To ensure the linguistic revision of these purely administrative communications with service providers, a team of at least two fully-fledged translators for each of the 11, soon to be 20, official languages would be necessary.

Parliament awarded contracts by public tender, a highly formal procedure the legislation for which set out clear rules as to the types of communication possible. It was unfortunate if this formality was seen by the complainant as creating a negative climate but the officials concerned were under an obligation to respect the legislation in force.

The relevant opinion of the Legal Service had been communicated to the Secretary-General marked as confidential and not to be made public, as was standard practice for opinions of Parliament's Legal Service. Under the public procurement rules, Parliament could furthermore not give information concerning a tender to any party other than the tenderer itself.

The complainant's observations

In its opinion, the complainant thanked the Ombudsman for his contribution to clarifying the problem and noted that it had forwarded Parliament's opinion to its members, encouraging them to ask personally for information concerning the tender. According to the complainant, one of its members that had already requested information but not received an answer intended to submit the matter to the Ombudsman. The complainant added that there was definitely a communication and transparency problem masked by bureaucracy and "formalities".

THE DECISION

1 Failure to explain reasons for cancelling call for tenders

1.1 At the beginning of 2002, the European Parliament published a call for tenders for the translation of verbatim reports of Parliament's sessions into Greek. Five of the bidders who responded to this call were members of the complainant, an association of Greek translation companies. On 2 July 2002, the tenderers were informed by Parliament that the call for tenders had been cancelled "due to technical reasons". In its complaint lodged at the beginning of September 2002, the complainant alleged that Parliament had failed to inform it about the reasons for cancelling the tender.

1.2 In its opinion, the European Parliament explained that the information contained in the e-mail of 2 July 2002 had been erroneous and that the call for tenders had in fact not been cancelled. Parliament had informed bidders for the relevant call for tenders on 26 September 2002 that the contract award notice had been published on 13 September 2002 and had apologised for any inconvenience the erroneous e-mail sent on 2 July 2002 could have caused.

1.3 The Ombudsman notes that the complainant's allegation was based on the assumption that the call for tenders had been cancelled. Given that the tender was in fact not cancelled, this allegation has thus become devoid of purpose, and there is no need further to inquire into it.

2 Inappropriate and arrogant tone of correspondence

2.1 The complainant considers that the tone of the e-mail by which the EP replied, on 3 July 2002, to inquiries by some of its members as to the reasons of the purported cancellation of the call for tenders was inappropriate and created an impression of arrogant behaviour.

2.2 Parliament points out that the head of its Translation Planning Division was at the Strasbourg plenary session when a member of his staff asked him how to reply to the complainant. The question

was put to him at a particularly busy time, and his instructions were therefore necessarily rather terse. The resulting e-mail was not drafted by himself but was an interpretation of his instructions drafted in English by a non-native speaker. There was no intention to offend or to appear arrogant.

2.3 In its observations, the complainant points out that other letters with a similar tone were sent by the staff of the head of the EP's Translation Planning Division. The Ombudsman notes, however, that these letters have not been submitted to him. His inquiry is therefore limited to the e-mail of 3 July 2002.

2.4 It is good administrative practice that officials should be courteous in relations with the public.[56] The e-mail of 3 July 2002 reads as follows: "We are not going to elaborate on the reasons for cancellation in so far as we do not have to." This message that was sent in reply to requests for clarification submitted by certain members of the complainant gives the impression that its sender considered that Parliament was under no obligation to provide the information that had been requested. However, no reasons whatsoever were given for this position, and the reply is limited to just one terse sentence. The Ombudsman considers that it is therefore understandable that the complainant and its members took offence at this e-mail. The Ombudsman notes that the message was sent in the name of the head of Parliament's Translation Planning Division, and both the latter and Mrs W. appear to have received a copy of this message. If there was indeed, as Parliament stresses in its opinion, no intention to offend or to appear arrogant on the part of the official concerned, there would thus have been ample time subsequently to correct the impression this message was bound to create. However, no such correction appears to have been undertaken or even attempted.

2.5 In these circumstances, the Ombudsman considers that by sending and failing to correct the e-mail message of 3 July 2002, Parliament failed to comply with the obligation to be courteous in relations with the public. This is an instance of maladministration, and a critical remark will be made in this respect.

3 Further issues

3.1 In its observations on Parliament's opinion, the complainant pointed out that it wished to be informed about the nature of the "technical" problem that had occurred and the relevant opinion of the Legal Service. The complainant further argued that one of its members that had been excluded from the said tender had asked to be informed about the reasons for exclusion but had not yet received the answer that the Legal Service had promised. In the complainant's view, this delay raised doubts about the transparency of tender procedures.

3.2 The Ombudsman thereupon forwarded the complainant's observations to Parliament which, in its reply, provided further information concerning the matter. In its observations on this reply, the complainant thanked the Ombudsman for his contribution to clarifying the problem and noted that it had forwarded Parliament's opinion to its members, encouraging them to ask personally for information concerning the tender. According to the complainant, one of its members that had already requested information but not received an answer intended to submit the matter to the Ombudsman.

3.3 In these circumstances, the Ombudsman considers that there is no need for him to deal, in the present case, with the further issues raised by the complainant in its observations on Parliament's opinion.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

56 Cf. Article 12 (1) of the European Code of Good Administrative Behaviour proposed by the European Ombudsman and endorsed by the European Parliament. The Code is available on the Ombudsman's website (http://www.euro-ombudsman.eu.int).

It is good administrative practice that officials should be courteous in relations with the public.[57] *The Ombudsman considers that by sending and failing to correct the e-mail message of 3 July 2002, Parliament failed to comply with this obligation. This is an instance of maladministration.*

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

3.4.2 The Council of the European Union

ACCESS TO DOCUMENTS

Decision on complaint 648/2002/IJH against the Council of the European Union

THE COMPLAINT

On 28 January 2002, the complainant made a confirmatory application to the Council, under Regulation 1049/2001[58], for access to a number of documents concerned with the modernisation of EU competition procedures. On 18 March 2002, the Council replied to the confirmatory application, giving only partial access.

The Council justified its decision to refuse access to certain parts of the documents by reference to the first paragraph of Article 4 (3) of Regulation 1049/2001.[59] According to the Council, the interest in protecting its decision-making process outweighs, on balance, the public interest in disclosure with regard to the delegations' positions recorded in the documents. The Council reasoned its conclusion as follows:

"In the context of preliminary discussions and negotiations within the Council's preparatory bodies, the possibility for delegations to express their views freely even on politically sensitive issues constitutes an essential pre-condition for the Council's capacity to find compromise solutions and achieve progress on difficult questions. The release, at the present stage, of those parts of the documents which make it possible to identify individual delegations' positions on particular subject matters which are still under discussion would jeopardise this capacity, as it could considerably reduce the flexibility of delegations to re-consider their respective positions in the light of the arguments exchanged in the debate. In the Council's view, this could seriously undermine its decision-making process."

The Council stated that partial access enables the applicant to be informed of the majority of the arguments exchanged in the course of the discussions on a legislative proposal which is currently being examined within the Council.

In her complaint to the Ombudsman, the complainant accepted the Council's reasoning for concealing the delegations' identities, without prejudice to a possible future argument that the delegations' identities, as well as their arguments should be revealed. According to the complainant,

57 Cf. Article 12 (1) of the European Code of Good Administrative Behaviour proposed by the European Ombudsman and endorsed by the European Parliament. Available on the Ombudsman's website (http://www.euro-ombudsman.eu.int).

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

59 *"Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."*

however, the Council has, in most cases, deleted any position taken by an identified delegation in its entirety. The complainant argues that the deletions made by the Council are excessive and have deprived some of the documents of meaning. In particular, contrary to what is stated in the Council's reply, they fail to inform the reader of the majority of the arguments exchanged in the course of the discussions. According to the complainant, the Council should disclose all the arguments, ideas and propositions contained in the documents, with the relevant delegation's name blanked out if need be.

Moreover, the complainant points out that two of the documents to which she was given partial access are Commission working documents, submitted to the Council Working Party on Competition, concerning the Commission's proposal for a Council Regulation on the implementation of the rules on competition. According to the complainant, the closing sections of both documents have been deleted in their entirety. The complainant argues that if the Commission prepared these documents as general background to the proposal, the confidentiality of the Council's discussions can have no relevance to their disclosure in full. On the other hand, if the documents were prepared after the Council's discussions began and in response to positions taken by one or more delegations, they should be disclosed nevertheless.

According to the complainant, sufficient legislative formality attaches to a published Commission proposal to warrant disclosure of the reasoning behind any subsequent Council-Commission dialogue. Once the public knows the content of the proposal, an understanding of the difficulties in carrying it through to enactment is important. If a text emerges from the Council with unexplained changes of substance, public confidence in the end product will be undermined and suspicion will be cast on the Council's methods.

Finally, the complainant alleges that the Council's online register of documents lacks the detail needed to reveal whether a particular document is likely to be of interest, leading to excessive requests for disclosure and a waste of time for both the Council and the applicant. As an example, the complainant mentions that all the working party reports in this case bear only the title of the Commission's proposal.

In summary, therefore, the complainant alleges that:

(i) In granting only partial access, the Council has deleted more material than justified by its reasoning concerning the need to maintain confidentiality of individual delegations' positions on particular subject matters which are still under discussion;

(ii) The Council's reasoning does not justify its deletions of material from certain Commission working documents;

(iii) the Council's online register of documents contains inadequate information.

The complainant claims full, or greater, access to 13 documents: 12241/00, 10022/01, 13798/00, 13563/01, 5158/01, 12290/00, 12856/00, 13385/00, 5843/01, 6024/01, 6622/01, 6834/01, 7692/01.

THE INQUIRY

The Council's opinion

In summary, the Council's opinion made the following points:

As regards the first allegation, the Council agrees in principle that documents relating to ongoing discussions on draft legislative acts should be as widely accessible as is possible and that one way to achieve this objective is to disclose most or all of the arguments which have been exchanged in the course of the discussions, while withholding only those parts of the documents which allow the identification of the delegations which defended those positions. This gives the delegations concerned the necessary flexibility to alter their positions in the light of the ongoing discussion, which constitutes a pre-condition for achieving progress on difficult questions. The Council has followed this practice on a number of occasions since the entry into force of Regulation 1049/2001.

However, the specific circumstances in this case justify a more cautious approach. The proposal in question raises a number of extremely delicate and contentious issues which are still the subject of difficult negotiations within the Council at a political level. In those circumstances, the premature release of the content of preliminary positions which were taken by the delegates of the Council members and the Commission representatives in the meetings and which, for an expert, may be easily attributable even in the absence of clear identification, can be prejudicial to the institution's capacity to find compromise solutions on those issues and thereby thwart its efforts to reach overall agreement on an important legislative text.

Document 13563/01 contains a Presidency compromise text on the proposed Regulation. Parts of this compromise text have been released, but other parts which concern particularly contentious and controversial issues have been withheld for similar reasons as those referred to above. A compromise proposal only has a chance of being accepted if each delegation is prepared to make concessions from its initial positions. Disclosure of a compromise proposal on particularly delicate matters, whilst it is still being examined by the members of the Council and their delegates and the Commission would thwart its very purpose.

As regards the second allegation, the Council argued that the Commission documents concerned are non-papers prepared by the Commission services for discussion in the Council working group, designed to clarify certain issues relating to the Commission proposal, which had neither been approved by the Commission at the level of the college of Commissioners nor were intended to commit it. The deletions from these documents are justified by the same reasoning as those made from the Council documents concerned.

As regards the third allegation, the Council argued that by clicking on the icon "document information" in the public register of documents on the Internet, the user obtains access to all the information which appears on the head of the document, including its originator, its addressee and the description of the document category, as well as its subject matter. However, the Council is prepared to examine the possibility of increasing the user-friendliness of the public register.

The Council also supplied the Ombudsman with a copy of the documents as supplied to the complainant.

The complainant's observations

As regards the first allegation, the complainant argued that the Council's opinion treats the enactment of EU legislation as it would the negotiation of an international treaty, where concessions are traded for points in the national interest. According to the complainant, this approach is inappropriate for enactment of legislation that is directly binding on the public. Furthermore, the Council's debate is not the equivalent of a ministerial or cabinet meeting at which odd and possibly unacceptable ideas are put forward among individuals. By the time a proposal gets to the Council, the Commission has already put the proposal in the public domain and the Council acts as a legislator. For the text of generally binding laws to be kept secret until the content is fixed seems an extreme remedy for a problem that could be managed by deletion of delegations' names.

As regards the second allegation, the complainant stated that she is willing to accept that Commission working documents prepared as contributions to the Council debate should be treated in the same way as Council documents.

As regards the third allegation, the complainant stated that her remarks had been intended to be helpful and that she did not wish to pursue the issue. She also made a number of suggestions to enhance what she referred to as this "uniquely valuable source of information."

FURTHER INQUIRIES

After careful consideration of the Council's opinion and the complainant's observations, the Ombudsman considered it necessary to inspect the documents concerned in order to evaluate the extent and nature of the deletions.

The inspection

The inspection was carried out by the Ombudsman's services on 9 October 2002. The Ombudsman subsequently wrote to thank the Council for its good co-operation during the inspection and inform it of the Ombudsman's findings.

The Ombudsman first recalled the positions of the Council and complainant as stated in the Council's opinion and the complainant's observations. The Ombudsman noted that the Council's justification of the deletions appears to be that release of the deleted parts of the documents could enable someone, possibly an expert, to identify the positions of delegations, or of the Commission representative, on matters under discussion in the Council. The complainant accepts that the Council can keep the names of delegations confidential, and that Commission working documents prepared as contributions to the Council debate should be treated in the same way. The Ombudsman therefore sought to verify from inspection of the documents whether the material that had been deleted by the Council could allow someone, possibly an expert, to identify the positions of delegations, or of the Commission representative, on matters under discussion in the Council.

The Ombudsman then stated the results of his inspection, as follows:

References to named delegations or to the Commission representative

In the documents inspected, references to named delegations or to the Commission representative normally take one of three forms: (i) a footnote (ii) a bracketed reference in the text or (iii) an introductory phrase such as "The (xx) delegation expressed the view...", or "The (xx) delegation considered that…"

All footnote references to named delegations appear to have been deleted, whilst in most cases the corresponding text has been released. In general, the deleted footnotes contain no information other than the identity of the delegation and the fact that it proposed, agreed or disagreed with, or made a reservation concerning, the position stated in the text. An exception is the footnote on page 3 of document 12241/01. Except for this one case, the Council's deletions of footnotes appear to be the minimum necessary to conceal the identities of delegations.

In most cases where references to named delegations are in form (ii) or (iii), the entire paragraph concerned has been deleted. In contrast, paragraphs 19, 33, 44, 50-51, 69 of document 13385/00 have been released in their entirety without deleting the references to named delegations and/or the Commission representative. There appear to be no cases, however, where the Council has deleted only the reference to the delegation and/or the Commission representative and released the rest of the text.

There is only one case in which the Ombudsman can confirm that the rest of the text of a deleted paragraph in this category might allow the identity of the delegation concerned to be inferred: paragraph 36 of document 13385/00.

Deleted material which does not contain references to named delegations or to the Commission representative

The Council has deleted certain sections of documents, paragraphs and parts of paragraphs that contain no reference to named delegations, or to the Commission representative. Some, though not all, of these paragraphs contain phrases such as "some delegations expressed the view…" or "delegations expressed the view…". In certain other cases, the deleted material consists of Presidency compromise proposals.

The Ombudsman cannot confirm that any of the deleted material in this category would enable the views of a specific delegation or delegations, or of the Commission representative to be identified. Although the Council refers to the possibility of an expert making such an identification, this appears unlikely given the nature of the deleted material.

Conclusions

On the basis of the inspection, the Ombudsman considers that deletion of at least the following material does not appear to be justified by the reasoning that its release could enable someone, possibly an expert, to identify the positions of delegations, or of the Commission representative, on matters under discussion in the Council :

Document 12241/01: footnote on page 3 (except for name of delegation); paragraphs 17-21, 23-27.

Document 10022/01: pages 29-36 (tables containing a factual comparison of main competition law provisions in Member States with Arts 81-82 EC).

Document 13798/00: paragraphs 5-8, 9-10 (partial deletions), 14-15.

Document 12856/00: paragraphs 2, 3 (partial deletion).

Document 13385/00: paragraph 2.

Document 5843/01: paragraphs 4, 5.

Document 6024/01: paragraphs 4, 5.

Document 6622/01: paragraphs 3, 10, 11.

Document 7692/01: paragraphs 12-18 and annex.

Document 6834/01: paragraphs 3 (partial deletion), 6, 8, 10.

Document 13563/01 falls into two parts: a progress report and Annexes. On the basis of the inspection, the Ombudsman considers that paragraphs 6, 8, 10-12, 19-20 and 22 could also be released without enabling anyone to identify the views of a specific delegation or delegations, or of the Commission representative. In Annex II to Document 13563/01 (the Presidency compromise text for a Regulation), there seems to be no basis to distinguish between those parts of the text (excluding footnotes) which have been released and those parts which have been deleted, other than that the latter deal with subjects that are considered politically more delicate. Release of the deleted text (excluding footnotes) could not, in the Ombudsman's view, enable anyone, even an expert, to identify the views of a specific delegation or delegations, or of the Commission representative. The same analysis also applies to the deletions in Document 5158/01, which contains an earlier proposal for the text of a Regulation.

The request for further information

In view of the above, the Ombudsman kindly requested the Council to re-examine its position in relation to the deleted material mentioned above and to inform him whether it would be prepared to release it to the complainant.

The Council's reply

In reply, the Council stated that it had reached political agreement on the draft Regulation concerned at its meeting on 26 November 2002. In the light of this progress, the Council considered that the complainant could now be given access to the documents concerned in their entirety.

The complainant's observations

In her observations, the complainant stated that the Council seems to have taken away the grounds for complaint by granting access to the documents concerned, but also expressed frustration at not having had access before the Regulation was adopted. The complainant thanked the Ombudsman for taking up the case on her behalf.

THE DECISION

1 Refusal of full access to certain documents

1.1 The Council gave the complainant only partial access to certain documents concerned with the modernisation of EU competition procedures. The complainant alleged that the Council deleted more material than was justified by its reasoning concerning the need to maintain confidentiality of individual delegations' positions on particular subject matters which are still under discussion. The complainant accepted that the Council may keep the names of delegations confidential, but argued that the content of the positions adopted should be released, together with other parts of the documents concerned.

1.2 The Council justified its decision to refuse access to certain parts of the documents by reference to the first paragraph of Article 4 (3) of Regulation 1049/2001.[60] According to the Council, the proposal in question raises a number of extremely delicate and contentious issues which, at the time, were still the subject of difficult negotiations within the Council at a political level. In those circumstances, the premature release of the content of preliminary positions which were taken by the delegates of the Council members and the Commission representatives in the meetings and which, for an expert, may be easily attributable even in the absence of clear identification, could be prejudicial to the institution's capacity to find compromise solutions and thereby thwart its efforts to reach overall agreement on an important legislative text.

1.3 In view of the complainant's acceptance that the Council may keep the names of delegations confidential, the Ombudsman focused his inquiry on the question of whether the Council had deleted more material than was necessary for this purpose.

1.4 Following an inspection of the documents concerned, the Ombudsman formed the view that certain deletions could not be justified by the Council's reasoning. The Ombudsman informed the Council of his detailed findings and requested it to re-examine its position.

1.5 In reply, the Council stated that it had reached political agreement on the draft Regulation[61] concerned at its meeting on 26 November 2002. In the light of this progress, the Council considered that the complainant could now be given access to the documents concerned in their entirety.

1.6 In observations on the Council's reply, the complainant expressed frustration at not having had access before the Regulation was adopted. The Ombudsman therefore considers that it is necessary to make a finding on the complainant's allegation of maladministration against the Council.

1.7 The Ombudsman inspected the documents to which the Council had given the complainant only partial access. The Ombudsman considers that the Council's reasoning that release of the deleted material could enable someone to identify the positions of delegations, or of the Commission representative, on matters under discussion in the Council fails to justify many of the deletions that were made. This was an instance of maladministration and the Ombudsman makes a critical remark accordingly.

1.8 The Ombudsman considers it unnecessary for him to take any further action, since the Council has now given the complainant access to the documents concerned in their entirety, following its agreement on the draft Regulation concerned at its meeting on 26 November 2002.

60 *"Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."*

61 The Council adopted the Regulation on 16 December 2002: Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, 2003 OJ L1/1.

2 Access to Commission working documents

2.1 The complainant alleged that the Council's reasoning does not justify its deletions of material from certain Commission working documents. The Ombudsman recalls that he has made a critical remark concerning the extent of the deletions made from the documents concerned. This aspect of the complainant thus concerns only whether the Council's reasoning could have any application to Commission working documents.

2.2 The Council argued that the Commission documents concerned are non-papers prepared for discussion in the Council working group, which had neither been approved by the Commission at the level of the college of Commissioners nor were intended to commit it.

2.3 In her observations, the complainant stated that she is willing to accept that Commission working documents prepared as contributions to the Council debate should be treated in the same way as Council documents. The complainant therefore appears to have dropped this aspect of the complaint.

3 The Council's online register of documents

3.1 The complainant alleged that the Council's online register of documents contains inadequate information.

3.2 The Council argued that information about the originator and addressee of each document and a description of its category can be easily obtained through its online register of documents. The Council is prepared to examine the possibility of increasing the user-friendliness of the public register.

3.3 In her observations, the complainant stated that her remarks had been intended to be helpful and that she did not wish to pursue the issue. She also made a number of suggestions to enhance what she called this "uniquely valuable source of information." The Ombudsman forwarded the complainant's suggestions to the Council, for information.

3.4 In the light of the above, the Ombudsman considers that there is no maladministration in relation to this aspect of the complaint.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman inspected the documents to which the Council had given the complainant only partial access. The Ombudsman considers that the Council's reasoning that release of the deleted material could enable someone to identify the positions of delegations, or of the Commission representative, on matters under discussion in the Council fails to justify many of the deletions that were made. This was an instance of maladministration.

The Ombudsman considers it unnecessary for him to take any further action, since the Council has now given the complainant access to the documents concerned in their entirety, following its agreement on the draft Regulation concerned at its meeting on 26 November 2002. The Ombudsman therefore closes the case.

THE COUNCIL'S RESPONSIBILITY FOR ENSURING THAT THE EUROPEAN UNION POLICE MISSION IN SARAJEVO RESPECTS FUNDAMENTAL RIGHTS

Decision on complaint 1200/2003/OV (confidential) against the Council of the European Union

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The administration of the Planning Team of the European Union Police Mission (EUPM) in Sarajevo terminated the complainant's employment contract, without providing any reasons, and on the basis of unsubstantiated allegations. This was done in violation of the complainant's rights of defence.

The complainant objected to the procedure followed by letter to the Planning Team dated 19 November 2002. In his reply of 26 November 2002, the Head of the EUPM Planning Team indicated that the complainant's contract of employment had been terminated because of his inappropriate behaviour and because he had contravened the ethos of the EUPM Planning Team and his responsibilities as a professional member of the mission.

On 17 December 2002, the complainant lodged a complaint with the European Ombudsman (ref. 2188/2002/OV). This complaint was however inadmissible, as the complainant had not made prior administrative approaches to the Council with regard to the subject matter of his complaint. The Ombudsman advised the complainant to write to the Council. According to the complainant, he then sent two registered letters to the Council, but received no reply.

On 26 June 2003, the complainant lodged the present complaint with the Ombudsman. The complainant alleged that his contract with the EUPM was terminated without any reasons and on the basis of unsubstantiated allegations, and that the Council has not replied to his two registered letters about the matter. He claimed that the Council should clear him of the allegations against him and that he should receive his salary for the whole month of December 2002.

THE INQUIRY

The Council's opinion

In a short opinion, the Council argued that its General Secretariat did not intervene either in the complainant's appointment or in his dismissal. The complainant was directly employed by the EUPM Planning Team, pursuant to the powers awarded to the mission by Council Joint Action of 11 March 2002 on the European Police Mission[62]. He was dismissed for reasons of which the General Secretariat of the Council was unaware.

Article 2(1) of the Council Joint Action establishes that "the Planning Team comprises the Police Head of Mission/Head of Planning Team and the necessary staff to deal with functions ensuing from the needs of the mission". The EUPM may recruit international civilian staff on a contractual basis, according to its needs[63]. It is, however, the task of the Head of Mission/Police Commissioner to exercise operational command over the EUPM, to assume the day-to-day management of operations[64] and to exercise the ensuing powers. These powers necessarily include the recruitment and the eventual dismissal of contractual staff, as was the case with the complainant.

62 OJ L 70/1 of 13 March 2002.

63 Council Joint Action of 11 March 2002 on the European Police Mission, article 5(3).

64 Council Joint Action of 11 March 2002 on the European Police Mission, article 4 (1) and 7, 3rd indent.

From the above it appears that it is not for the General Secretariat of the Council to recruit (and eventually dismiss) contractual staff for the EUPM.

The complainant's observations

The complainant maintained his complaint. He stated that he has already started writing letters to lawyers in Brussels.

THE DECISION

1 The scope of the Ombudsman's inquiry

1.1 In dealing with complaints concerning a contractual relationship with a Community institution or body, the Ombudsman limits his inquiry to examining whether the Community institution or body 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 concludes that his inquiry has not revealed an instance of maladministration.

1.2 The Ombudsman's decision on a contractual case does not affect the right of the parties to have the dispute subsequently examined and authoritatively settled by a court of competent jurisdiction.

2 The termination of the contract without reasons and on the basis of unsubstantiated allegations

2.1 The complainant alleged that his contract with the European Union Police Mission (EUPM) in Sarajevo was terminated without any reasons and on the basis of unsubstantiated allegations. According to the complainant, his rights of defence have been violated.

2.2 The Council argued that its General Secretariat did not intervene either in the complainant's appointment, or in his dismissal. The complainant was directly employed by the EUPM Planning Team, pursuant to the powers awarded to the mission by Council Joint Action of 11 March 2002 on the European Police Mission. He was dismissed for reasons of which the General Secretariat of the Council was unaware.

2.3 The Ombudsman notes that the European Union Police Mission was established by Council Joint Action of 11 March 2002[65]. Article 4.1 of the Joint Action provides that the Head of Mission/Police Commissioner, appointed by the Council, shall exercise operational command over the EUPM and assume the day-to-day management of the EUPM operations. Article 4.4 further provides that the Head of Mission/Police Commissioner shall be responsible for disciplinary control over the personnel. Article 3.2 of the Agreement between the EU and Bosnia and Herzegovina (BiH) on the activities of the EUPM in BiH[66] provides that the Head of Mission/Police Commissioner shall report to the Secretary-General/High Representative for the Common Foreign and Security Policy through the European Union Special Representative in BiH.

2.4 In the light of the above provisions, the Ombudsman considers that the Council is responsible for ensuring that the EUPM's actions respect the principle of the rule of law and the fundamental rights recognised by the European Union.

2.5 The Ombudsman has carefully studied the documents supplied to him by the complainant and the Council. On the basis of this evidence, the facts of the case appear to be as follows:

(i) The contract of employment of the complainant was signed on 26 June 2002 with the EUPM Planning Team, in accordance with Article 5.3 of the Council Joint Action of 11 March 2002

65 OJ L 70/1 of 13 March 2002.

66 OJ L 293/2 of 29 October 2002.

on the EUPM, which provides that *"international civilian staff and local staff shall be recruited on a contractual basis by the EUPM as required"*. The duration of the contract was from 1 July to 31 December 2002.

(ii) The termination of the complainant's contract was decided as a disciplinary measure. The documentation sent by the complainant contains a note of 12 November 2002 from the Legal Adviser of the EUPM Planning Team entitled "Recommendation on a disciplinary case". This note mentions that an internal investigation report was compiled by the Deputy Police Commissioner into alleged misconduct by the complainant. The alleged misconduct concerned the supposed relationship of the complainant with a Moldavian woman who was staying illegally in Bosnia-Herzegovina working as a dancer in two local bars and whom the complainant was supposed to have paid for "services". The note, which also refers to "commercial sexual purchasing", concluded that *"(..) because of being a member of the EUPM Planning Team and thus being under an obligation not to foster any illegal activities, [the complainant] should have been more reserved to establish any kind of emotional/romantic relationship with Ms X. As having ignored a decent and reserved behaviour in this regard, [the complainant] has endangered the impeccable reputation of the EUPM Planning Team"*.

(iii) The Legal Adviser's conclusion and recommendation was that "the behaviour of [the complainant] has been seriously inconsistent with his obligations emanating from his contract of employment. [The complainant] has severely jeopardised the reputation of the EUPM Planning Team. His actions in this regard have constituted a serious misconduct. The EUPM PT Commissioner is advised to terminate [the complainant]'s contract with immediate effect". As the legal basis for the termination of the contract, the Legal Adviser referred to paragraph 15 of the contract, which provides that "in the case of serious misconduct, the Employer reserves the right to terminate the Employee's contract without prior written notice." The Police Head of Mission decided to terminate the complainant's contract as from 8 December 2002.

2.6 Article 41 of the Charter of Fundamental Rights of the European Union (right to good administration) includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken. On the basis of the evidence available to the Ombudsman, it appears that the complainant was never given the opportunity to express his views on the supposed facts which formed the basis of the disciplinary action against him. This constitutes an instance of maladministration. Given that the complainant's contract was terminated more than one year ago, it is not appropriate to propose a friendly solution. The Ombudsman therefore makes the critical remark below.

3 The claims of the complainant

3.1 The complainant claims that the Council should clear him of the allegations against him and that he should receive his salary for the whole month of December 2002.

3.2 The Ombudsman suggests that the most useful course of action would be for the complainant to make the above claims directly to the Council, which could consider them in the light of the Ombudsman's findings and conclusion under point 2.6 above. In case of an unsatisfactory reply from the Council, the complainant would then have the possibility either to take the case to a court of competent jurisdiction, or to make a new complaint to the European Ombudsman.

4 Failure to reply

4.1 The complainant alleges that the Council did not reply to the two registered letters he sent with regard to his dismissal. The Council did not comment on this point, but merely noted that it did not intervene in the complainant's recruitment or dismissal.

4.2 The Ombudsman office asked the complainant for a copy of the two registered letters the complainant sent to the Council. The complainant did not have a copy of one registered letter. As regards the other letter, dated 18 March 2003, it appears that it was sent by registered post on 19 March 2003 to a Head of Unit in DG A (Personnel and Administration) of the Secretariat General of the Council.

4.3 Principles of good administration require that the institutions reply to letters sent by citizens[67]. In the present case, it appears that the Council has neither replied to the complainant's letter, nor explained the reasons for its failure to reply. This constitutes an instance of maladministration and the Ombudsman makes the critical remark below.

5 Conclusion

On the basis of the Ombudsman's inquiries into parts 2 and 4 of this complaint, it is necessary to make the following critical remarks:

Article 41 of the Charter of Fundamental Rights of the European Union (right to good administration) includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken. On the basis of the evidence available to the Ombudsman, it appears that the complainant was never given the opportunity to express his views on the supposed facts which formed the basis of the disciplinary action against him. This constitutes an instance of maladministration.

Principles of good administration require that the institutions reply to letters of citizens[68]. In the present case it appears that the Council has neither replied to the complainant's letter, nor explained the reasons for its failure to reply. This constitutes an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

3.4.3 The European Commission

INCORRECT INFORMATION IN A TENDER PROCEDURE

Decision on complaint 1351/2001/(ME)(MF)BB against the European Commission

THE COMPLAINT

According to the complaint lodged in September 2001, the complainant was the Project Director of "Integration GmbH" Consortium concerning the Tender EuropeAid/112404/C/SV (lot 1) Monitoring the implementation of projects (Tacis and Balkans). He complained on behalf of the Consortium.

On 5 June 2001, the tender Monitoring the implementation of projects (Tacis and Balkans) for a service contract was launched by the European Commission, together with four other lots. On 9 July 2001, "Integration GmbH" Consortium submitted a bid under call for tenders No. Europeaid.112404/C/SV (lot 1) to the Commission, EuropeAid Co-operation Office.

On 18 June 2001, before submitting the bid, the complainant together with other tenderers requested clarification from the Commission of some points in the terms of reference. One of the questions put by the complainant to the Commission concerned the financial evaluation. The complainant asked whether it was based on unit prices or global price. On 20 June 2001, the Commission replied to the complainant that "The assessment of the financial offer is made on the basis of the unit prices/fixed costs, and fees" (point B in the clarification letter entitled "Cost Breakdown and Financial Offer"). The complainant consequently based his proposal on the assumption that the financial evaluation would be based on unit prices. The complainant's proposal contained a high number of

67 Article 13 of the European Code of Good Administrative Behaviour.

68 Article 13 of the European Code of Good Administrative Behaviour.

" working days by expert" as he was aware that a higher number of working days by expert is not automatically to a tenderer's detriment when the tender is based on unit prices.

On 7 September 2001, the complainant heard rumours that he might have lost the tender on the basis of global price and that another tenderer was awarded the contract because his proposal contained a substantially lower input of "working days by expert". The complainant then wrote to the Commission on 11 September 2001, to ask for clarification of the method of price evaluation. Upon calling the Commission, the complainant was told that this second letter would not be replied to. The contract was awarded to another tenderer for a period of six months.

In his complaint to the Ombudsman, the complainant alleged possible irregularities in the handling of the tender.

The claims of the complainant were summarised in the following main points:

(i) The complainant wants to be informed whether the evaluation was really based on unit prices.

(ii) If the financial evaluation was made on the basis of the global price, the Commission should suspend the procedure and review whether the use of this wrongful evaluation method resulted in an incorrect ranking of tenders. If this were the case, the proposals should be re-calculated on the basis of unit prices.

THE INQUIRY

The Commission's opinion

In its opinion, the European Commission made, in summary, the following points:

The complainant contacted the Commission's departments several times during the tender procedure. The Commission considered that the complainant's behaviour could be regarded as an attempt to gain access to confidential information on the tender procedure. Moreover, the Commission expressed "its strong disapproval of the manner in which the complainant used the arbitration procedure (...) The complaint seems to have been lodged solely in order to influence the Commission's departments during the tender procedure".

The contract was awarded in accordance with the procedural rules in force, in particular with Section 4 of the Manual of Procedures. The complainant's tender was rejected because it was less cost-effective.

Concerning the criteria for awarding the contract, the invitation to tender stipulates that "The financial offer must show the following; the full budget for the services described in the terms of reference for one, the first, year. This budget will be the basis of the assessment of the offer." Section 11.10.02 of the Manual of Procedures defines the rules for the financial assessment of tenders.

Point B of the letter of clarification sent to the complainant on 20 June 2001 should not be used outside its context and outside the provisions of the invitation to tender and the tender dossier. Although the clarification letter was sent to all tenderers, the complainant was the only one to use this point to challenge the tendering procedure, which demonstrates the lack of logic in his interpretation of it.

For monitoring contracts, the financial evaluation is always made on the basis of global pricing. This issue has never been raised in previous invitations to tender. Given that the complainant was the successful tenderer for the previous monitoring system, he should have been well acquainted with the tendering rules.

The European Commission's Advisory Committee on Procurement and Contracts (hereafter ACPC) delivered a favourable opinion on the Commission's choice on 19 September 2001. This opinion certified that the technical and financial evaluation of tenders complied with the information contained in the Manual of Procedures, the tender provisions and the clarification letter to the tenderers.

The complainant's observations

In his observations, the complainant made, in summary, the following points:

By lodging a complaint with the Ombudsman, the complainant believed that he had chosen the right procedure.

The complainant contacted the Commission's departments several times during the tender procedure. It aimed to alert the Commission to possible maladministration based on unclear terms of reference, a misleading letter of clarification and violation of the prevailing Tacis monitoring methods. The complainant did not take the initiative to contact the Commission in order to gain access to confidential information. On the contrary, information on the Commission's recommendation to the ACPC was given to the consortium from various other sources.

It was precisely the experience of the five companies of the consortium which submitted the bid that led them to request a letter of clarification. Their knowledge of the fundamental differences between Tacis Monitoring and Global Monitoring caused them to alert the Commission. The complainant knew that for Global Monitoring (lots 2-5), the annual monitoring visits were precisely defined and that the financial evaluation would be based on global prices. On the contrary, for Tacis Monitoring (lot 1), the required monitoring input was defined only vaguely in the terms of reference ("the frequency of monitoring visits per year will be established…after the individual requirements of Projects managers are known…"). Knowing that, in such cases, the financial evaluation would be based on unit prices, in accordance with the Court of Auditors Special Report n° 16/2000, the complainant asked the Commission for clarification.

In addition, the complainant stated that the sentence "The assessment of the financial offer is made on the basis of the unit prices/fixed costs" in the clarification letter sent by the Commission could not be found in any of the documentation available to him. In compliance with the Court of Auditor's interpretation of the method to be used in such unclear cases, the complainant constructed its proposal accordingly.

The complainant fully agreed with the Commission that this sentence in the clarification letter should be seen in the context of the full text including the invitation to tender and the tender dossier. However, the scope of the complaint was not limited to the letter of clarification but referred also to various paragraphs in the terms of reference.

In its opinion on the complaint, the Commission quoted a different definition of rules for the financial assessment procedures from that set out in the letter of clarification. The documentation accessible to companies bidding for tenders, as posted on the Commission's Europeaid web site, does not include such a Manual of Procedure. The complainant based his proposal on the "Practical Guide to EC external aid contract procedures" dated January 2001, in which a section 11.10.02 does not exist. In the complainant's view, this guide is based on a document adopted on 10 November 1999 by the Common Service for External Relations called "Manual of Instructions". The complainant assumed that the Commission is either quoting an internal document or an earlier version of this Manual of Instructions.

In its closing remarks, the complainant concluded that he wished an "amicable in-house solution" to be found in this case.

The complainant's further observations

On 30 May 2002, the complainant sent further observations to the European Ombudsman. He pointed out the urgency of his complaint since the Commission awarded the disputed contract for six months expiring on 15 June 2002. He also emphasised that he wishes to have the dispute settled peacefully.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The possibility of a friendly solution

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman's provisional conclusion was that there could be an instance of maladministration by the Commission. The reasons for this conclusion were, in summary, as follows:

The European Ombudsman noted that in its clarification letter, which was sent to all tenderers, the Commission stated that the financial evaluation would be made on the basis of unit prices. According to the rules of the tender procedure, a clarification letter, which is sent to all tenderers, is binding on the Commission. However, afterwards in its opinion the Commission stated that for monitoring contracts, which is the kind of contract in this case, assessment is always carried out on the basis of global pricing. The Ombudsman considered that, by stating that it would apply unit prices and by applying afterwards the overall pricing method, the Commission failed to comply with the rules governing the tender procedure.

On 15 July 2002, the Ombudsman therefore made a proposal for a friendly solution to the Commission in accordance with Article 3 (5) of the Statue of the Ombudsman. In his letter, the Ombudsman invited the Commission to consider taking steps to satisfy the complainant and thereby achieve a friendly solution that would eliminate the possible instance of maladministration.

The Commission's reply

In its reply of 18 November 2002, the Commission informed the Ombudsman that was not in a position to accept the solution proposed by the European Ombudsman. The Commission formally disagreed with the complainant's conclusions and rejected that its services are held responsible for his misinterpretation. The Commission considered that its services complied with the rules and principles governing the tender procedure.

The Commission pointed out that in his observations to the European Ombudsman, the complainant stated that it based its proposal on the "Practical Guide to EC external aid contract procedures". However, contrary to what the complainant implies, the Practical Guide foresees that the Commission concludes only two types of services contract using two different financial evaluations.

The first one is called the global price contract, for which the financial offer consisting of a single sheet of paper must state the tenderer's global price for providing the services according to its Technical offer.

For the second one, the fee-based contract, the comparison is made on the basis of the total amount derived from the multiplication of the fee rate by the corresponding number of working days. The Financial offer must include the Budget breakdown and cash flow forecast. The fee rates to be paid for the experts provided by the Consultant to carry out the services, together with the Provision for incidental expenditure, are set out in the Budget breakdown.

Despite having based his proposal on the Practical Guide, the complainant expected the Commission's services to use a third method that compared the average unit price, which is not foreseen in the Practical Guide. The Commission underlined that the Court of Auditors report n° 16/2000, which the complainant mentioned to justify his interpretation, specifies that the average unit price method of evaluation has been abandoned.

According to the Commission, in the context of methods foreseen in the Practical Guide, and considering that the contract was not a lump sum contract, the clarification given by the services emphasised that between the two financial evaluation methods, the evaluation would be based on the method comparing the unit prices/fixed costs and fees and would not be done using the global price method. Therefore, the Commission considered that the clarification to the tenderers was done regarding the method foreseen and that the financial evaluation complied with the rules governing the tender procedure.

The Commission underlined that the complainant was the only one of a total of 26 tenderers who received the same clarification that misinterpreted the clarification. According to the Commission, the clarification given by the services on the awarding procedure was applicable to all the lots, and the complainant had presented an offer for four other lots without contesting the financial evaluation.

The complainant's observations on the Commission's reply

In his observations on this opinion, the complainant made, in summary, the following points:

The arguments of the Commission demonstrated the state of confusion regarding the evaluation method. The Commission referred in its reply to documents which were not provided in the tender documents. If the Commission intended to follow the fee-based contract, it did not in this case comply with its own repeatedly quoted rules.

The clarification letter was binding on the Commission according to the rules of the tender procedure. However, the 'clarification' given by the Commission was misleading and not based on the Commission's instructions. The complainant contested the argument that the unit-priced method had been abandoned.

According to the complainant, the Commission attempted to discredit the complainant and harm its credibility and integrity by mentioning that the consortium was the only one out of 26 tenders to complain. On the contrary, only two proposals for lot 1 were evaluated. It was obvious that the winning consortium would have no reason to complain.

The Commission's inaction had led to the following direct and indirect damage:

(a) Financial loss

- Loss of a Service contract for 3 years;
- Compensation and 'bridging honoraria' paid to key staff to keep them on board in case the conflict could be settled quickly;
- Loss of nine highly qualified key monitoring staff to the successful consortium;
- Cost for legal advice and substantial time for replying to the Commission's statements.

(b) Non financial damage

- Damage to the complainant's reputation and integrity through the Commission's almost personal allegations.

The complainant concluded his observations by urging a quick friendly solution to avoid a long legal dispute.

THE DECISION

1 The Commission's criticism of the complainant for having recourse to the Ombudsman

1.1 In its opinion on the complaint, the Commission expressed "its strong disapproval of the manner in which the complainant used the arbitration procedure. The complaint seems to have been lodged solely in order to influence the Commission's departments during the tender procedure." The European Ombudsman understood this criticism to refer to the fact that the complainant complained to the European Ombudsman before the conclusion of the tender procedure.

The Ombudsman considered it necessary to make the following comments on this aspect of the Commission's opinion.

1.2 The right to complain to the European Ombudsman is guaranteed by the EC Treaty and by the Charter of Fundamental Rights of the European Union. The Ombudsman did not consider it

appropriate for the institution complained against to speculate on the reasons why a citizen chooses to exercise his or her fundamental right to make a complaint.

1.3 The Ombudsman pointed out that an inquiry by the Ombudsman does not have a suspensive effect on administrative procedures, nor can the Ombudsman set aside a decision to award a contract. Complaint to the Ombudsman is not therefore a procedure of the kind foreseen by the Court of Justice in the Alcatel case, through which the bidder in a tender procedure may seek review of the contracting authority's decision prior to the conclusion of the contract. However, a tenderer who wishes to use a non-judicial remedy has the possibility to complain to the Ombudsman concerning maladministration in a tender award procedure.

1.4 In this context, the Ombudsman considered it useful to mention that the present case formed part of the background to the Ombudsman's own-initiative inquiry (OI/2/2002/IJH) into the remedies available to bidders in tender procedures organised by the Commission. The own-initiative inquiry, which is still on going, does not deal with the substance of the present case.

2 The allegation of irregularities in the tender procedure

2.1 The complainant alleged possible irregularities in the handling of the tender procedure. The complainant wants to be informed whether the evaluation was really based on unit prices.

2.2 The Commission argued that the contract was awarded in accordance with the procedural rules in force and that the Advisory Committee on Procurement and Contracts had delivered a favourable opinion.

2.3 As regards the basis of evaluation, the Commission's opinion stated that, for monitoring contracts, assessment is always carried out on the basis of global pricing. The Ombudsman therefore considered that the complainant's claim to be informed had been met.

2.4 The Ombudsman noted that in its response to the Ombudsman's proposal for a friendly solution, the Commission acknowledged that its reply to the complainant's request for clarification of the tender stated that the global price method would not be used. Since the Commission's opinion stated that the global pricing method is always used for monitoring contracts, the Commission appeared to have provided incorrect information in reply to the complainant's request for clarification of the tender and, thereby, failed to comply with the rules governing the tender procedure. This constituted an instance of maladministration and the Ombudsman made a critical remark below.

3 The complainant's claims

3.1 The complainant's original claim was that, if the financial evaluation was made on the basis of the global price, the Commission should suspend the procedure and review whether the use of this wrongful evaluation method resulted in an incorrect ranking of tenders. If this is the case, the proposals should be re-calculated on the basis of unit prices.

In his observations on the Commission's reply to the Ombudsman's proposal for a friendly solution the complainant submitted a new claim for damages.

3.2 As regards the complainant's original claim, the Ombudsman recalled that, as mentioned in point 1.3 above, a complaint to the Ombudsman does not have a suspensive effect on administrative procedures, nor can the Ombudsman set aside a decision to award a contract. Furthermore, the Ombudsman observed that the tender procedure in question led to the award of a contract, which expired on 15 June 2002. Therefore, the Ombudsman concluded that it is no longer possible to comply with the complainant's claims to suspend and review the evaluation.

3.3 As regards the complainant's new claim for damages, the Ombudsman noted that the complainant urged a quick friendly solution to the case. The Ombudsman considered, however, that it was not possible for him to achieve a friendly solution in this case, because the Commission had already rejected the Ombudsman's proposal for a friendly solution. The Ombudsman therefore

considered that it was appropriate to close the case with a critical remark concerning the instance of maladministration identified in paragraph 2.4 above and for the complainant to address his new claim for damages directly to the Commission. The Ombudsman noted that the complainant was aware of the possibility to bring legal proceedings to enforce his claim.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman noted that in its response to the Ombudsman's proposal for a friendly solution, the Commission acknowledged that its reply to the complainant's request for clarification of the tender stated that the global price method would not be used. Since the Commission's opinion stated that the global pricing method is always used for monitoring contracts, the Commission appeared to have provided incorrect information in reply to the complainant's request for clarification of the tender and, thereby, failed to comply with the rules governing the tender procedure. This constituted an instance of maladministration.

For the reasons set out in point 3.3 of the decision the Ombudsman considered that it was not possible for him to achieve a friendly solution in this case. Given that the critical remark concerns procedures relating to specific events in the past, it is not appropriate to pursue the matter further. The Ombudsman therefore closes the case.

FUNCTIONING OF THE IST PROGRAMME

Decision on complaint 221/2002/ME against the European Commission

In February 2002, a complaint was lodged with the Ombudsman on behalf of MRA Consultants Limited against the European Commission concerning the functioning of the IST Programme under the Fifth Framework Programme. In summary, the complainant alleged malfunctioning of the IST Programme as well as use of incorrect evaluation criteria in 2000. The complainant in particular pointed out that the evaluation in 2000 was based on funding per partner instead of funding per user as stated in the IST Guide for Proposers. The complainant claimed improved administration and effectiveness of the IST Programme and the use of correct evaluation criteria.

The Commission argued that it had taken the complainant's allegations very seriously, checked the evaluation and explained its standpoint to the complainant on several occasions. The evaluation was based on the text of the Call, work programme and Evaluation Manual and the correct evaluation criteria had therefore been used. According to the Commission, the terms "partner" and "user" were interchangeable.

The Ombudsman found that, according to the Evaluation Summary Report, the best proposal did not meet the threshold for three of the five applicable criteria. The five criteria mentioned were the same as those in the Evaluation Manual applicable to the call. Furthermore, the Ombudsman noted that the Call for proposals did not refer to the Guide for Proposers as a binding document and that the Guide for Proposers itself stated that it does not supersede the relevant rules and conditions. In these circumstances, the Ombudsman did not consider that it had been demonstrated that the Commission had applied incorrect evaluation criteria.

The Ombudsman did however find it necessary to make a critical remark in relation to the Commission's use of the terms "user" and "partner". The Ombudsman recalled that principles of good administration require the Commission to provide accurate information to citizens. The Commission should therefore avoid presenting information in a form which is misleading or unnecessarily complex. The Ombudsman noted that, in ordinary language, the terms user and partner are not synonymous. The Ombudsman also noted that the programme in question was governed by a large number of documents, of varying legal status and with multiple cross-

references. In these circumstances, the Ombudsman considered that the Commission's use of the terms user and partner interchangeably was an additional and unnecessary obstacle to clear communication with citizens.

ALLEGED FAILURE TO TAKE A DECISION IN AN INFRINGEMENT COMPLAINT (ARTICLE 226 EC)

Decision on complaint 1237/2002/(PB)OV against the European Commission

THE COMPLAINT

The origin of this complaint is a previous complaint to the Ombudsman (801/2000/(ME)PB) lodged by the complainant regarding the same matter and closed on 8 June 2001. In that previous complaint, the complainant alleged that the European Commission had dealt inadequately with his infringement complaint against Denmark. This infringement complaint was submitted to the Commission and registered by its General Secretariat in January 1998. The complainant's grievance against the Danish authorities was, in summary, that their taxation of used cars imported from other EU Member States is contrary to the EC rules on free movement. In its answer to the allegation, the Commission stated that the reason for its delay in taking a final stand regarding the infringement complaint was a pending court case, the outcome of which it wished to await. The Ombudsman accepted the Commission's stance and noted further that the Commission had undertaken to take a decision on the complainant's infringement complaint in October 2001, of which the complainant and the Ombudsman would be informed.

On 15 February 2002, the complainant informed the Ombudsman that he had received no information from the Commission concerning his complaint. The Ombudsman invited the Commission to comment on this statement. The Commission replied that the delay was due to new court cases and the failure by some Member States to reply to a request for opinions. The Commission repeated its intention to inform the complainant of the outcome of his infringement complaint, but this time the Commission did not provide any timetable for its conclusions.

In June 2002, the complainant had still not received information on any decision taken by the Commission concerning his infringement complaint. He therefore lodged this second complaint against the Commission with the Ombudsman.

In his complaint, lodged in June 2002, the complainant alleges that the Commission has acted contrary to good administration by failing to take a stand on the issues raised by him in his infringement complaint. The complainant claims that the Commission should immediately take a stand on the issues raised in his infringement complaint.

THE INQUIRY

The Commission's opinion

The Commission's opinion acknowledges the fact that three issues put forward by the complainant remain to be answered:

1 The first issue concerns cross-border long-term leasing of vehicles, which are registered in Germany but with an intended use in Denmark. The Commission has informed the complainant that it wanted to await the ruling of the Court of Justice in Case C-451/99 *Cura Anlagen GmbH* before taking any other initiative as regards rules concerning cross-border long-term leasing of vehicles. The Court of Justice delivered its judgement on 21 March 2002. The Commission will soon address itself to all the Member States asking them whether their rules and regulations are in conformity with this judgement.

2 The second issue concerns the Danish taxation of used cars imported to Denmark from another EU country. The Commission has informed the complainant about its intention to await the Court's ruling in Case C-393/98 *Gomes Valente*. In addition, the Commission has decided to also await the outcome of Case C-101/00 *Antti Siilin.* The judgement in the latter case was delivered only very recently, on 19 September 2002. Furthermore, on 1 June 2001, the Commission addressed a Communication to all the Member States to make them aware of the consequences of the Court's ruling in the *Gomes Valente* case. In its reply to that Communication, Denmark assured the Commission that its rules are in conformity with the outcome of the *Gomes Valente* case. However, some of the Member States have still not replied to the communication. Since the Commission takes the view that this is an issue that has to be dealt with as a part of an overall strategy, the Commission has still not been able to come to a decision as regards the complainant's infringement complaint.

3 The third issue concerns the qualifications of the persons carrying out the valuation of used motor vehicles imported to Denmark. This valuation is crucial for the amount of Danish Registration Tax to be paid on an imported used vehicle. The complainant has not made it clear whether these persons are private persons or officials. The Commission will contact the complainant to clarify this matter. Furthermore, this issue only came to the Commission's knowledge through the documents sent by the complainant to the Ombudsman. If the complainant had turned directly to the Commission, it would have been possible to deal with the issue more promptly.

To sum up its opinion, the Commission concludes that it has not failed to fulfil its obligations towards the complainant. The complainant will be personally informed about the Commission's follow-up of his complaint. The course of action chosen is however to solve the problem simultaneously in all the Member States through co-operation and by issuing a Communication written in clear and simple language.

The Commission also points out that due to lack of personnel it has to focus on matters with important financial and legal implications. It also points to the fact that the issues concerned are very complex and that they belong to a not yet harmonised area of law, where the rulings of the Court of Justice are the only existing legal reference.

The complainant's observations

The complainant was invited to submit observations on the Commission's opinion. In reply, the complainant sent a three-page letter and supporting documents, making in summary the following points:

1 As regards the Danish tax rules on cross-border long-term leasing of vehicles, there is a judgement from the Court of Justice and it is the Commission's obligation to make Denmark conform to this judgement.

2 As regards Danish taxation of used cars imported to Denmark from another EU country, there now exist so many clear rulings from the Court of Justice that the Commission can no longer neglect making Denmark comply with the rules. As it is now, Denmark does not comply with the rules. When a used car is imported to Denmark, its value is always put too high, leading to a heavier tax burden on imported used cars than on used cars which once were sold as new in Denmark.

3 As regards the qualifications of the persons carrying out the valuation of used motor vehicles imported to Denmark, the complainant has contacted the Commission directly on the matter several times.

Finally, the complainant questions why the Commission should not take his complaint seriously since the Danish authorities seem to have taken it seriously by exempting him from paying the tax at issue until the end of 2003.

THE DECISION

1 The alleged failure to take a stand on the infringement complaint

1.1 The complainant alleges that the Commission has acted contrary to good administration by failing to take a stand on the issues raised by him in his infringement complaint. The complainant claims that the Commission should immediately take a stand on the issues raised in his infringement complaint.

1.2 The Commission argues that it has not failed to fulfil its obligations towards the complainant. Since the course of action chosen by the Commission is to solve the problems related to car taxation simultaneously in all the Member States it has not yet been able to come to a decision as regards the complainant's infringement complaint. The complainant will however be personally informed about the Commission's follow-up of his complaint. The Commission also points out that the issue concerned is very complex and belongs to a not yet harmonised field of law.

1.3 The Ombudsman notes that the complainant's infringement complaint to the Commission was registered by its Secretariat General in January 1998. In the framework of the Ombudsman's own initiative inquiry into the administrative procedures for dealing with complaints concerning Member States' infringement of Community law (reference 303/97/PD)[69], the Commission undertook to take a decision either to close the file or to initiate official infringement proceedings within a maximum period of one year from the date on which it was registered, except in special cases, the reasons for which must be stated[70].

1.4 In his decision on the complainant's previous complaint (801/2000/(ME)PB) concerning the lack of response from the Commission with regard to his infringement complaint, the Ombudsman found no maladministration because he accepted that the Commission was waiting for the outcome of cases pending before the Court of Justice before producing a final reply to the complainant. He further noted that the Commission undertook to take a decision on the complainant's infringement complaint in October 2001 and to inform the complainant thereof.

1.5 It appears that the Court of Justice has now delivered judgement in the cases for which the Commission was waiting. Notwithstanding this, the Commission has still not taken a decision on the alleged infringement, despite its undertaking to do so in October 2001. The Commission explained its failure to respect its undertaking by stating that it preferred to take an overall approach to the problems related to car taxation and that its aim is to solve these problems simultaneously in all the Member States, namely through co-operation and by issuing a Communication written in clear and simple language. The Commission further indicated that the matter at stake belongs to a not yet harmonised field of law.

1.6 It is good administrative practice to respect the legitimate and reasonable expectations that members of the public have in the light of how the institution has acted in the past.[71] The Ombudsman considers that the Commission's explanation of why it did not reach a decision by October 2001, despite its undertaking to do so, is not unreasonable. However, the complainant could reasonably expect that the Commission would inform him in October 2001 of the fact that it would not fulfil its undertaking and of the reasons. The Commission's failure to do so is an instance of maladministration. The Ombudsman therefore makes a critical remark below.

1.7 The Ombudsman also points out that the complainant has the possibility of making a new complaint to the Ombudsman in the future if there is further delay by the Commission in reaching a decision on the infringement complaint.

69 See the Ombudsman's Annual Report for 1997, page 270.

70 The Ombudsman notes that this one year rule has been formally laid down in point 8 of the Annex to the *Commission communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (COM(2002)141 final)*, 2002 OJ C 244/5.

71 Cf. Article 10 (2) of the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: http://www.euro-ombudsman.eu.int).

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

It is good administrative practice to respect the legitimate and reasonable expectations that members of the public have in the light of how the institution has acted in the past.[72] *The Ombudsman considers that the Commission's explanation of why it did not reach a decision by October 2001, despite its undertaking to do so, is not unreasonable. However, the complainant could reasonably expect that the Commission would inform him in October 2001 of the fact that it would not fulfil its undertaking and of the reasons. The Commission's failure to do so is an instance of maladministration.*

Given the explanations provided by the Commission for the delayed inquiry into the complainant's complaint and its new promise to keep the complainant informed about the outcome, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

DISCRIMINATORY CLAUSE IN NOTICE OF COMPETITION

Decision on complaint 1523/2002/GG against the European Commission

THE COMPLAINT

In the summer of 2002, the Commission published two open competitions, one for administrators (COM/A/1/02) and one for assistant administrators (COM/A/2/02), in the fields of agriculture, fisheries and environment[73].

According to the notice of the second competition, candidates needed to have a university degree but no professional experience. However, the notice contained the following provision (point A.II.2.b): "You will be allowed to sit the competition if you obtained the university degree required for admission after 27 September 1997."

In his complaint to the Ombudsman lodged in August 2002, the complainant (a Commission official) alleged that the condition set out at point A.II.2.b of the notice of competition constituted a clear case of discrimination on the grounds of age. He took the view that this issue had already been resolved.

It appears that the complainant thus indirectly referred to the Ombudsman's decision of 27 June 2002 in OI/2/2001/(BB)/OV. In this decision, the Ombudsman noted that the President of the Commission had informed him of the Commission's decision adopted on 10 April 2002 "to abolish age limits for all competitions run by the Commission with immediate effect".

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following main comments:

Competition COM/A/1/02 for administrators and competition COM/A/2/02 for assistant administrators should be considered together. For the competition concerned (competition

72 Cf. Article 10 (2) of the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: http://www.euro-ombudsman.eu.int).

73 OJ C 177A/13 of 25 July 2002.

COM/A/2/02), no professional experience was required but candidates needed to have obtained the university degree required after 27 September 1997 or a post-graduate qualification directly relevant to the areas of activity concerned after 27 September 1999. For competition COM/A/1/02, the date of the degree was irrelevant, and the only requirement was that by 27 September 2002 (the closing date for the submission of applications) candidates had at least three years' professional experience corresponding to the duties concerned.

The "recent degree" clause that applied to the competition concerned was broader than in previous competitions, in the sense that the degree that was required for admission to the competition had to be obtained less than five years before the closing date for the submission of applications (rather than three years as previously). Second, the present notice of competition offered an alternative eligibility condition, namely the acquisition of a post-graduate qualification obtained less than three years previously. This qualification did not need to have been obtained immediately after the first degree, but could have been acquired as a result of additional training during the candidate's professional career (even 5, 10 or 15 years after starting work).

The competition concerned was for career bracket A8 (assistant administrator), which is the basic A-grade career bracket. The requirement of a recently obtained degree was a condition based on the nature of the posts to be filled, as the Ombudsman had stated in point 1.4 of his decision on joint complaints 428/98/JMA and 464/98/JMA[74]. In the case of recruitment in the basic career bracket, the Commission required recent or "fresh" knowledge.

The argument that the "recent degree" clause resulted in discrimination on the grounds of age was based on the assumption that only young people studied. However, people who were not young but who engaged in study during their working life would meet the requirement in the same way as young people.

Furthermore, as the competition concerned was running in parallel with competition COM/A/1/02, anyone who had obtained his first degree more than five years previously could apply for this competition.

The appointing authority, in the interest of the service and having regard to the posts covered by the competition in question, had therefore legally and legitimately been able to impose the condition concerned.

The complainant's observations

In his observations, the complainant maintained his complaint. He queried how a candidate who had obtained his degree four and a half years ago could be considered as possessing a "fresh degree" whereas one who had acquired his degree five and a half years ago was excluded from the competition. The complainant further submitted that in view of the rapid technological and scientific development, the period since the acquisition of the "recent degree" should be reduced rather than extended. In the complainant's view, the condition should be abolished altogether and the "fresh knowledge" tested during the competition itself.

According to the complainant, not only, but mostly young people studied. As a consequence, a condition like the one at issue in the present case excluded mostly persons of a higher age and therefore constituted discrimination on the grounds of age in the complainant's view.

74 Point 1.4 of this decision (adopted on 21 July 2000) reads as follows: "The Commission has justified the application of this clause on the basis of the nature and functions to be carried out by assistant administrators. Since A8 officials are not deemed to have any relevant professional experience prior to their joining the Commission, the institution has set a date – usually no more than 2 or 3 years before the competition – for the completion of their studies. The 'freshness' of the diploma appears thus as a specific condition based on the nature of the posts to be filled." Point 1.5 reads: "In view of the nature of the tasks to be entrusted to an assistant administrator, and also taking into account that their recruitment has traditionally been done among recently graduated university students, the Ombudsman considers that the argumnets put forward by the Commission seem reasonable. Moreover, the limitations imposed by this clause appear to be proportional to their purported aim, namely to enable the institution to better target prospective A8 candidates."

The complainant added that the fact that the relevant competition was running in parallel with competition COM/A/1/02 did not change anything since this competition required three years' professional experience and thus excluded many categories of graduates.

In the complainant's view, the relevant condition also discriminated on the grounds of sex. He pointed out that a woman who had obtained her degree six or more years before the relevant date, and who had then had children, was punished by being excluded from the competition. The complainant argued that in a previous competition (competition COM/LA/9/99), the Commission had protected such categories of persons.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore forwarded a copy of the complainant's observations to the Commission and asked the latter to provide an opinion on the further allegation that had been submitted by the complainant and according to which the relevant condition also constituted discrimination on the grounds of sex.

The Commission's second opinion

In its second opinion, the Commission made the following comments:

The Commission's aim in organising competition COM/A/1/02 for administrators and competition COM/A/2/02 for assistant administrators was to ensure a balance between the recruitment of officials (men and women) with a certain amount of confirmed professional experience and officials (men and women) with more freshly acquired knowledge. It was certainly true that some people (men and women) had not obtained their degree after the date stipulated in the notice of competition or did not have the required professional experience. This did however not amount to discrimination, either on the grounds of age or between men and women. Competitions were not deemed to be open to all candidates who had obtained their degree since the last general competition had been organised. The fact was that the Commission and the other institutions organised their competitions to recruit officials based on the needs of their services. To this end, they had considerable discretion, provided they observed the general provisions of the Staff Regulations. It was thus quite normal for notices of competition to differ, depending on the profiles of the officials the Commission wished to recruit.

The notice of competition COM/LA/9/99 that had been published in 1999 provided that derogations from the cut-off date for obtaining the relevant degree were possible for candidates who had completed compulsory military service, who had had an uninterrupted break from paid employment for at least one year in order to look after a dependent child (this was presumably what the complainant had in mind) or who had a physical disability. Whilst it was true that these derogation clauses were no longer included in notices of competition published by the Commission, the eligibility criteria had also changed compared to previous notices of competitions. For example, the competition referred to by the complainant had still included an age limit (45 years).

Differences between notices of competition did not constitute discrimination or failure to comply with the principle of equal opportunities. The criteria and conditions laid down in notice of competition COM/A/2/02 applied equally to all candidates who were in the same position, regardless of whether they were male or female.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Alleged discrimination on the grounds of age in competition COM/A/2/02

1.1 In the summer of 2002, the Commission published a competition for assistant administrators (COM/A/2/02) in the fields of agriculture, fisheries and environment. Candidates needed to have a university degree but no professional experience. However, the notice of competition contained the following provision (point A.II.2.b): "You will be allowed to sit the competition if you obtained the university degree required for admission after 27 September 1997." The complainant, a Commission official, considered that this condition amounted to discrimination on the grounds of age.

1.2 The Commission pointed out that candidates were also eligible if they had obtained a post-graduate qualification directly relevant to the areas of activity concerned after 27 September 1999. In the Commission's view, the relevant competition and competition COM/A/1/02 for administrators that had been published with the said competition should be considered together. For competition COM/A/1/02, the date of the degree was irrelevant, and the only requirement was that by 27 September 2002 (the closing date for the submission of applications) candidates had to have at least three years' professional experience corresponding to the duties concerned. As the competition concerned was running in parallel with competition COM/A/1/02, anyone who had obtained his first degree more than five years previously could apply for this competition. According to the Commission, the requirement of a recently obtained degree was a condition based on the nature of the posts to be filled, and in the case of recruitment in the basic career bracket, the Commission required recent or "fresh" knowledge. The Commission also noted that the "recent degree" clause that applied to the competition concerned was broader than in previous competitions, in the sense that the degree that was required for admission to the competition had to be obtained less than five years before the closing date for the submission of applications (rather than three years as previously).

1.3 The Ombudsman notes that the relevant competition was for career bracket A8 (assistant administrator), which is the basic A-grade career bracket and for which no previous professional experience is required. He further notes that the institutions and bodies of the EU organise their competitions in order to recruit officials based on the needs of their services, and that they have considerable discretion in doing so, provided that they comply with the Staff Regulations and other legal rules that are binding upon them. The Ombudsman takes the view that by requiring candidates for A8 posts to have a university degree that has been obtained in the recent past, the Commission has acted within the limits of its legal authority.[75] The same conclusion holds true for the Commission's decision to set the period during which the degree had to be obtained at five years before the closing date.

1.4 The Ombudsman further notes that the "recent degree" clause that applied to the competition concerned was broader than corresponding clauses applied in previous competitions and that the Commission organised competition COM/A/1/02 for administrators concurrently with the competition concerned. Candidates who had obtained their university degree on or before 27 September 1997 but who had three years' professional experience corresponding to the duties concerned were thus able to take part in competition COM/A/1/02.

1.5 The Ombudsman therefore considers that there was no maladministration on the part of the Commission in so far as the complainant's original allegation is concerned.

2 Alleged discrimination between women and men in competition COM/A/2/02

2.1 In his observations on the Commission's opinion, the complainant took the view that the relevant clause in the notice of competition COM/A/2/02 also constituted discrimination on the

[75] Cf. the Ombudsman's decision of 21 July 2000 on complaints 428/98/JMA and 464/98/JMA and his decision of 28 March 2003 on complaint 1536/2002/OV (which also concerned competition COM/A/2/02).

grounds of sex.[76] In his view, a woman who had obtained her degree six or more years before the relevant date, and who had then had children, was punished by being excluded from the competition. The complainant pointed out that in a previous competition (competition COM/LA/9/99), the Commission had provided for exceptions in such cases.

2.2 The Commission admitted that the notice of competition COM/LA/9/99 had provided that derogations from the cut-off date for obtaining the relevant degree were possible, notably for candidates who had had an uninterrupted break from paid employment for at least one year in order to look after a dependent child, and that the notice of competition COM/A/2/02 did not contain any such clause. It took the view, however, that differences between notices of competition did not constitute discrimination or failure to comply with the principle of equal opportunities. The Commission further pointed out that the eligibility criteria had also changed and that the competition referred to by the complainant had for example still included an age limit (45 years) whilst the notice of the relevant competition did not contain any such clause.

2.3 It is good administrative practice to ensure equal opportunities between women and men when deciding on the conditions to be fulfilled by candidates at competitions organised by Community institutions or bodies. Given that it is still mostly women that look after dependent children, these conditions thus have to take sufficient account of the special problems that may arise from this fact. The Ombudsman notes that there was a significant difference in this respect between the competition which is the subject of the present complaint and a previous competition organised by the Commission. The notice of competition COM/LA/9/99 provided that in such cases the cut-off date (that is to say the date after which the required university degree had to be obtained) could be extended by the time spent out of employment for a period of up to two years per child, with a maximum of five years in all. Whilst it is true that mere differences between notices of competition do not constitute proof of discrimination, the fact remains that the Commission does not seem to have taken any precautions to accommodate women who were in a similar situation. As a consequence, a woman who had obtained her degree on or some time before 27 September 1997 and who had subsequently taken time off work in order to bring up her children was likely to find herself at a disadvantage compared to male candidates, since she would have been neither able to take part in the competition concerned nor (unless she had nevertheless acquired three years' professional experience) to take part in competition COM/A/1/02.

2.4 The Ombudsman considers that the Commission has not provided a satisfactory explanation as to why no account was taken of these specific problems in the competition concerned although the Commission must have been aware of them, as the notice of competition COM/LA/9/99 shows. The fact that the competition concerned is different from previous ones in that it no longer contains an age limit, laudable as this change is in itself, does not remedy this omission.

2.5 In these circumstances, the Ombudsman takes the view that by omitting to take sufficient account of the situation of women bringing up children when drafting the notice of competition COM/A/1/02, the Commission has failed to ensure equal opportunities between women and men. This is an instance of maladministration, and a critical remark will be made in this respect.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

It is good administrative practice to ensure equal opportunities between women and men when deciding on the conditions to be fulfilled by candidates at competitions organised by Community institutions or bodies. In the present case, the Ombudsman takes the view that by omitting to take sufficient account of the situation of women bringing up children when drafting the notice of competition COM/A/1/02, the Commission has failed to ensure equal opportunities between women and men. This is an instance of maladministration.

[76] It should be noted that no such allegation had been made in complaints 428/98/JMA, 464/98/JMA or 1536/2002/OV (see preceding footnote).

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. In view of the fact that it is likely that most competitions will in the future be organised not by the Commission but by the European Personnel Selection Office, the Ombudsman considers that it would not be appropriate to make a draft recommendation, either. The Ombudsman therefore closes the case.

INCONSISTENT APPROACH TO STUDY ON SEALS BY COMMISSION

Decision on complaint 754/2003/GG against the European Commission

THE COMPLAINT

Background

The present complaint follows two previous complaints (836/2002/GG and 1574/2002/GG) that were lodged in 2002.

The facts underlying these previous complaints were as follows:

The complainant used to work for the Irish Sea Fisheries Board (the "Board"), an Irish authority. The Board had entered into a contract (reference number PEM/93/06) with the European Commission's Directorate-General ("DG") XIV (Fisheries) by which it had undertaken to carry out research into "The Physical Interaction between Grey Seals and Fishing Gear". The complainant was the responsible scientist on this research contract.

According to Article 3 ("Reports and documents") of the contract, the tasks carried out by the contractor in performance of this contract were to be the subject of reports drawn up in accordance with Annex III. The latter detailed in particular how the final report had to be set out and specified that the draft (final) report had to be submitted to the Commission by a certain date. Annex III further stipulated: "The Commission will then either notify its acceptance to the Contractor or will send him its comments. Within one month of receiving any comments from the Commission, the Contractor will send the Commission the definitive report, which will either take account of these comments or will put forward alternative points of view. (…)"

The draft final report was accepted by the Commission in April 1997. According to the complainant, some weeks later the Board had received instructions from its parent civil service authority, the Department of the Marine & Natural Resources, to carry out substantial changes to the draft. Since the complainant had been unwilling to do so, he had considered that his position had become untenable and had resigned from the Board.

About a year later, the report was published. According to the complainant, it had been very substantially altered. The main findings of the draft final report had been either deleted, negated or diluted. The complainant considered that these changes were not allowed under the contract. He claimed that no explanation for what happened had yet been offered.

On 8 May 2002, the complainant turned to the Ombudsman (complaint 836/2002/GG). In his decision of 27 May 2002, the Ombudsman informed the complainant that he was unable to deal with this complaint on the grounds that the complainant had not yet made the appropriate prior approaches to the Commission.

The complainant then wrote to the Director-General of DG Fisheries at the European Commission on 13 June 2002 asking for explanations. By the time he decided to renew his complaint to the Ombudsman in September 2002, the complainant had received neither a reply nor an acknowledgement of receipt regarding this letter.

In his new complaint (1574/2002/GG), the complainant in substance criticised (1) the fact that the Commission had allowed the Board to make substantial changes to the report as compared to the draft report that had been accepted by the Commission and (2) the Commission's failure to reply to his letter of 13 June 2002 asking for an explanation as to why these changes had been allowed.

In its opinion on this complaint, the Commission noted that it was not common but that it was not unknown for a final report to differ from a draft final report, although the latter had been accepted by the Commission. In the Commission's view, it was after all the responsibility and duty of the contractor (i.e., the Board) to deliver the final report in the form it saw as appropriate. The Commission noted that it did not wish to intervene in such a process.

In his decision on complaint 1574/2002/GG, the Ombudsman came to the conclusion that the Commission's view according to which it was the responsibility and duty of the contractor to deliver the final report in the form it saw as appropriate appeared to be reasonable and that no maladministration could therefore be found with regard to this aspect of the complaint. The Ombudsman did however make a critical remark in so far as the Commission's failure to reply to the complainant's letter was concerned.

The new complaint

In a letter submitted in April 2003, the complainant asked the Ombudsman to reconsider his decision on complaint 1574/2002/GG in so far as the main issue was concerned. The complainant's letter was therefore treated as a new complaint.

In this new complaint, the complainant submitted that the final report was a censored version of the draft final report. In order to support this view, the complainant noted in particular that the draft final report had concluded that 17 tons of fish damaged by seals had been sampled whereas the corresponding conclusion in the final report had merely stated that damage to fish could be ascribed to large predators such as seals or conger eels. According to the complainant, there had been no scientific evidence to suggest that any animal other than seals had caused this damage and the evidence that seals were the cause of the damage had been more than reasonable. The complainant argued that the message of the draft final report would have been controversial, and that this was the reason why its conclusions had been changed in the final report.

The complainant submitted a substantial number of documents to support his case. Some of these new documents had been obtained from the Commission following a request for access to copies of all correspondence that had been exchanged between the Commission and the Board in relation to the contract between April 1997 and the date of the Commission's acceptance of the final report in 1998. For the first time, the complainant also provided copies of the draft final report and the final report themselves.

From these documents, the following facts emerge:

In a letter to the Commission dated 2 June 1993 regarding the study to be carried out, the complainant noted: "Misinterpretation of these data by protectionist groups, based on their historical performance, is quite possible". The Board's programme for the study noted that it was hoped "that the causative agents of damaged fish in gillnets and tangle nets will be clearly established".

On 28 March 1994, the European Parliament's Committee on Agriculture, Fisheries and Rural Development submitted a report on the interactions between seals and fisheries (A3-0186/94). The corresponding motion for a resolution called for research to be carried out about the operational interactions between marine mammals and fisheries, requested "that an impartial structure, free of pressure from vested interest groups, be established to determine a scientific framework for addressing marine mammal/fisheries interactions in European waters" and congratulated the Commission for having recently approved the research project concerned by the present complaint. The European Parliament adopted this resolution on 6 May 1994.[77]

[77] OJ C 205/553 of 25 July 1994.

The explanatory statement included in the said report contains the following statements: "Evidence exists which suggests that protectionist NGO values have influenced scientific research in the field of marine mammal/fisheries interactions over the past two decades. (…) The fisheries case has been largely ignored and research effort has focused almost exclusively on the effects of fisheries on marine mammals, not the other way around. This effectively amounts to a form of scientific censorship. (…) Nowhere else has this censorship been more dramatically demonstrated than in the field of seal/fisheries interactions. (…)".

On 16 December 1996, the complainant asked for an extension of the time for submitting the final report from the end of 1996 until the end of February 1997. In its reply of 14 January 1997, the Commission noted that it had accepted this request and that the draft final report had to be submitted "no later than end February 1997".

When submitting the draft final report to the Commission on 4 March 1997, the complainant noted that "some minor modifications" might still be necessary. In a fax dated 21 May 1997, the complainant explained that there was a "number of typographical and grammatical errors" in the draft final report and that he would like to amend these in the final report. In a letter of 20 August 1997, the complainant informed the Commission that he would "not now be making any amendments to the Draft Final Report, which was accepted by the Commission five months ago".

In a letter to the Board of 15 December 1997, the Commission pointed out that the draft final report had been approved and accepted by the Commission as satisfactory. The Commission noted, however, that it was still waiting for the final cost statement which was necessary to enable it to make the final payment and to close the financial file for the project.

On 7 January 1998, the Board stated in reply that it hoped to be able to complete the final cost statement by mid-February. The Board further noted that it was making "the corrections to the final report mentioned in our fax of the 21st of May last".

In its reply of 9 January 1998, the Commission took note of the Board's statement that the final cost statement for the project would be sent the following month.

On 1 April 1998, the Board submitted the final cost statement to the Commission.

On 28 April 1998, the Board sent the "definitive final report" regarding the project to the Commission.

The complainant also submitted a form with the heading "Certificat de dépôt et attestation de service fait d'une étude ou enquête effectuée pour la Commission". This form contained administrative information relating to the study prepared by the Board. The stamp and signature of the Commission service concerned ("Bureau Enregistrement des Etudes") are dated 17 June 1997. Section G of the form concerns the question as to whether the results of the study could be spread outside the Commission. The answer "yes" ("oui") is indicated.

In his new complaint, the complainant thus in substance alleged that (1) the Commission had been negligent in not seeking reasons or explanations for the changes made by the Board and that (2) the changes that had been made should not have been allowed.

The complainant expressed the hope that he would receive an apology for what had occurred and assurances that efforts would be made to ensure that the like would not happen again.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

While it might be argued that the Commission should not have accepted an ill-based and unjustified scientific conclusion, this could not be equated with maladministration.

As was explained in the Commission's response to complaint 1574/2002/GG, the Commission's main parameter leading to acceptance or rejection of a report, be it draft or final, was whether the terms of the contract had been observed. This had been the case with the present contract. Wherever the Commission saw deficiencies in the scientific analysis of the results of the work carried out under the contract, appropriate comment would be made to and modification would be requested of the contractor. However, this had not been the case for this contract either in the draft report or in the final report. If the contractor wished to alter conclusions resulting from the scientific analysis in its final report it should be and was entitled to do so.

As regards contractual aspects, perusal of a copy of the contract and added annexes did not reveal any capacity for the Commission "to prevent what happened from occurring"[78]. As regards *procedural aspects*, it was not common but it was not unknown for a final report to differ from an associated draft final report, even though the latter had been accepted by the Commission. It was, after all, the responsibility and duty of the contractor to deliver the final report in a form which it saw as appropriate. The Commission did not wish to intervene in such a process.

The Commission had no capacity to reject a final report because it considered it to be scientifically incorrect or for any other reason other than failure to comply with the conditions of the contract.

Otherwise, the lengthy supporting documents provided by the complainant referred to possible or purported interactions between various administrative or governmental bodies within Ireland over which the Commission had no influence, as well as to differences in interpretation of data between the complainant and the person who drafted the ultimate final report and the report of the European Parliament, the resolutions of which were not binding upon the Commission.

The complainant's observations

In his observations, the complainant maintained his complaint and made the following further comments:

The Commission official in charge of the project had been informed by telephone on numerous occasions between May 1997 and September 1997 how the project had been interfered with. In a letter to this official sent on 3 November 1997,[79] the complainant had pointed out that he had discovered that the Ministry "wished to exercise editorial control over the final report before it was published".

In his letter of 11 August 2003, the complainant concluded by saying that he had originally sought an apology and assurances that the like would not happen again, but that he now wished to see the original draft final report published with an official explanation as to why this was being done. At the very least he was seeking to be exonerated for refusing to be a party to scientific censorship and to have his reputation restored.

In his subsequent letter of 17 August 2003, however, the complainant explained that upon reflection he wished to await the outcome of the Ombudsman's inquiry first.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. By letter of 8 September 2003, the Ombudsman therefore asked the Commission to grant him access to its file.

On 8 October 2003, the Ombudsman's services inspected the Commission's file. The Commission officials in charge of the file explained that when a file concerning a study was closed, not all the

78 The reference here is to the text of complaint 1574/2002/GG.

79 A copy of this letter, which the complainant had obtained from the Commission further to a request for access to documents, was submitted to the Ombudsman.

documents were kept. That was why the file did not contain the draft final report that had been superseded by the final report. The Commission officials also expressed the view that there must have been telephone conversations between the Commission and the contractor in which the Commission had asked for the submission of the final report. However, no record of any such telephone conversation had been put on the file.

The Commission's file inspected by the Ombudsman's services contained a manuscript note that was dated "18 March" and that appears to have been drawn up by Mr O., who at that time worked in DG Fisheries. Although this note does not explicitly indicate its subject-matter, it appears likely that its contents refer to the draft final report.[80] This notes gives the impression that its author considered that the results of that report were controversial.

THE DECISION

1 Preliminary remark

1.1 The present complaint concerns a contract (reference number PEM/93/06) between the Irish Sea Fisheries Board (an Irish authority) and the European Commission's Directorate-General (DG) XIV (Fisheries) by which the Commission undertook to provide part of the cost of research into "The Physical Interaction between Grey Seals and Fishing Gear". The complainant, who was working for the Board at the time and who was the responsible scientist on this research contract, alleges that the draft final report was substantially changed due to the interference of another Irish authority, the then Department of the Marine & Natural Resources, after it had been accepted by the Commission.

1.2 The European Ombudsman is unable to deal with complaints directed at institutions or bodies other than institutions or bodies of the European Community. He would therefore be unable to deal with any complaints against Irish authorities. The present complaint, however, is directed at the Commission, and the present decision therefore only deals with the allegations against the European Commission.

2 The allegation that the Commission should not have allowed the changes that were made by the Board

2.1 The complainant alleges that the Commission should not have allowed the changes that were made by the Board. According to him, the main findings of the draft final report that had been submitted in March 1997 were either deleted, negated or diluted in the final report that was submitted by the Board in April 1998.

2.2 The Commission takes the view that it is the contractor's responsibility to deliver the final report in the form which it considers appropriate and that the Commission does not wish to intervene in such a process. While it might be argued that the Commission should not have accepted an ill-based and unjustified scientific conclusion, this could not be equated with maladministration. According to the Commission, perusal of the contract did not reveal a requirement such as the one alleged by the complainant.

2.3 The Ombudsman notes that the Commission does not dispute the complainant's allegation that substantial changes were made to the draft final report that the Commission had accepted.

2.4 However, the Ombudsman considers, as he already set out in his decision on complaint 1574/2002/GG, that the Commission's view according to which it was the responsibility and duty of the contractor to deliver the final report in the form it saw as appropriate appears to be reasonable.

[80] The note refers to the "EU logo on the cover". The draft final report that had been submitted on 4 March 1997 does indeed show the EU logo on its cover.

2.5 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as this allegation is concerned.

3 Alleged negligence on the part of the Commission by not seeking reasons or explanations for the changes made by the Board

3.1 The complainant alleges that the Commission was negligent in not seeking reasons or explanations for the changes made by the Board.

3.2 The Commission points out that its main parameter leading to acceptance or rejection of a report, be it draft or final, is whether the terms of the contract are observed. This was the case with the present contract. Wherever the Commission sees deficiencies in the scientific analysis of the results of the work carried out during the contact, appropriate comment will be made to and modification will be requested of the contractor. However, this was not the case for this contract either in the draft report or in the final report. If the contractor wished to alter conclusions resulting from the scientific analysis in its final report it should be and was entitled to do so.

3.3 The Ombudsman considers that it is good administrative practice to act consistently.[81]

3.4 In the present case, the Commission examined and accepted the draft final report in April 1997. In the light of the provisions of the relevant contract, this meant that the Board did not have to carry out any further work in relation to this study apart from submitting a final cost statement.

3.5 The Ombudsman considers that two different aspects can be distinguished in so far as the Commission's obligation to act consistently is concerned.

3.6 First, if the Commission considered that the contractor still had to provide the final report, one would have expected the Commission to have sent reminders to the Board asking for the final report to be submitted. However, the reminders the Commission did send only refer to the final cost statement, but not the report. This is all the more noteworthy since the (extended) deadline by which the final report should have been submitted (end of February 1997), had long since expired. Even if there should have been (unrecorded) telephone conversations between the Commission and the contractor, the Ombudsman finds it hard to believe that the Commission should have failed to send a written reminder but simply waited until the final report was submitted in April 1998, more than a year after it had accepted the draft final report.

3.7 Second, the Commission stresses that where it sees deficiencies in the scientific analysis of the results of the work carried out under a contract, these deficiencies will be pointed out to the contractor. This means that the Commission examines a report to ascertain as to whether there are any such deficiencies and does not limit itself to rubber-stamping the report submitted to it. It further emerges from the evidence submitted to the Ombudsman that the Commission was aware of the fact (a) that the contents of the draft final study were potentially controversial, (b) that the Irish Ministry wished to exercise editorial control over the final report before it was published, (c) that the final report was handed in more than a year after the Commission had approved the draft final report and (d) that this final report contained substantial changes as compared to the draft final report. In the light of these circumstances, one would have expected that the Commission should have carefully examined the final report. However, there is nothing to indicate that the Commission carried out any such examination after it had received the final report in April 1998.

3.8 In these circumstances, the Ombudsman takes the view that the the Commission should have examined the substantially modified final report submitted to it in April 1998, more than a year after it had accepted the draft final report. By neglecting to do so, the Commission failed to comply with the requirement to act consistently. This was an instance of maladministration and the Ombudsman makes a critical remark below.

81 Cf. Article 10 (1) of the European Code of Good Administrative Behaviour, available on the Ombudsman's website (http://www.euro-ombudsman.eu.int.).

4 The complainant's claims

4.1 In his complaint, the complainant expressed the hope that he would receive an apology for what had occurred and assurances that efforts would be made to ensure that the like would not happen again. In his letter of 11 August 2003, the complainant concluded by saying that he had originally sought an apology and assurances that the like would not happen again, but that he now wished to see the original draft final report published with an official explanation as to why this was being done. At the very least he was seeking to be exonerated for refusing to be a party to scientific censorship and to have his reputation restored.

4.2 In his letter of 17 August 2003, however, the complainant explained that upon reflection he wished to await the outcome of the Ombudsman's inquiry first.

4.3 In these circumstances, the Ombudsman considers that there is no need to deal with the claims originally submitted by the complainant.

5 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman takes the view that the the Commission should have examined the substantially modified final report submitted to it in April 1998, more than a year after it had accepted the draft final report. By neglecting to do so, the Commission failed to comply with the requirement to act consistently. This was an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

ALLEGED FAILURE TO ANSWER QUESTIONS REGARDING TENDER SPECIFICATIONS

Decision on complaint 949/2003/IJH against the European Commission

In May 2003, a complaint was made to the Ombudsman on behalf of a company concerning the Commission's call for tenders for translation services (AO2003), which was published on 17 April 2003.

According to the complainant, the relevant facts are, in summary, the following:

The complainant found a certain lack of clarity in the tender specifications, as regards mainly the supporting documents to be submitted with the tender, and the answers on the Commission's FAQ website[82] only spread greater confusion. He therefore sent the designated contact person within the Commission several e-mails asking for clarifications. He did not, however, receive any satisfactory answers.

The complainant annexed to his complaint copies of the e-mails to the Commission in which he asked for clarification. It appears from these e-mails that the alleged confusion between the tender specifications and the FAQ web-site mainly concerns the extent to which copies of supporting documents had to be certified.

In substance, the complainant alleges that:

82 That is, a web page giving answers to Frequently Asked Questions.

(i) the Commission's FAQ website contained information which was unclear and possibly inconsistent with the tender specifications; and

(ii) the Commission failed to answer his questions concerning the tender specifications.

THE INQUIRY

The European Commission's opinion

In its opinion, the Commission made the following comments:

In one of his e-mails to the Commission, the complainant had asked the following questions regarding sub-contractors: "For the purposes of the tender are we obliged to send certified/notarised details of every possible translator we could use for a particular project? We are able, in the context of our application to inform ourselves of our procedures in selecting suitable translators, and could swear to this officially, and could also certify that all translators used on any project would comply with your minimum qualification requirement. Would this be sufficient? We could also send illustrative information on likely translators but would these all have to be certified?" The complainant had also asked what legal relationship would bind his company's sub-contractors to the Commission. According to the complainant, the above was not clear from the supplied information.

The tender specifications, and more specifically paragraph 2.3.3.2., were unambiguous as regards possible requirements. No certified information on staff or on sub-contractors was required. This fact was confirmed in the FAQ website's answer to the following questions: *"Do the photocopies of the degree certificates also have to be certified? Do the two copies of the tender also have to be certified? Who should the copies be certified by?"* The answer stated, among other things, that *"unlike other supporting documentation, the copies of the degree certificates do not have to be certified"*. Furthermore, paragraph 2.3.3.2. stated that *"in any event, the principal contractor shall assume sole liability for the performance of the contract"*.

The complainant had also made remarks as regards the requirement of certified copies in general and specifically the answer to a certain FAQ stating *"unlike other supporting documentation, the copies of the degree certificates do not have to be certified. One original bid must be submitted, including originals or certified true copies. The two copies should simply be photocopies of the original bid, including the annexes. The certification must be done by an appropriate authority, e.g. a solicitor or notary. Self-certification is not acceptable."* The complainant considered this answer to be ambiguous, wondering which were the certified documents or originals that had to be included if copies of degrees did not have to be certified.

The tender specifications were unambiguous. Paragraph 2.1.1. listed six possible grounds for exclusion from participation. The answer to the FAQ clearly referred to this paragraph of the tender specifications, which unequivocally listed the documents for which an original or a certified true copy had to be provided.

The complainant had further asked whether a sworn statement before a notary would be sufficient to prove that his company was not bankrupt or subject to bankruptcy procedures, since it was not possible to obtain a Certificate of Good Conduct in Britain.

The answer to this question was found in the last sentence of paragraph 2.1.1. in the tender specifications, which said that "where no such certificate is issued in the country concerned, it may be replaced by a sworn or solemn statement made by the tenderer before a judicial or administrative authority or a notary in his country of establishment".

As a general comment on the allegation of failure to answer questions, the Commission further points out that the policy regarding contacts between the tenderers and the awarding authorities

was described in section 1.12 of the tender specifications[83]. Furthermore, since the answers to the complainant's questions could all be found in the tender specifications, with additional details on certain questions provided on the FAQ website, and since no other tenderer had come forward with any of the complainant's questions, no action was undertaken. This approach was in line with letting the principle of safeguarding a level playing field for all tenderers prevail over the Commission's policy to reply to all requests for information.

The complainant's observations

The complainant's observations made, in summary, the following points:

The fact that there is no requirement of certified information on staff or sub-contractors in paragraph 2.3.3.2. in the tender specifications does not necessarily imply that no such certified information is required if such a requirement is suggested elsewhere. In reply to a certain FAQ, it was stated that *"unlike other supporting documentation, the copies of the degree certificates do not have to be certified. One original bid must be submitted, including originals or certified copies"*. One interpretation of this juxtaposition, for which a clarification could reasonably be requested, is that as far as degree certificates are concerned, certified copies are not required, only originals.

Furthermore, paragraph 2.1.1. in the tender specifications was ambiguous since the final sentence clearly referred back to the previous sentence which in turn referred to sub-paragraph (d) alone: *"the tenderer must also provide proof that he has fulfilled these obligations in the form of a recent certificate"*. It was not at all clear that this alternative evidential method also applied to sub-paragraphs (a), (b) and (e) and the answer to the complainant's question could not necessarily have been inferred from the wording of the paragraph. Furthermore, in a subsequent tender procedure, the Commission did explain which sub-paragraphs in paragraph 2.1.1. were covered by the last sentence of that paragraph.

Finally, the justification put forward by the Commission for not responding to the complainant's questions, i.e. that no other tenderer had asked similar questions and that this policy was in line with the principles of safeguarding a level playing field, is absurd. No advantage over other tenderers could possibly have resulted from clarifications being published. All tenderers would have benefited equally from further explanations.

THE DECISION

1 The FAQ website's alleged unclearness and inconsistency with the tender specifications

1.1 The complaint concerns the Commission's call for tenders for translation services (AO2003). The complainant alleges that the FAQ website, read together with the tender specifications, made it unclear whether certified information on sub-contractors had to be submitted. It was also generally unclear which copies of supporting documents had to be certified, especially if copies of diplomas did not have to be certified.

1.2 The Commission argues that the tender specifications were unambiguous as regards the requirement of certified information and copies. Furthermore, the answer to the FAQ in question only confirmed what was already clear from the tender specifications. Consequently, copies of degrees and diplomas did not have to be certified, whereas, e.g. copies of evidence as required under paragraph 2.1.1. of the tender specifications had to be certified.

83 The Ombudsman understands this reference to section 1.12 as being to that part of that section stating: "Any contact between the tenderers and the awarding authorities concerning this call for tender is prohibited, except under exceptional circumstances and under the following conditions: (a) before the closing date for the submission of tenders: – at the instance of tenderers: the Commission may communicate to interested parties only additional information solely for the purpose of clarifying the nature of the contract. /.../ Prospective tenderers are required to submit any questions exclusively by e-mail to [the designated] person. Questions should be clear and concise and refer explicitly to the relevant point in the specification. They should be in English, French or German, and the replies will be posted on the website /.../ in these three languages. /.../"

1.3 The Ombudsman points out that information concerning documents that have to be submitted with a tender should be clear and unambiguous, especially since an incomplete tender in most cases cannot be remedied after the deadline for submissions. However, in view of the wording of the FAQ to which the information in question constituted an answer, the Ombudsman does not consider that the information on the FAQ website was unclear or inconsistent with the tender specifications. The Ombudsman therefore finds no maladministration by the Commission as regards this part of the complaint.

2 The Commission's alleged failure to answer the complainant's questions

2.1 The complainant alleges that the Commission did not answer his questions regarding the tender specifications.

2.2 The Commission argues that no action was undertaken because the answers to the complainant's questions could all be found in the tender specifications, with additional details provided on the FAQ website. The Commission also argues that no other tenderer had come forward with any of the complainant's questions and that its approach was in line with letting the principle of safeguarding a level playing field for all tenderers prevail over its policy to reply to all requests for information.

2.3 The Ombudsman first points out that his finding in 1.3 above (i.e. that certain information concerning the call for tenders in question, in its specific context, cannot be considered inconsistent or unclear) does not imply that there could be no legitimate reason for potential tenderers to ask for additional clarification. Indeed, the language of section 1.12 of the tender specifications[84] could reasonably lead tenderers to expect that the Commission would answer all questions meeting the criteria specified therein and that a level playing field would be safeguarded by publication of answers on the FAQ website.

2.4 As regards the questions submitted by the complainant, the Ombudsman notes that the Commission sent the complainant an e-mail to the effect that the requested information could already be found in the tender specifications and on the FAQ website. In the Ombudsman's view, this was an adequate answer to the complainant's question concerning the legal relationship between his company's subcontractors and the Commission, since this information could be found easily in the documents mentioned by the Commission. Furthermore, as regards the interpretation of paragraph 2.1.1. of the tender specifications, the complainant appears to have asked the Commission whether a sworn statement would be sufficient to show that his company was not bankrupt. It was only in the course of the current inquiry that the complainant elaborated his question into how to interpret the last sentence of paragraph 2.1.1. in relation to the sub-paragraphs. The Ombudsman finds reasonable the Commission's response to the complainant's original question, i.e. that the answer could be found sufficiently easily in paragraph 2.1.1 and that to publish a new answer on the FAQ website was therefore unnecessary.

2.5 The complainant's questions regarding details on sub-contractors did not, however, only concern the possible requirement of certified copies of diplomas, which was the subject matter of the answer on the FAQ website referred to by the Commission. The complainant also asked, in summary, whether information on all possible translators/sub-contractors was needed, or if it was enough to explain the procedure used to select those translators. The Ombudsman does not consider that the answer to this question could easily be found in the tender specifications and the FAQ. Furthermore, as regards the complainant's question as to which certified documents or originals had to be submitted if copies of degrees did not have to be certified, the Ombudsman does not consider the Commission's argument that the FAQ website answered this question to be justified.[85]

84 See footnote 83 above.

85 The answer stated: "Unlike other supporting documentation, the copies of the degree certificates do not have to be certified. One original bid must be submitted, including originals or certified true copies. The two copies should simply be photocopies of the original bid, including the annexes. The certification must be done by an appropriate authority, e.g. a solicitor or notary. Self-certification is not acceptable."

2.6 In view of the above, the Ombudsman considers that, on the basis of section 1.12 of the tender specifications[86], the complainant could reasonably have expected the Commission to publish answers to two of his questions on the FAQ website. It is good administration to act in accordance with reasonable expectations created by the Institution's conduct.[87] The Commission's failure to provide and publish such answers was therefore an instance of maladministration and the Ombudsman will make a critical remark in this regard.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

On the basis of section 1.12 of the tender specifications, the complainant could reasonably have expected the Commission to publish answers to two of his questions on the FAQ website. It is good administration to act in accordance with reasonable expectations created by the Institution's conduct.[88] The Commission's failure to provide and publish such answers was therefore an instance of maladministration.

Given that this aspect of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

3.4.4 The Economic and Social Committee

ALLEGATION THAT COMPLAINANT PROVIDED "FALSE INFORMATION" IN FRAMEWORK OF RECRUITMENT

Decision on complaint 852/2003/OV against the Economic and Social Committee

THE COMPLAINT

The background of the present complaint is the following:

On 14 and 22 May 2002, the complainant made a complaint to the European Ombudsman (ref. 906/2002/OV) against the Economic and Social Committee (hereafter "ECOSOC") for having terminated his recruitment procedure.

The complainant had participated in the European Parliament's competition PE/86/A for English language Assistant Administrators. He was informed by letter of 29 July 1999 from the head of the Parliament's competition service that his name was not included in the reserve list. However, the complainant understood the letter to mean that he had passed the competition. In January 2002, he therefore applied to ECOSOC for a post as an official. In February 2002, ECOSOC made a job offer to him and the complainant took the medical examination. However, in March 2002, ECOSOC informed the complainant that they could not recruit him, as he had not succeeded in the European

86 See footnote 83 above.

87 Article 10 of the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: http://www.euro-ombudsman.eu.int).

88 Article 10 of the European Code of Good Administrative Behaviour adopted by the European Parliament in its resolution C5-0438/2000 of 6 September 2001 (available on the Ombudsman's website: http://www.euro-ombudsman.eu.int).

Parliament's competition and had not been placed on the reserve list. In May 2002, the complainant complained to the Ombudsman alleging that ECOSOC had unjustifiably suspended his recruitment procedure.

On 16 December 2002, the Ombudsman closed his inquiry and came to the conclusion that there had been no maladministration by ECOSOC. As the complainant had made new allegations in his observations of 30 November 2002, the Ombudsman informed the complainant that he could submit a new complaint.

On 30 April 2003, the complainant wrote back to the Ombudsman and made a new complaint, which can be summarised as follows:

In its opinion on complaint 906/2002/OV, ECOSOC stated that the procedure for the recruitment of the complainant was initiated on the basis of *"false information provided by the complainant"*. The provision of false information is a serious offence, as it implies the wilful withholding or altering of facts with a view to mislead. The complainant considers that this allegation against him is unjustified, as he acted in good faith and voluntarily provided ECOSOC with all the relevant information in his possession. Moreover, by making this allegation, ECOSOC has infringed Article 12 ("courtesy") of the European Code of Good Administrative Behaviour. ECOSOC could have politely pointed out to the complainant that his actions were based on an unfortunate misunderstanding and could have apologised for its failure to identify this misunderstanding.

In summary, the complainant alleges that ECOSOC's statement that he provided false information is unfounded and constitutes an act of maladministration. He claims a full retraction, in writing, of the statement and an apology, also in writing, for having wrongfully called into question his personal honesty and integrity.

THE INQUIRY

The Economic and Social Committee's opinion

ECOSOC firstly observed that, in his decision of 16 December 2002, the Ombudsman concluded that there had been no maladministration by ECOSOC, as the complainant had not been put on the reserve list.

ECOSOC then stated that there was no general inconsistency, or any slander or accusation to be read from the wording of the statements in its opinion in case 906/2002/OV. These statements were in no way libellous.

The complainant has used the potential similarity between "passing a competition" and "becoming a successful candidate" for a post as the basis for his entire defence strategy for both complaints submitted to the Ombudsman. This strategy contravenes Articles 28 d and 30, and Annex III of the Staff Regulations. The complainant was not entirely truthful towards the ECOSOC officials who first contacted him to initiate the appointment procedure. He played on the potential ambiguity of the concepts of "passing a competition" and "becoming a successful candidate", and the persons responsible for his recruitment understood that he had been added to the reserve list. The complainant was himself the source of the incomplete information provided to ECOSOC and must bear the logical consequences of his disloyal action. ECOSOC has in no way sought to discredit the complainant, nor committed any slander against him.

ECOSOC further observed that, from a procedural point of view, the complaint should not be admitted because a) the complainant has submitted his complaint as a response to the statements made by ECOSOC when exercising its right to a fair hearing, and the question which arises here is thus a problem of a procedural nature that must be resolved as part of the same proceedings used to reach a decision on the initial complaint, and b) the complainant has not made prior administrative approaches in relation to this new complaint.

ECOSOC concluded that the complaint should therefore be declared inadmissible or, alternatively, rejected.

The complainant's observations

The complainant maintained his complaint and made nine pages of observations which can be summarised as follows: He regretted that ECOSOC did not show any intention to meet his request for a written retraction of the allegation that he provided false information and for a written apology. He maintained his request and was open for a friendly solution. The complainant hoped that the Ombudsman would take note of the arrogance and disrespect shown by ECOSOC in further aggravating an already serious situation.

As regards the admissibility, the complainant observed that the Ombudsman's decision to admit the present complaint is perfectly in line with the Ombudsman's interpretation of his procedures according to which, in case of any doubt concerning whether prior administrative approaches have been made, such doubt should go in favour of the complainant. Moreover, the facts underpinning the present complaint were well known to ECOSOC from complaint 906/2002/OV.

The complainant reiterated that his view that he had been successful in open competition PE/86/A was held legitimately and in good faith on the basis of the facts available at the time. He was thus acting in good faith when he claimed that he had been successful in his letters to ECOSOC.

ECOSOC at no point retracted its allegation that the complainant provided it with false information, nor did it provide any facts to substantiate the allegation. Instead, ECOSOC aggravated the situation by claiming that the complainant was not entirely truthful towards the ECOSOC officials, that he played on the potential ambiguity of the concepts, that he was himself the source of the incomplete information provided to ECOSOC, and that he should bear the consequences of his disloyal action. These additional allegations are as unfounded and as unsubstantiated as the allegation that is the subject of the present complaint. ECOSOC was again acting deliberately to discredit the complainant by making libellous allegations against him.

If officials specialised in staff matters could, on the basis of copies of letters of the European Parliament concerning his candidature, come to the conclusion that the complainant was eligible for recruitment as an official, then surely a European citizen with no detailed knowledge of an institution's recruitment procedures might be forgiven for coming to the same conclusion in good faith. The responsibility for knowing the recruitment procedures rests with the Community institutions and not with the citizen. The complainant discharged any personal responsibility by providing ECOSOC with all the relevant information, including documentary evidence.

THE DECISION

1 The admissibility of the complaint

1.1 In its opinion, ECOSOC questions the admissibility of the complaint on two grounds: a) the question which arises is a problem of a procedural nature that must be resolved as part of the same proceedings used to reach a decision on the initial complaint, and b) the complainant has not made prior administrative approaches in relation to this new complaint.

1.2 Article 2.4 of the Statute of the European Ombudsman[89] provides that "a complaint (…) must be preceded by the *appropriate* administrative approaches to the institutions and bodies concerned". In his Annual Report for the year 1995, the Ombudsman stated, with regard to the interpretation of the criteria of admissibility, that *"an unduly technical or legalistic approach to the admissibility of complaints about possible instances of maladministration by Community institutions or bodies would be*

[89] Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ L 113/15 of 4 May 1994.

inappropriate. If there is any doubt, for example, concerning whether there has been sufficient prior contact (…), 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".[90]

1.3 The Ombudsman notes that the allegation that is the subject of the present complaint is closely linked to the matter which was examined in the framework of the inquiry into complaint 906/2002/OV. The complainant has for the first time complained about this allegation in the framework of this former complaint, namely in his observations on ECOSOC's opinion. ECOSOC has been informed of this, as the Ombudsman sent a copy of his decision of 16 December 2002 to ECOSOC, and the decision mentioned the allegation that is the subject of the present complaint.

1.4 On the basis of the above, the Ombudsman considers that the condition of "appropriate" prior administrative approaches is met in the present complaint. Requiring the complainant to contact ECOSOC again before complaining to the Ombudsman would have been inappropriate and unduly legalistic. The complaint is therefore admissible.

2 The statement that the complainant provided "false information" and the claim for a retraction of that statement

2.1 The complainant alleges that ECOSOC's statement in its opinion on complaint 906/2002/OV that he provided false information is unfounded and constitutes an act of maladministration. He claims that ECOSOC should fully retract the statement in writing, and apologise, also in writing, for wrongfully having called into question his personal honesty and integrity. The complainant argues that he acted in good faith.

2.2 ECOSOC argues that the complaint should be rejected as there was no general inconsistency, nor any slander or accusation to be read from the wording of the statements in its opinion in case 906/2002/OV. ECOSOC has in no way sought to discredit the complainant. The complainant played on the potential ambiguity of the concepts, was himself the source of the incomplete information provided to ECOSOC and must bear the logical consequences of his disloyal action.

2.3 The Ombudsman recalls that the complainant's application for a post at ECOSOC was based on the following text in the letter of the European Parliament's competition service of 29 July 1999 concerning the complainant's participation in open competition PE/86/A : *"I regret to inform you that it was not possible to include your name on the list of suitable candidates because, although you obtained the pass-mark in each of the tests and you obtained the required 60 % of the marks in all the written and oral tests, you are not among the 13 best candidates to whom the list of suitable candidates had to be restricted".* As stated in the Ombudsman's decision of 16 December 2002 on complaint 0906/2002/OV, it is clear from this phrase – starting with "I regret to inform you" – that the complainant had not succeeded in the competition. The complainant's belief that he passed the competition and could apply for a post at ECOSOC was thus wrong.

2.4 In its opinion on complaint 906/2002/OV, ECOSOC stated that the complainant provided "false" information. The Ombudsman notes that, amongst the normal meanings of the word false, is "deliberately untrue". In its opinion on the present complaint, ECOSOC has not provided any evidence to show that the complainant deliberately provided untrue information. ECOSOC could, in its opinion on the present complaint, have withdrawn and apologised for any suggestion that the complainant did not act in good faith. Instead, ECOSOC has made further insinuations of bad faith – without substantiating them – by stating that the complainant *"has used the potential similarity between these two notions as the basis for his entire defence strategy", "played on the potential ambiguity of concepts" and "must now bear the logical consequences of his disloyal action."*

2.5 When a Community institution or body considers that it has acted correctly and that it cannot be blamed for maladministration, then it is useful that the institution or body explain its actions and give reasons for them. This usually promotes understanding of the actions of the administration.

[90] Annual Report of the Ombudsman 1995, pages 20-21.

Improper wordings only provoke and support a negative impression of the institution concerned and of the Community administration at large[91]. The above phrases in ECOSOC's opinion show that it has responded in a language different from that normally used by Community institutions and bodies in their opinions to the Ombudsman.

2.6 Principles of good administration require that institutions be correct and courteous in their relations with the public. If an error occurs, which negatively affects the rights or interests of a member of the public, the institution shall apologise for it and endeavour to correct the negative effects resulting from this error[92]. In the present case, ECOSOC has failed to comply with the duty to act courteously. This constitutes an instance of maladministration and the Ombudsman therefore makes the critical remark below.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

Principles of good administration require that institutions be correct and courteous in their relations with the public. If an error occurs, which negatively affects the rights or interests of a member of the public, the institution shall apologise for it and endeavour to correct the negative effects resulting from this error[93]. In the present case, ECOSOC has failed to comply with the duty to act courteously. This constitutes an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, and considering the position adopted by ECOSOC in its opinions on the present case and case 906/2002/OV, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

3.4.5 The European Anti-Fraud Office

UNFOUNDED ALLEGATIONS OF BRIBERY AGAINST JOURNALIST

Decision on complaint 1840/2002/GG against the European Anti-Fraud Office

This is a short summary of the decision which could not be published in full due to its length. The summary deals with only one aspect of the case, which also involved other allegations. The complete text of the decision in German and English can be found on the Ombudsman's website at :

http://www.euro-ombudsman.eu.int/decision/en/021840.htm

The complainant is the Brussels correspondent of the *Stern*, a German weekly newspaper. *Stern* published two articles about alleged irregularities that had been raised by an EU official, Mr Paul van Buitenen, and the related inquiries carried out by the European Anti-Fraud Office (OLAF). These articles were based on confidential documents obtained by the complainant. OLAF subsequently published a press release saying that "a" journalist had obtained a number of documents relating to this inquiry and that it had decided to open an internal inquiry into, amongst other things, the allegation that the relevant documents had been obtained "by paying a civil servant." On 4 April

91 See the Ombudsman's decision of 13 March 2002 in the own initiative inquiry OI/1/2002/OV concerning CEDEFOP, Annual Report of the Ombudsman 2002, p. 204. See also at http://www.euro-ombudsman.eu.int/decision/en/02oi1.htm.

92 Article 12.1 and 12.3 of the European Code of Good Administrative Behaviour.

93 Article 12.1 and 12.3 of the European Code of Good Administrative Behaviour.

2002, the newspaper *European Voice* quoted an OLAF spokesman as having said that OLAF "had been given *prima facie* evidence that a payment may have occurred".

The complainant considered that OLAF had acted wrongly by making public in a press release and in its comments to *European Voice* allegations of bribery that had to be understood as directed at him and his newspaper.

During the Ombudsman's inquiry, OLAF argued that the decision to announce that an internal investigation had been opened was taken after careful consideration. Given the serious implications of the possibility that an OLAF official was responsible for the illegal disclosure of confidential information and personal data, OLAF's Director decided to announce publicly and in the most transparent way possible that OLAF was investigating these breaches in order to identify those responsible, and to prevent any such further violations. Moreover, on the basis of specific information which OLAF had received, it had reason to believe that, on at least one occasion, payment had been made to an OLAF official or other EU official for the supply of confidential documents. Enquiries as to whether this had in fact occurred were still ongoing. OLAF also argued that its reference to "a" journalist was neutral and did not implicate any specific individual.

After considering OLAF's opinion and the complainant's observations, the Ombudsman stated that it is good administrative practice to ensure, when taking decisions, that the measures adopted are proportional to the aim pursued. In particular, the administration ought to avoid restricting the rights of citizens when those restrictions are not in a reasonable relation with the purpose pursued by the action.[94] These standards ought to apply not only to decisions, but to the activity of administrations in general. They are therefore also relevant for the provision of information.

The Ombudsman welcomed in principle the fact that OLAF had decided to proceed in the "most transparent way possible". Such an approach is in conformity with the obligation of the institutions and bodies of the EU to take decisions as openly as possible (Article 1 of the Treaty on European Union). However, an insinuation of bribery is a serious allegation which is likely to tarnish the reputation of a journalist. Such insinuations must therefore not be made in public without a sufficiently serious basis that can be scrutinised publicly. The Ombudsman considered that OLAF had not established that publication of the suspicion of bribery was necessary for the purpose of its work and proportional to the aim pursued. He therefore made the following draft recommendation to OLAF, in accordance with Article 3 (6) of the Statute of the Ombudsman:

OLAF should consider withdrawing the allegations of bribery that were published and that were likely to be understood as directed at the complainant.

OLAF informed the Ombudsman that it accepted the draft recommendation and that it had implemented it by publishing a press release. The relevant passage in this press release reads as follows: "OLAF's enquiries have not yet been completed, but to date, OLAF has not obtained proof that such a payment was made."

The Ombudsman agreed with the complainant's view that this press release did not adequately implement the Ombudsman's draft recommendation. Instead of withdrawing the allegations of bribery, OLAF simply stated that "to date" it has not found sufficient evidence to support these allegations. In these circumstances, the action taken by OLAF is manifestly inadequate to remedy the instance of maladministration.

The Ombudsman considered that a critical remark could constitute adequate satisfaction for the complainant and that it was not therefore appropriate to submit a special report to the European Parliament.

The Ombudsman therefore closed the case with the following critical remark:

94 Cf. Article 6 of the Code of Good Administrative Behaviour, available on the website of the European Ombudsman (http://www.euro-ombudsman.eu.int).

By proceeding to make allegations of bribery without a factual basis that is both sufficient and available for public scrutiny, OLAF has gone beyond what is proportional to the purpose pursued by its action. This constitutes an instance of maladministration.

3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION

3.5.1 The Council of the European Union

COUNCIL GRANTS PARTIAL ACCESS TO ANNUAL REPORT OF CODE OF CONDUCT GROUP

Decision on complaint 573/2001/IJH (Confidential) against the Council of the European Union

THE COMPLAINT

The complaint was made by a chartered accountant. It was classified as confidential, at the complainant's request, in accordance with Article 2 (3) of the Statute of the Ombudsman.

The complainant contested the Council's refusal, under Council Decision 93/731, to grant access to Council document 13563/00, which is the second annual progress report from the Code of Conduct Group (business taxation) to the ECOFIN Council. The Council refused access to the document by reference to Article 4 (2) of Council Decision 93/731, in order to protect the confidentiality of the Council's proceedings.

The Ombudsman considered that the Council's decision to refuse access was tainted by maladministration because:

(i) the Council's reasoning was inadequate to explain its interest in the confidentiality of its proceedings as regards the document in question, or to demonstrate that disclosure of the document would seriously undermine the Council's decision-making process. The Ombudsman noted that the Council did not explain in what way the Code of Conduct Group's second annual report differs in nature from the first, which was published.

(ii) the Council failed to address the question of partial access. According to the case law of the Court the Council is obliged, in applying Decision 93/731, to examine whether partial access should be granted to information not covered by the exceptions.[95] Partial access is also expressly foreseen by Article 4 (6) of Regulation 1049/2001.

By decision dated 17 June 2002, the Ombudsman therefore addressed a draft recommendation to the Council in accordance with Article 3 (6) of the Statute of the European Ombudsman, to reconsider the application in accordance with Regulation 1049/2001[96], which replaced Council Decision 93/731.

95 Case C-353/99 P, *Council of the European Union v. Heidi Hautala*, [2001] ECR I-9565, para. 87.

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

The Ombudsman also took the view that the document in question could relate to the Council's legislative activities and that the Council should take this point into account.

In its detailed opinion on the draft recommendation, the Council concluded that paragraphs l-4, 13, 14 and 24 of document 13563/00 and points 1-8 and 14-16 of its Annex I are not covered by any exception and may be released. As for the remaining parts of the document, the Council decided to refuse access on grounds of Article 4 (3), first subparagraph of Regulation 1049/2001.

The Council also provided a detailed explanation of how the second report of the Code of Conduct Group differs substantially in content and nature from the first report.

The Ombudsman considered that the Council's detailed opinion adequately addressed the points mentioned in the Ombudsman's draft recommendation and that, in the present state of Community law, the Council's reasoning could reasonably justify non-disclosure even if the document in question is legislative.

The Ombudsman therefore closed the case, on the basis that the Council had taken adequate steps to satisfy the draft recommendation.

The full text of the draft recommendation can be found at: http://www.euro-ombudsman.eu.int/recommen/en/010573.htm.

COUNCIL GRANTS ACCESS TO CANDIDATES' MARKED EXAMINATION PAPERS

Decisions on complaints 2097/2002/GG and 2059/2002/IP against the Council of the European Union

Complaint 2097/2002/GG

THE COMPLAINT

The complainant, a German citizen, took part in competition Council/C/412 for clerical assistants (C5 bracket) of German language. The competition comprised four parts: two multiple choice tests (A and B), a written examination for which the PC had to be used (C) and an oral examination (D). The written examination was sub-divided into three tests. In the second of these tests (test b), candidates had to produce a clean text out of, and lay out, some 45 lines that had been written on a typewriter and that contained manuscript corrections and references as well as typing errors and grammatical errors. This text was to be marked from 0 to 40 points. The pass mark was 24 points.

On 12 November 2002, the Council informed her that she had only obtained 18 points in test C.b and that she could therefore not be admitted to the oral examination.

In a letter of 20 November 2002, the complainant informed the Council that she had never sat a test of this kind before and added that, as she was still interested in working within the European institutions, it would help her greatly to know the reasons why she had failed to obtain the pass mark. The complainant therefore asked for access to the assessment of the test in question.

In its reply of 27 November 2002, the Council informed the complainant that the Selection Board had reviewed her paper and decided to confirm its initial marking. The Council added that it was unfortunately not possible to give the complainant access to her examination paper.

In her complaint to the Ombudsman, the complainant stressed that the Council's refusal to grant her access to her marked examination paper was not acceptable. She pointed out that no reasons had been given for this refusal. The complainant added that this refusal made it impossible for her to understand why she had failed to pass the relevant test.

THE INQUIRY

The Council's opinion

In its opinion, the Council made the following comments:

According to Article 6 of Annex III of the Staff Regulations, the proceedings of the Selection Board shall be secret. As the Court of Justice had already stated, this secrecy was introduced with a view to guaranteeing the independence of Selection Boards and the objectivity of their proceedings, by protecting them from all external interference and pressures. Consequently, observance of this secrecy ran counter to divulging the attitudes adopted by individual members of Selection Boards and also to revealing all the factors relating to individual or comparative assessments of candidates[97] This secrecy inherent in the Selection Board's proceedings also precluded the communication of the criteria for marking the competition tests, which criteria formed an integral part of the comparative assessment made by a Selection Board of a candidate's respective merits.[98]

The obligation to safeguard the secrecy of the proceedings of the Selection Board prevented it from granting a candidate access to his or her marked examination paper, since the latter revealed the attitudes adopted by the individual members related to the assessment of candidates.

The communication of the marks obtained in the various tests constituted an adequate statement of reasons on which a Selection Board's decision was based

The complainant's observations

No observations were received from the complainant.

THE DRAFT RECOMMENDATION

On 16 April 2003, the Ombudsman addressed the following draft recommendation to the Council in accordance with Article 3 (6) of the Statute of the Ombudsman:

The Council of the European Union should allow the complainant to have access to her own marked examination paper.

This draft recommendation was based on the following considerations:

1 The complainant, a German citizen, took part in competition Council/C/412 for clerical assistants (C5 bracket) of German language. Having been informed that she had failed to obtain the pass mark in one of the written tests of this competition, she asked for access to her marked examination paper. The Council rejected this request. In her complaint to the Ombudsman, the complainant expressed the view that this refusal was not acceptable.

2 In its opinion, the Council pointed out that according to Article 6 of Annex III of the Staff Regulations, the proceedings of the Selection Board shall be secret and that this secrecy had been introduced with a view to guaranteeing the independence of Selection Boards and the objectivity of their proceedings. In the Council's view, the obligation to safeguard the secrecy of the proceedings of the Selection Board prevented it from granting a candidate access to his or her marked examination paper, since the latter revealed the attitudes adopted by the individual members related to the assessment of candidates.

3 The European Ombudsman has already had to deal with the issue of access to candidates' marked examination papers in cases concerning the European Commission[99] and the European Parliament.[100]

97 Case 89/79 *Bonu v Council* [1980] ECR 553, paragraph 5.

98 Case C-254/95 P *European Parliament v Innamorati* [1996] ECR I-3423, paragraph 29.

99 Own-initiative inquiry 1004/97/(PD)/GG.

100 Complaints 457/99/IP, 610/99/IP, 1000/99/IP and 25/2000/IP.

4 On the basis of his inquiries concerning the recruitment procedures of the Commission, the Ombudsman submitted, on 18 October 1999, a special report to the European Parliament[101] which contains the following considerations:

"The Ombudsman is not aware of any provision of Community law or case-law of the Community courts which would prevent the Commission from allowing a candidate in a written examination to see his or her own marked script. Article 6 of Annex III to the Staff Regulations stipulates that the "proceedings of the Selection Board" are to be secret. The deliberations of the Selection Board must therefore remain secret, but it does not necessarily follow from this that a candidate must be prevented from seeing his or her own marked examination script.

The main argument which the Commission puts forward in order to justify its refusal concerns the nature of the recruitment procedure. In the Commission's view the Selection Board assesses each candidate by comparing his or her performance to the performance of all the other candidates in the same competition. The Commission concludes from this that the disclosure of the marked examination script would serve no purpose, since it only reflects the appraisal of a person who has not assessed all the other candidates.

However, being able to inspect his own marked examination script does entail several benefits for the candidate. First, the candidate gains the opportunity to discover his mistakes and thus to improve his future performance. Second, the candidate's confidence in the administration is strengthened. This is important, since there seems to be a widespread belief that tests are not always properly assessed by the Commission and indeed that sometimes they are not assessed at all. Third, if a candidate feels that he has been wrongly assessed, he will be able to argue much more precisely if he has seen his marked examination script. In any event, the citizen who requests information should be the judge of whether the information is useful, not the administration.

The Commission also refers to administrative and financial burdens which the disclosure of examination scripts could entail. The Ombudsman is confident that the Commission services could organise the process of disclosure in a way that would minimise the costs since it is unlikely that every candidate would wish to see his or her marked examination script.

(…)

The Commission is also correct to point out that the activity of Selection Boards is subject to judicial review by the Community courts. However, this means that queries which could easily have been solved if the candidate had a chance to see the marked examination script may have to be dealt with by the courts. The Ombudsman believes that this is highly unsatisfactory for candidates. Granting access to the marked examination script, on the other hand, is likely to satisfy many queries with a minimum of effort and time.

(…)

As the Treaty of Amsterdam has confirmed, the obligation to take decisions as openly as possible represents one of the fundamental principles of the administrative law of the European Communities. Furthermore, it is important to ensure that citizens receive a positive impression when first encountering the Community institutions. Citizens who wish to work for the Communities receive a very bad impression if they are left in doubt as to whether they have been assessed fairly and correctly. To dispel such doubt it is essential that each candidate should have the possibility to inspect the marked copy of his or her own examination script. This possibility in no way conflicts with the requirement that the proceedings of Selection Boards shall be secret, since it does not concern the deliberations of Selection Boards in which the relative merits of candidates are assessed. For these reasons, the Commission's failure to modify its administrative procedures so as to give each candidate the possibility of access to his or her own marked examination script, appears to constitute an instance of maladministration."

5 On the basis of these considerations, the Ombudsman made a recommendation to the Commission according to which the latter should, in its future recruitment competitions, and at the latest from 1 July 2000, give candidates access to their own marked examination scripts upon

101 OJ C 371/12, of 22 December 1999.

request. By letter of 7 December 1999, the President of the European Commission informed the Ombudsman that the Commission had accepted this recommendation.

6 On 17 November 2000, the European Parliament adopted a resolution[102] in which it endorsed the Ombudsman's special report and congratulated the Commission on its positive response to the recommendation made by the Ombudsman. Parliament also expressed the hope "that all other European bodies and institutions will follow the example set by the Commission".

7 On 17 July 2000, the Ombudsman addressed draft recommendations to the European Parliament in which he suggested that the latter should grant the complainants concerned access to their marked examination papers. On 27 November 2000, Parliament informed the Ombudsman that it had accepted the principle that candidates should be allowed to obtain a copy of their own marked examination papers and described how it would implement the Ombudsman's draft recommendations.[103]

8 The arguments put forward by the Council in the present case do not refer to any special characteristics of competitions organised by the Council which would distinguish them from competitions organised by the European Parliament and the Commission. The Ombudsman therefore takes the view that the considerations set out in his special report concerning the recruitment procedures of the Commission also apply (mutatis mutandis) to the competitions organised by the Council.

9 In view of the above, the Ombudsman considers that the refusal of the Council to grant the complainant access to her marked examination paper is an instance of maladministration.

The Council's detailed opinion

In its detailed opinion, the Council informed the Ombudsman that it had decided to accept the draft recommendation and to allow the complainant access to her own marked examination paper. A copy of the complainant's examination paper as well as its evaluation by the Selection Board would be sent to the complainant the same day.

The Council noted that in consideration of the Staff Regulations and the very recent judgement of the Court of First Instance in Case T-72/01[104], the communication of these documents could not be considered to infringe the principle of secrecy inherent in the proceedings of the Selection Board.

The complainant's observations

No observations on the Council's detailed opinion were received from the complainant.

THE DECISION

1 Refusal to grant access to marked examination paper

1.1 The complaint concerned the Council's refusal to grant the complainant access to her marked examination paper in competition Council/C/412 for clerical assistants (C5 bracket) of German language.

1.2 On 16 April 2003, the Ombudsman addressed, in accordance with Article 3 (6) of the Statute of the Ombudsman, a draft recommendation to the Council according to which the Council should allow the complainant to have access to her own marked examination paper.

102 OJ C 223/352&368 of 8 August 2001.

103 Cf. the Ombudsman's decisions of 11 May 2001 concerning complaints 457/99/IP, 610/99/IP, 1000/99/IP and 25/2000/IP, available on the Ombudsman's website (http://www.euro-ombudsman.eu.int).

104 Judgement of 25 June 2003 in Case T-72/01 *Pyres v. Commission*.

1.3 In its detailed opinion, the Council informed the Ombudsman that it had decided to accept the draft recommendation and to allow the complainant access to her own marked examination paper.

2 Conclusion

2.1 On the basis of his inquiries, the Ombudsman concludes that the Council has accepted the Ombudsman's draft recommendation and that the measures taken by the Council are satisfactory.

2.2 The Ombudsman therefore closes the case.

Complaint 2059/2002/IP

The European Ombudsman made the same draft recommendation to the Council of the European Union in case 2059/2002/IP. The Council's detailed opinion and the decision are as follows:

The Council's detailed opinion

In its detailed opinion, the Council stressed that, further to the draft recommendation made by the Ombudsman in a previous similar case (complaint 2097/2002/GG), the General Secretariat of the Council had, on 17 September 2003, set up new rules related to the communication of marked copies to candidates. These rules would apply to all external and internal competitions to be organised by the General Secretariat of the Council.

Candidates participating in competitions published from 1 September 2003 onwards would be allowed to obtain a copy of their own examination paper and, for written tests, of the evaluation sheet of the Selection Board. In case of competitions organised before 1 September 2003, the relevant rules provided that candidates so requesting were allowed to obtain a copy of their own examination paper and also the evaluation sheet, where the Selection Board had drawn up such a sheet.

As regards the present case, the Council had decided to allow the complainant access to his own examination paper. As regards the communication of the evaluation criteria, the Council stressed that they had been indicated in point VI.A.d) of the notice of competition and that the Selection Board had not drawn up an evaluation sheet. According to the Council, a copy of the complainant's examination paper, together with a copy of the notice of competition, would be sent to the complainant the same day.

The complainant's observations

On 5 November 2003, the Ombudsman's services contacted the complainant by telephone in order to inform him about the Council's reply and to ascertain if he considered the reply to be satisfactory. The complainant congratulated the Ombudsman for the outcome of the inquiry and for the results that had been achieved.

THE DECISION

1 Refusal to grant access to marked examination paper and to communicate the evaluation criteria

1.1 The complainant asked for access to a copy of his marked examination paper in competition Council/A/394 and to be informed about the criteria followed by the Selection Board in the evaluation of the tests. The Council refused to comply with these requests. The complainant therefore complained to the Ombudsman.

1.2 On 8 July 2003, the Ombudsman addressed, in accordance with Article 3 (6) of the Statute of the Ombudsman, a draft recommendation to the Council according to which the Council should

allow the complainant to have access to his own marked examination paper and should inform him of the evaluation criteria followed by the Selection Board.

1.3 In its detailed opinion, the Council informed the Ombudsman that it had decided to accept his draft recommendation.

The Council pointed out that on 17 September 2003 its General Secretariat had set up new rules related to the communication of marked copies to candidates. These rules would apply to all external and internal competitions to be organised by the General Secretariat of the Council.

Candidates participating in competitions published from 1 September 2003 onwards would be allowed to obtain a copy of their own examination paper and, for written tests, of the evaluation sheet of the Selection Board. In case of competitions organised before 1 September 2003, the relevant rules provided that candidates so requesting were also allowed to obtain both a copy of their own examination paper and a copy of the evaluation sheet of the Selection Board where it had drawn up such a sheet.

1.4 As regards the complainant's case, the Council informed the Ombudsman that a copy of the complainant's examination paper and of the notice of competition would be sent to the complainant the same day. The Council explained that since the evaluation criteria followed by the Selection Board had been set out in point VI.A.d) of the notice of competition, the Selection Board had not drawn up an evaluation sheet.

2 Conclusion

2.1 On the basis of his inquiries, the Ombudsman concludes that the Council has accepted the Ombudsman's draft recommendation and that the measures taken by the Council to implement it are satisfactory.

2.2 The Ombudsman therefore closes the case.

3.5.2 The European Commission

COMMISSION TO PROMOTE GOOD ADMINISTRATION IN EUROPEAN SCHOOLS

Decision on complaint 845/2002/IJH against the European Commission

THE COMPLAINT

In May 2002, Mrs L. complained to the Ombudsman on behalf of herself and a group of about 50 parents of children at the European Schools in Brussels. The complaint concerns the allocation of places at the Schools for the academic year 2002-3, the subsequent appeals that were lodged and the mechanisms for co-ordination between the Schools.

In summary, the complainants made the following points:

Places available in the new primary section in Ixelles were allocated to pupils currently attending the two existing primary sections on the basis of two different sets of criteria, which were determined and applied unilaterally and non-transparently by the school of origin. Over 200 appeals were lodged, some of which had still not been dealt with at the date of the complaint.

The mechanisms for co-ordination between the Brussels schools are inadequate even to basic tasks like harmonising holidays and days off between the three schools.

The action of the schools in this matter contradicts the basic principles of good administrative practice and therefore breaches Article 41 of the Charter of Fundamental Rights. There is also a breach of Article 24 (2) of the Charter, which states that "*In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration*". The first criterion for distributing children between schools was the capacity of the three schools, which had been fixed in advance, without reference to the needs of the children or the wishes of their parents.

The complainants contacted the Commission, which is a member of the Board of Governors and which has the duty of protecting its staff's rights and interests. The complainants have never had a complete answer or explanation from the direction of the European Schools, the Board of Governors or the Commission.

The complainants fear further chaos when a fourth European School in Brussels is established in future.

In summary, the complainants allege that the action of the European Schools contradicts Articles 24 (2) and 41 of the Charter of Fundamental Rights and that co-ordination mechanisms between the schools are inadequate.

The complainants ask the Ombudsman to do everything in his power to ensure that:

- a solution is urgently found respecting the best interests of the children involved;
- the matter is fully investigated at the highest level;
- there is a comprehensive review of the administration of the European Schools to ensure that in future they operate according to the same standards of good governance and good administrative practice that apply to other EU institutions and that, in accordance with Article 24 (2) of the Charter, the best interests of the children are the primary consideration in all actions affecting them;
- all the appeals are accepted even if this solution would require splitting some classes into two;
- there is a review of the distribution of resources between schools;
- a clear and transparent system for allocating children between the Schools is established, in order to avoid future transfer of children in similar conditions.

THE INQUIRY

In dealing with previous complaints against the European Schools, the Ombudsman has taken the view that the Schools are not a Community institution or body, but that the Commission has a certain responsibility for their operation because it is represented in the Board of Governors and contributes largely to their financing. The Ombudsman considers that the Commission's responsibility does not extend to questions concerning the internal management of the Schools.

The Ombudsman therefore asked the Commission for an opinion on the present complaint.

The Commission's opinion

In summary, the Commission's opinion made the following points:

The redistribution of a certain number of pupils between the European Schools in Brussels was the inevitable consequence of two factors. First, the decision by the Board of Governors to open the third School in Ixelles, in order to relieve the Uccle and Woluwe Schools, which were particularly over-subscribed at the time and second, the need to move temporarily a number of pupils from the Uccle School to the Woluwe School as a result of major repair and reconstruction work.

In deciding the redistribution of the language sections between the three schools, the Board of Governors sought to ensure that the dual principle of geographical balance and rational utilisation

of resources was respected. At no time did the Heads' decision require the reallocation of pupils during term.

To better manage these movements, the Representative of the Board of Governors set up a co-ordinated management group for the three Brussels Schools, on which the Heads, the teaching staff and the parents' associations were represented.

According to the information supplied to the Commission, parental choice was given priority, but the limits imposed by the structure of the school organisation and the need to make optimal use of available resources made it impossible to meet the expectations and requirements of all families. According to the Schools, it would have been difficult to justify splitting sections or classes in one School when the corresponding sections and classes in another School were virtually empty.

The Schools argue that, in their assessment of individual cases, they applied the criteria of the presence of siblings, geographical proximity to the family home and the creation of balanced classes in the three Schools. The Heads' decisions about where to place pupils were based on the information provided by the parents to the School concerning the schooling of siblings and the location of the family home.

The Commission is aware that a significant number of complaints have been submitted. These complaints have been dealt with individually by committees within each School that comprise members of the Administrative Board and parents' representatives. A large number of the complaints were upheld.

In response to the complainants' requests, the Commission made the following points:

1. The procedure followed and the criteria used by the Schools for the transfer of pupils, along with the possibility of appeal, suggests that the pupils' best interests were a primary consideration which, as far as possible, was taken into account.

2. During its meeting on 21-23 May 2002, the Board of Governors examined the Report drawn up by its Representative on the "Distribution of pupils from pre-school, primary and secondary cycles between the Brussels I, II and III Schools". The Commission has not been made aware of any irregularities in this regard.

3. The principles laid down in the Charter of Fundamental Rights, and particularly its Articles 24 (2) and 41, apply in full to the European Schools and are binding upon them. These principles also apply to future reform of the Schools.

4. According to the information supplied to the Commission, the Schools made every effort to take into account, as a primary consideration, the choices of parents. In fact, efforts were made to adjust the distribution of classes from September 2002, with the ensuing transfer of posts, as well as to derogate from the rules governing the grouping of primary classes during the year 2002/2003 for certain sections. Despite these efforts, certain limits imposed by the structure of the school organisation and the need to make optimal use of available resources could not be ignored. Splitting sections or classes in one School, when corresponding sections and classes in another School were virtually empty, would not have been good administrative practice.

5. The Board of Governors alone is competent to decide on the distribution of resources between the different European Schools. It must be guided by the principles of geographical balance and the optimal utilisation of available resources.

6. The participation of the parents' associations, first in the co-ordinated management group for the three Brussels Schools, which was set up to better manage the transfer of pupils, and, subsequently, in the committees responsible for examining complaints, is evidence of the transparency of the system. This transparency must be maintained in any future pupil transfers.

The complainant's observations

The complainant's observations made, in summary, the following points:

The complainant had supplied information to the Commission and requested it to intervene in the Board of Governors on behalf of the children and their families. The Commission's representative should, therefore, have been aware of the situation when the Board of Governors met on 21-23 May 2002. The distribution of resources among schools without a thorough evaluation of the children's needs is an example of the worst administrative practice.

The Commission argues that the Board of Governors alone is competent to decide on the allocation of resources between the Schools. This shows that the Commission has not learnt any lessons and is refusing its responsibilities. The Commission provides most of the money for the schools and should put the children's needs and interests first.

THE DRAFT RECOMMENDATION

By decision dated 10 December 2002, the Ombudsman addressed a draft recommendation to the Commission in accordance with Article 3 (6) of the Statute of the Ombudsman. The basis of the draft recommendation was the following:

1 Allocation of places at the European schools

The complainant's case

1.1 In May 2002, Mrs L. complained in her own name and that of about 50 other parents of children at the European Schools in Brussels concerning the allocation of places for the academic year 2002-3, the subsequent appeals that were lodged and the mechanisms for co-ordination between the Schools.

In summary, the complainants allege that the action of the European Schools contradicts Articles 24 (2) and 41 of the Charter of Fundamental Rights and that co-ordination mechanisms between the schools are inadequate. They ask the Ombudsman to do everything in his power to ensure that:

- a solution is urgently found respecting the best interests of the children involved;
- the matter is fully investigated at the highest level;
- there is a comprehensive review of the administration of the European Schools to ensure that in future they operate according to the same standards of good governance and good administrative practice that apply to other EU institutions and that, in accordance with Article 24 (2) of the Charter, the best interests of the children are the primary consideration in all actions affecting them;
- all the appeals are accepted even if this solution would require splitting some classes into two;
- there is a review of the distribution of resources between schools;
- a clear and transparent system for allocating children between the Schools is established, in order to avoid future transfer of children in similar conditions.

The Commission's arguments

1.2 The Commission stated its awareness of a significant number of complaints. These were dealt with individually and a large number were upheld. The procedure and the criteria used by the Schools for the transfer of pupils, along with the possibility of appeal, suggests that the pupils' best interests were a primary consideration which, as far as possible, was taken into account.

The Board of Governors alone is competent to decide on the distribution of resources between the different Schools. It must be guided by the principles of geographical balance and the optimal

utilisation of available resources. The Board of Governors examined a Report on the matter and the Commission is not aware of any irregularities in this regard.

The Schools made every effort to take the parents' choices into account as a primary consideration. Efforts were made to adjust the distribution of classes, but splitting sections or classes in one School, when corresponding sections and classes in another School were virtually empty, would not have been good administrative practice.

The principles laid down in the Charter of Fundamental Rights, and particularly its Articles 24 (2) and 41, apply in full to the European Schools and are binding upon them. These principles also apply to future reform of the Schools.

The participation of the parents' associations, first in the co-ordinated management group for the three Brussels Schools, which was set up to better manage the transfer of pupils, and, subsequently, in the committees responsible for examining complaints, is evidence of the transparency of the system. This transparency must be maintained in any future pupil transfers.

The Ombudsman's findings

1.3 The Ombudsman notes that the European Schools were originally created by the Member States, which signed the Statute of the European School in 1957. In 1994, the Member States and the European Communities signed a Convention[105] which cancels and replaces the 1957 Statute. That Convention entered into force on 1 October 2002.

1.4 The Ombudsman has consistently taken the view that the European Schools are not a Community institution or body, but that the Commission has a certain responsibility for their operation because it is represented in the Board of Governors and contributes largely to their financing. The Ombudsman considers that the Commission's responsibility does not extend to questions concerning the internal management of the Schools.

The appeals

1.5 As regards the appeals concerning allocation of children between the Schools, the Ombudsman considers that decisions on individual appeals are not within the Commission's responsibility and hence are outside the scope of the Ombudsman's inquiry. The Ombudsman notes that the Commission has stated that a large number of the appeals have been upheld.

The Charter of Fundamental Rights

1.6 Concerning the alleged violations of the Charter of Fundamental Rights, the Ombudsman welcomes the Commission's acknowledgement that the right to good administration (Art. 41) and the rights of the child (in particular Art 24 (2)[106]) are binding on the European Schools and also apply to their future reform. As a general principle, the Ombudsman considers that respect for these rights is consistent with also taking into account efficiency in the allocation of resources between the Schools. In the present case, the Ombudsman does not consider that his inquiry has produced evidence of violation of the rights of children as guaranteed by Art 24 (2) of the Charter, especially taking into account that the original allocation of children between the Schools appears to have been modified by the large number of successful appeals.

The right to good administration is considered further below.

Co-ordination and good administration

1.7 As regards the allegation that co-ordination mechanisms between the schools are inadequate, the Ombudsman recalls that a large number of appeals were made and that, according to the

105 OJ L 212/3 of 17 August 1994.

106 "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration."

Commission, many of them were upheld. The Ombudsman considers this to be evidence that there exists an effective and responsive system for dealing with grievances.

1.8 At the same time, the Ombudsman points out that when a particular area of administration generates an unusually large number of appeals or complaints it is good practice to examine whether there is an underlying problem and, if so, to take measures to deal with it for the future. This is particularly true when it emerges that a high proportion of the appeals or complaints is justified.

1.9 The Ombudsman also points out that the Commission is the representative of the European Communities, which largely finance the European Schools and which are a signatory to the 1994 Convention on the Statute of the Schools. The Ombudsman takes the view that the Commission's responsibility includes the promotion of good administration by the European Schools. The Ombudsman considers that the Commission's response to the events that gave rise to the present complaint fails to demonstrate that the Commission fully recognises this responsibility. This is an instance of maladministration.

2 Conclusion

2.1 For the reasons explained above, the Ombudsman considers that the Commission's response to the events which gave rise to the present complaint fails to demonstrate that it fully recognises its responsibility to promote good administration by the European Schools.

2.2 The above finding raises an issue of general importance, which is not susceptible to a friendly solution. The Ombudsman therefore makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

THE DRAFT RECOMMENDATION

The Commission should recognise its responsibility to promote good administration by the European Schools and outline concrete measures which it will take to fulfil that responsibility in the future.

The Commission's detailed opinion

The Commission's detailed opinion was, in summary, as follows:

The decision on the opening of a new school in Brussels (B-III) and redistribution of language sections (both newly created sections and those already in existence) between the three schools (B-I, B-II and B-III) was taken by the Board of Governors at its meeting on 28-29 April 1998, taking account of the principles of geographical balance and the rational utilisation of available resources.

The Board of Governors assigned six sections to B-I (Danish, German, Greek, English, Spanish and French), eight sections to B-II (German, English, Finnish, French, Italian, Dutch, Swedish and Portuguese) and six to B-III (German, English, Spanish, French, Italian and Dutch).

The Commission, as a member of the Board of Governors, approved this decision without reservations and fully assumes the responsibility pertaining to it.

The transfer of pupils as a result of this redistribution of language sections and the work being carried out at B-I is not a matter for the Board of Governors, but for the bodies normally responsible for the internal management of the system.

Although the Commission's powers do not extend to matters of internal management of the Schools, it has closely followed the progress of this matter. Within the Administrative Boards of the schools concerned, it has drawn the attention of head teachers to the magnitude of the problem and asked them to make every effort to find a solution. It was also at the Commission's request that the Board of Governors examined the procedure followed by the schools, and found it to be correct.

The Commission will again draw the attention of the Secretary-General of the European Schools to the fact that, in future, especially when the fourth Brussels school opens, all the necessary measures must be taken to ensure that transfers of pupils take place under optimum conditions.

The complainant's observations on the detailed opinion

The complainant's observations included, in summary, the following points:

Parents are extremely worried about the on-going process of search for a fourth European school in Brussels. It is likely that the children's interests are again not taken into account in discussions with the responsible Belgian authorities. The Commission should intervene to defend children's and its staff's interests.

During the procedure for dealing with this complaint, it has become clear that whenever there is a problem that concerns the School's direct responsibility, parents do not have an instrument to question decisions. It is worrying that structures dealing with children are not accountable to anyone. The parents would like to have some advice as to how to tackle this question.

THE DECISION

1 The Ombudsman's evaluation of the Commission's detailed opinion

1.1 The Ombudsman conducted an inquiry into a complaint concerning the allocation of places at the European Schools in Brussels. Taking into account that the Commission is the representative of the European Communities, which largely finance the European Schools and which are a signatory to the 1994 Convention on their Statute, the Ombudsman took the view that the Commission's responsibility includes the promotion of good administration by the European Schools. The Ombudsman considered that the Commission's response to the events that gave rise to the present complaint failed to demonstrate that the Commission fully recognises this responsibility. The Ombudsman therefore made the following draft recommendation:

The Commission should recognise its responsibility to promote good administration by the European Schools and outline concrete measures which it will take to fulfil that responsibility in the future.

1.2 In its detailed opinion on the draft recommendation, the Commission undertook to draw the attention of the Secretary-General of the European Schools to the fact that, in future, especially when the fourth Brussels school opens, all the necessary measures must be taken to ensure that transfers of pupils take place under optimum conditions.

1.3 The Ombudsman considers that, in relation to the subject matter of the present complaint, the Commission has responded positively to the draft recommendation and thereby taken adequate steps to satisfy it.

1.4 The Ombudsman notes the complainant's general concerns about the governance and accountability of the European Schools. The Ombudsman will consider whether to begin an own-initiative inquiry into the Commission's responsibility to promote their good administration, in accordance with the Charter of Fundamental Rights. A further remark to this effect is made below.

2 Conclusion

The Ombudsman considers that the Commission has taken adequate steps to satisfy the draft recommendation. The Ombudsman therefore closes the case.

FURTHER REMARK

The Ombudsman will consider whether to begin an own-initiative inquiry into the Commission's general responsibility to promote the good administration of the European Schools, in accordance with the Charter of Fundamental Rights.

DISCRIMINATION ON THE GROUNDS OF NATIONALITY BY TELECOMMUNICATIONS COMPANY AND EU COMPETITION LAW

Decision on complaint 1045/2002/GG against the European Commission

THE COMPLAINT

The complainant, a German national, studied in Sweden. In order to obtain a telephone subscription from Telia, a Swedish telecommunications company, he had to provide a deposit of 5000 SEK (or a declaration by a Swedish citizen that he would guarantee for this sum). It appears that such a deposit was requested of all foreigners who did not possess a Swedish social security number. The complainant considered that this was an instance of discrimination contrary to Article 12 of the EC Treaty, given that Swedish nationals did not have to provide such a deposit.

On 25 November 1998, the complainant submitted a formal complaint to the Commission's representation in Sweden. The latter informed the complainant on 2 December 1998 that the complaint had been forwarded to the Secretariat-General in Brussels.

On 3 September 1999, and further to a reminder from the complainant dated 20 August 1999, the Commission's Secretariat-General informed the complainant that the case had been registered under reference 99/4916 SG(99) A/9472/2.

In his complaint to the Ombudsman lodged in June 2002, the complainant alleged that despite several further reminders (12 July 2000, 18 October 2000 and 18 November 2001) the Commission had neither informed him about the state of the procedure nor about whether it intended to commence infringement proceedings against Sweden.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission had first consulted several of its Directorates-General (Internal Market, Justice and Home Affairs, Information Society) in order to check whether the incriminated behaviour derived, directly or indirectly, from a provision of Swedish law. This examination lasted until the summer of 2000. Its result was that Telia had imposed the relevant obligation of its own accord.

Since thus the behaviour of an undertaking was at issue, the Commission's Directorate-General (DG) Competition had subsequently examined whether Article 82 of the EC Treaty had been infringed. On 25 August 2000, Telia had been asked by DG Competition to provide explanations. In its reply of 25 September 2000, Telia had explained that the amount of 5000 SEK served the purpose of securing debts of subscribers of whom Telia, in the absence of a Swedish social security number, might lose track in the case of a move. The Commission had considered that this explanation justified the difference in treatment between holders of a Swedish social security number and persons who did not have such a number. It had thus decided not to make any further inquiries.

In the light of this result, the matter had thereafter had less priority, particularly in view of the fact that DG Competition had to deal with numerous other cases from the telecommunications sector.

The above-mentioned circumstances had resulted, to the regret of the Commission, in a certain delay as regards the information of the complainant about the first conclusions of the examination of his complaint and about the Commission's intention to file the complaint.

On 8 August 2002, the Commission had sent the complainant a written reply concerning his complaint. On 5 September 2002, the Commission had furthermore telephoned the complainant to make sure that he had received the reply.

The complainant's observations

In his observations, the complainant confirmed that he had received the Commission's letter of 8 August 2002 and noted that the primary purpose of his complaint had thus been achieved. The complainant pointed out, however, that he was left with the bitter feeling that notwithstanding all his reminders the Commission had not considered it necessary to inform him earlier. In his view, this was more than a "certain delay" and could not be justified by a lack of staff. The complainant nevertheless took note of the Commission's regret and accepted its apologies.

In so far as the substance of the case was concerned, the complainant considered that the reasons given by the Commission for closing its inquiry were not fully convincing. In the complainant's view, there had been an infringement of Article 82 of the EC Treaty. The complainant considered that the explanation Telia had offered for its behaviour failed to convince, given that Telia was in any event able to pursue debtors abroad. He agreed that this might be more difficult than pursuing debtors in Sweden itself. The complainant considered, however, that this could not serve as a justification for discriminations. If the Commission were to accept Telia's arguments, this would run counter to the logic of the EU's efforts to simplify the enforcement of claims in other member states.

The complainant also took the view that Telia could resort to other means to protect itself, for example by asking non-Swedish EU nationals to provide a copy of their identity card or passport. In his view, this information could help to 'trace' the debtor. The complainant also queried whether the mere fact of possessing a Swedish social security number made it easier to reach the debtor in cases where he moved abroad.

The complainant therefore asked the Ombudsman to support his complaint and to try and make the Commission continue its inquiries.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to all the complainant's allegations.

The proposal for a friendly solution

Article 3 (5) of the Statute of the Ombudsman[107] directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complaint. The Ombudsman's provisional conclusion was that the Commission's decision to close the file on the grounds that Telia's approach appeared to be justified could be an instance of maladministration.

The Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The European Commission should reconsider the complaint submitted to it by the complainant.

107 Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, 1994 OJ L 113/15.

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission had, in accordance with the Ombudsman's proposal, reconsidered the matter in the light of the new arguments put forward by the complainant. Telia's approach had the aim of ensuring that its customer was solvent at the time when it concluded a subscription contract with him. This could be achieved in three ways – by providing the social security number, by furnishing a deposit or by submitting evidence as to the purchase of a house or apartment in Sweden.

The Swedish social security number ("personnummer") was given to every Swedish citizen and to every foreigner residing for more than one year in Sweden. It was composed of several digits that in particular allowed to know the age of the person and his place of birth. This number served the purpose of identifying the person for administrative purposes. It was used for the purposes of social security, but not exclusively. The translation "social security number" should not obscure this fact.

The number was used by tax authorities and private bodies in order to set up financial databases. By consulting such a database, it was thus possible to verify whether a given person had unpaid debts. When a person having a "personnummer" wished to subscribe to Telia's services, the company consulted a database in order to check whether the applicant had any unpaid debts. Obviously financial information was only available on that database if the person had been followed up by the various administrative or private bodies in Sweden.

Telia's approach of asking for the social security number, a deposit or evidence as to the purchase of a house or apartment in Sweden was independent of nationality. A foreign national who lived and worked in Sweden possessed a "personnummer". Besides, a non-resident Swedish national could also be required to provide a deposit if he came to Sweden for a short time as a student. Although this person had a "personnummer", no financial information was available on the database regarding this person since he did not reside in Sweden.

As every telecommunications operator, Telia needed, when accepting a new subscriber, to have the relevant data of the person and a means to trace him in case he did not pay his bills. Many telecommunications operators within the EU covered this risk by asking for a copy of the subscriber's identity card. This was practised notably by agencies of operators that favoured the sale of subscriptions in the physical presence of the subscriber. However, Telia's situation was different. On the one hand, the company frequently sold subscriptions by telephone. On the other hand, it legitimately wished to assure itself as to the solvency of the client at the time when it concluded the contract. Telia therefore did not ask for a copy of the identity card. In order to assure itself as to the solvency of the client, the company asked those clients who had one for their "personnummer". Where no access to financial data on the customer that had been validated by a third party or no evidence of property was available, a deposit was requested. In fact, Telia granted unlimited usage of the telephone line to its customers between two bills, that is to say during a period of three months. The relevant options furthermore covered the risk that a bill should remain unpaid.

The practice of telecommunications operators in Europe as to the conditions for the grant of a line, the conditions of invoicing and the period during which the line was maintained and allowed to be used where the customer failed to pay the bills were very varied. Other operators such as British Telecom or France Telecom also foresaw that deposits like the one asked for by Telia were necessary in certain cases.

According to Telia's system, total and unlimited usage of a telephone line was possible for a period of five months between the date when the last invoice was paid and the date when the line was effectively blocked in the absence of payment. Other operators limited this period to three months and certain of them blocked usage of the line for external calls shortly after the failure to pay a bill was detected.

Telia had reduced its system of deposits that now amounted to 3000 SEK or 333 € instead of 5000 SEK at the time when the complainant had turned to the Commission. This amount appeared to be appropriate to the aim pursued (333 € as a deposit for five months' free usage of the line).

The principal reason of the obligation to provide the "personnummer" (or a deposit or evidence proving ownership of accommodation) was not to avoid the risk that the company might have to pursue its claims in other member states.

In the absence of a discrimination or of an unjustified practice, the Commission considered that there were not enough grounds to justify opening a procedure for an infringement of Article 82 of the EC Treaty.

The complainant's observations

In his observations, the complainant maintained his complaint. He alleged that Telia's approach resulted in an indirect discrimination of non-Swedish nationals since in reality, the latter could only obtain a "personnummer" after one year. According to the complainant, Telia's general terms of business provided that a deposit was required where there was reason to assume that the customer would not pay his invoices. The complainant argued that by assuming that this was the case where no "personnummer" was available, Telia in fact disadvantaged nationals of other member states.

In the complainant's view, there was a substantial difference between asking for a "personnummer" and asking for a deposit. In the former case, proof of solvency was sufficient whereas in the second case the customer had to provide financial resources to Telia, and that without receiving interest.

The complainant added that the comparison with British Telecom and France Telecom was not convincing, given that the conditions of these companies indiscriminately dealt with the cases where a deposit was required. There were other telecommunications operators that did not ask for a deposit at all (like Deutsche Telekom) or only when problems had arisen (like Telekom Austria).

THE DRAFT RECOMMENDATION

On the basis of the evidence submitted to him, the Ombudsman arrived at the conclusion that a friendly solution was not possible. The Ombudsman therefore made the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

The European Commission should reconsider the complaint submitted to it by the complainant.

The Commission's detailed opinion

In its detailed opinion, the Commission made the following comments:

As to the substance of the complaint that the complainant had submitted to the Commission, there remained a difference of opinion between the complainant, the Ombudsman and the Commission. The person that was principally concerned, that is to say Telia, had not been involved in the exchange of correspondence. It remained to be clarified whether Telia's practice constituted an abuse of a dominant position within the meaning of Article 86 of the EC Treaty. The Commission had therefore decided formally to examine this question under Article 82 of the EC Treaty. This would allow the parties concerned (the complainant and Telia) to provide their views on all elements of the present case. At the end of this examination, the Commission would be in a position to reconsider all the elements of the present case before taking a definitive decision on the substance. This new approach should not be understood as an acceptance by the Commission of the Ombudsman's comments regarding the substance of the matter.

In order to proceed rapidly, the complainant's complaint under Article 82 of the Treaty would be forwarded to Telia within the next few days.

The Commission took the view that this new approach perfectly replied to the Ombudsman's recommendation to reconsider the complaint that the complainant had submitted to it.

The complainant's observations

On 1 July 2003, the complainant informed the Ombudsman's services by telephone that he was satisfied with the outcome of this case.

THE DECISION

1 Lack of information concerning complaint lodged with the Commission

1.1 The complainant, a German national, studied in Sweden. In order to obtain a telephone subscription from Telia, a Swedish telecommunications company, he had to provide a deposit of 5000 SEK. It appears that such a deposit was requested of all foreigners who did not possess a Swedish social security number. The complainant considered that this was an instance of discrimination contrary to Article 12 of the EC Treaty, given that Swedish nationals did not have to provide such a deposit. On 25 November 1998, the complainant therefore submitted a formal complaint to the Commission. In his complaint to the Ombudsman lodged in June 2002, the complainant alleged that despite several reminders the Commission had neither informed him about the state of the procedure nor about whether it intended to commence infringement proceedings against Sweden.

1.2 In its opinion, the Commission explained how the complaint had been dealt with by it and regretted that there had been a certain delay in so far as informing the complainant was concerned. According to the Commission, the complainant was finally informed by a letter sent on 8 August 2002.

1.3 It is good administrative practice that complainants should be kept informed about the state and the outcome of complaints that they lodge with the Commission. In the present case, it took the Commission nine months and a reminder from the complainant before it informed the latter in September 1999 that his complaint had been formally registered. None of the three reminders that were subsequently sent by the complainant appear to have been answered. It was only in August 2002, and after having been informed that the complainant had turned to the Ombudsman, that the Commission finally informed the complainant about the outcome of his complaint. In these circumstances, the Ombudsman takes the view that the approach of the Commission in the present case constitutes a clear case of maladministration. However, in view of the fact that the complainant has informed the Ombudsman that he accepted the Commission's apologies the Ombudsman considers that there are no grounds to pursue his inquiries into this aspect of the complaint.

2 Failure to pursue the complaint to the Commission

2.1 In its letter to the complainant and in the opinion submitted to the Ombudsman, the Commission pointed out that in the course of its inquiry into a possible infringement of Article 82 of the EC Treaty, it had asked Telia to comment on the issue. Telia had explained that the deposit it demanded served the purpose of securing debts of subscribers of whom Telia, in the absence of a Swedish social security number, might lose track in the case of a move. The Commission noted that it had considered that this explanation justified the difference in treatment between holders of a Swedish social security number and persons who did not have such a number. It had thus decided not to make any further inquiries.

2.2 In his observations, the complainant criticised this decision. The complainant considered that there was an infringement of Article 82 of the EC Treaty, given that Telia discriminated between Swedish nationals and other EU nationals. He further submitted that the purpose followed by Telia of securing itself against the risk of losing track of its debtors could not justify this discrimination.

2.3 The Ombudsman considered that the complainant had thus submitted a further allegation. Given the close link between the original complaint and the further allegation, he took the view

that the latter should be dealt with in the context of the present inquiry. The Commission had the opportunity to comment on this further allegation in its opinion on the Ombudsman's proposal for a friendly solution.

2.4 The Ombudsman notes that the Commission disposes of discretionary powers as regards complaints alleging infringements of EU competition law. The Commission may thus decide to close a case if it comes to the conclusion that there is no such infringement or where it considers that there is no Community interest in pursuing it because national courts or authorities would be better placed to deal with the matter. The Ombudsman notes that in the present case, the Commission closed the case because it considered that in the absence of a discrimination or of an unjustified practice, there were not enough grounds to justify opening a procedure for an infringement of Article 82 of the EC Treaty. It is thus this reasoning which has to be examined here.

2.5 When dealing with prospective subscribers, Telia distinguishes between those persons who have a Swedish social security number ("personnummer") and those who do not have such a number and who do not possess a house or an apartment in Sweden either. As the complainant correctly points out, this distinction has important repercussions: whereas the mere indication of the "personnummer" is sufficient in the first case, the customer has to provide financial resources to Telia in the second case. Contrary to what the Commission alleges, this distinction results in an indirect discrimination on the grounds of nationality. The Commission itself points out that a "personnummer" is given to every Swedish citizen and to every foreigner residing for more than one year in Sweden. This means that nationals of other EU member states who do not stay in Sweden for more than one year (such as students) do not obtain a "personnummer". By limiting the advantage of not having to provide a deposit to those persons who have a "personnummer", Telia thus necessarily disadvantages all nationals of other member states who do not have such a number. The fact that non-resident Swedish nationals could also be required to provide a deposit when they come to Sweden for a short time as a student would (if established) not affect this conclusion. In order to constitute discrimination on the grounds of nationality, the relevant measure does not have to benefit all nationals of the member state concerned.[108]

2.6 The Ombudsman considers that none of the arguments that have been put forward by the Commission can be regarded as constituting a sufficient justification for this difference in treatment. First, the Commission's explanation as to why Telia does not simply ask prospective customers for a copy of their identity card is unconvincing. If Telia's supposed preference to sell subscriptions over the telephone should make it impractical for such a paper copy to be provided, it is difficult to understand why evidence as to the purchase of a house or apartment in Sweden is nevertheless accepted. Second, the individual commercial approach of Telia (with longer periods between invoices than practised by other companies) can obviously not justify disadvantaging nationals of other member states. Third, the reduction of the deposit from 5000 SEK to 3000 SEK reduces the disadvantage suffered by nationals of other member states but does not eliminate it. Fourth, and most important, Telia is of course entitled to protect itself against the risk that customers might not pay their invoices. However, this does not justify a system that results in disadvantaging nationals of other member states. The Ombudsman considers that there are possibilities to ensure the legitimate aim without resorting to discriminating measures. In this context, it is not without interest to note that the Commission has been unable to identify any other comparable telecommunications operator in the EU that would practice a system similar to Telia's. As the complainant correctly observes, the conditions of neither British Telecom nor France Telecom that have been submitted by the Commission would appear to link the obligation to provide a deposit, directly or indirectly, to the nationality of the customer.

108 Cf. Case C-281/98 *Angonese* [2000] ECR I-4139 paragraph 41 and Case C-274/96 *Bickel and Franz* [1998] ECR I-7637 paragraph 25. See also Case C-43/95 *Data Delecta v. MSL* [1996] ECR I-4661 and Case C-323/95 *Hayes v. Kronberger* [1997] ECR I-1711.

3 Conclusion

3.1 On the basis of his inquiries, the Ombudsman made a draft recommendation in which he suggested that the Commission should reconsider the complaint submitted to it by the complainant. In its detailed opinion, the Commission informed the Ombudsman that it had decided to open a formal investigation under Article 82 of the EC Treaty. The complainant subsequently informed the Ombudsman that he was satisfied with the outcome of this case.

3.2 The Ombudsman considers that the Commission has thus accepted his draft recommendation and that the measures taken or to be taken by the Commission appear to be satisfactory.

3.3 The Ombudsman therefore closes the case.

3.6 CASES CLOSED AFTER A SPECIAL REPORT

3.6.1 The European Parliament

EUROPEAN PARLIAMENT ACCEPTS TO PUBLISH NAMES OF SUCCESSFUL CANDIDATES IN RECRUITMENT COMPETITIONS

Decision on complaint 341/2001/(BB)IJH against the European Parliament

The complaint concerned the European Parliament's refusal to inform the complainant, who took part in an open competition, of the names and marks of the successful candidates in the competition.

The Ombudsman made a draft recommendation that, in future competitions, Parliament should inform candidates in the notices of competition that the names of successful candidates will be made public.

Parliament's detailed opinion did not clearly accept the draft recommendation. Nor did the detailed opinion indicate that Parliament's future actions would treat candidates fairly and ensure consistency with its commitment to openness in the recruitment process. The Ombudsman therefore considered it his duty to make a Special Report on the matter.

By letter of 25 February 2003, the President of the European Parliament informed the Ombudsman that Parliament had accepted the Ombudsman's recommendation to publish the lists of successful candidates in competitions and to indicate this in all notices of competition.

In view of the above, the Ombudsman closed the case.

The full text of the special report can be found at: http://www.euro-ombudsman.eu.int/special/pdf/en/010341.pdf

3.6.2 The Council of the European Union

ACCESS TO COUNCIL DOCUMENTS, INCLUDING OPINIONS OF THE LEGAL SERVICE

Summary of decision on complaint 1015/2002/(PB)IJH and note on complaint 1542/2000/(PB)(SM)IJH against the Council of the European Union

Complaint 1015/2002/(PB)IJH

THE COMPLAINT

In May 2002, a Danish Member of the European Parliament made a complaint against the Council concerning an application for access to documents, made on 3 December 2001 under Regulation 1049/2001.[109] The complainant asked the Council for documents of seven types, three of which gave rise to the complaint to the Ombudsman. The complainant described them as follows:

1 a full list of all committees and working parties in the European institutions in which representatives of the Council and/or the Member States take part, including lists of their members;

2 lists of those who, in the year 2000, received travel expenses and/or daily allowances from the Council or the Member States for attending meetings at the European institutions;

3 a full list of all meetings of the Council of Ministers and Council working parties concerning transparency in the Council of Ministers, along with working papers and reports, for the period during which the draft of Regulation 1049/2001 on public access to documents was discussed.

On 17 January 2002, the Council replied to the complainant's application. It began by stating that Regulation 1049/2001 applies only to existing documents.

As regards the first type of document, the Council informed the complainant that he can find a list of members attending each Council meeting in the press releases published immediately after each meeting. The Council also sent a document entitled "Extract from the Interinstitutional Directory – who's who in the European Union". This contains information on the Council itself and the latest list of committees and working parties involved in the Council's preparatory work.

As regards the second type of document, the Council informed that complainant that it does not keep such lists; that it does not, in fact, pay daily allowances to delegates; and that it reimburses travel expenses only on the basis of the actual expenses and upon production of supporting documents.

As regards the third type of document, the Council sent the following:

– a list of meetings of the Council and its preparatory bodies (in this case COREPER II and the Working Party on Information) held since 28 January 2000, which was the date when the Commission made its proposal for a Regulation regarding public access to European Parliament, Council and Commission documents;

– all working papers and reports concerning the meetings of the Working Party on Information, COREPER II and the Council covering the entire period of negotiation of Regulation 1049/2001, with the exception of the following opinions from the Council's Legal Service:

[109] 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.

– document 7594/00 concerning the effect, form and scope of the act;

– document 7184/01 concerning the treatment of sensitive documents;

– document 8002/01, containing legal drafting remarks.

The Council gave as its reason for withholding these legal opinions that their release would undermine the protection of internal legal advice to the Council as provided for in Article 4 (2) of Regulation 1049/2001 and that, in the absence of any specific reasons pointing to a particular overriding public interest in disclosure, the Council had concluded that, on balance, the interest in protecting internal legal advice outweighed the public interest in disclosure.

The Council added that, apart from the document number and the subject of these legal opinions, the exception applies to their entire content. It was therefore not possible to grant partial access on the basis of Article 4 (6) of Regulation 1049/2001.

On 7 February 2002, the complainant made a confirmatory application. As regards the lists of committees and working groups, he stated that the information sent to him by the Council was not comprehensive or structured in such a way as to enable identification of all committees or working groups and their members. The complainant also repeated his request for lists of those who, in the year 2000, received travel expenses and/or daily allowances from the Council or the Member States for attending meetings at the European institutions. Concerning the three legal opinions, the complainant asked for the specific grounds for refusing access.

The Council replied on 8 April 2002. The Council repeated that the lists of committees and working groups requested by the complainant do not exist. It would be impossible or extremely cumbersome to create such lists, especially as the composition of committees and working parties frequently changes.

The requested lists of recipients of allowances do not exist either. The Council emphasised that rules of sound financial management are observed, and that the payment of allowances is subject to the scrutiny by the Court of Auditors.

As regards the three legal opinions, the Council repeated that Article 4 (2) of Regulation 1049/2001 requires that advice given by the Council's Legal Service shall remain undisclosed unless on balance the institution is satisfied that there is an overriding public interest in disclosure. The Council stated that an overriding public interest is not established by the fact that the legal opinions, as in this case, relate to the preparation of legislation. The Council supported its position by referring to case law under the former rules on public access to documents.

On the basis of the above, the complainant addressed the Ombudsman, making the following allegations against the Council:

1. It is contrary to good administration that the Council has not established a list of all committees and working groups in the European institutions where representatives of the Council and the Member States participate. The list should include the names of the members of those committees and working groups;

2. It is contrary to good administration that the Council has not established or identified a list of all those persons who have received travel allowances and/or daily allowances from the Council or the Member States in the year 2000 for meetings in the European institutions;

3. The Council wrongly rejected access to the legal opinions requested by the complainant. In particular, the Council has breached the rules on public access to documents by rejecting access to the legal opinions as a matter of general practice, whereas the rules require an individual assessment of each request.

THE INQUIRY

The Council's opinion

The Council's opinion made, in summary, the following points:

List of committees and working groups

Regulation 1049/2001 concerns only existing documents. Where the institution concerned asserts that a document does not exist, there is a presumption that this assertion is correct.[110] This presumption may be rebutted by relevant and consistent evidence, which in the present case has not been brought forward.

The complainant does not put forward any arguments why, as a matter of good administration, the Council should establish the lists requested. In fact, the Council does keep a list of its own preparatory bodies. The list is publicly available on the Internet and was sent to the complainant. It is adequate and sufficient for the Council's administrative purposes, and provides the public with a complete overview of all committees and working groups involved in the preparation of the Council's work. This list, together with the public register of documents, enables the citizens to make specific requests for documents submitted to those committees and working groups. The Council fails to see the need for it to keep lists of other committees or working groups which have nothing to do with its work and in which representatives of the Member States participate.

As regards the names of delegates participating in the Council's preparatory bodies, the composition of working parties is subject to continuous changes from one meeting to another and sometimes even during one meeting, as Member States are free to send the delegates of their choice. Keeping complete and up-to-date lists of all the participants would therefore pose a heavy administrative burden. Such lists are neither necessary for the internal purposes of the General Secretariat, nor has it been demonstrated that there is any significant public interest in having this information.

Lists of recipients of allowances

The Council repeated its earlier statements to the complainant. According to the Council, the Community's financial interests are adequately safeguarded by the provisions and control bodies already in place. It is therefore not necessary, in the interests of good administration, to keep the lists requested by the complainant.

Access to legal opinions

The Council confirmed the view it expressed in response to the complainant's confirmatory application. This view does not prejudice the individual examination of each document, with a view to determining whether disclosure is in fact likely to undermine one of the interests protected by the exceptions provided for, taking into account notably the possibility of granting partial access. Upon re-examination of its decision, the Council decided to grant access to points 1 to 10 of document 7184/01 and to the introduction and points 1 and 2 of document 7594/00.

As for the remaining parts of the documents, the Council confirmed the refusal contained in its reply to the complainant's confirmatory application.

The Council's opinion was forwarded to the complainant with an invitation to submit observations if he so wished. No observations were received.

The draft recommendation

By decision dated 27 March 2003, the Ombudsman addressed a draft recommendation to the Council concerning the complainant's third allegation. The basis of the draft recommendation, made in accordance with Article 3 (6) of the Statute of the European Ombudsman, was as follows:

110 Case T-311/00, *British American Tobacco v. Commission*, judgement of 25 June 2002, paragraph 35, and Case T-123/99, *JT's Corporation v. Commission* [2000] ECR II-3269, paragraph 58.

1 The complainant alleges that the Council wrongly rejected access to opinions of the Council Legal Service. He argues that the Council rejected access to the legal opinions as a matter of general practice, whereas the rules require an individual assessment of each request.

2 The Council argues that Article 4 (2) of Regulation 1049/2001 requires that advice given by the Council's Legal Service shall remain undisclosed unless on balance the institution is satisfied that there is an overriding public interest in disclosure. In response to the complainant's application and confirmatory application, the Council took the view that the exception applied to the entire content of the three legal opinions in question: documents 7594/00, 7184/01 and 8002/01. In its opinion on the present complaint, the Council states that its general position does not prejudice the individual examination of each document and that, upon re-examination, the Council decided to grant partial access to documents 7594/00 and 7184/01.

3 The Ombudsman notes that the refusal of public access to document 7594/00 is also the subject of another complaint made to the Ombudsman against the Council: 1542/2000/(PB)(SM)IJH. In that case, the Ombudsman made a draft recommendation to the Council, followed on 12 December 2002 by a Special Report to the European Parliament. The European Parliament has not yet taken a position on the Special Report. In these circumstances, the Ombudsman considers that no further inquiries are justified in the framework of the present complaint. The Ombudsman will however, inform the European Parliament that the Council has agreed to give the complainant in the present case partial access to document 7594/00.

4 As regards the other two documents, the Ombudsman recalls that the above-mentioned draft recommendation and Special Report are based on the view that a distinction should be drawn between different kinds of legal opinion. Opinions given in the context of possible future court proceedings are analogous to a communication between a lawyer and a client. They should therefore normally be exempt from disclosure under Article 4 (2) of Regulation 1049/2001. In contrast, opinions on draft legislation should normally become available to the public when the legislative process has reached a conclusion. They should be exempt only if the institution can show, in accordance with Article 4 (3) of Regulation 1049/2001, that disclosure would seriously undermine its decision-making process and that there is no overriding public interest in disclosure.

5 Applying the above distinction to the present case, it appears that documents 7184/01 and 8002/01 are opinions on draft legislation and that the legislative process concerned has reached a conclusion. The Ombudsman therefore made a draft recommendation, similar to that previously made in case 1542/2000/(PB)(SM)IJH, that the Council should reconsider the complainant's application and give access to documents 7184/01 and 8002/01, unless one or more of the exceptions other than Article 4 (2), second indent of Regulation 1049/2001 applies.

The Council's detailed opinion

The Council's detailed opinion informed the Ombudsman that the question of whether and under what conditions opinions of the Council Legal Service relating to draft legislative acts are covered by the exceptions laid down in Regulation 1049/2001, is currently the subject of the legal proceedings before the Court of First Instance (Case T-84/03, *Maurizio Turco v Council*). The Council therefore abstained from commenting on the substance of the draft recommendation.

The Council's detailed opinion was forwarded to the complainant with an invitation to submit observations if he so wished. No observations were received.

THE DECISION

1 List of committees and working groups

1.1 The complainant alleges that it is contrary to good administration that the Council has not established a list of all the committees and working groups in the European institutions where

representatives of the Council and the Member States participate. The list should include the names of the members of those committees and working groups.

1.2 According to the Council, there is no need for it to keep lists of committees or working groups that have nothing to do with its work. The Council keeps a list of its own preparatory bodies, which is adequate for the Council's administrative purposes. This list provides the public with a complete overview of all committees and working groups involved in the preparation of the Council's work and, together with the public register of documents, enables citizens to make specific requests for documents. As regards the inclusion of the names of delegates, the Council argues that keeping complete and up-to-date lists would be extremely cumbersome as the composition of working parties frequently changes. Such lists are neither necessary for the internal purposes of the General Secretariat, nor has it been demonstrated that there is any significant public interest in having this information.

1.3 The Ombudsman recalls the general principle of good administration that citizens should be provided with the information that they request.[111] The Ombudsman notes that the Council provides part of the information sought by the complainant in the form of a publicly available list of its own preparatory bodies. In the Ombudsman's view, the Council's explanation of why it does not maintain the other lists sought by the complainant appears reasonable. The Ombudsman therefore finds no maladministration as regards this aspect of the complaint.

2 Lists of recipients of allowances

2.1 The complainant alleges that it is contrary to good administration that the Council has not established or identified a list of all those persons who have received travel allowances and/or daily allowances from the Council or the Member States in the year 2000 for meetings in the European institutions.

2.2 According to the Council, it does not pay daily allowances to delegates and no lists of recipients of allowances exist. The Council argues that the Community's financial interests are adequately safeguarded by the provisions and control bodies already in place and that it is therefore unnecessary, in the interests of good administration, to keep the lists requested by the complainant.

2.3 The Ombudsman notes that the complaint refers to travel allowances and daily allowances paid either by the Council, or by the Member States. As regards travel allowances and daily allowances paid by the Member States, the Ombudsman is not aware of any rule or principle which would require the Council to maintain lists of the recipients of such allowances.

2.4 As regards travel allowances paid by the Council, the Ombudsman notes that the Council denies that a list of recipients exists. The Ombudsman recognises that the establishment of such a list and its public availability could promote greater accountability by enabling citizens to carry out genuine and efficient monitoring of the exercise of the powers vested in the Community institutions, and thereby increase confidence in the administration. The Ombudsman is not aware however of any rule or principle binding on the Council which could justify a finding that failure to maintain such a list is maladministration. The Ombudsman therefore finds no maladministration as regards this aspect of the complaint.

3 Access to legal opinions

3.1 The complainant alleges that the Council wrongly rejected his application for access to opinions of the Council Legal Service.

3.2 For reasons explained above, the Ombudsman made a draft recommendation that the Council should reconsider the complainant's application and give access to documents 7184/01 and 8002/01,

111 See Article 22 of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: *http://www.euro-ombudsman.eu.int*.

unless one or more of the exceptions other than Article 4 (2), second indent of Regulation 1049/2001 applies.

3.3 The Council abstained from commenting on the substance of the Ombudsman's draft recommendation because a case pending before the Court of First Instance (Case T-84/03, *Maurizio Turco v Council*) raises the same issue of interpretation of Regulation 1049/2001. The Ombudsman therefore has to consider whether to make a Special Report to the European Parliament.

The Ombudsman recalls that the European Parliament has already been informed of the Ombudsman's views on the issues concerned by the Special Report presented on 12 December 2002 in case 1542/2000/(PB)(SM)IJH. Moreover, the Ombudsman understands that, in view of the legal proceedings in Case T-84/03, the Committee on Petitions of the European Parliament has decided not to make a report on that Special Report.

Against this background, the Ombudsman considers that it would not be appropriate to make a further Special Report and that no further inquiries in the present case are therefore justified.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to be no maladministration by the Council as regards the complainant's first two allegations and no further inquiries appear to be justified as regards the third allegation. The Ombudsman therefore closes the case.

Note: complaint 1542/2000/(PB)(SM)IJH

As mentioned in the above summary, on 12 December 2002, the Ombudsman submitted a special report to the European Parliament on complaint 1542/2000/(PB)(SM)IJH, which also concerned the Council's refusal to grant access to opinions of the Council's Legal Service.

On 10 June 2003, the European Ombudsman informed the Committee on Petitions of the European Parliament of the fact that proceedings have been brought in the Court of First Instance (Case T-84/03, *Maurizio Turco v Council)* which raise the same issue of legal principle as the special report: that is to say, the correct interpretation of Regulation 1049/2001 as regards Legal Service opinions on draft legislation.

In light of this information, the Committee on Petitions decided not to make a report on the Ombudsman's special report.

The Statute of the Ombudsman provides for the submission of a report to the European Parliament to be the final step in an inquiry by the Ombudsman. The Ombudsman therefore closed the case.

3.7 OWN INITIATIVE INQUIRIES BY THE OMBUDSMAN

REMEDIES AVAILABLE IN TENDER PROCEDURES

Decision in own initiative inquiry OI/2/2002/IJH concerning the European Commission

THE REASONS FOR THE INQUIRY

In the course of dealing with a complaint made by an unsuccessful bidder in a tender procedure organised by the Commission[112], the Ombudsman became concerned that the remedies available to such persons might not be adequate.

In opening the own-initiative inquiry, the Ombudsman noted that, according to the judgement of the Court of Justice in the Alcatel case:

… the Member States are required to ensure that the contracting authority's decision prior to the conclusion of the contract as to the bidder in a tender procedure with which it will conclude the contract is, in all cases, open to review in a procedure whereby an applicant may have that decision set aside if the relevant conditions are met, notwithstanding the possibility, once the contract has been concluded, of obtaining an award of damages.[113]

The Ombudsman also noted that Article 56 of the (subsequently replaced) Financial Regulation provided as follows:

When concluding contracts for which the amount involved is equal to or greater than the threshold provided for by the Council directives on the co-ordination of procedures for the award of public works, supplies and services contracts, each institution shall comply with the same obligations as are imposed upon bodies in the Member States by those directives.

The implementing measures provided for in Article 139 shall include appropriate provisions to that end.

In view of the above, the Ombudsman was concerned that a possible failure by the Commission to provide bidders in its tender procedures with access to a review procedure of the kind foreseen in the *Alcatel* judgement could be an instance of maladministration. The Ombudsman therefore asked the Commission to inform him whether a review procedure exists and, if not, whether the Commission is prepared to introduce such a procedure rapidly.

THE INQUIRY

The Commission's opinion

The Commission's opinion was, in summary, as follows:

In the light of the *Alcatel* judgement, the Commission agrees that, prior to contract signature, authorising officers will have to inform without delay all bidders or candidates of the award decision in the public procurement procedures covered by Article 56 of the current Financial Regulation and by Article 105 of the new Financial Regulation, and should provide for a reasonable delay before contract signature in order to enable bidders and candidates to request the reasons for the award decision and, the case being, file a judicial recourse against such a decision.

112 1351/2001/(ME)MF, closed by decision dated 17 February 2003.

113 Case C-81/98, *Alcatel Austria v Bundesministerium für Wissenschaft und Verkehr*, [1999] ECR I- 7671, paragraph 43.

The Commission will pay particular attention to the practical and organisational aspects of this procedure, in order to ensure a timely management of its activities, taking account of the high number of the Commission's public purchases every year (several hundreds) and the duration of the public procurement procedures. In the light of this, the Commission intends to work out practical arrangements so that the procedure could be in place from the beginning of 2003 and taken into account in the planning of the new public procurement procedures to be launched by then.

The Ombudsman's request for further information

The Ombudsman welcomed the Commission's positive response to the own-initiative inquiry and requested the Commission to provide details of the practical arrangements and procedure mentioned in its opinion.

The Ombudsman also invited the Commission to indicate whether it has any plans to provide a non-judicial remedy that tenderers could use, if they so wish, as an alternative to judicial recourse.

The Commission's reply

After sending holding replies on 1 and 14 April 2003, the Commission sent the following further comments on 3 July 2003:

The Commission has adopted a Communication[114] setting up a procedure to inform all bidders or candidates of the award decision in the public procurement procedures covered by Article 105 of the new Financial Regulation.[115] This Communication provides for a reasonable delay before contract signature in order to enable tenderers to request the detailed grounds for the award decision and where necessary, seek a judicial remedy against such decision. (The Commission enclosed a copy of the Communication with its opinion).

The Commission does not consider it necessary to provide a non-judicial remedy to tenderers, for the following reasons:

– the procedure laid down in the Communication will allow tenderers to seek an effective judicial remedy against the contracting authority's award decision;

– in view of the low number of complaints presently lodged before the Court, the necessity of providing for a non-judicial remedy does not appear to be justified;

– finally, the human and material resources needed for executing the non-judicial remedies tasks, which may in future have an inter-institutional dimension, are not available.

THE DECISION

1 Review procedures available to bidders in tender procedures

1.1 The Ombudsman was concerned that possible failure by the Commission to provide bidders in its tender procedures with a review procedure of the kind foreseen in the Alcatel judgement[116] could be maladministration. The Ombudsman therefore began an own-initiative inquiry, asking the Commission to inform him whether a review procedure exists and, if not, whether the Commission is prepared to introduce such a procedure rapidly.

114 Communication from the Commission. COM(2003)395 final (03.07.03). Procedure for informing candidates and tenderers, after a contract has been awarded and before the actual contract has been signed, in respect of public procurement contracts awarded by the Commission under Article 105 of the Financial Regulation.

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

116 Case C-81/98, *Alcatel Austria v Bundesministerium für Wissenschaft und Verkehr*, [1999] ECR I- 7671.

1.2 The Commission agreed that, in the light of the above-mentioned judgement, it should provide for a reasonable delay before contract signature in order to enable bidders and candidates to request the reasons for the award decision and possibly challenge the decision judicially. The Commission stated its intention to work out the practical arrangements to put such a procedure in place from the beginning of 2003.

1.3 The Ombudsman welcomed the Commission's positive response and requested details of the practical arrangements and procedure. He also invited the Commission to indicate whether it has plans to provide a non-judicial remedy that tenderers could use, if they so wish, as an alternative to judicial recourse.

The Commission's reply is analysed in the following sections of the decision.

2 The Commission's Communication of 3 July 2003

2.1 The Commission informed the Ombudsman that it had adopted, on 3 July 2003, a Communication[117] in response to the own-initiative inquiry.

The Ombudsman has carefully examined the Communication, which establishes a procedure to provide information rapidly to unsuccessful tenderers and candidates, so that the latter have the opportunity to bring judicial proceedings to challenge an award decision, before the relevant contract is signed. The procedure applies to contract awards covered by Article 105 of the Financial Regulation.[118]

2.2 The Ombudsman notes the following as the main elements of the procedure:

As soon as possible after the award decision and within the following week at the latest, the contracting authority notifies all unsuccessful tenderers or candidates simultaneously, by mail and fax or e-mail, that their bid or application has not been accepted. Each tenderer or candidate is notified individually and the reasons why the bid or application has not been accepted are specified in each case; for instance by taking up, in a concise but explicit form, details contained in the award decision.

The contracting authority also informs the unsuccessful tenderers or candidates that it will not sign the contract with the successful tenderer until two calendar weeks have elapsed from the day after the simultaneous dispatch of the notification messages. It will also be stated that additional information about the reasons for rejection of the bid or application can be obtained in response to a request sent in writing, by mail, fax or e-mail. For all tenderers who have put in an admissible bid, this information could include the characteristics and relative advantages of the bid accepted and the name of the successful tenderer. Finally, it will be added that if the contract cannot be concluded with the successful tenderer or if the successful tenderer were to pull out, the contracting authority may review the award decision and could then award the contract to another tenderer, close the procedure or decide not to award the contract.

The contracting authority also informs the successful tenderer of the notification sent to the unsuccessful candidates or tenderers and that the contract cannot be signed until two calendar weeks have elapsed from the day after the date of dispatch of the notification. It will also be pointed out that the contracting authority may:

117 Communication from the Commission COM(2003)395 final (03.07.03) Procedure for informing candidates and tenderers, after a contract has been awarded and before the actual contract has been signed, in respect of public procurement contracts awarded by the Commission under Article 105 of the Financial Regulation.

118 This Article provides for the Directives on public supply, services and works contracts to establish the thresholds that determine publication arrangements, choice of procedures and corresponding time limits under the Financial Regulation. The Ombudsman therefore understands that the procedure established by the Communication applies to all contract awards that fall within the thresholds of the Directives.

- until the contract has been signed, either abandon the procurement, or cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation;

- suspend signing of the contract for additional examination, if justified by requests or comments made by unsuccessful tenderers during the two calendar weeks mentioned above, or by any other relevant information received during that period.

2.3 The Ombudsman takes the view that the procedure described in the Commission's Communication appears to provide unsuccessful tenderers and candidates with the opportunity to bring judicial proceedings to challenge an award decision and to have that decision set aside before the relevant contract is signed.[119] The Ombudsman therefore considers that the Commission has taken steps to provide bidders in its tender procedures with access to a review procedure of the kind foreseen in the Alcatel judgement and so finds no maladministration by the Commission.

2.4 The Ombudsman notes that the Commission's Communication does not expressly provide that unsuccessful tenderers and candidates shall be informed of the possibility to bring judicial proceedings to challenge an award decision and to have that decision set aside before the relevant contract is signed. The Ombudsman points out that, according to the Commission's Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public[120], decisions should, where appropriate, refer to the possibility of starting judicial proceedings in accordance with Article 230 EC. The Ombudsman considers that it would be in conformity with the principles of good administration to provide such information to unsuccessful tenderers and candidates. A further remark is therefore made below.

2.5 The Ombudsman considers that the legal basis for the new procedure falls outside the scope of his inquiry. The Ombudsman notes, however, that the Commission refers to Articles 100 (2) and 101 of the Financial Regulation[121] and to Article 149 of the Implementing Rules[122] as the legal basis.

3 Possibility of an additional non-judicial review procedure

3.1 The Ombudsman invited the Commission to indicate whether it has any plans to provide a non-judicial remedy that tenderers could use, if they so wish, as an alternative to judicial recourse.

3.2 The Commission replied that it has not considered it necessary to provide a non-judicial remedy to tenderers, because amongst other reasons, the procedure laid down in its Communication of 3 July 2003 will allow tenderers to seek an effective judicial remedy against the contracting authority's award decision.

3.3 The Ombudsman notes that the relevant judgement of the Court of Justice requires "*a procedure whereby an applicant may have* [an award] *decision set aside if the relevant conditions are met*." The Ombudsman recalls the finding in paragraph 2.3 above that the procedure described in the Commission's Communication appears to provide unsuccessful tenderers and candidates with the opportunity to bring judicial proceedings to challenge an award decision and to have that decision set aside before the relevant contract is signed. The Ombudsman takes the view that the Commission is not obliged also to establish a non-judicial remedy and therefore finds no maladministration in the Commission's decision not to do so.

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119 The Ombudsman notes in this context that the Rules of Procedure of the Court of First Instance (available online at <*http://www.curia.eu.int*>) provide for the possibility of both interim measures and an expedited procedure and that these procedures have been invoked by a tenderer, which later succeeded in obtaining a judgement annulling a Commission decision rejecting its tender: Case T-211/02, *Tideland Signal Ltd v Commission*, [2002] ECR II-3781.

120 The Commission's code is annexed to its rules of procedure: 2000 OJ L 308/26. It is also available online at *http://www.europa.eu.int/comm/secretariat_general/code/index_en.htm*.

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

122 Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, 2002 OJ L 357/1.

3.4 For the avoidance of doubt, the European Ombudsman points out that an inquiry by the Ombudsman does not have a suspensive effect on administrative procedures, nor can the Ombudsman set aside a decision to award a contract. Complaint to the European Ombudsman is not, therefore, a review procedure of the kind foreseen in the *Alcatel* judgement.

4 Conclusion

The Commission has taken steps to provide bidders in its tender procedures with access to a review procedure of the kind foreseen in the Alcatel judgement.[123] The Ombudsman therefore finds no maladministration by the Commission and closes the own-initiative inquiry.

FURTHER REMARK

The Ombudsman notes that the Commission's Communication does not expressly provide that unsuccessful tenderers and candidates shall be informed of the possibility to bring judicial proceedings to challenge an award decision and to have that decision set aside before the relevant contract is signed. The Ombudsman points out that, according to the Commission's Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public, decisions should, where appropriate, refer to the possibility of starting judicial proceedings in accordance with Article 230 EC. The Ombudsman considers that it would be in conformity with the principles of good administration to provide such information to unsuccessful tenderers and candidates.

ELECTRONIC REGISTRATION IN A RECRUITMENT COMPETITION – COMPLAINANT FROM ACCESSION STATE

Decision in own-initiative inquiry OI/4/2003/ADB concerning the European Personnel Selection Office

THE INQUIRY

The reasons for the inquiry

On 2 November 2003, the complainant, a national from an accession country, contacted the European Ombudsman and complained about the circumstances of the registration for open competition EPSO/A/XX/03 organised by the European Personnel Selection Office (EPSO) to constitute a reserve of assistant administrators. The only way to get registered for this competition was through the internet. The closing date for registration was 24 June 2003 "*at 12.00 Brussels time*". The complainant allegedly tried to perform the electronic registration on 24 June 2003. However, technical problems with EPSO's server prevented him from getting registered. On 24 June 2003, at 11.34 am, the complainant therefore contacted EPSO's services by e-mail. According to the complainant, EPSO replied on 12.41 pm, stating that e-mail registration could not be taken into account, and that EPSO was experiencing difficulties with its server. EPSO informed the complainant that these difficulties should soon be fixed and advised the complainant to "*try again before the 12.00*".

The complainant was dissatisfied with this reply and therefore contacted EPSO again. EPSO confirmed its previous answer. It in particular underlined that applicants had had enough time to get registered and, in view of possible technical difficulties, had been expressly instructed not to wait until the last few days before the closing date. The complainant therefore lodged a complaint with the European Ombudsman.

123 Case C-81/98, Alcatel Austria v Bundesministerium für Wissenschaft und Verkehr, [1999] ECR I- 7671.

The complainant alleged that for competition EPSO/A/XX/03, EPSO had failed to ensure that applicants could perform their compulsory electronic registration until the actual closing time foreseen by the notice of competition. The complainant claimed that in view of the technical problem he encountered, his e-mail to EPSO should be taken into consideration as a registration.

The Treaty establishing the European Community provides for the European 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."*

Given that the complainant did not fall into any of these categories, he was informed by the Ombudsman that the Ombudsman had no power to deal with his complaint.

However, given the seriousness of the issues raised by the complainant, the Ombudsman considered that they should be examined. He therefore decided to open an own-initiative inquiry into this matter.

The information requested in the inquiry

On 27 November 2003, EPSO was asked to deliver an opinion on the allegation and claim contained in the complaint.

EPSO's opinion

The opinion of EPSO on the complaint was sent on 4 December 2003. The Director of EPSO informed the Ombudsman that the case had been reviewed and that the complainant had been invited to the pre-selection tests scheduled on 11 and 12 December 2003.

The complainant's observations

On 10 December 2003, the Ombudsman's services contacted the complainant by telephone. The complainant thanked the Ombudsman for his efforts and considered that EPSO had settled the matter to his full satisfaction.

THE DECISION

1 On 27 November 2003, the European Ombudsman started an own initiative inquiry into EPSO's dealing with the registration of a candidate who had unsuccessfully tried to use the compulsory electronic registration procedure in view of his participation in an open competition for nationals of accession countries. According to the candidate, he could not get registered before the closing date for registration due to technical problems with EPSO's server. The candidate's participation in the competition was rejected despite the fact that, before the closing date, he had informed EPSO of the impossibility to perform the electronic registration and asked that his e-mail registration should be taken into consideration instead.

2 In its opinion, EPSO stated that further to the Ombudsman's own initiative inquiry, the candidate had been invited to participate in the open competition.

3 The candidate was contacted by telephone by the Ombudsman's services. He confirmed that EPSO had taken the steps to settle the matter to his full satisfaction and thanked the Ombudsman for his efforts.

4 The Ombudsman considers that EPSO has taken the steps to settle the matter and therefore closes the case.

3.8 QUERY FROM REGIONAL OMBUDSMAN

COMMUNITY LEGISLATION IN THE FIELD OF REHABILITATION OF PERSONS SUFFERING FROM MULTIPLE SCLEROSIS

Decision on query Q1/2003/IP

On 19 May 2003, Mr F., regional Ombudsman of the region of Tuscany, in Italy, addressed a query to the European Ombudsman in accordance with the procedure agreed at the seminar for national Ombudsmen and similar bodies held in Strasbourg in September 1996. The query related to a request for information that the regional Ombudsman received from Professor B., President of the Italian National Multiple Sclerosis Association. Professor B. would like to be informed about existing Community legislation in the field of rehabilitation of persons suffering from multiple sclerosis. The regional Ombudsman forwarded this request to the European Ombudsman.

On 23 July 2003, the European Ombudsman forwarded a copy of the query to the Commission and asked the latter to inform him on the existing Community legislation in this field.

In its reply, the Commission states that, on the basis of Article 152 of the Treaty, the European Union has a mandate to ensure a high level of health protection by completing national policies aiming to improve public health by preventing human illness and diseases. However, according to paragraph 5 of Article 152, the principal responsibility in regard to health care, including issues of rehabilitation, remains with the Member States. In view of this, there is no Community legislation in the field of rehabilitation of persons suffering from multiple sclerosis and there is no Community legislation in preparation in this field.

The European Ombudsman forwarded the Commission's reply to the regional Ombudsman with an invitation to make observations, if he so wished. During a telephone conversation on 17 October 2003, his services informed the European Ombudsman's services that the regional Ombudsman had taken note of the Commission's answer and extended his thanks to the European Ombudsman for his help in this matter. The Ombudsman therefore closed the case.

4.1 THE EUROPEAN PARLIAMENT

On 27 February, Mr SÖDERMAN, accompanied by Mr Olivier VERHEECKE, had a meeting with the Earl of STOCKTON MEP, Rapporteur on the Annual Report on the activities of the European Ombudsman for the year 2002. Among the matters discussed were the Article 226 EC procedure, the situation of Ombudsmen in the Member States and applicant countries, as well as the cooperation between the Ombudsman and the Committee on Petitions.

On 3 March, in the framework of his visit to Stockholm, Mr SÖDERMAN visited the European Parliament's Information Office and had a meeting with Mr Christian ANDERSSON, Head of the office.

On 24 March, Mr SÖDERMAN presented his Annual Report for 2002 to the Committee on Petitions in Brussels. In his speech to the Committee, the Ombudsman welcomed the cooperation which all the institutions demonstrated in their relations with his office. Mr SÖDERMAN further gave an overview of his main successes for citizens and outlined the areas which, in his view, would require further actions or improvements.

Mr Vitaliano Gemelli, Chairman of the Committee on Petitions of the European Parliament, Mr Söderman and Mr Roy Perry, Vice Chairman of the Committee, on the occasion of the presentation of the Annual Report for 2002 to the Committee. Brussels, Belgium, 24 March 2003.

The Chairman and Vice Chairman of the Committee, respectively Mr GEMELLI and Mr PERRY as well as the Earl of STOCKTON, rapporteur for the Ombudsman's 2002 Report paid tribute to Mr SÖDERMAN for his work and achievements as first European Ombudsman.

On 25 March, the President of the European Parliament, Mr Pat COX, held a reception for the Ombudsman and his staff. The event was to mark Mr SÖDERMAN's achievements in office. Around thirty people attended the event, including the Chairmen of the political groups and the Chairman and members of the Committee on Petitions. Mr COX praised the Ombudsman's work on transparency, promoting good working relations with the Parliament's Petitions Committee and bringing the Union closer to its citizens.

The Chairman of the European Parliament's Committee on Petitions, Mr GEMELLI, offered a dinner in Mr SÖDERMAN's honour on 25 March in Brussels. Members of the Petition's Committee who attended the dinner included, amongst others, Mr Roy PERRY, Vice-chairman of the Committee on Petitions and the Earl of STOCKTON, rapporteur for the Ombudsman's Annual Report for 2002. Mr SÖDERMAN was accompanied by Mr Joao SANT'ANNA. All the Members of Parliament present thanked Mr SÖDERMAN for the high quality of his work as first European Ombudsman.

Mr Pat Cox, President of the European Parliament and Mr Söderman, at the reception to celebrate Mr Söderman's achievements as European Ombudsman. Brussels, Belgium, 25 March 2003.

On 2 April, Mr DIAMANDOUROS met the Secretary General of the European Parliament, Mr Julian PRIESTLEY. During the discussion, Mr PRIESTLEY expressed the willingness of the European Parliament to cooperate effectively with the European Ombudsman and to support the adoption on an interinstitutional basis of a Code containing principles of good administration. Also present at the meeting were Mr Constantin STRATIGAKIS, head of the Secretary General's cabinet and Mr Ian HARDEN, head of the Ombudsman's legal department.

On 10 June, Mr DIAMANDOUROS presented his priorities as Ombudsman to the Committee on Petitions in Brussels. In his speech to the Committee, the Ombudsman gave a positive assessment of the results achieved under his predecessor, highlighted the preparations for enlargement and the budgetary consequences thereof, and stressed the proactive role of the Ombudsman in reaching out to citizens in order to educate them about their rights and about how to exercise them.

The Chairman of the Committee on Petitions, Mr Vitaliano GEMELLI, thanked Mr DIAMANDOUROS for his presentation. The following Members then spoke: the Earl of STOCKTON, Rapporteur for the Ombudsman's 2002 Report, Mr Rainer WIELAND, Mr Eurig WYN, Mr Roy PERRY, and Mr GEMELLI. Subsequently, the Committee adopted the Earl of STOCKTON's Report unanimously. Mr DIAMANDOUROS was accompanied by Mr Ian HARDEN, Head of his legal department and Mr Nicholas CATEPHORES, his assistant.

On 12 June, Mr Ian HARDEN participated in a public hearing organised by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of the European Parliament on the implementation of Regulation 1049/2001 on public access to documents. Other speakers at the hearing included Mrs Hanja MAIJ-WEGGEN MEP, Mr Hans BRUNMAYR, Director-General, DG Press of the Council of the European Union, Mr Harald RØMER, Deputy Secretary-General of the European Parliament and Mr Michael CASHMAN MEP, the Committee's rapporteur.

On 8 July, Mr DIAMANDOUROS visited a number of EU institutions in Luxembourg. He met Mr Gregorio GARZON CLARIANA, Jurisconsult of the European Parliament, as well as senior members of the European Parliament's legal service, including Mr Johann SCHOO and Mr Christian PENNERA. Mr DIAMANDOUROS explained his priorities as Ombudsman and there was an exchange of views on topics of mutual concern, including the co-operation agreements between the Ombudsman and the European Parliament. Mr DIAMANDOUROS was accompanied by Mr Ian HARDEN, Head of his legal department.

On 11 July, Mr DIAMANDOUROS had a meeting with the President of the European Parliament, Mr Pat COX, in the Parliament Information Office in Dublin. They discussed several issues, amongst which the forthcoming Intergovernmental Conference (IGC).

After the meeting, Mr DIAMANDOUROS had a working lunch with the Association of European Journalists, organised by the Dublin Information Office in its premises. The meeting was chaired by Mr James O'BRIEN, Head of the Parliament Information Office. Present at this working lunch was also Mr Peter DOYLE, Head of the European Commission Representation in Ireland.

On 24 September, Mr DIAMANDOUROS was visited by Mr George KASSIMATIS, Head of the European Parliament Information Office in Athens. They discussed several issues, including promotion of the European Ombudsman institution in Greece.

On 25 September, Mr DIAMANDOUROS presented the Annual Report for 2002 of the European Ombudsman to the Plenary Session of the European Parliament. The debate was chaired by Mr Renzo IMBENI, Vice-President of the European Parliament. In his speech, Mr DIAMANDOUROS paid tribute to the many achievements on behalf of citizens of his predecessor, Mr Jacob SÖDERMAN, who was present at the debate, outlined the progress being made in the handling of citizens' complaints and enquiries and noted the preparations being made for enlargement of the European Union. Mr DIAMANDOUROS then outlined his position on the role of the European Ombudsman in relation to the Draft Constitution for Europe, and thanked the European Parliament for its support of his proposals. The following then spoke: the Earl of STOCKTON, Rapporteur for the Ombudsman's 2002 Report, Mrs Loyola DE PALACIO, the Commissioner responsible for relations with the European Ombudsman, Mr Vitaliano GEMELLI, Chairman of the Petitions Committee of the European Parliament, Mrs Astrid THORS MEP, and Mr Jan DHAENE MEP (see also Section 6.1 below).

On 21 October, Mr Enrico BOARETTO, outgoing Head of Secretariat of the Committee on Petitions paid a visit to Mr DIAMANDOUROS, to introduce his successor, Mr Josephus COOLEGEM.

4.2 THE EUROPEAN COMMISSION

On 20 January, Mr SÖDERMAN presented his work at a meeting of the Heads of the Commission's Representations in the Member States. The meeting took place in Brussels and was chaired by Mr Jonathan FAULL, Director General of the Commission's Press and Communication DG. Mr SÖDERMAN was accompanied by Mr Ben HAGARD, his Internet Communications Officer and Ms Rosita AGNEW, his Press Officer. Mr Ben HAGARD gave a demonstration of the Ombudsman's website and Ms Rosita AGNEW outlined the Ombudsman's communication strategy. Mr SÖDERMAN then answered questions about his work and his experience as the Union's first Ombudsman.

On 2 April, Mr DIAMANDOUROS met the College of Commissioners. The President of the European Commission, Mr Romano PRODI, welcomed the new Ombudsman and emphasised the Commission's commitment to openness and the importance of the Ombudsman's work in this respect. The Commissioner responsible for relations with the European Ombudsman, Mrs Loyola DE PALACIO, explained the importance which the Commission attaches to the Ombudsman's

findings and recommendations both as regards complaints and more general issues raised in the Ombudsman's own-initiative inquiries. Mrs DE PALACIO also paid tribute to the work of the first European Ombudsman, Mr Jacob SÖDERMAN. Mr DIAMANDOUROS then outlined his priorities as European Ombudsman, including preparation for the enlargement of the Union and reaching out to citizens to inform them of their rights and how to exercise them. The exchange of views which followed included contributions and questions from Commissioners BOLKESTEIN, REDING, SCHREYER, VERHEUGEN and WALLSTRÖM. In conclusion, Mr DIAMANDOUROS thanked Members of the College for the willingness that they had expressed to build on the existing good co-operation between the Ombudsman and the Commission.

On 23 September, Mr David O'SULLIVAN, Secretary-General of the European Commission paid a visit to Mr DIAMANDOUROS in his office in Strasbourg. They discussed interinstitutional relations and Mr O'SULLIVAN invited Mr DIAMANDOUROS to make a presentation at a forthcoming meeting of the Directors General and Heads of Service of the Commission.

On 21 October, Mr DIAMANDOUROS met Mrs Margot WALLSTRÖM, Commissioner for the Environment, for an exchange of views. The main subjects of discussion were the mechanisms available to citizens who wish to complain about failure by Member States to enforce European environmental law, especially non-judicial remedies.

On 21 October, Mr DIAMANDOUROS met with Mr Horst REICHENBACH, Director General of Personnel and Administration. Mr REICHENBACH presented to Mr DIAMANDOUROS the progress being made with the Commission's plan to reform the staff regulations for officials and other agents of the EU.

On 20 November, Mr DIAMANDOUROS held an exchange of views with the Directors General and Heads of Service of the European Commission in Brussels, which was chaired by the Secretary-General of the Commission, Mr David O'SULLIVAN. Mr DIAMANDOUROS outlined his priorities for the work of the European Ombudsman: the maintenance and enhancement of the capacity of the Ombudsman's Office to help citizens, the promotion of the rule of law, good administration and respect for human rights, and the reaching out to all citizens to inform them of how to use their rights. Mr DIAMANDOUROS also highlighted a number of issues of specific concern to infringement procedures, friendly solutions and EU administrative law. There followed a wide-ranging debate on these issues. Subsequently to this meeting, Mr DIAMANDOUROS held a further exchange of views on the issues raised with Mr Enzo MOAVERO MILANESI, Deputy Secretary-General of the European Commission. Mr DIAMANDOUROS was accompanied to these meetings by Mr Ian HARDEN, Head of his legal department, and Mr Nicholas CATEPHORES, his assistant.

4.3 THE EUROPEAN CONVENTION

The European Convention was established following the Laeken European Council in December 2001, in order to pave the way for the next Intergovernmental Conference. The Convention's task was to consider the key issues arising from the Laeken Declaration for the European Union's future development and to identify various possible responses.

The Convention brought together representatives from the governments and national parliaments of Member States and Candidate States, from the European Parliament and from the European Commission. As was also the case with the earlier Convention that drafted the Charter of Fundamental Rights of the European Union, the European Ombudsman held the status of an Observer in the new Convention.

Mr SÖDERMAN participated in the Plenary Sessions of the Convention on 20-21 January, 27-28 February, 5 March and 17-18 March.

On 23 January, Mr SÖDERMAN forwarded to the Convention a contribution on "The functioning of the Institutions" (CONV 505/03).

On 27 February, Mr SÖDERMAN addressed the plenary session of the Convention on the subjects of transparency, the right to good administration, and the need for the European Union to be able to accede to international agreements for the protection and promotion of human rights.

Mr DIAMANDOUROS participated in the Plenary Sessions of the Convention on 3-4 April, 24-25 April and 15-16 May.

On 24 April, Mr DIAMANDOUROS addressed the plenary session of the Convention on the subject of "The democratic life of the Union".

On 28 April, Mr DIAMANDOUROS forwarded to the Convention a contribution entitled "Resolution adopted by the national ombudsmen and similar bodies of the Member States of the EU, meeting at their fourth seminar, held in Athens 7-8 April 2003" (CONV 699/03) (see section 6.1).

The Convention completed its work on 10 July 2003. The European Ombudsman's speeches and proposals are available on his Website as well as on that of the Convention.

4.4 THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

On 20 March, Mr SÖDERMAN visited the President of Court of Justice of the European Communities, Mr Gil Carlos RODRÍGUEZ IGLESIAS, to say farewell on the occasion of his retirement as European Ombudsman at the end of March 2003. The President of the Court awarded the European Ombudsman the Court's 50th Anniversary Medal with Mr SÖDERMAN'S name inscribed. Mr RODRÍGUEZ further stated that an excellent work had been performed in establishing the European Ombudsman's Office.

In the framework of his visit to several EU institutions in Luxembourg on 8 July, Mr DIAMANDOUROS had meetings with Mr Gil Carlos RODRÍGUEZ IGLESIAS, President of the Court of Justice and Mr Vassilios SKOURIS, a Judge at the Court of Justice. Mr DIAMANDOUROS was accompanied by Mr Ian HARDEN, Head of his legal department.

4.5 THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

On 19 March, Mr SÖDERMAN visited the President of the Court of First Instance, Mr Bo VESTERDORF, to say farewell on the occasion of his retirement as first European Ombudsman at the end of March 2003.

4.6 THE COURT OF AUDITORS

On 19 March, Mr SÖDERMAN visited the President of the Court of Auditors, Mr Juan Manuel FABRA VALLÉS, to say farewell on the occasion of his retirement as first European Ombudsman at the end of March 2003.

In the framework of his visit to several EU institutions in Luxembourg on 8 July, Mr DIAMANDOUROS met Mr Juan Manuel FABRA VALLÉS, President of the Court of Auditors

and Mr Ioannis SARMAS, a Member of the Court, for an exchange of views on a number of topics, including preparations for enlargement for the Union. Mr DIAMANDOUROS was accompanied by Mr Ian HARDEN, Head of his legal department.

4.7 THE EUROPEAN INVESTMENT BANK

On 8 July, in the framework of his visit to several EU institutions in Luxembourg, Mr DIAMANDOUROS met the President of the European Investment Bank, Mr Philippe MAYSTADT, who had requested information on whether the Ombudsman could deal with complaints concerning the Bank's activities outside the European Union. Mr MAYSTADT informed the Ombudsman of concerns expressed by the European Parliament concerning the absence of a mechanism to handle such complaints, when submitted by non-residents or non-citizens. The Ombudsman explained his power to open own-initiative inquiries, which has already been used in one such case. He also explained the competence of the European Parliament's Committee on Petitions. Mr DIAMANDOUROS was accompanied by Mr Ian HARDEN, Head of his legal department.

4.8 THE PUBLICATIONS OFFICE OF THE EUROPEAN COMMUNITIES

On 22 October, the European Ombudsman met the Director-General of the Office for Official Publications of the European Communities, Mr Thomas CRANFIELD and signed a framework service-level agreement, covering relations between the Publications Office and the Ombudsman and including specific provisions on quality control, copyright and deadlines, and evaluation. Both Mr DIAMANDOUROS and Mr CRANFIELD agreed on the value of further co-operation between the two offices with a view to best serving the citizen. Mr Serge BRACK, Head of Unit in the Publications Office, accompanied Mr CRANFIELD. Mr Joao SANT'ANNA, Mr Ben HAGARD, Ms Murielle RICHARDSON, Mr Nicholas CATEPHORES and Ms Rosita AGNEW also attended the signing ceremony.

Mr Diamandouros and Mr Thomas Cranfield, Director-General of the Office for Official Publications of the European Communities, sign a framework service-level agreement. Strasbourg, France, 22 October 2003.

5.1 RELATIONS WITH NATIONAL, REGIONAL AND LOCAL OMBUDSMEN OF THE EU

SWEDEN

On 3 March, in the framework of his visit to Stockholm, Mr SÖDERMAN visited the Swedish Ombudsman's Office, where he made a powerpoint presentation for the institution's staff, in the presence of the Swedish Ombudsmen, Mr Claes EKLUNDH, Mrs Kerstin ANDRÉ, Mr Jan PENNLÖV and Mr Nils-Olof BERGGREN. The activity was coordinated by Liaison Officer Ms Marianne VON DER ESCH. The European Ombudsman was accompanied by his assistant Mr Juan MALLEA.

GREECE

The 4th Seminar of the National Ombudsmen and Similar Bodies of the EU entitled "Ombudsmen and the Protection of Rights in the European Union", organised jointly by the European Ombudsman and the National Ombudsman of Greece, was held in Athens on 7 and 8 April (see section 6.1).

Participants at the 4th Seminar of the National Ombudsmen and Similar Bodies of the EU. Athens, Greece, 7 April 2003.

On 30-31 October, the National Ombudsman of Greece, Mr Yorgos KAMINIS, paid a visit to Mr DIAMANDOUROS in Strasbourg and attended a series of meetings with the staff of the European Ombudsman. The meetings dealt with the processes and procedures for dealing with citizens' complaints and enquiries and press and communications within the office of the European Ombudsman. Mr KAMINIS was accompanied by Mrs Kalliopi SPANOU and Mr Andreas TAKIS, two of his Deputy Ombudsmen.

4TH MEETING OF REGIONAL OMBUDSMEN OF THE EUROPEAN UNION, VALENCIA, SPAIN

From 9 to 11 April, the 4th Meeting of EU Regional Ombudsmen and similar bodies was held in Valencia under the sponsorship of the Sindic de Greuges de Valencia (regional ombudsman). Previous seminars had been held in Barcelona (1997), Florence (1999) and Brussels (2001). The European Ombudsman's Office was represented by Mr João SANT'ANNA and Mr José MARTÍNEZ ARAGÓN.

More than 80 participants attended the conference, including regional ombudsmen as well as members of Committees on Petitions from Austria, Belgium, Germany, Italy Spain and the UK.

The opening address was delivered by Mrs MIRÓ PÉREZ, President of the Regional Parliament of Valencia. In his welcoming address, Mr Bernardo DEL ROSAL, Sindic de Greuges of Valencia, noted the path towards an expanded Europe, and stressed the need for closer co-operation among EU regional ombudsmen. Mr SANT'ANNA, thanked all the regional ombudsmen and representatives of Petition Committees, on behalf of the European Ombudsman, Mr DIAMANDOUROS, for having, once again, made this fruitful gathering possible.

Participants at the 4th Meeting of EU Regional Ombudsmen and Similar Bodies.
Valencia, Spain, 10 April 2003.

On 10 and 11 April, working sessions dealt with (i) the future of Europe, (ii) immigration & asylum, (iii) protection of the environment, and (iv) access to environmentally-related documents.

Mr SANT'ANNA participated in the Round Table on "The future of Europe" together with Mr Bar CÉNDON, Professor of Constitutional Law at the University of Valencia and Mr Antón CAÑELLAS, Ombudsman of Catalonia. Mr MARTÍNEZ ARAGÓN participated in the Round Table on "Environmental protection in the EU and the role of the Regional Ombudsmen", together with Mr Miguel Angel LANES CLIMENT legal adviser in environmental issues at the Valencia Ombudsman's Office and Mrs Maria Grazia VACCHINA, Ombudsman of the Val d'Aosta Region in Italy.

FRANCE

Paris

On 14 May, Mr DIAMANDOUROS met with the French Ombudsman, Mr Bernard STASI and participated in a joint press Conference given on the occasion of the presentation of the 2002 Annual Report of the *Médiateur de la République*.

Strasbourg

On 2 September, Mr DIAMANDOUROS attended a meeting of the network of Ombudsmen of the "Grande Région" (transborder cooperation between certain neighbouring French, German and Belgian regions and Luxembourg), at the invitation of Mr Bernard STASI, French Ombudsman. The meeting was hosted by the Prefect of Bas-Rhin, at the Prefecture in Strasbourg.

ITALY

In the framework of his visit to Florence from 12 to 16 June, the European Ombudsman held a series of meetings with the Regional Ombudsman of Tuscany and coordinator of the Italian Regional Ombudsmen, Mr FANTAPPIÉ, as well as with several other regional and local ombudsmen from Italy (see section 6.2).

IRELAND

On 11 July, Mr DIAMANDOUROS, accompanied by Mr Olivier VERHEECKE and Ms Rosita AGNEW, paid a visit to the National Ombudsman of Ireland, Mrs Emily O'REILLY. Mr DIAMANDOUROS and Mrs O'REILLY discussed several issues such as the Charter of Fundamental Rights, disability rights, redress and compensation, and the liaison network.

At a dinner hosted by Mrs O'REILLY, Mr DIAMANDOUROS also met Mr Kevin MURPHY, former National Ombudsman of Ireland, as well as Mr Pat WHELAN, Director General of the Office, and Mr Michael BROPHY, Senior Investigator. Mr DIAMANDOUROS expressed his thanks to Mr MURPHY for the precious help he had given him in setting up the Greek Ombudsman's Office.

MEETING OF CHAIRMEN AND DEPUTY CHAIRMEN OF THE COMMITTEES ON PETITIONS IN GERMANY AND OF OMBUDSMEN FROM GERMANY AND GERMAN-SPEAKING COUNTRIES IN KIEL

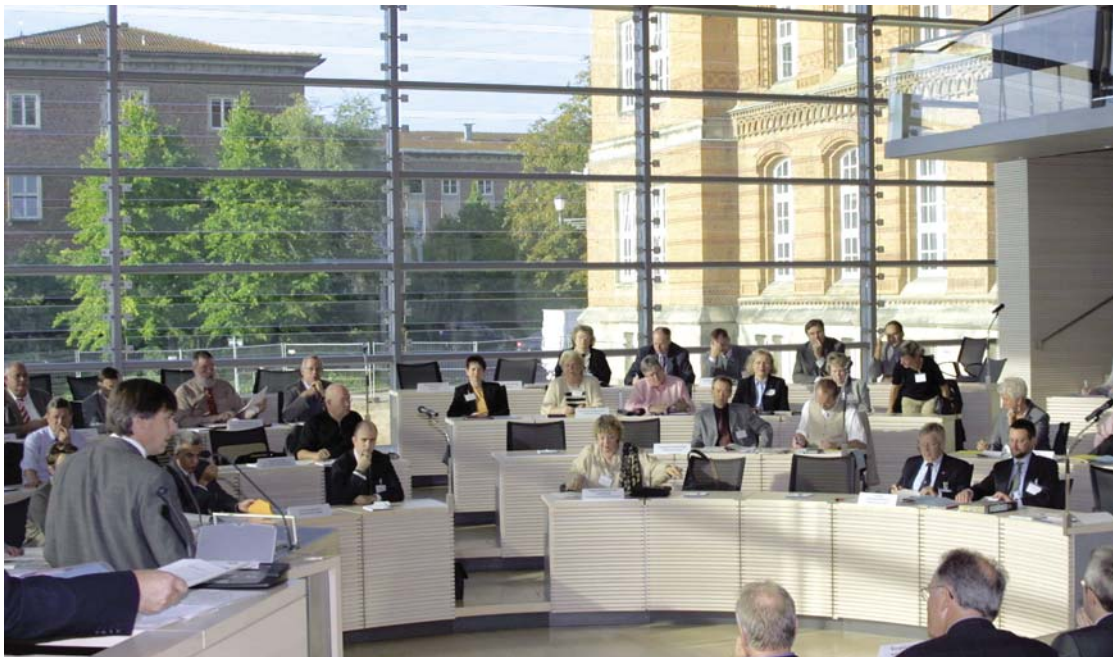
On 14 and 15 September, the European Ombudsman attended the regular meeting of chairmen and deputy chairmen of the committees on petitions in Germany and of ombudsmen from Germany and German-speaking countries which is held every two years. This year the meeting took place in the *Landtag* of Schleswig-Holstein in Kiel. It was chaired by Mrs Marita SEHN, the president of the Committee on Petitions of the German *Bundestag*. Mr DIAMANDOUROS was accompanied by Mr Gerhard GRILL and Mr Ben HAGARD from his office.

The participants included the chairmen and deputy chairmen of all the committees on petitions in Germany (including the one in Niedersachsen which was set up this year), the four regional ombudsmen from Germany as well as ombudsmen from Austria, Italy (South Tyrol) and Switzerland. Mrs KESSLER, MEP from the European Parliament's Committee on Petitions, and representatives of the committee on petitions from Luxembourg were also present.

8TH ROUND TABLE OF EUROPEAN OMBUDSMEN IN OSLO

On 3 and 4 November, the European Ombudsman participated in the Eighth Round Table of European Ombudsmen jointly organised in Oslo by the Council of Europe's Commissioner for Human Rights, Mr Álvaro GIL-ROBLES, and the Norwegian Ombudsman, Mr Arne FLIFLET. This gathering brought together ombudsmen from the Council of Europe's Member Countries, as

well as other institutions concerned with the defence of human rights, with a view to discussing matters of common interest. Mr DIAMANDOUROS was accompanied by Mr HARDEN, Head of the Ombudsman's legal department and Mr MARTÍNEZ ARAGÓN, Principal Legal Advisor.



Participants at the meeting of chairmen and deputy chairmen of the committees on petitions in Germany and of ombudsmen from Germany and German-speaking countries. Kiel, Germany, 15 September 2003.

The conference was formally opened by Messrs FLIFLET and GIL-ROBLES in the presence of His Majesty the King of Norway, HARALD V. Mr DIAMANDOUROS chaired the first part of the plenary session, in the course of which the general themes of this year's Round Table were presented. The topics included public access to official documents, the protection of minorities, the legal status of detainees, and the respective powers of ombudsmen and courts.

In the course of his visit, Mr DIAMANDOUROS had the opportunity to meet Mr Álvaro GIL-ROBLES, the Council of Europe's Commissioner for Human Rights. The discussion focused on the means to further the co-operation between both institutions, in line with the Council of Europe's recent Recommendation 1615 (2003) on the Ombudsman institution. Mr DIAMANDOUROS also met Mr FLIFLET, Norwegian Ombudsman, to review matters of common interest.

DENMARK

In the framework of his official visit to Denmark from 5 to 7 November, Mr DIAMANDOUROS met with the Danish Parliamentary Ombudsman and his staff. (see section 6.2)

THE UNITED KINGDOM

In the framework of his official visit to London on 23 and 24 November, Mr DIAMANDOUROS held a meeting with the Parliamentary and Health Service Ombudsman, the Deputy Parliamentary and Health Service Ombudsman and the Chairman and Chief Executive of the Commission for Local Administration (England) and Local Government Ombudsman (see section 6.2).

5.2 THE LIAISON NETWORK

In September 1996, the European Ombudsman set up a network of ombudsmen and similar bodies in Europe to promote a free flow of information about Community law and to make possible the transfer of complaints to the body best able to deal with them. The network now consists of 90 offices in 30 European countries. It covers the ombudsmen and similar bodies at the European, national and regional levels within the European Union and the ombudsmen and similar bodies at the national level in Norway, Iceland and the applicant countries for EU membership.

Already in 1996, each of the national ombudsmen and similar bodies in the EU Member States appointed a liaison officer to act as a point of contact for other members of the network. In May 2003, following the resolution agreed at the 4th National Ombudsmen Seminar in Athens the previous month, the European Ombudsman requested the national ombudsmen in the ten Accession Countries to appoint liaison officers. All ten offices responded enthusiastically to the European Ombudsman's request.

The network has steadily developed into an effective collaboration tool for the ombudsmen and their staff. Experiences and best practice are shared via a regular newsletter, an electronic forum and meetings.

NEWSLETTER

In the past, the European Ombudsman produced a regular *Liaison Letter* to enable members of the network to exchange information. In July 2003, the European Ombudsman and the European Region of the International Ombudsman Institute, represented by Dr Herman WUYTS, Vice-President for the European Region of the IOI, signed an agreement merging the European Ombudsman's *Liaison Letter* and the newsletter of the European region of the IOI. The new publication, entitled *European Ombudsmen – Newsletter*, covers the work of the members of the European Ombudsman's network and the broader IOI-Europe membership. Produced in English, French, German, Italian and Spanish, it is addressed to over 400 offices at the European, national, regional and local levels. The first edition of the Newsletter was published in October 2003 and launched at the Annual Meeting of the Voting Members of the IOI – European Region that was held in Nicosia, Cyprus.

INTERNET

Towards the end of 2000, the online version of the liaison officers' network, entitled EUOMB, was set up to further facilitate communication between members of the network. EUOMB consists of a website and an Internet Summit where interactive discussions and sharing of documents can take place. One hundred and eighty users, for the most part the ombudsmen and liaison officers in the network, have access to the Summit.

In November 2001, a new section of the Summit entitled *Ombudsman Daily News* was created. This virtual newspaper has made it possible for members to be kept informed of the activities of ombudsmen and similar bodies throughout the EU and beyond. In 2003, *Ombudsman Daily News* was published every working day, offering more than 1,000 news stories to readers. Most of the liaison network members now consult the Daily News on a regular basis and are thus kept informed of the ways that other bodies have dealt with matters that they too may be dealing with.

MEETINGS

In order to allow members of the liaison officers' network to discuss their work more intensively with each other, meetings are held every two years. Four liaison meetings have been held since the network was established in 1996 (in Brussels in 1997 and 1998 and in Strasbourg in 2000 and 2003).

The fourth liaison meeting, entitled "European Information, Advice and Justice for all", took place on 1-2 December in the European Parliament in Strasbourg. The purpose of the meeting was to raise awareness among the liaison officers of the range of relevant services that exist at the EU level to help deal with complaints from citizens about Union law. The meeting was attended by twenty seven liaison officers, including the ten new liaison officers from the Accession Countries.

The European Ombudsman opened the meeting, by welcoming the liaison officers to Strasbourg and outlining his plans for the network. This was followed by Session 1, entitled "Where can I get information for citizens about the EU?". Ms Gisela GAUGGEL-ROBINSON and Ms Anna FINI from the European Commission explained the range of relevant information sources available at the EU level. Session 2 covered the topic "Who provides advice to citizens about their rights under EU law?" and included a presentation by Mr. Tony VENABLES, Director of the European Citizen Action Service. Mr. Ian HARDEN, Head of the legal department in the Office of the European Ombudsman, then outlined the range of judicial and non-judicial remedies for Session 3 " How can citizens obtain justice in the EU?". Each of these presentations was followed by a case-study from a liaison officer, illustrating problems encountered by citizens in exercising their rights under Union law. The final presentation on Day 1 was made by Mr. Nicholas LEAPMAN from the European Commission, who explained the SOLVIT network of the Directorate-General Internal Market.

Participants at the 4th Liaison Meeting. Strasbourg, France, 1 December 2003.

The second day of the meeting focused on the functioning of the liaison officers' network and how it could be improved. After a lively brainstorming session, a number of liaison officers gave examples of best practice in their offices in the following areas: "Making best use of the media", "The challenge of multilingualism" and "Including marginalised groups". These innovative examples for reaching the citizen were of great interest to members of the network.

During the meeting, there were a number of opportunities for liaison officers to discuss their work bilaterally. The excursion organised by the European Ombudsman and the various dinners and lunches offered ample time for the officers to discuss their work more informally with each other.

5.3 RELATIONS WITH NATIONAL OMBUDSMEN IN THE ACCESSION STATES

"OMBUDSMAN AND THE LAW OF THE EUROPEAN UNION" CONFERENCE

On 29 and 30 May, the European Ombudsman, Professor P. Nikiforos DIAMANDOUROS, attended the conference "Ombudsman and the Law of the European Union" organised by the Ombudsman

of Poland, Professor Andrzej ZOLL, in Warsaw. Ombudsmen or their representatives from seven of the ten Accession Countries (Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Malta and Poland) as well as from Azerbaijan, the Netherlands and Romania took part in the conference. The Centre for the Study of Democracy in Bulgaria and the Human Rights Inquiry Commission of Turkey were also present. Further participants included representatives from the Council of Europe's Office of the Commissioner of Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations Development Programme (UNDP), the Office of Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Commission's Delegation in Poland. Professor DIAMANDOUROS was accompanied by Mr Gerhard GRILL and Mr Ben HAGARD from the European Ombudsman's Office.

The opening of the conference was addressed by Dr Marek BOROWSKI, the Speaker of the Seym (Poland's Parliament) and by Professor Longin PASTUSIAK, the Speaker of the Polish Senate. In the first session of the conference, the Ombudsman of Poland, Professor ZOLL, delivered a speech on "The Rights of Foreigners with Special Regard to the Entry, Residence, Work Permits and Asylum".

This was followed by a presentation on "Access to Public Information as the Fundamental Civil Right – Limitations and Controversies", by Ms Tereza SAMANOVA from the Czech Ombudsman's Office. In the third session, the European Ombudsman delivered a speech on "The Role of Ombudsman in Ensuring the Rule of Law and Protection of Fundamental Rights in the Light of the Convention's Work on the Draft Constitution of the European Union". Finally, Dr. Jerzy ŚWIĄTKIEWICZ, Deputy Ombudsman of Poland, spoke about "The Scope of Ombudsman's Protection of Human Rights and Freedoms – The Present and the Future".

Mr Roel Fernhout, National Ombudsman of the Netherlands, Ms Zita Zamžickiene, Seimas Ombudsman of Lithuania, Prof. Elmira Suleymanova, Commissioner for Human Rights of Azerbaijan, Ms Rimante Šalaševiciute, Seimas Ombudsman of Lithuania and Mr Diamandouros, at the "Ombudsman and the Law of the European Union" conference. Warsaw, Poland, 30 May 2003.

MEETING WITH THE PARLIAMENTARY COMMISSIONERS OF HUNGARY

In the framework of his official visit to Hungary on 27 and 28 October, Mr DIAMANDOUROS met with all three Parliamentary Commissioners and their staff (see section 6.2).

MEETING WITH THE MALTESE OMBUDSMAN

From 9 to 11 December, Mr DIAMANDOUROS met with the Ombudsman of Malta, Mr Joseph SAMMUT and his staff as part of his ongoing information tour of the Member and Accession States of the European Union (see section 6.2).

6.1 HIGHLIGHTS OF THE YEAR

ELECTION

On 15 January, the European Parliament elected Professor P. Nikiforos DIAMANDOUROS as European Ombudsman after Jacob SÖDERMAN, who had held the office since 1995, decided to retire. Professor DIAMANDOUROS who served as the first Greek Ombudsman until his appointment took up his new duties on 1 April 2003.

Mr Diamandouros on the day of his election. Strasbourg, France, 15 January 2003.

SOLEMN OATH

On 1 April, Mr P. Nikiforos DIAMANDOUROS assumed his duties as European Ombudsman by proclaiming a solemn oath at the European Court of Justice. The President of the Court, Gil Carlos RODRIGUEZ IGLESIAS, welcomed the new Ombudsman and praised his work in the academic, administrative and ombudsman fields.

In his speech to the distinguished audience, Mr DIAMANDOUROS highlighted three of his responsibilities as European Ombudsman: to live up to the expectations that have been generated by the first European Ombudsman Jacob SÖDERMAN; to lead the institution of the European Ombudsman during a moment of great historical significance, namely enlargement; to reach out to citizens in order to educate them about their rights and about how to exercise them.

THE EUROPEAN OMBUDSMAN PROCLAIMING A SOLEMN OATH AT THE EUROPEAN COURT OF JUSTICE

Mr Diamandouros at the European Court of Justice. Luxembourg, 1 April 2003.

Mr Jean-Pierre Puissochet, Mr Gil Carlos Rodríguez Iglesias and Mr Romain Schintgen, on the occasion of the European Ombudsman proclaiming a solemn oath before the European Court of Justice. Luxembourg, 1 April 2003.

Among the audience at the ceremony were Mr Roy PERRY MEP, Vice-President of the Committee on Petitions of the European Parliament, Mr Christos ROZAKIS, Vice-President of the European Court of Human Rights, Mr Bernard STASI, the French Ombudsman, Mr Enrique MÏGICA HERZOG, the Spanish Ombudsman, Mr Roel FERNHOUT, the Dutch Ombudsman, Mrs Kerstin ANDRI, Swedish Ombudsman, Mr Pierre-Yves MONETTE, Belgian Federal Ombudsman and Mr Paavo NIKULA, Finnish Chancellor of Justice. The following members of the European Ombudsman's staff also attended the event: Mr Ian HARDEN, Mr João SANT'ANNA, Mr Gerhard GRILL, Ms Rosita AGNEW and Mr Ben HAGARD.

FOURTH SEMINAR OF NATIONAL OMBUDSMEN AND SIMILAR BODIES OF THE EU

Professor P. Nikiforos DIAMANDOUROS took part in the 4th Seminar of the National Ombudsmen and Similar Bodies of the EU held in Athens (Vouliagmeni) on 7 and 8 April. The seminar, entitled "Ombudsmen and the Protection of Rights in the European Union", was organised jointly by the European Ombudsman and the Greek Ombudsman. Previous seminars were held in Strasbourg (1996), Paris (1999) and Brussels (2001). Mr HARDEN, Mr HAGARD and Mr VERHEECKE also attended from the European Ombudsman's Office.

Mr Vitaliano Gemelli, Chairman of the Committee on Petitions of the European Parliament, Mr Kevin Murphy, National Ombudsman of Ireland, Professor Yorgos Kaminis, National Ombudsman of Greece and Ms Anna Diamantopoulou, European Commissioner for Employment and Social Affairs, at the 4th Seminar of the National Ombudsmen and Similar Bodies of the EU. Athens, Greece, 7 April 2003.

The opening ceremony was introduced by the President of the Greek Parliament, Mr Apostolos KAKLAMANIS, followed by speeches by the Deputy Minister of the Interior, Public Administration and Decentralisation, Mr Stavros BENOS, and the President of the Committee on Petitions of the European Parliament, Mr Vitaliano GEMELLI.

In the morning session of 7 April, chaired by the newly elected Greek Ombudsman, Professor Yorgos KAMINIS, the European Commissioner for Employment and Social Affairs, Ms Anna DIAMANTOPOULOU, gave a speech about "Social Rights in the EU, with Special Reference to the Free Movement of EU Citizens and Third-Country Nationals". The Rapporteur was the National Ombudsman of Ireland, Mr Kevin MURPHY.

The Prime Minister of Greece, Mr Costas SIMITIS, spoke at the official lunch which followed. At this occasion, the Greek media had been invited.

The afternoon session, chaired by the National Ombudsman of Denmark, Mr Hans GAMMELTOFT-HANSEN, dealt with "The Rights of Foreigners with Special Reference to Entry, Residence, Working Permits and Asylum". The keynote speaker was the National Ombudsman of Poland, Professor Andrzej ZOLL, and the Rapporteur was the Parliamentary Ombudsman of Finland, Ms Riitta-Leena PAUNIO.

Mr Costas Simitis, Prime Minister of Greece and Mr Diamandouros, at the 4th Seminar of the National Ombudsmen and Similar Bodies of the EU. Athens, Greece, 7 April 2003.

The debate of the next day was devoted to "Human and Minority Rights". The discussion was introduced by the French Médiateur, Mr Bernard STASI. The keynote speech was given by the Commissioner for Human Rights of the Council of Europe, Mr Alvaro GIL-ROBLES, who spoke about the minority rights of Roma in the EU Member States and Accession Countries. A lengthy debate followed this presentation. The Rapporteur was the National Ombudsman of the Netherlands, Mr Roel FERNHOUT.

Mr Yorgos Kaminis, National Ombudsman of Greece, Ms Riitta-Leena Paunio, Parliamentary Ombudsman of Finland, Mr Hans Gammeltoft-Hansen, National Ombudsman of Denmark and Prof. Andzej Zoll, National Ombudsman of Poland, at the 4th Seminar of the National Ombudsmen and Similar Bodies of the EU. Athens, Greece, 7 April 2003.

The debates were followed by the adoption of a Resolution by the National Ombudsmen and Similar Bodies. The newly elected European Ombudsman, Professor DIAMANDOUROS and the Greek Ombudsman then gave a joint press conference.

The seminar ended with a General Conclusions session chaired by the European Ombudsman in which the rapporteurs for the various sessions presented their reports.

OPEN DAYS

Brussels

On 3 May, the Ombudsman's Office participated in the Open Day organised by the European institutions in Brussels. The Ombudsman's stand was located in the European Parliament and was staffed by members of the Ombudsman's Office throughout the day. Information about the Ombudsman's work was made available in 24 languages. A competition that involved recognising "the European Ombudsman" in six different languages was organised on the stand. 12 000 people passed through the Parliament over the course of the day.

Citizens visiting the Ombudsman's stand at the Open Days in Brussels, Belgium (3 May 2003) and Strasbourg, France (8 May 2003).

Strasbourg

On 8 and 9 May, the Ombudsman's Office participated in the Open Days organised by the European Parliament in Strasbourg. Mr DIAMANDOUROS took part in a public video-conference with Mr Pat COX, President of the European Parliament, and Mrs Pervenche BERES, MEP. Material covering the Ombudsman's work was distributed to visitors in 24 languages. A competition that involved recognising "the European Ombudsman" in six different languages was organised on the stand. Staff members were present throughout the day to answer questions. 15 000 people visited the Parliament during the Open Days.

THE ANNUAL REPORT 2002

The Annual Report of the European Ombudsman for the year 2002 was presented to the European Parliament at its plenary session in Strasbourg on 25 September 2003. Before giving the floor to Mr DIAMANDOUROS, Vice-President Renzo IMBENI, the chair of the session, welcomed Mr Jacob SÖDERMAN, the former European Ombudsman, who had taken his seat in the official gallery.

In his speech, Mr DIAMANDOUROS paid tribute to Mr SÖDERMAN for establishing an effective and well-known institution. He also underlined his many achievements for the European Citizens and his important contribution to the work both of the Convention that drafted the Charter of Fundamental Rights and the European Convention. Mr DIAMANDOUROS undertook to build on the work of his predecessor and cooperate closely with national and regional ombudsmen both

in the current Member States and in the Accession States. He concluded his speech by thanking the Earl of STOCKTON for his report and the Committee on Petitions at large for its support and encouragement. He also expressed his gratitude for the positive approach shown by the President of the European Parliament and Commissioner DE PALACIO.

Speaking on behalf of the Committee on Petitions, the Earl of STOCKTON introduced his report on the Ombudsman's annual report and congratulated the Ombudsman and his staff for the work performed during the year 2002. Other speakers including MEP Vitaliano GEMELLI, on behalf of the EPP-ED Group, MEP Astrid THORS, on behalf of the ELDR Group, MEP Jan DHAENE, on behalf of the Green/ALE Group and Mrs Loyola DE PALACIO, paid tribute to the Ombudsman's work and achievements.

6.2 CONFERENCES AND MEETINGS

BELGIUM

Brussels

On 28 January, Mr Olivier VERHEECKE participated in the Colloquium entitled "Models of co-operation within an enlarged EU" organised jointly by the National Bank of Belgium and the Royal Institute for International Relations (RIIR). The conference, which was under the presidency of Viscount Etienne DAVIGNON, President of the RIIR, was opened by Mr Louis MICHEL, Belgian Deputy Prime Minister and Minister of Foreign Affairs. Speakers in Part I of the conference which was entitled "Co-operation in the second and third pillars of the EU" were Professor Koen LENAERTS, Judge at the Court of First Instance of the EC, Mr Antonio VITORINO, Member of the European Commission and Mr Alain LAMASSOURE, MEP and Representative of the European Parliament at the Convention.

Part II of the conference concerned "Economic and social governance within a larger EMU" with contributions from Professor Franklin DEHOUSSE, Mr Didier REYNDERS, Belgian Minister of Finance, Mr Frank VANDENBROUCKE, Belgian Minister of Social Affairs and Pensions, Mr Klaus HÄNSCH, MEP and Member of the Praesidium of the European Convention and Mr Jean-Luc DEHAENE, former Prime Minister of Belgium and Vice-chairman of the Convention. The closing address was given by Mr Guy VERHOFSTADT, Prime Minister of Belgium.

On 21 January, Mr SÖDERMAN gave a lecture entitled "Will there be a Citizen's Europe?" at the Representation of the State of Lower Saxony to the European Union. The introductory remarks were made by the State Secretary Dr. Rainer LITTEN from the Ministry of Justice of the State of Lower Saxony. Mr SÖDERMAN was accompanied by Ms Vicky KLOPPENBURG, Ms Rosita AGNEW and Mr Ben HAGARD.

On 21 February, Mr Olivier VERHEECKE gave a lecture about "The role of the Ombudsman in an enlarged Union" at the advanced joint training seminar for Team Europe, Info Points Europe and Carrefours. The Seminar, entitled "Enlargement after Copenhagen: from 15 to 25 and beyond" was organised by DG Press and Communication of the Commission.

On 25 February, Mr SÖDERMAN participated in a seminar entitled "The Convention and the EU Charter of Fundamental Rights" organised by the European Policy Centre in the "Residence Palace" in Brussels. The discussions mainly considered the various possibilities of including the Charter of Fundamental Rights in the future Constitutional Treaty.

The seminar was chaired by Mr Hywel Ceri JONES, Chairman of the Executive Board of the European Policy Centre who introduced the debate. Mr Jacob SÖDERMAN gave a speech about "The Convention, the charter and the remedies" in which he underlined the importance of including in the Constitutional Treaty the different means of redress open to citizens, in case their rights under

Community law are violated. The other speakers were Mrs Jacqueline DUTHEIL DE LA ROCHÈRE, Director of the Centre de Droit Européen at the Université Panthéon Assas-Paris II, and Mr Antonio VITORINO, European Commissioner for Justice and Home Affairs and Chairman of the Charter Working Group of the Convention on the Future of Europe.

On 6 March, Mr Gerhard GRILL took part in a symposium « Auf dem Weg zu einem europäischen Verwaltungsraum » (Towards a European administrative space) organised by the Deutsche Hochschule für Verwaltungswissenschaften Speyer in co-operation with the representation of Rhineland-Palatinate in Brussels. The symposium took place in the offices of the latter in Brussels. Mr GRILL spoke about the right to good administration and the European Code of Good Administrative Behaviour. Further speakers included Professor Dr. Hermann HILL, rector of the Deutsche Hochschule für Verwaltungswissenschaften, and Professor Dr. Karl-Peter SOMMERMANN, professor at the Deutsche Hochschule für Verwaltungswissenschaften. The event was attended by some 70 participants.

Understanding Europe – the EU citizen's right to know

On 3 April, Mr DIAMANDOUROS spoke at a conference organised by Friends of Europe, the European Citizens Action Service, the European Commission and European Parliament. Around 250 people attended the conference including officials from the EU institutions and representatives from the public and private sectors in the Member States. Mr Ian HARDEN and Ms Rosita AGNEW from the Ombudsman's Office were also present. The seminar was divided into three sessions, namely "Finding a balance between information overload and the communications deficit", "Could more information on EU policies tackle the democratic deficit?" and "Dos and Don'ts of EU information Campaigns". Mr DIAMANDOUROS intervened during the first session, underlining the need to provide concrete information to citizens by, for example, informing them of their rights and how to use them. He pointed out that the European Ombudsman has an important role to play in this regard and should collaborate with his national counterparts, NGOs and the media to raise awareness of these rights among citizens.

Annual Conference of the European Environmental Bureau

Mr Ian HARDEN participated in a panel discussion of the draft constitution for Europe at the Annual Conference of the European Environmental Bureau, held in Brussels on 16 October. The keynote speaker was Commissioner Margot WALLSTRÖM. Other participants in the panel included Mr Andrew DUFF MEP and Mr Krister NILSSON, State Secretary at the Ministry of the Environment, Sweden.

European Union Committee of the British Chamber of Commerce

On 2 December, Mr DIAMANDOUROS gave a speech on "The Ombudsman in the 21st century – aims and aspirations" at a lunch meeting organised by the European Union Committee of the British Chamber of Commerce in Belgium. The event was attended by about 15 members from law firms, European Union affairs consultancies, European information services, political strategical companies and associations. Mr DIAMANDOUROS was accompanied by Ms Elodie BELFY.

European Forum of Citizens Advice Services

On 5 December, the European Ombudsman gave the keynote speech at the European Forum of Citizens Advice Services in Brussels. Mr. DIAMANDOUROS spoke on the topic of "Citizens' rights, means of redress and the Ombudsman", outlining the rights and remedies available to citizens of the Union. The Ombudsman then answered questions from participants on issues ranging from the implications of a legally binding Charter of Fundamental Rights to the future evolution of his institution. Mr. DIAMANDOUROS was accompanied by his Press Officer, Ms Rosita AGNEW, who attended the two-day Forum.

GERMANY

Baden Württemberg

On 11 and 12 February, Mr SÖDERMAN visited Baden-Württemberg. He was accompanied by Mr Gerhard Grill, Principal Legal Officer at the European Ombudsman's Office.

In the afternoon of 11 February, the Ombudsman was received at the University of Tübingen by Professor Dr. Martin NETTESHEIM, the Dean of the law faculty, Professor Dr. Hans-Ludwig GÜNTHER and the rector of the university, Professor Dr. Eberhard SCHAICH. The Ombudsman then gave a talk on his work to professors, students and researchers at the University of Tübingen. A lively discussion ensued.

On 12 February, the European Ombudsman presented his work to the members of the committee on petitions of the Landtag of Baden-Württemberg in Stuttgart at their regular meeting and answered questions from members of the committee. Dr Jörg DÖPPER, the chairman of the committee, subsequently took the Ombudsman to see Mrs Christa VOSSSCHULTE, deputy speaker of the Landtag. The Landtag published a press release (10/2003 of 12 February 2003) to mark the visit of the European Ombudsman.

In the afternoon, the Ombudsman visited the Europa-Zentrum Baden-Württemberg in Stuttgart where he was received by Mr Niels BUNJES who had organised the visit. The Ombudsman gave an interview to the Stuttgarter Zeitung and then presented his work to a gathering of experts and interested persons from institutions, groups and associations at the Europa-Zentrum. The lecture was introduced by Professor Dr. Hans TÜMMERS from the Stuttgart Institute of Management and Technology. After a lively discussion that followed the lecture, the Ombudsman returned to Strasbourg.

Speyer

On 31 March, Mr Gerhard GRILL gave the opening lecture on the right to good administration from a European perspective on the first day of the 4th Europa-Forum Speyer. Mrs Paulina TALLROTH, Professor Dr David CAPITANT and Professor Dr Ricardo GARCÍA MACHO dealt with the same subject from the perspective of their respective countries (Finland, France and Spain). The forum was organised by Professor Dr Siegfried MAGIERA and Professor Dr Karl-Peter SOMMERMANN of the Deutsche Hochschule für Verwaltungswissenschaften in Speyer. Around 60 civil servants and other officials from all over Germany participated in the event.

FRANCE

Strasbourg

On 13 February, Mr SÖDERMAN attended a lunch offered by the Mayor of Strasbourg, Mrs Fabienne KELLER, to bid farewell to him on the occasion of his retirement as from April 2003, and also to welcome the newly elected European Ombudsman, Mr Nikiforos DIAMANDOUROS, who was in Strasbourg on a working visit.

On 27 May, Mr DIAMANDOUROS was visited by Ms Lucie LAVOIE, Deputy Ombudsman of Quebec, Canada. They discussed preparations for the 8th International Ombudsman Institute Conference, which will take place in Quebec City in September 2004.

On 22 September, Ambassador Oguz DEMILRAP, Turkish Permanent Representative to the European Union, paid a visit to Mr DIAMANDOUROS in his office in Strasbourg. A number of issues were discussed, including prospects for the establishment of an ombudsman institution in Turkey.

On 21 October, Mr DIAMANDOUROS gave a speech to a luncheon meeting of the "Kangaroo Group" of the European Parliament. Mr DIAMANDOUROS had been invited by the Chairman of the Kangaroo Group (the Parliamentary Intergroup for Free Movement), Karl VON WOGAU MEP.

The chair of the luncheon, the Earl of STOCKTON introduced Mr DIAMANDOUROS, who spoke on the role of ombudsmen in defending citizens' rights within democracies. Over 50 Members of the European Parliament, European officials, journalists and representatives of industry and commerce attended the luncheon.

On 18 November, Mr DIAMANDOUROS gave a lecture to the Students Association of the "Institut d'Etudes Politiques de Strasbourg" on the subject of the role of the European Ombudsman in defending citizens' rights.

Council of Europe – Media Training Seminar

On 12 and 13 May, Ms Rosita AGNEW attended a media training seminar organised by the Council of Europe in Strasbourg.

Around fifteen people from the Council took part in the seminar which was given by two members of the Council's Spokesperson and Press Division – Mr Alun DRAKE, former journalist for the BBC and Ms Cathy BURTON, former press and radio journalist in the UK. The seminar was aimed at training members of the Council's Directory of Experts, who will increasingly be asked to speak to journalists as part of their daily work. The objectives of the course were to raise awareness of how the media work and to teach the skills required in media relations. Participants performed radio and television interviews and were given feedback to improve future performance.

Council of Europe – Meeting with EU and Accession Country ambassadors

On 28 May, Mr DIAMANDOUROS met the EU and Accession Country Permanent Representatives to the Council of Europe. He was invited to address the meeting by Ambassador Athanassios THEODORACOPOULOS, Permanent Representative of Greece to the Council of Europe.

In his speech, Mr DIAMANDOUROS addressed a number of issues including democracy and human rights, the European Convention and the role of the ombudsman. A lively and interesting discussion followed the intervention, during which topics such as transparency, democracy and human rights were raised.

Paris

On 5 June, Mr HARDEN made a presentation concerning the responsibilities of ombudsmen in relation to human rights at a colloquy on "The Institution of Ombudsman", organised in Paris by the Committee on Legal Affairs and Human Rights of the Council of Europe.

Epernay

On 25 October, Mr DIAMANDOUROS gave a presentation at the "Entretiens européens d'Epernay". Mr DIAMANDOUROS was invited to speak at the Conference by Mr Bernard STASI, the French Médiateur and President of the "Entretiens européens d'Epernay". Mr DIAMANDOUROS spoke on the subject of "the European Ombudsman and the citizens in tomorrow's Europe" (Le Médiateur européen et les citoyens dans l'Europe de demain).

SWEDEN

Stockholm

On 3 and 4 March, Mr SÖDERMAN visited Stockholm. He was accompanied by his assistant, Mr Juan MALLEA.

On 3 March, Mr SÖDERMAN was invited to a working meeting at the Government Chancellery with the participation of Mr Olle ABRAHAMSSON, Mr Carl Henrik EHRENKRONA, Mr Bosse HEDBERG, Mr Henrik JERMSTEN, Ms Helena JÄDERBLOM, Ms Kristina SVAHN STARRSJÖ, Mr Kenneth NORDLANDER. Also present were Mr Christian ANDERSSON, Head of the European Parliament's information office and Mr Hans ALLDIN, Head of the Commission's office in Stockholm.

In the morning of 4 March, Mr SÖDERMAN, accompanied by Mr Hans ALLDIN, had a meeting with the Secretary of State Mr Dan ELIASSON at the Swedish Ministry of Justice.

He later made a presentation on the European Ombudsman's Office to the members of three Swedish Parliamentary Committees: the Constitutional Affairs Committee, headed by Mr Gunnar HÖKMARK; the EU Affairs Committee, headed by Ms Inger SEGELSTRÖM; and the Foreign Affairs Committee, headed by Mr Berndt EKHOLM. The meeting took place at the Swedish Parliament's hemicycle.

In the afternoon of 4 March, Mr SÖDERMAN participated in a Symposium in the Aula Magna of the University of Stockholm, entitled "Europe for Citizens or for Politicians?" Other participants included Professor Tommy MÖLLER, Mr Göran MAGNUSSON, Mr Göran LENNMARKER and Mr Kenneth KVIST. Jointly organised by the EP Information office and the Stockholm Institute for European Policy Studies (SIEPS), the event was moderated by journalist Ms Ylva NILSSON. The European Ombudsman's lecture was followed by questions from the students.

ITALY

Florence

From 12 to 16 June, the European Ombudsman held a series of meetings in Florence. Mr DIAMANDOUROS was accompanied to all events by Ms Ida PALUMBO from his Office.

On 12 June, Mr DIAMANDOUROS was welcomed in Florence by the regional Ombudsman of Tuscany and coordinator of the Italian regional ombudsmen, Mr Romano FANTAPPIÈ. In the evening, Mr FANTAPPIÈ hosted a dinner for Mr DIAMANDOUROS, which was also attended by the head of the office of Mr FANTAPPIÈ and some members of his staff.

In the morning of 13 June, the European Ombudsman held a series of meetings with local and regional authorities. He met with the President of the City Council, Dr Alberto BRASCA, with the Ombudsman of Florence, Dr Francesco LOCOCCIOLO, and with the President of the regional Council, Mr Riccardo NENCINI.

Mr DIAMANDOUROS then attended a meeting with several Italian regional Ombudsmen and some local Ombudsmen. Mr DIAMANDOUROS explained the functioning of the European Ombudsman's Office and outlined his priorities. His talk was followed by a questions and answers session.

In the afternoon, Mr DIAMANDOUROS met with the participants to the 126th Bergedorf Round Table organised by the Körber Foundation. In the evening, he participated in a dinner hosted by the Foundation.

On 14 and 15 June, the Ombudsman attended the Round Table at "Villa la Fonte" in San Domenico di Fiesole. The theme of the Round Table, chaired by Dr Richard von WEIZSÄCKER, was "The future of Democracy in Europe". Three rounds of discussion had been planned. The first round addressed the historical and political development of democratic government in Europe in its regional and structural diversity. During the second round, a debate took place about crises, approaches to reform, and the possible means for renewing democracy at the national level in comparative perspective. The third round of discussion explored the future prospects of the European Union, as well as the possibilities and limits of a supranational democracy.

On 16 June, Mr DIAMANDOUROS held a bilateral meeting with the President of the European University Institute in Florence, Prof. Yves MINY.

IRELAND

On 11 July, Mr DIAMANDOUROS gave a speech about "The role of the Ombudsman in applying the Charter of Fundamental Rights" at the Institute of European Affairs in Dublin. This presentation

was followed by a speech by the newly appointed National Ombudsman of Ireland, Mrs Emily O'REILLY. In her first public address since taking up office, Mrs O'REILLY spoke about the right to good administration, the right of access to documents and the Ombudsman, seen from the Irish perspective.

Later that day, Mr DIAMANDOUROS, accompanied by Mr Olivier VERHEECKE and Ms Rosita AGNEW, had a meeting with the Chairman of the Irish House of Representatives, Dr Rory O'HANLON, who is also the Chairman of the Civil Service Commission. After the meeting, Mr DIAMANDOUROS was taken on a guided visit of the building of the House of Representatives.

FINLAND

From 6 to 10 September, the European Ombudsman, Mr P. Nikiforos DIAMANDOUROS, held a series of meetings, lectures and media events in Finland as part of his ongoing information tour of the Member and Accession States of the European Union. Mr DIAMANDOUROS was accompanied by Mrs Benita BROMS and Mr Ben HAGARD.

On 6 September, Mr DIAMANDOUROS had a lunchtime meeting with the Chancellor of Justice of Finland, Mr Paavo NIKULA and his wife Riitta NIKULA. Discussions during the meeting centred on the respective areas of competence of the Parliamentary Ombudsman and Chancellor of Justice in Finland, the working relations between these two institutions and their involvement in EU issues.

On 7 September, Mr and Mrs DIAMANDOUROS spent the day with the first European Ombudsman, Mr Jacob SÖDERMAN and his wife Raija SÖDERMAN. The four of them visited Ekenäs, a historically-significant coastal town in the west of Finland, and the surrounding countryside.

In the morning of 8 September, Mr DIAMANDOUROS paid a visit to the Deputy Chancellor of Justice of Finland, Mr Jaakko JONKKA. Mr JONKKA and the members of the Chancellor's staff present at the meeting gave an overview of the work of the Chancellor of Justice.

Mr Diamandouros, Mrs Riitta Nikula, Mr Paavo Nikula, Chancellor of Justice of Finland and Mrs Magda Diamandouros. Helsinki, Finland, 6 September 2003.

After his meeting with the Deputy Chancellor of Justice, Mr DIAMANDOUROS gave a talk to the staff of the Chancellor of Justice about the work of the European Ombudsman. A question and answer session then followed, during which many issues of common interest were discussed.

Mr DIAMANDOUROS then held a lunchtime meeting with Finnish Members of the European Parliament, namely Mrs Ulpu IIVARI, Mrs Eija-Riitta KORHOLA and Mr Matti WUORI. The meeting was organised and hosted by Mr Renny JOKELIN, Head of the European Parliament Information Office in Helsinki. Issues raised during discussion included the European Ombudsman's information tour of the EU Accession Countries, co-operation with national ombudsmen and the European Ombudsman's views on the Draft Constitutional Treaty.

Ms Riitta-Leena Paunio, Parliamentary Ombudsman of Finland, Mr Diamandouros and Mr Paavo Lipponen, Speaker of the Finnish Parliament. Helsinki, Finland, 10 September 2003.

After the lunchtime meeting with the MEPs, Mr DIAMANDOUROS met with the President of the Supreme Court of Finland and former Judge of the Court of Justice of the European Communities, Mr Leif SEVÓN. Issues raised during discussion included the information tour to the Accession Countries, co-operation with national ombudsmen and the development of ombudsmen and similar bodies in the European Union Accession Countries.

In the morning of 9 September, Mr DIAMANDOUROS paid a visit to the office of the Parliamentary Ombudsman of Finland. He began his visit with a meeting with the Parliamentary Ombudsman, Mrs Riitta-Leena PAUNIO, her two Deputies, Mr Ikka RAUTIO and Mr Petri JÄÄSKELÄINEN and the Liaison Officer Mrs Riitta LÄNSISYRJÄ. Mrs PAUNIO described the activities of the Parliamentary Ombudsman and the division of work between her and the two Deputies. Issues raised during discussion focussed on the complaints relating to Community law that have been handled by the Parliamentary Ombudsman.

Following his meeting with the Parliamentary Ombudsman, Mr DIAMANDOUROS gave a talk to the staff of the Parliamentary Ombudsman about the work of the European Ombudsman. He explained the functioning of the European Ombudsman's Office and outlined his priorities. A question and answer session then followed, during which many issues of common interest were discussed.

After lunch, Mr DIAMANDOUROS met with Mr Timo MÄKELÄ, Head of the European Commission Representation in Finland. Issues raised during discussion included the work of the Commission Representation, access to documents, the SOLVIT network and the EUROJUS system. At the end of the meeting, Mr DIAMANDOUROS was briefly introduced to the Finnish EUROJUS lawyer, Mr Juri KAINULAINEN.

That evening, Mrs Riitta-Leena PAUNIO hosted a dinner in honour of Mr and Mrs DIAMANDOUROS. Participants at the dinner included the first European Ombudsman, Mr Jacob SÖDERMAN and his wife Mrs Raija SÖDERMAN, the President of the Supreme Court, Mr Leif SEVÓN, the President of the Supreme Administrative Court, Mr Pekka HALLBERG, the Chancellor of the Ministry of Justice, Mrs Kirsti RISSANEN, the Secretary General of the Finnish Parliament, Mr Seppo TIITINEN, the Jean Monnet Chair of the University of Turku, Professor Esko ANTOLA and the two Deputy Parliamentary Ombudsmen, Mr Ikka RAUTIO and Mr Petri JÄÄSKELÄINEN.

On 10 September, Mr DIAMANDOUROS met with the Speaker of the Finnish Parliament, Mr Paavo LIPPONEN. The Parliamentary Ombudsman, Mrs Riitta-Leena PAUNIO, also attended the meeting.

Mr DIAMANDOUROS then met with the Prime Minister of Finland, Mr Matti VANHANEN. Mr DIAMANDOUROS outlined the work of the European Ombudsman for the Prime Minister and then presented his two proposals for improving the Draft Constitutional Treaty.

Mr Diamandouros and Mr Matti Vanhanen, Prime Minister of Finland.
Helsinki, Finland, 10 September 2003.

Over a working lunch, Mr DIAMANDOUROS met with the Director of Research at the Centre for European Studies of the University of Helsinki's Department of Political Science, Mrs Teija TIILIKAINEN. The possibilities for European Studies centres to work together or separately to develop courses on democratic accountability in general, or the European Ombudsman in particular, were discussed.

After the meeting with Mrs TIILIKAINEN, Mr DIAMANDOUROS gave a public lecture on "Citizens' rights, means of redress and the European Ombudsman" at the Centre for European Studies. Over 50 persons attended, from a wide variety of backgrounds including students from the University of Helsinki, representatives of non-governmental organisations and officials from Finnish Ministries involved with giving advice to citizens concerning the European Union.

UNITED KINGDOM

Seminar at the University College, London

On 9 September, Mr HARDEN gave a seminar at the Constitution Unit, University College, London on public access to information and documents held by EU institutions. The seminar was chaired by

Professor Patrick BIRKINSHAW, University of Hull and attended by amongst others, the Director of the Constitution Unit, Professor Robert HAZELL.

London

On 23 and 24 November, the European Ombudsman held a series of meetings and lectures in London.

On 23 November, Mr DIAMANDOUROS met with Professor Roger JOWELL, Director of the Centre for Comparative Social Surveys at City University, London in order to discuss ways of researching customer satisfaction in the work of the European Ombudsman.

On 24 November, Mr DIAMANDOUROS met with the Parliamentary and Health Service Ombudsman, Ms Ann ABRAHAM, with the Deputy Parliamentary and Health Service Ombudsman, Ms Trish LONGDON, and with Mr Tony REDMOND, Chairman and Chief Executive of the Commission for Local Administration (England) and Local Government Ombudsman. Issues discussed during the meeting included developments in the role of the Parliamentary and Health Service Ombudsman in the United Kingdom and co-operation among ombudsman offices.

After lunch, Mr DIAMANDOUROS gave a talk to the staff of the Parliamentary and Health Service Ombudsman about the work of the European Ombudsman. He explained the functioning of the European Ombudsman's Office and outlined his priorities. A question and answer session then followed, during which many issues of common interest were discussed. Later in the afternoon, Mr DIAMANDOUROS met with the former Parliamentary and Health Service Ombudsman, Sir Michael BUCKLEY.

After attending a meeting with members of the Board of Athens College at the Hellenic Centre in London, Mr DIAMANDOUROS finished the day by giving the 2003 Athens College Alumni Prestigious Lecture on "The Ombudsman as a Mechanism of Accountability in Modern Democracies". The lecture was followed by a reception.

ESTONIA

Tallinn

From Thursday 11 to Friday 12 September, the European Ombudsman, Mr P. Nikiforos DIAMANDOUROS, held a series of meetings, lectures and media events in Estonia, as part of his ongoing information tour of the Member and Accession States of the European Union. Mr DIAMANDOUROS was accompanied by Mrs Benita BROMS and Mr Ben HAGARD.

(*Left*) Mr Diamandouros and Mr Juhan Parts, Prime Minister of Estonia, and (*right*) Mr Diamandouros and Mr Arnold Rüütel, President of Estonia. Tallinn, Estonia, 11 September 2003.

On the morning of Thursday 11 September 2003, Mr DIAMANDOUROS met with Mr Allar JÕKS, Legal Chancellor of Estonia and with the Director of the Legal Chancellor's Office, Ms Egle KÄÄRATS. Mr JÕKS and Ms KÄÄRATS, presented an overview of the work of the Legal Chancellor. Issues raised during discussion included the European Ombudsman's ongoing information tour, co-operation between ombudsmen and similar bodies in Europe, the linguistic diversity of the European Ombudsman's Office and the consequences of enlargement for the European Ombudsman's Office.

Mr Diamandouros, Mrs Benita Broms, Mr Allar Jõks, Legal Chancellor of Estonia and Ms Egle Käärats, Director of the Legal Chancellor's Office. Tallinn, Estonia, 11 September 2003.

Following the meeting with Mr JÕKS, Mr DIAMANDOUROS met with the Prime Minister of Estonia, Mr Juhan PARTS. The Legal Chancellor, Mr JÕKS, also attended the meeting. The Prime Minister stated that Estonian citizens are very keen to know of their rights, at both the national and now at the European level. Mr DIAMANDOUROS outlined the work of the European Ombudsman for the Prime Minister and explained the purpose of the ongoing information tour. Issues raised during discussion included the following weekend's referendum in Estonia on EU membership, the Charter of Fundamental Rights and the European Ombudsman's two proposals for improving the Draft Constitutional Treaty.

In the afternoon, Mr DIAMANDOUROS met with the President of Estonia, Mr Arnold RÜÜTEL. The Legal Chancellor, Mr JÕKS, also attended the meeting. Mr DIAMANDOUROS outlined the work of the European Ombudsman for the President and explained the purpose of the ongoing information tour. The President outlined a variety of challenges facing Estonia and gave some thoughts on the future. Mr DIAMANDOUROS presented his two proposals for improving the Draft Constitutional Treaty.

In the morning of Friday 12 September, Mr DIAMANDOUROS met with the Head of the European Commission Delegation in Estonia, Mr John KJAER. Issues raised during discussion included the European Ombudsman's ongoing information tour, the most effective ways of informing citizens in the EU Accession Countries, and the current and future structure of the European Commission offices in the Accession Countries.

During Friday lunchtime, Mr DIAMANDOUROS gave a public lecture on "Democracy, accountability and the institution of the ombudsman" at the National Library of Estonia. Over 130 persons attended, from a wide variety of backgrounds, including students from the University of Tallinn, representatives of non-governmental organisations, officials from Estonian Ministries and activists from both sides of the campaign leading up to the following weekend's referendum on EU membership.

That afternoon, Mr DIAMANDOUROS gave a talk to the staff of the Legal Chancellor about the work of the European Ombudsman. He explained the functioning of the European Ombudsman's Office and outlined his priorities. A question and answer session then followed, during which many issues of common interest were discussed.

SPAIN

On 18 September, Mr DIAMANDOUROS travelled to Barcelona as part of his efforts to make the institution better known among European citizens.

Mr DIAMANDOUROS met the regional ombudsman of Catalonia, Mr CAÑELLAS, with whom he discussed ways of increasing the co-operation between their offices and how best to serve the citizen. Mr DIAMANDOUROS had the opportunity to have an informal exchange of views with some of Mr CAÑELLAS' staff.

In the course of his visit, the European Ombudsman delivered the opening address at the VIth Spanish Congress of Political Science in the University of Barcelona. In his speech, Mr DIAMANDOUROS outlined the crucial role ombudsmen play in modern democracies in holding public authorities to account. The vice-chancellors of the three universities of Barcelona, as well as a number of members of the Catalan government were among the public attending the event.

TUNISIA

Third Statutory Congress of the French-speaking Ombudsman's Association

On 14 and 15 October, Mr DIAMANDOUROS, accompanied by Mr Olivier VERHEECKE, attended the "Third Statutory Congress of the French-speaking Ombudsman's Association" (3ème Congrès Statutaire de l'Association des Ombudsmans et Médiateurs de la Francophonie – AOMF) which took place in Yasmine Hammamet, Tunisia. The Congress was entitled "L'Ombudsman/Médiateur, acteur de la transparence administrative".

The Congress was officially opened in the morning of 14 October by Mr Béchir TEKKARI, Minister of Justice and Human rights of Tunisia. Other speakers during the opening ceremony included Mrs Alifa FAROUK, Ombudsman of the Tunisian Republic, Mr Bernard STASI, President of the AOMF and French Ombudsman, Mrs Maria Grazia VACCHINA, Secretary General of the AOMF and Regional Ombudsman of the Aosta Valley, Italy, and Mr Daniel JACOBY, Honorary Member of the AOMF.

In the first session of the Congress, Mr DIAMANDOUROS gave a lecture entitled "Le Médiateur européen, les droits fondamentaux et la future Constitution pour l'Europe". Other speakers included Mr Hatem BEN SALEM, Secretary of State for Foreign Relations, and Mrs FAROUK.

In the afternoon session, speeches were given by Mr JACOBY, Mr Anton CAÑELLAS, Regional Ombudsman of Catalonia, and Mr Nourreddine BEN FARHAT, Director General of the Information Centre on NGOs (IFADA).

In the evenings of 14 and 15 October respectively, the Congress delegation was officially received by Mr Mohamed GHANNOUCHI, Prime Minister of the Tunisian Republic, and Mr Mondher ZENAODI, Minister of Tourism and Commerce.

CYPRUS

On 9-10 October, the European Ombudsman attended the international conference "The Changing Nature of the Ombudsman Institution in Europe" in Nicosia, Cyprus. The conference was organised by the Commissioner for Administration in Cyprus, Ms Eliana NICOLAOU and attended by over 40 participants from 25 countries. The Annual Meeting of the Voting Members of the European Region of the International Ombudsman Institute also took place during the conference, under the chairmanship of Dr Herman WUYTS, who is the Regional Vice-President of the European Region of the IOI. Mr Ian HARDEN and Ms Rosita AGNEW accompanied Mr DIAMANDOUROS.

The conference was opened by the President of the Republic of Cyprus, Mr Tassos PAPADOPOULOS. Mr DIAMANDOUROS addressed the conference on "The role of Ombudsmen in applying the European Union Charter". His counterparts from The Netherlands, Mr Roel FERNHOUT, and

Belgium, Dr Herman WUYTS spoke on "The role of the Ombudsman in the Protection of Social Rights" and "Supporting and Strengthening the Ombudsman Institution – A Practical Approach" respectively.

Dr Herman Wuyts, Regional Vice-President of the European Region of the IOI, Ms Eliana Nicolaou, Commissioner for Administration in Cyprus, Mr Arne Fliflet, Parliamentary Ombudsman of Norway, Ms Kerstin André, Justice Ombudsman of Sweden, Mr Diamandouros, Mr Joseph Sammut, National Ombudsman of Malta and Mr Roel Fernhout, National Ombudsman of the Netherlands, at the "Changing Nature of the Ombudsman Institution in Europe" conference. Nicosia, Cyprus, 9 September 2003.

HUNGARY

From 27 to 28 October, the European Ombudsman, Mr P. Nikiforos DIAMANDOUROS, held a series of meetings, lectures and media events in Hungary as part of his ongoing information tour of the Member and Accession States of the European Union. Mr DIAMANDOUROS was accompanied to all events by Mr Alessandro DEL BON and Ms Rosita AGNEW.

In the morning of 27 October, Mr DIAMANDOUROS met with all three Parliamentary Commissioners, namely Mr Barnabás LENKOVICS, Mr Jenő KALTENBACH (Parliamentary Commissioner for National and Ethnic Minority Rights) and Mr Attila PETERFALVI (Parliamentary Commissioner for Data Protection and Freedom of Information), as well as the Deputy Parliamentary Commissioner for Civil Rights, Mr Albert TAKACS. Ms Erzsébet WOLF, Director of the Office, also attended the meeting. Among the issues raised during the discussion were the rights of minorities, non-judicial remedies and the mandate of the European Ombudsman.

Mr DIAMANDOUROS then gave a talk to the staff of the Parliamentary Commissioners about the work of the European Ombudsman. He explained the functioning of the European Ombudsman's Office and outlined his priorities. His talk was followed by a question and answer session, during which issues raised included the Ombudsman's approach to transparency and the proportion of overall complaints concerning lack of openness. Ms Rosita AGNEW then explained the Ombudsman's liaison network and the tools used to exchange information.

Mr DIAMANDOUROS then met with the Deputy Speaker of the National Assembly, Mr László MANDUR. Mr LENKOVICS, Mr PETERFALVI and Ms Eva LISTAR (responsible for relations with the Parliament) also attended the meeting. Mr DIAMANDOUROS outlined the work of the European Ombudsman and explained the purpose of the ongoing information tour. There was then a short discussion on the draft Constitution for Europe, during which Mr DIAMANDOUROS outlined the panoply of mechanisms available to citizens to defend their rights.

In the afternoon, Mr DIAMANDOUROS met the Rector of the Eötvös Loránd University and the Dean of the Faculty of Law. The Rector, Professor Dr Istvan KLINGHAMMER, welcomed the Ombudsman and gave an overview of the history of the University, which he said was the oldest and largest in Hungary. Mr DIAMANDOUROS explained the reason for his visit to Hungary and what his work involves. Mr DIAMANDOUROS then gave a public lecture at the University on "Democracy, accountability and the institution of the ombudsman". Over forty people attended the lecture, mostly students and professors from the University.

In the evening, Mr LENKOVICS hosted a dinner for Mr DIAMANDOUROS. Professors Judith SANDOR and Gabor TOKA from the Central European University also attended the dinner. The discussion centred around high profile cases that the Hungarian Parliamentary Commissioners had dealt with, including a case about the right to life and the ongoing problem of segregation in schools.

On 28 October, Mr DIAMANDOUROS had a meeting with the Prime Minister of Hungary, Mr Péter MEDGYESSY during which the Ombudsman gave an overview of his work and explained the purpose of the ongoing information tour. He confirmed the European Ombudsman's continuing commitment to linguistic diversity in an enlarged European Union and referred to the issue of ethnic minorities and the draft Constitution. The Prime Minister welcomed the fact that he had brought this topic up, as it is one of great importance in Hungary.

Mr DIAMANDOUROS then met with Mr László SZASZFALVI, Chairman of the Committee on Human Rights, Minorities and Religion. Mr SZASZFALVI explained the work of his Committee, which will soon be revising the Hungarian Act on Minorities. There was then a discussion on the problems of the Roma minority and the need to empower disadvantaged groups.

After a lunch hosted by Mr KALTENBACH, Mr DIAMANDOUROS spoke at the International Conference entitled "The European Constitution – A Vision for Europe". The Conference was organised by the Prime Minister's Office. Around 50 people attended the event that was chaired by the Hungarian Ambassador to the EU, Mr Péter BALAZS.

After the speech, Mr DIAMANDOUROS had a discussion with Mr KALTENBACH and two members of his staff, about the issue of minorities in Hungary and the importance of protecting their rights. The discussion covered the types of activities that minority groups are involved in and the issue of segregation.

DENMARK

From 5 to 7 November, the European Ombudsman held a series of meetings, lectures and media events in Denmark. Mr DIAMANDOUROS was accompanied by Mr José MARTÍNEZ ARAGON and Mr Nicholas CATEPHORES. All events took place in the city of Copenhagen.

On 5 November, the day began with a meeting with Mr Søren SØNDERGAARD, Head of the Information Office in Denmark of the European Parliament, and his Deputy, Mr Henrik GERNER HANSEN. Issues raised during the discussion included the current political situation in Denmark.

Mr DIAMANDOUROS then had an exchange of views on the role and work of the European Ombudsman with a number of representatives of NGOs and relays at the Representation of the European Commission in Denmark.

Subsequently, he had a working lunch at the Representation with the Deputy Head of Representation, Mr Thomas CHRISTENSEN, and the Head of Press and Media Service, Mr Michael VEDSØ. Issues raised during the discussion included Danish attitudes towards the European Union.

In the afternoon, Mr DIAMANDOUROS attended a meeting of the Legal Affairs Committee of the Danish Parliament, at which the Danish Parliamentary Ombudsman, Mr Hans GAMMELTOFT-HANSEN, presented his Annual Report.

The final meeting of the day was at the European Environment Agency with its Executive Director, Professor Jacqueline McGLADE. Horizontal issues such as the impact of the staff reforms in the European Union Institutions and cooperation on the Code of Good Administration were discussed. The meeting was also attended by Mr Gordon McINNES, Mr Jef MAES and Mr Jeff HUNTINGTON from the Agency.

On 6 November, Mr DIAMANDOUROS had a meeting with Mr Nils BERNSTEIN, Permanent Secretary of the Prime Minister's Department, at the Office of the Prime Minister. The discussion included the proposals by Mr DIAMANDOUROS for amendments to improve the Draft Constitutional Treaty for Europe. Mr DIAMANDOUROS was accompanied to this meeting by the Danish Parliamentary Ombudsman, Mr Hans GAMMELTOFT-HANSEN.

Mr DIAMANDOUROS then had lunch with Members of the Legal Affairs Committee of the Danish Parliament in the Parliament Restaurant. The lunch was attended by Ms Anne BAASTRUP MP, Chairman of the Legal Affairs Committee, and by Mr Morten BØDSKOV MP, Ms Elisabeth ARNOLD MP, Ms Margrete AUKEN MP, and Mr Hans GAMMELTOFT-HANSEN.

Mr DIAMANDOUROS later had a meeting with Mr Friis Arne PETERSEN, Permanent Secretary of the Ministry of Foreign Affairs, at the Foreign Ministry. The discussion included the proposals by Mr DIAMANDOUROS for amendments to improve the Draft Constitutional Treaty for Europe. Mr DIAMANDOUROS was accompanied to this meeting by the Danish Parliamentary Ombudsman.

On 7 November, the day began with a meeting with the Speaker of the Danish Parliament, Mr Christian MEJDAHL. Subjects covered included the role of the European Ombudsman and prospects for the Intergovernmental Conference. Mr DIAMANDOUROS was accompanied to this meeting by the Danish Parliamentary Ombudsman.

Mr DIAMANDOUROS then gave a briefing about the role and work of the European Ombudsman to the staff of the Danish Parliamentary Ombudsman at their office which was followed by a bilateral exchange of views with Mr GAMMELTOFT-HANSEN.

Mr DIAMANDOUROS then paid a courtesy visit to the Representation of the European Commission in Denmark and met with the acting Head of Representation, Mr Peter LINDVALD NIELSEN.

The visit ended with an official dinner hosted by the Danish Parliamentary Ombudsman in the Restaurant of the Parliament.

MALTA

From 9 to 11 December, the European Ombudsman held a series of meetings, lectures and media events in Malta as part of his ongoing information tour of the Member and Accession States of the European Union. Mr DIAMANDOUROS was accompanied to all events by Mr Ben HAGARD and Ms Ida PALUMBO.

On 9 December, Mr DIAMANDOUROS met with Mr Ronald GALLIMORE, Head of the European Commission Delegation, at the Delegation office in Ta'Xbiex. The Head of the Information Office in Malta of the European Parliament, Mr Ron EVERS, was also present at the meeting. Issues raised during discussion included the referendum on EU membership, Maltese citizens' expectations resulting from EU membership and various ideas for informing citizens of the work of the European Ombudsman. Mr EVERS announced that the Information Office will be producing a brochure about citizens' rights and distributing it to every household in Malta during Spring 2004.

Mr DIAMANDOUROS then had a meeting with the Ombudsman of Malta, Mr Joseph SAMMUT and with senior members of his staff. Mr SAMMUT outlined the work of the Ombudsman of Malta. Issues raised during discussion included the network that the Maltese Ombudsman has built up to disseminate best practice, the use of the Maltese language and the attention given to the views of third parties when handling cases. Mr SAMMUT explained that he has long been asking Parliament

to pay more attention to his work and that at last, a two-person committee has just been set up to deal with Ombudsman affairs.

The final meeting of the day was with the Foreign and European Affairs Committee of the House of Representatives of Malta. The Chairman of the Committee, Mr Michael FRENDO, welcomed Mr DIAMANDOUROS, who then addressed the Committee to explain the work of the European Ombudsman and the objectives of the information tour. Issues raised during a lengthy and interesting discussion included the co-operation between the European Ombudsman and national ombudsmen and the European Ombudsman's proposals for improving the Draft Treaty establishing a Constitution for Europe. The Chairman informed Mr DIAMANDOUROS that the meeting was a historic occasion, as it was the first time that a Committee meeting had been open to the public by being streamed live on the internet.

Mr Michael Frendo, Chairman of the Foreign and European Affairs Committee of the House of Representatives of Malta, Members of the Committee and Mr Diamandouros. Valletta, Malta, 9 December 2003.

That evening, Mr SAMMUT hosted a dinner for the European Ombudsman and his delegation. Several of the Maltese Ombudsman's senior staff were present at the dinner.

Members of the Mini European Assembly and Mr Diamandouros. Valletta, Malta, 10 December 2003.

On 10 December, the day began with a meeting with Dr Alfred SANT, Leader of the Opposition Labour Party in Malta. The Party's spokesman for European affairs, Evarist BARTOLO and the spokesman on the Ombudsman's Office, Adrian VASSALLO, were also present at the meeting. Mr DIAMANDOUROS explained the work of the European Ombudsman and the objectives of

the information tour. Issues raised during discussion included relations between the national Ombudsman and the European Ombudsman and the European Ombudsman's proposals for improving the Draft Treaty establishing a Constitution for Europe.

Later in the morning, Mr DIAMANDOUROS gave a speech to an extraordinary session of the Mini European Assembly, a prominent non-governmental organisation in Malta. His speech was entitled "Democracy, accountability and the institution of the ombudsman". Over 60 students from further and higher education attended the lecture and raised a number of interesting questions during the subsequent question and answer session.

Dr Edward Fenech Adami, Prime Minister of Malta, Mr Diamandouros and Mr Joseph Sammut, National Ombudsman of Malta.
Valletta, Malta, 10 December 2003.

After lunch, the European Ombudsman met Dr Joe BORG, Minister of Foreign Affairs of Malta. The Ombudsman of Malta, Mr Joseph SAMMUT, also attended the meeting. Mr DIAMANDOUROS explained the work of the European Ombudsman and the objectives of the information tour. Discussions centred on the European Ombudsman's proposals for improving the Draft Treaty establishing a Constitution for Europe.

Mr DIAMANDOUROS then met the Prime Minister of Malta, Dr Edward Fenech ADAMI. The Ombudsman of Malta, Mr Joseph SAMMUT, also attended the meeting. Mr DIAMANDOUROS outlined the work of the European Ombudsman and explained the purpose of the ongoing information tour. He confirmed the European Ombudsman's continuing commitment to linguistic diversity in an enlarged European Union and referred to his proposals for improving the Draft Treaty establishing a Constitution for Europe. He also highlighted the close working relationship between the European Ombudsman and the national Ombudsman of Malta.

Mr DIAMANDOUROS finished the day by giving a public lecture at the Aula Magna of the University of Malta. The theme of his lecture was "Building a citizen-centred Europe – the Role of the European Ombudsman". The lecture was chaired by the Ombudsman of Malta, Mr Joseph SAMMUT and was attended by over 70 people. A number of interesting questions were raised during the subsequent question and answer session.

GREECE

Athens

On 19 December, Mr DIAMANDOUROS participated in a round-table on "The Greek Political System Faced with Immigrants and Racism" organised by the Hellenic Centre for European Studies and Research and the Greek General Confederation of Labour.

On 22 December, Mr DIAMANDOUROS participated in the presentation of the Greek edition of "The Europeans" by the distinguished Professor of History at the University of Paris I, Mrs Helene

AHRWEILER-GLYKATZI, which took place under the auspices of the Information Office of the European Parliament in Athens.

On 22 December, Mr DIAMANDOUROS gave the third annual lecture at the Hellenic Foundation for European and Foreign Policy on "Democracy, the Rule of Law and the Institution of the Ombudsman in Eastern and South-eastern Europe: the European Perspective".

6.3 OTHER EVENTS

On 8 January, Mr Alessandro DEL BON gave a lecture on the role and the work of the European Ombudsman to a group of French pupils from the Lucie Berger School in Strasbourg.

On 14 January, Mr SÖDERMAN received a delegation from the Secretariat of the Chamber of the Swedish Parliament in Strasbourg. Mr SÖDERMAN explained his work and achievements as European Ombudsman and answered questions from the participants.

On 15 January, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 15 students from the Gustav-Heinemann-Gesamtschule in Essen under the guidance of Mrs Margrit THIMME-RICHARDT.

On 22 January, Mr José MARTÍNEZ ARAGÓN lectured on the work of the European Ombudsman to a group of students from the Institut des Hautes Etudes Européennes of the Robert Schuman University, in Strasbourg.

On 10 February, Mr MARTÍNEZ ARAGÓN gave a presentation on the role of the European Ombudsman to a group of fifteen MPs from Lithuania. The lecture was given in the framework of the "Ahead of the Game" programme preparing EU Accession Member States, prospective Members of the European Parliament and Officials.

On 11 February, Mr Ian HARDEN met two German students – Ms Simone RUPPERTZ-RAUSCH and Mr Tobias AUBERGER – to discuss the European Ombudsman's work on transparency. The students were carrying out research for the Deutsche Forschungsgemeinschaft and their project was entitled "The Development of Rights and Democracy in the EU". The interview focused on the Ombudsman's involvement in the elaboration and implementation of the rules on access to documents of the EU institutions.

On 11 March, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 40 students from Nottingham under the guidance of Mr Michael McKEEVER.

On 3 April, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to the 60 participants of the 25th European Study Seminar of the International Kolping Society. The seminar was headed by Mr Anton SALESNY.

On 7 April, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 20 Finnish guests of Mrs Marjo MATIKAINEN-KALLSTRÖM MEP.

On 9 April, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 20 students from the Realschule Halstenbek, who were accompanied by their teacher, Mr Detlef LAU.

On 23 May, Mr Olivier VERHEECKE gave a lecture to a group of six lawyers from the national Ombudsmen offices of Costa Rica, El Salvador, Guatemala, Panama and from the Law Reform Commission of Tanzania. The group was led by Professor H. ADDINK from the Institute of Constitutional and Administrative Law of the Utrecht University. Mr VERHEECKE spoke about the role and activities of the European Ombudsman, his main achievements since 1995, his contribution

to the Convention on the Future of Europe and his activities in the framework of an enlarged European Union. The presentation was followed by a lively discussion.

On 26 May, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to 35 members of the Europa-Union Dortmund.

On 2 June, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to 30 students from the Staatliche Berufsschule Landsberg am Lech (Bavaria). The students were accompanied by their teacher, Mr F. GRAF. Later that day, Mr GRILL also gave a lecture to some 50 stagiaires from the European Commission.

On 4 June, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to the 26 participants of a seminar on equality of chances for women and men organised by the Bildungswerk Sachsen of the Deutsche Gesellschaft e.V. The participants were accompanied by Mrs Elke FEILER from the Bildungswerk Sachsen.

On 18 June, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to 40 participants from the Karl-Arnold-Stiftung in Königswinter, Germany.

On 25 June, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 40 trainee teachers from Germany in the framework of a trip to Strasbourg organised by the Europäische Akademie Bayern. The participants were accompanied by Dr Heike HOFFMANN from the Europäische Akademie Bayern.

On 8 July, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 25 citizens from Germany within the framework of a seminar organised by Arbeitnehmer-Zentrum Königswinter (AZK).

On 10 July, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 45 trainee teachers from Germany in the framework of a trip to Strasbourg organised by the Europäische Akademie Bayern. The participants were accompanied by Dr Heike HOFFMANN from the Europäische Akademie Bayern.

On the same day, Mr GRILL lectured to 15 local politicians and administrators from Germany within the framework of a seminar organised by the Stätte der Begegnung e.V. in Vlotho (Germany). The group was accompanied by Mr Johannes SCHRÖDER.

On 15 July, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 45 trainee teachers from Germany in the framework of a trip to Strasbourg organised by the Europäische Akademie Bayern. The participants were accompanied by Mrs Alke BÜTTNER from the Europäische Akademie Bayern.

On 18 July, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 40 members of a Catholic parish from Dortmund within the framework of a seminar organised by the Karl-Arnold-Stiftung (Königswinter). Later that day, he also lectured to 51 members of the municipal council of Friesenheim (Baden) and members of their families. The participants were accompanied by Mr Klaus GRAS from Kehl.

On 21 July, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to 12 trainee teachers from Starnberg and their leader, Mrs Gertrud GRUBER.

On 24 September, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 40 pupils from a secondary school in Brühl (Germany) accompanied by Mr Carsten SCHÜBELER. The visit was organised by the Karl-Arnold-Stiftung in Königswinter, Germany.

On 3 October, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 35 teachers from Germany within the framework of a trip to Strasbourg organised by the Karl-Arnold-Stiftung (Königswinter). The participants were accompanied by Mr J. CLAUSIUS from the Karl-Arnold-Stiftung.

On 15 October, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 35 German soldiers within the framework of a seminar organised by the Karl-Arnold-Stiftung (Königswinter).

On 15 October, Ms Tina NILSSON presented the work of the European Ombudsman to a group of law students from Erhus University, Denmark. The meeting took place in Brussels and the presentation was followed by questions from the participants.

On 22 October, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 30 headmasters and school supervision officials from Germany within the framework of a trip to Strasbourg organised by the Regierung der Oberpfalz. The participants were accompanied by Mr Heribert STAUTNER.

On 23 October, Mr MARTÍNEZ ARAGÓN presented the work of the European Ombudsman to a group of political activists from Sweden, who had been invited to Strasbourg by the Swedish Social Democrats' group in the European Parliament.

On 17 November, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to some 15 German citizens within the framework of a seminar organised by Bildungswerk für Demokratie, soziale Politik und Öffentlichkeit (Düsseldorf) and to a journalist. The group was led by Mrs Wiltraud TERLINDEN.

On 18 December, Mr DIAMANDOUROS presented his work to a group of doctors and students from Greece who had been invited to Strasbourg by Mr Dimitris TSATSOS MEP. Mr DIAMANDOUROS spoke in particular about the proactive role of ombudsmen in protecting citizens' rights.

On 18 December, Mr GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some 20 young diplomats from the Accession Countries within the framework of a seminar organised by the French Ministry of Foreign Affairs and the Centre des études européennes in Strasbourg. The group was guided by Mrs Sarah KEATING.

6.4 MEDIA RELATIONS

On 13 January, Mr Philippe GELIE of Le Figaro interviewed Mr SÖDERMAN by telephone. The interview covered Mr SÖDERMAN's seven years as European Ombudsman, with a particular focus on his relations with the institutions.

On 14 January, Ms Maria MAGGIORE interviewed Mr SÖDERMAN for a Euronews programme. The aim of the programme was to explain the Ombudsman's work to viewers by presenting cases the Ombudsman had dealt with. Mr SÖDERMAN outlined his main areas of activity to the journalist and summarised his key achievements as European Ombudsman.

On 14 January, Ms Melanie RAY of BBC Television interviewed Mr SÖDERMAN. The interview formed part of a news programme about the election of the new European Ombudsman.

On 20 January, Mr SÖDERMAN gave an interview to Mr Alain DEFAUX, journalist for Eurinfo, the monthly publication of the Commission's representation in Belgium. Mr DEFAUX asked Mr SÖDERMAN about his experience as the first European Ombudsman.

On 23 January, Ms Alfonza SALAMONE interviewed Mr SÖDERMAN for a radio programme on Belgian radio, RTBF, called "Rond Point Schuman". The purpose of the interview was to explain the service the European Ombudsman provides for citizens.

On 10 February, Mr SÖDERMAN gave an interview to a Swedish journalist, Mr Charlie NILSSON from the newspaper Smεlandstidningen. Mr NILSSON asked the Ombudsman about his impression of the EU institutions and his work in dealing with complaints from European citizens.

Also On 10 February, Mr SÖDERMAN gave an interview in Strasbourg to the Finnish business magazine Kauppalehti. He was interviewed by Ms Mirjami SAARINEN, the magazine's Brussels-based correspondent.

On 11 February, the Ombudsman gave an interview to Ms Sigrid BÖE of the Swedish national paper Dagens Nyheter. Ms BÖE asked the Ombudsman about his experience in dealing with citizens' complaints and his impression of how the EU institutions had developed during his time as Ombudsman.

On 18 February, the European Ombudsman was interviewed by Mr Thorsten SCHÄFER, a Brussels-based reporter for the German press agency, DPA. Mr SCHÄFER was interested in Mr SÖDERMAN's work as Ombudsman since 1995 and the types of complaints he had dealt with.

On 26 February, Mr SÖDERMAN gave an interview to Mr Denis MC GOWAN, Editor of the European Commission's internal newsletter, Commission en Direct. Mr MC GOWAN asked the Ombudsman about his work since 1995 and how the institutions had improved their administration over that time.

On 27 February, Mr Jens REIERMANN, European Editor for the Danish radio programme "Orientering" interviewed Mr SÖDERMAN. The interview focused on the Ombudsman's proposals to the European Convention and particularly on human rights and openness.

On 3 March, in the framework of his visit to Stockholm, Mr SÖDERMAN gave an interview to Mr Lennart LUNDBERG, journalist for the Church of Sweden's weekly Kyrkans Tidning. Later that day, he was interviewed by Mr Lars STRÖMAN for Europa-Posten.

On 4 March, a working dinner was organised at the Pressens-hus in Stockholm under the theme "Openness in the EU". Among mainstream mass media editorial and management experts, the participants included Mr Nils FUNCKE, Mr Anders AHLBERG, Mr Per HULTENGERD, Mr Eke WREDIN, Mr Hans SCHÖIER, Ms Kersti ROSIN, Ms Josefin SANDSTEDT, Mr Anders R. OLSSON, Ms Gunnel ARRBÄCK, Ms Barbro FISCHERSTRÖM, Mr Olof KLEBERG, Ms Lena HÖRNGREN, Mr Niklas EKDAL, Mr Torbjörn VON KROGH, Mr Jan STRID, Mr Micke GULLIKSSON and Mr Per HULTENGERD. The Ombudsman gave a talk on openness and access to information.

On 24 March, Mr SÖDERMAN held a press lunch, in Brussels, to present his 2002 Annual Report and to mark the end of his term as Ombudsman. Fifteen journalists attended the lunch, namely: Ms Nicola SMITH, EPolitix, Ms Lisbeth KIRK, EU Observer, Ms Lorena GARCIA, Aqui Europa, Mr Brian BEARY, European Report, Mr Dirk DE WILDE Belga, Ms Heleen PAALVAST Algemeen Nederlands Persbureau, Mr Damian CASTANO, EFE, Ms Cornelia BOLESCH, Süddeutsche Zeitung, Mr Michael JUNGWIRTH, Kleine Zeitung, Mr Henk VAN OOSTRUM, Het Financiλle Dagblad, Mr Rory WATSON, The Times, Ms Marizandra OZOLINS, Tagblatt, Mr Martin BANKS, European Voice, Mr Brandon MITCHENER, The Wall Street Journal Europe and Mr Ralph ATKINS, Financial Times. Mr Ian HARDEN, Mr Olivier VERHEECKE, Mr Ben HAGARD, Mrs Murielle RICHARDSON and Ms Rosita AGNEW from the Ombudsman's Office were also present. A powerpoint presentation was used to give an overview of Mr SÖDERMAN'S seven years as Ombudsman. This was followed by a questions and answers session.

On 25 March, eight Finnish journalists attended a press breakfast with the Ombudsman. The journalists were: Mr Marko RUONOLA and Mr Tuomas SAVONEN, Finnish News Agency, Ms Anne AUTIO, Mr Jonas JUNGAR and Mr Jussi SEPPALA, YLE, Mr Petteri TUOHINEN, Helsingin Sanomat, Ms Maija LAPOLA, Turun Sanomat and Ms Mirjami SAARINEN, Kauppalehti. Mrs Benita BROMS, Mr Ben HAGARD, Mrs Murielle RICHARDSON and Ms Rosita AGNEW from the Ombudsman's Office were also present. The Ombudsman spoke about his work over the previous seven years. This was followed by a powerpoint presentation giving an overview of his

achievements. Following the breakfast, the Ombudsman was interviewed by Mr Jussi SEPPALA for the Finnish radio and by Mr Petteri TUOHINEN for Helsingin Sanomat.

On 2 April, Mr DIAMANDOUROS held a joint press conference with the Commission Vice-President responsible for administrative reform, Neil KINNOCK. Mr KINNOCK welcomed the new Ombudsman and outlined the measures adopted by the Commission to respond to the Ombudsman's recommendations in the past. Mr DIAMANDOUROS outlined his three main responsibilities as European Ombudsman, namely to continue the work of his predecessor, to make a success of enlargement and to inform citizens of their rights. He then answered questions from journalists about enlargement, how to raise awareness of the citizen's right to complain to the Ombudsman and the possible extension of the Ombudsman's powers.

On 7 May, Ms Helen SEENEY of the English service of Deutsche Welle Radio interviewed Mr DIAMANDOUROS by telephone. She asked about the European Ombudsman's mandate and powers and how the Ombudsman can make the European project more relevant to the general public.

On 12 May, Mr DIAMANDOUROS was interviewed by Mr Joshua ROZENBERG, Legal Editor of the Daily Telegraph. Mr ROZENBERG asked the Ombudsman about the extent of public awareness of his work, his thoughts on the future of Europe and his experience prior to becoming European Ombudsman.

On 13 May, Mr Martin BANKS, journalist with European Voice, interviewed Mr DIAMANDOUROS. Mr BANKS focused on the Ombudsman's approach to the enlargement of the Union and asked how the Ombudsman could increase awareness of his work in the applicant countries. Mr DIAMANDOUROS also answered questions about his life before becoming European Ombudsman, for the purpose of a profile to appear in the newspaper.

On 20 May, the Ombudsman did a radio interview for a programme called Europe Magazine, to be broadcast on the French version of Deutsche Welle. The journalist, Ms Elisabeth CADOT asked the Ombudsman about the type of complaints he receives, the length of time it takes to investigate a complaint and the Ombudsman's powers.

On 20 May, Ms Marie-Claude HARRAER of the Dernières Nouvelles d'Alsace interviewed Mr DIAMANDOUROS in Strasbourg. The journalist asked Mr DIAMANDOUROS about his previous experience as ombudsman and about his first impressions of the job of European Ombudsman and of Strasbourg.

On 30 May, during the conference "Ombudsman and the Law of the European Union" which was held in Warsaw, Poland, the European Ombudsman, Professor P. Nikiforos DIAMANDOUROS and the Ombudsman of Poland, Professor Andrzej ZOLL, held a joint press conference, which was attended by over a dozen journalists. They outlined the reasons for the conference and the themes discussed (see Chapter 5.4). Professor DIAMANDOUROS outlined his strategy for working with the national ombudsmen in reaching out to the citizens of Europe and announced his intention to visit all the Accession Countries in the coming year.

On 15 July, Mr DIAMANDOUROS gave an interview to Mr Tansel TERZIOGLU, an Austrian journalist. Mr DIAMANDOUROS outlined his priorities as European Ombudsman and gave his views on the draft Constitution for Europe.

Also on 15 July, Mr DIAMANDOUROS held two meetings with Brussels-based journalists to discuss the Constitution for Europe, transparency and enlargement. The first meeting was with correspondents from press agencies or news websites and included Mr Brian BEARY from European Report, Ms Maria DAVIDSSON from the Swedish news agency, Ms Honor MAHONY from EUObserver and Ms Nicola SMITH from EUPolitix. The second meeting was with correspondents from national newspapers and included Mr Rory WATSON, The Times, Mr Michael STABENOW, Frankfurter Allgemeine Zeitung, Ms Minna NALBANTOGLU, Helsingin Sanomat and Mr John PRIDEAUX, Financial Times.

On 15 July, Mr DIAMANDOUROS gave an interview to Mr Alain DREMIERE of La Quinzaine Européenne. The purpose of the interview was to do a portrait of the Ombudsman. Mr DREMIERE focused on the Ombudsman's experience to date and his goals in office.

On 8 September, during his visit to Finland, Mr DIAMANDOUROS was interviewed by Mr Björn MENSSON from the Swedish-language TV4 Finnish television news programme. The interview was broadcast during the evening news later that day.

On 9 September, Mr DIAMANDOUROS held a press conference, which was chaired by the Head of the European Commission Representation in Finland, Mr Timo MÄKELÄ. Over 20 journalists attended, including representatives from press agencies, newspapers, television channels and radio stations. Mr DIAMANDOUROS gave a presentation on the work of the European Ombudsman, outlined his priorities and explained the objectives of his information tour. Questions raised by journalists covered transparency and access to documents, the number of complaints to be expected per year following EU enlargement and the Draft Constitutional Treaty of the EU.

Following the press conference, Mr DIAMANDOUROS was interviewed by Mr Jouni MÖLSÄ, from Finland's leading newspaper, Helsingin Sanomat and by Mr Risto PAANANEN, from Europa Magazine.

On 10 September, Mr DIAMANDOUROS gave a live television interview at 7h15 during Finland's most popular morning television programme, on channel MTV3. Mr DIAMANDOUROS was interviewed together with the first European Ombudsman, Mr Jacob SÖDERMAN. Issues raised during the interview included the main achievements of Mr SÖDERMAN and the future priorities of Mr DIAMANDOUROS as European Ombudsman.

Mr Allar Jõks, Legal Chancellor of Estonia and
Mr Diamandouros address a press conference.
Tallinn, Estonia, 11 September 2003.

On 11 September, in the framework of his visit to Estonia, Mr DIAMANDOUROS gave a press conference in the meeting room of the Legal Chancellor of Estonia. The press conference was chaired by the Legal Chancellor of Estonia, Mr Allar JÕKS. About 10 journalists attended, including representatives from press agencies, newspapers, television channels and radio stations. Mr DIAMANDOUROS gave a presentation on the work of the European Ombudsman, outlined his priorities and explained the objectives of his information tour. Most of the questions raised by journalists concerned the enlargement of the European Union.

Following the press conference, Mr DIAMANDOUROS was interviewed by Kuku Raadio, the biggest private radio station in Estonia and by Mr Andres PULVER from the third biggest regional newspaper in Estonia, Virumaa Teataja.

On 23 September, the Ombudsman was interviewed by Ms Michèle DE WAARD, European Editor of the Dutch newspaper, NRC Handelsblad. The interview focused on the Ombudsman's role, the Constitution for Europe and enlargement.

On 24 September, Mr DIAMANDOUROS spoke to Mr Marko RUONALA, Finnish news agency, Mr Hendrikus VAN OOSTRUM, Het Financieele Dagblad and Mr Thomas GACK, Stuttgarter Zeitung about the European Parliament's report on the Ombudsman's activities in 2002. During the meeting, Mr DIAMANDOUROS outlined his views on the importance of including non-judicial remedies in the Constitution for Europe.

On 22 October, Mr DIAMANDOUROS attended a dinner for 13 Greek journalists in Strasbourg. Mr DIAMANDOUROS spoke about the role of ombudsmen in improving relations between citizens and public administrations. The dinner was hosted by Ambassador Athanassios THEODORACOPOULOS, Permanent Representative of Greece to the Council of Europe. Also present were Mr Dimitris KOUSTAS, Press Officer of the Greek Permanent Representation to the Council of Europe and Mr George KASSIMATIS, Head of the European Parliament's Information Office in Athens.

On 23 October, Mr DIAMANDOUROS was interviewed by Mr Chrysostomos BIKATSIK for Greek National Television "ET-1". Mr DIAMANDOUROS spoke about the Ombudsman's role and citizens' rights.

On 23 October, the European Ombudsman presented his work to 18 journalists from Finland, Sweden, Iceland and Norway. The presentation formed part of the journalists' eight-week long seminar, arranged by the Nordic Journalist Centre in Erhus. During the lively session, the Ombudsman answered questions on transparency, discrimination and relations with the other institutions.

In the framework of his visit to Hungary, the Ombudsman was interviewed by Ms Mercédesz GYÜKERI, a journalist from Magyar Hírlap, one of the Hungarian daily newspapers on 27 October. Mr DIAMANDOUROS answered questions on the role of the European Ombudsman, his relations with the Hungarian ombudsmen, the draft Constitution for Europe and the problems that the Accession Countries have to overcome before they join the Union.

On 28 October, the Ombudsman did a TV interview with the Hungarian state-sponsored station, MTV. Ms BORBALA, MTV Parliamentary Affairs correspondent, asked the Ombudsman about

Mr Diamandouros gives a television interview for MTV television of Hungary.
Budapest, Hungary, 28 October 2003.

the changes he envisaged as a result of enlargement, how he would deal with complaints from Hungary, the types and the number of complaints he received and the Code of Good Administrative Behaviour. The Ombudsman then did an interview with MTV's Foreign Affairs correspondent, Mr Robert NEMETH, who asked the Ombudsman about national ombudsmen in the EU Member States and Accession Countries, maladministration and how complaints are dealt with.

Later that day, Mr DIAMANDOUROS did two further media interviews – one with Mr Béla FINCZICZKI from the Hungarian weekly, HVG, and one with Mr László SZOCS from the daily, Népszabadsag. The interviews centred around the changes that the enlargement will bring for the Ombudsman's work.

Mr Barnabás Lenkovics, Hungarian Parliamentary Commissioner for Civil Rights, Mr Diamandouros and Mr Jenő Kaltenbach, Hungarian Parliamentary Commissioner for National and Ethnic Minority Rights, address a press conference. Budapest, Hungary, 28 October 2003.

In the afternoon, the European Ombudsman participated in a press conference chaired by Mr LENKOVICS, the Hungarian Parliamentary Commissioner for Civil Rights. Around 20 people attended the press conference. Mr DIAMANDOUROS gave a presentation on the work of the European Ombudsman, outlined his priorities and explained the objectives of his information tour. Mr LENKOVICS complemented this presentation by comparing the work of the European and Hungarian ombudsmen.

On 14 November, the Ombudsman's Press Officer, Ms Rosita AGNEW, gave an interview to Ms Cornelia METZIG, a German student. Ms AGNEW answered questions about the Ombudsman's communications policy and the role of the Press Officer. Ms METZIG was writing an article for a young journalists' competition.

On 17 November, the European Ombudsman met Mr Leo LINDER, a German film producer, to discuss a project entitled "User's Guide to Europe". The work of the European Ombudsman will be portrayed in the educational film which will explain what European citizens can do to make their voice heard.

On 18 November, the European Ombudsman gave an interview to Mr Koos VAN HOUDT for an article to feature in the Dutch magazine Binnenlands Bestuur. The interview covered issues such as democracy and the role of the Ombudsman, administrative reform and transparency.

On 18 November, Mr DIAMANDOUROS gave a series of interviews to Greek journalists on the role of the European Ombudsman, including Ms Alexandra ANASTASOPOULOU for the Greek

Television Channel "Kanali Voulis", Ms Alexandra CHRISTAKAKI for Greek National Television "NET", and Mr Ioannis PAPADIMITRIOU for the Greek-language radio in Germany.

On 24 November, Mr DIAMANDOUROS gave an in-depth interview about his work to Ms Metta TSIKRIKA from the BBC World Service Greek Section.

On 9 December, several journalists from television stations, radio stations and newspapers were present to report on the arrival of the European Ombudsman in Malta. During his visit to Malta, Mr DIAMANDOUROS gave a number of in-depth interviews with, among others, the Times of Malta newspaper, the di-ve news website, the L-Ewropej television programme and Radio 101's "Mill-Ewropa" programme.

On 11 December, Mr DIAMANDOUROS gave a press conference at the European Commission Delegation office in Ta'Xbiex. The press conference was attended by around 10 journalists from Malta's television stations, radio stations and newspapers.

Mr Diamandouros addresses a press conference.
Ta´Xbiex, Malta, 11 December 2003.

On 11 December, Ms Rosita AGNEW, Press Officer, gave an interview to Ms Sarah TALVARD about the European Ombudsman's communications policy. Ms TALVARD asked about the aims of the Ombudsman's communications policy and the tools used to implement it for the purpose of writing a paper on citizenship in the context of her university studies.

6.5 ONLINE COMMUNICATION

The year 2003 has seen a consolidation of the European Ombudsman's Internet presence. New information has been added to the Ombudsman's website and several sections have been expanded.

E-MAIL COMMUNICATION

In April 2001, an electronically submittable version of the complaint form was added to the website in twelve languages. Since then, an ever-increasing proportion of complaints has been submitted in this way. In 2003, complaints submitted over the Internet made up almost half of all complaints received by the Ombudsman, with the proportion increasing slightly compared to 2002. This compares to a third received via the Internet in 2001, a little under a quarter in 2000 and just a sixth in 1999.

Over 2500 requests for information were received in the main e-mail account of the European Ombudsman in 2003. This was a lower number than the 3717 received in 2002, but when one discounts the mass mailings replied to in each of the two years (over 1600 e-mails regarding the sinking of the 'Prestige' oil tanker were received in 2002), the number of individual replies sent was constant at around 2000.

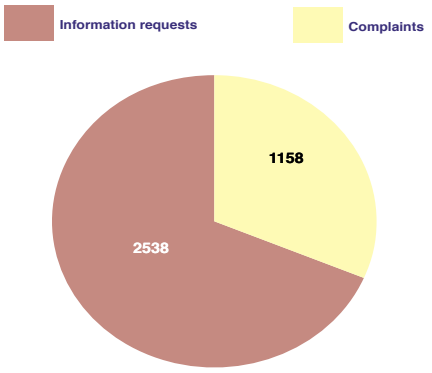
In early 2003, the European Ombudsman received over 300 e-mails from EU citizens regarding the subsidies granted to breeders of fighting bulls. Although the matter was outside the mandate of the Ombudsman, a reply was sent to each e-mail mentioning the possibility of petitioning the European Parliament.

WEBSITE DEVELOPMENTS

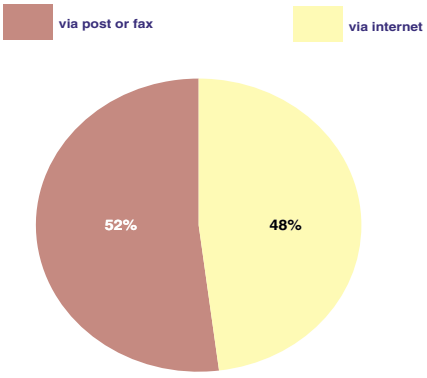
Throughout 2003, the euro-ombudsman website began to be modified in preparation for the enlargement of the European Union in 2004. Pages were re-coded to be able to display the character sets of the new official languages of the European Union and some new pages were created in the new languages. In December 2003, a new 11-language section was added to the euro-ombudsman website, regarding the European Ombudsman's own initiative inquiry into the subject of the integration of persons with disabilities by the European Commission.

In order to ensure that the euro-ombudsman website stays at the forefront of EU websites, the Office of the European Ombudsman participated throughout 2003 in the work of the Inter-Institutional Internet Editorial Committee (CEiii). The Office of the European Ombudsman also participated in the Internet Editorial Committee of the European Parliament during 2003.

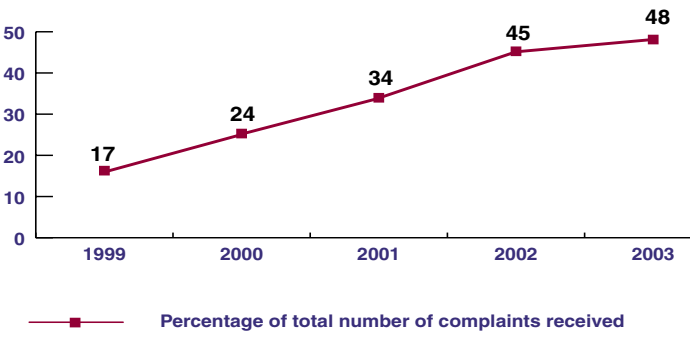
E-mails replied to in 2003



Proportion of complaints received via internet in 2003



Growth in proportion of complaints received via internet

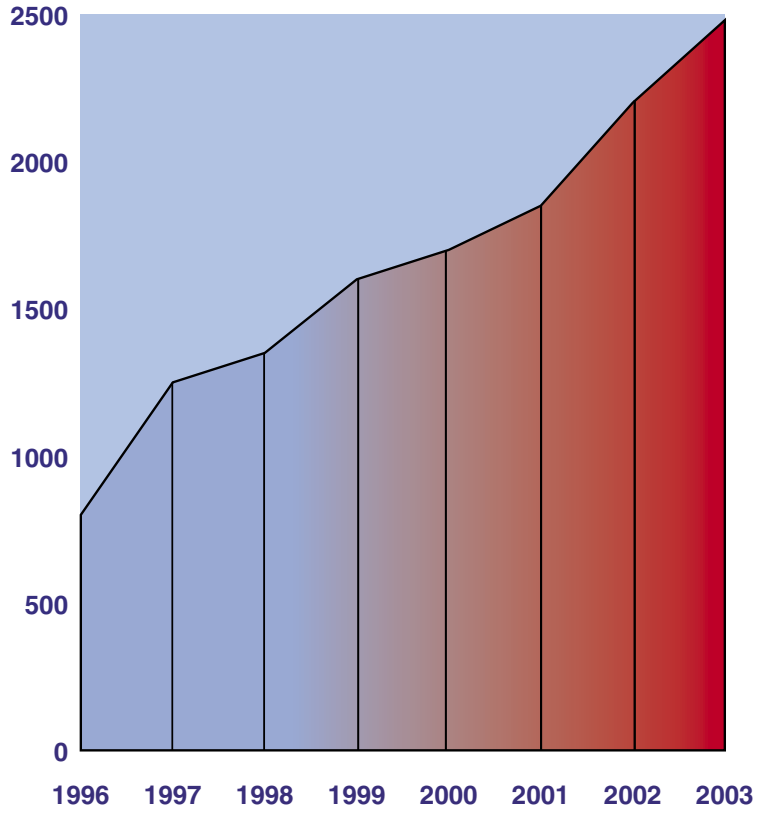


A STATISTICS CONCERNING THE WORK OF THE EUROPEAN OMBUDSMAN IN 2003

1 CASES DEALT WITH DURING 2003

1.1 TOTAL CASELOAD IN 2003 2611

- complaints and inquiries not closed on 31.12.2002 170[1]
- complaints received in 2003 2436
- own initiatives of the European Ombudsman 5



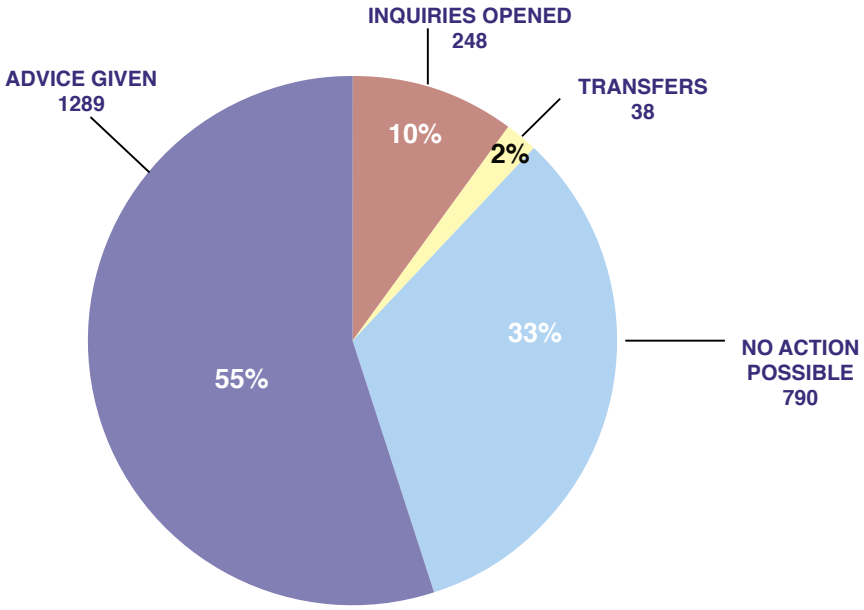
Increase in Complaints 1996 - 2003

[1] Of which one own initiative of the European Ombudsman and 109 inquiries.

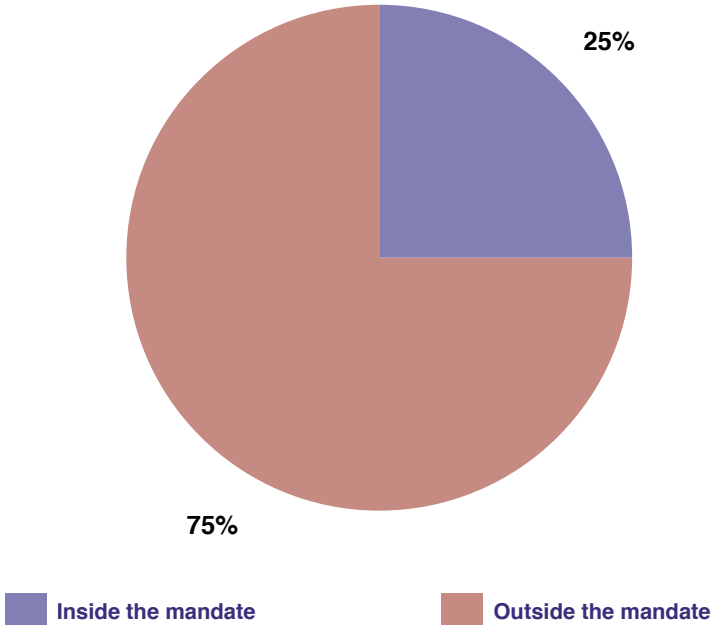
1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED 95%

1.3 CLASSIFICATION OF THE COMPLAINTS

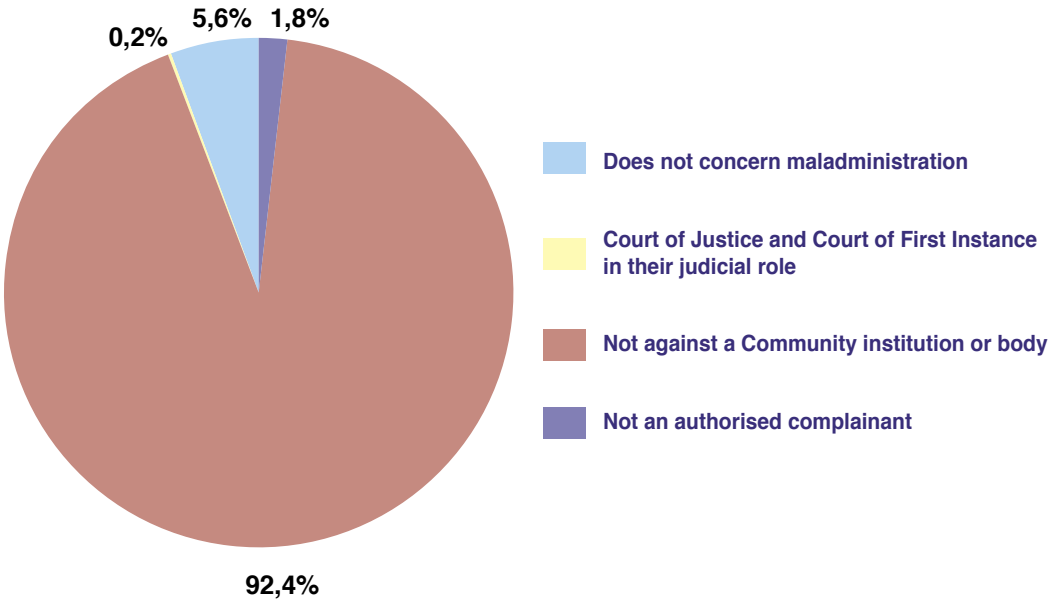
1.3.1 According to the type of action taken by the European Ombudsman to benefit the complainants



1.3.2 According to the Mandate of the European Ombudsman

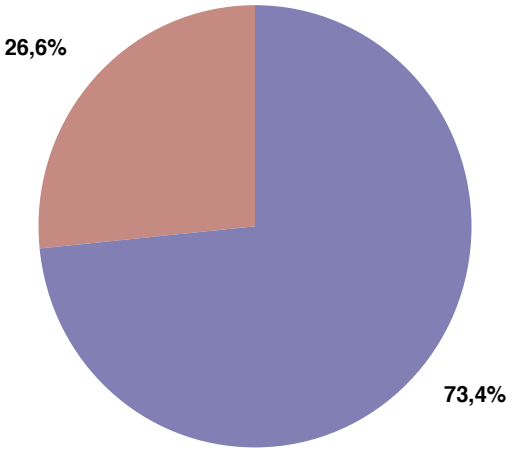


Outside the Mandate



Inside the Mandate

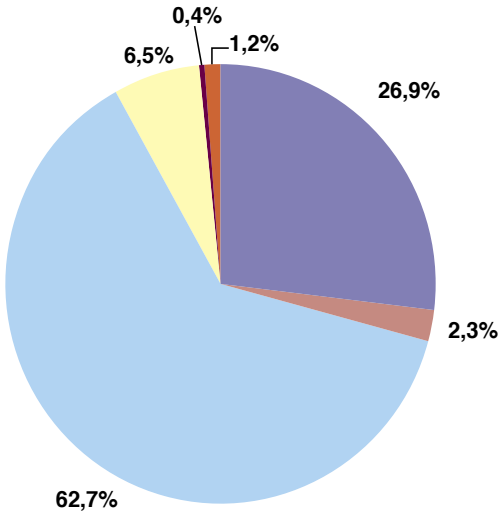
– *Admissible complaints*



No grounds or insufficient grounds for inquiry

Inquiries initiated

– *Inadmissible complaints*



Author/object not identified

Time limit exceeded

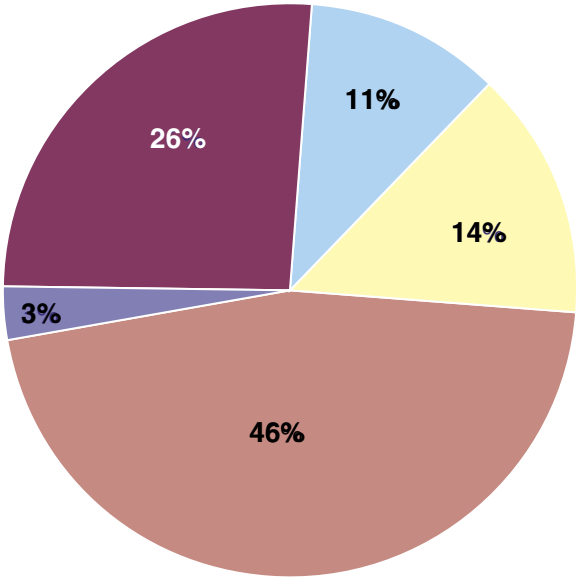
Prior administrative approaches not made

Internal remedies not exhausted in staff cases

Alleged facts are or have been the subject of legal proceedings

Being dealt with or already settled by a court

2 TRANSFERS AND ADVICE



Advice to contact ombudsman or petition a regional or national parliament (616)

Advice to contact the European Commission (189)

Advice to petition the European Parliament (143)

Advice to contact other bodies (341)

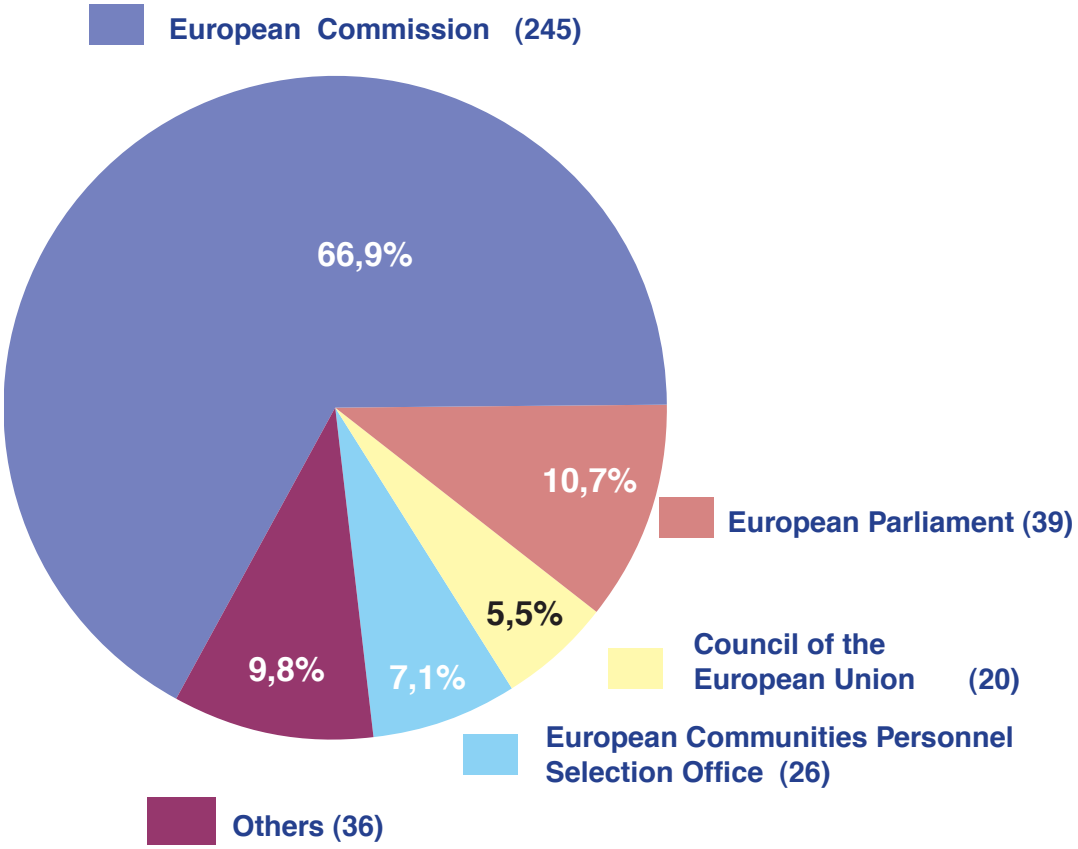
Transfers (38)

To the European Parliament (6)
To the European Commission (7)
To a national or regional ombudsman (25)

3 INQUIRIES DEALT WITH IN 2003 363

In 2003, the European Ombudsman dealt with 363 inquiries, 253 inquiries initiated in 2003 (of which five own initiatives) and 110 inquiries not closed on 31.12.2002

3.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES[2]

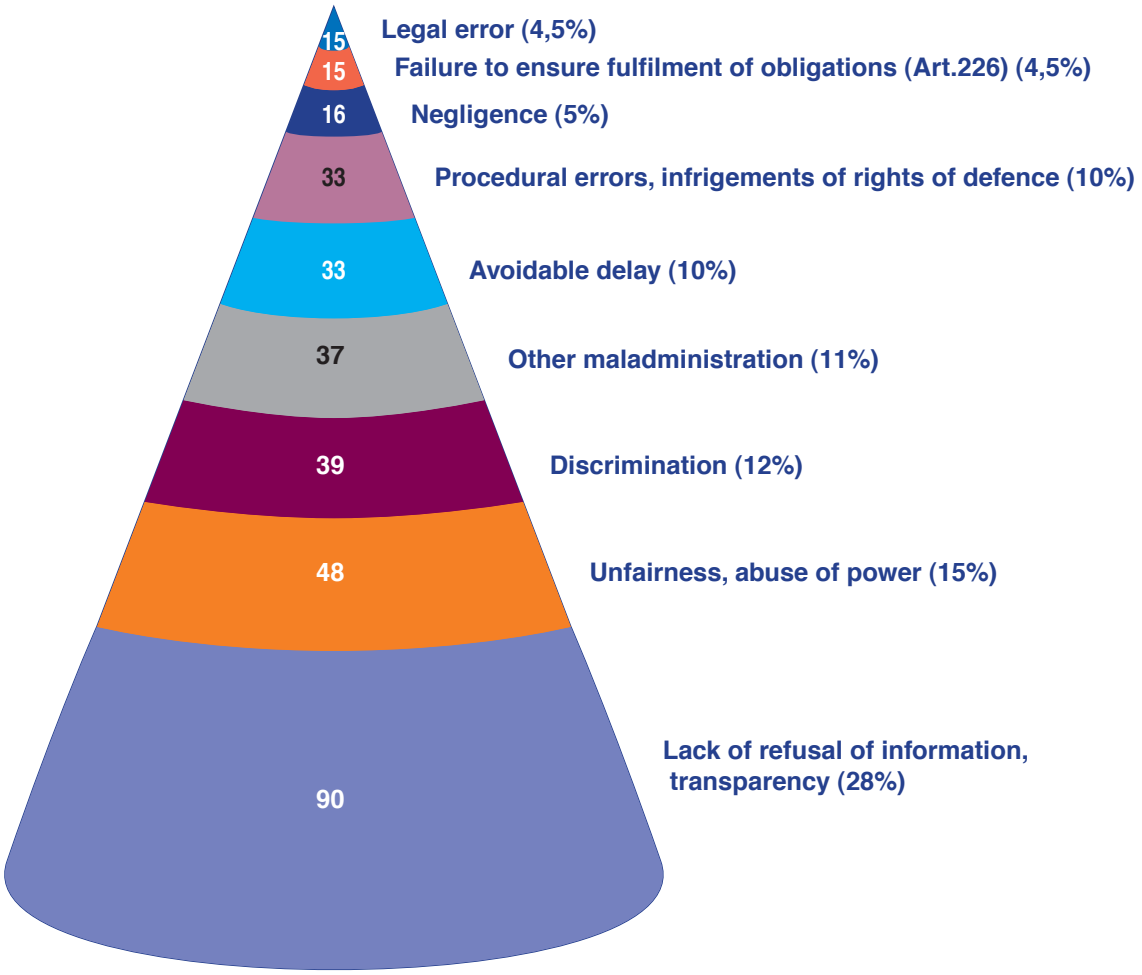


Court of Justice	7
European Court of Auditors	6
OLAF	6
European Central Bank	4
Committee of the Regions	3
Economic and Social Committee of the European Communities	2
European Agency for the Evaluation of Medicinal Products	1
European University Institute	1
European Investment Bank	1
Europol	1
European Convention	1
European Foundation for the Improvement of Living and Working Conditions	1
European Environment Agency	1
European Agency for Reconstruction	1

2 Some cases concern two or more institutions or bodies.

3.2 TYPE OF MALADMINISTRATION ALLEGED

(In some cases, two types of maladministration are alleged)

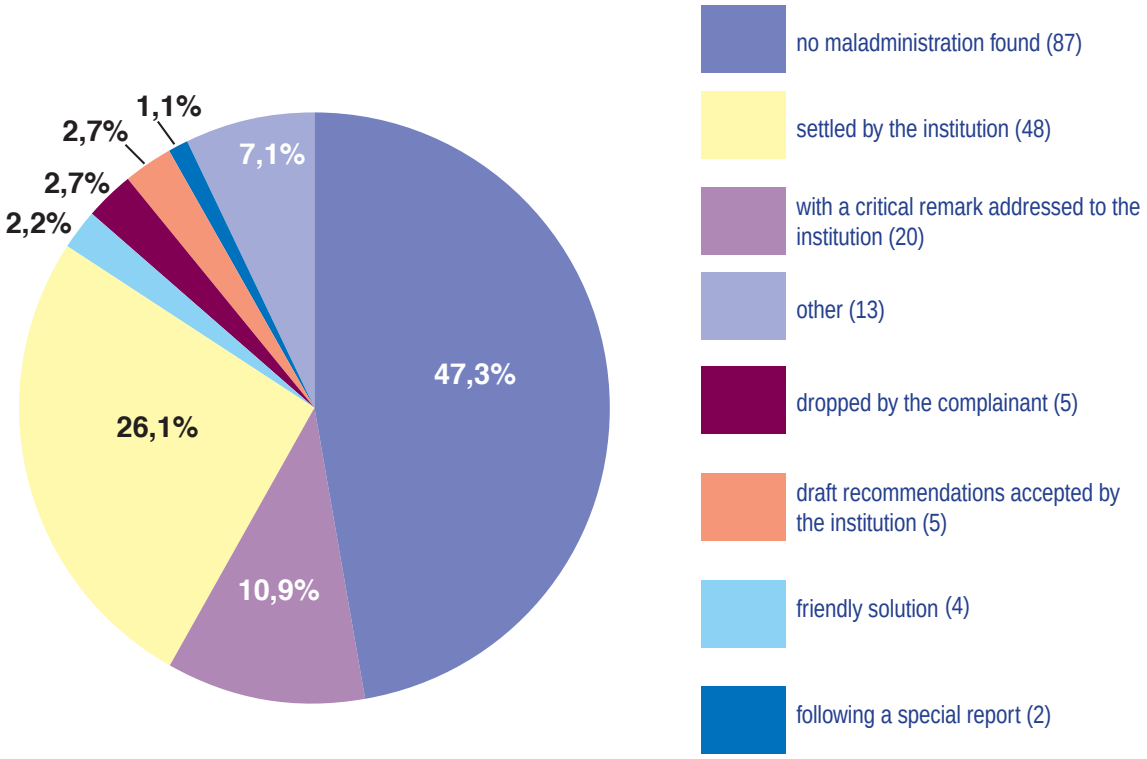


3.3 PROPOSALS FOR FRIENDLY SOLUTIONS AND DRAFT RECOMMENDATIONS MADE IN 2003

– proposals for friendly solutions	18
– draft recommendations	9

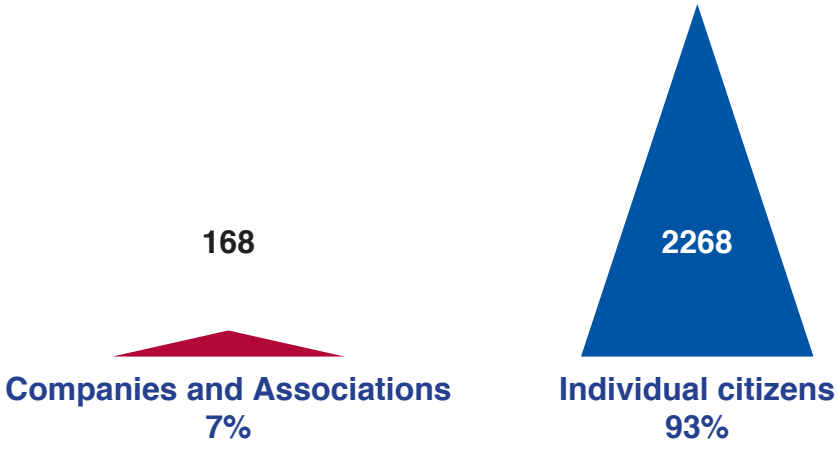
3.4 INQUIRIES CLOSED WITH REASONED DECISION[3] 180

(An inquiry can be closed for one or more of the following reasons)



4 ORIGIN OF COMPLAINTS REGISTERED IN 2003

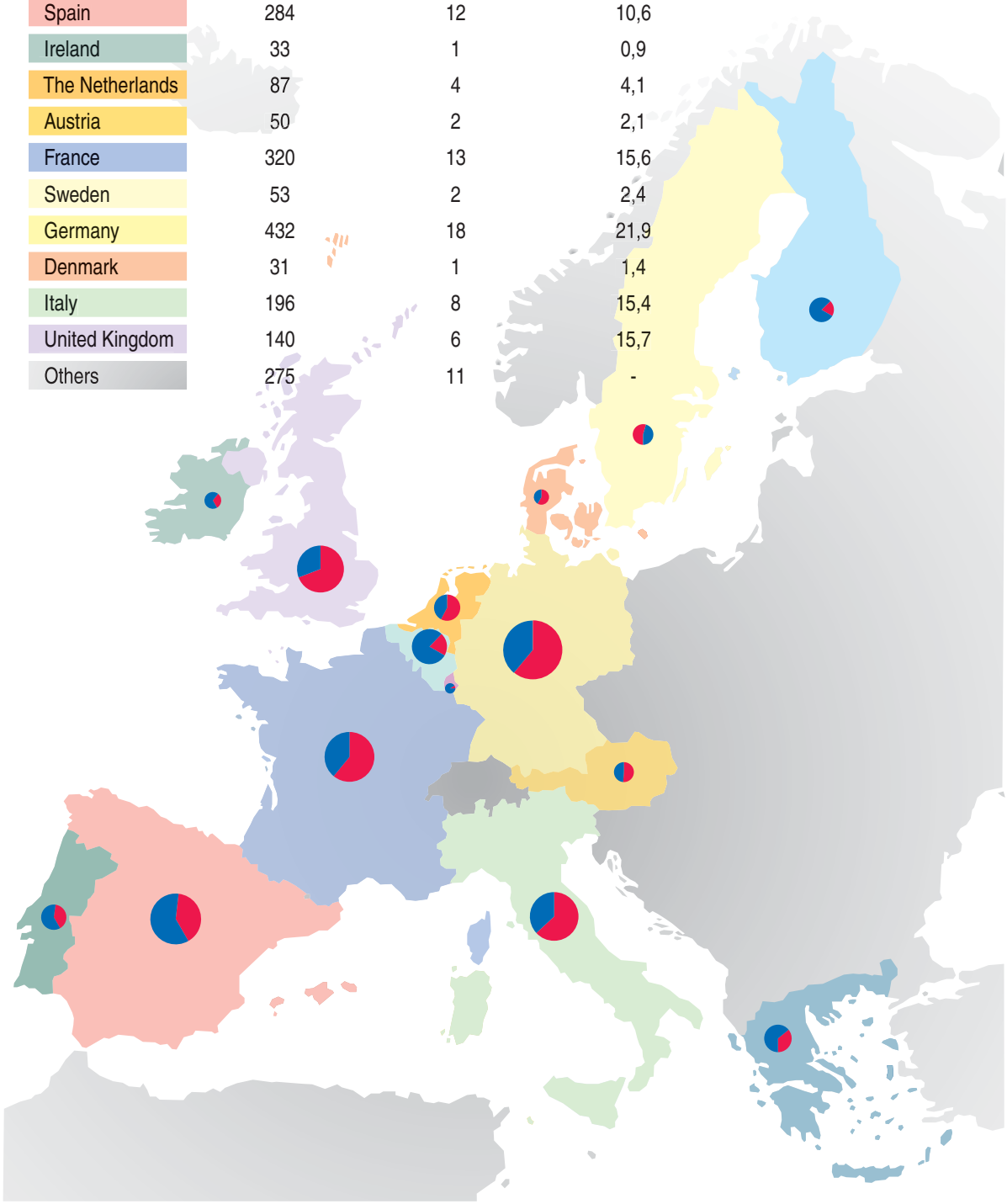
4.1 SOURCE OF COMPLAINTS



[3] Of which two own initiatives of the Ombudsman.

4.2 GEOGRAPHICAL ORIGIN OF COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population
Luxembourg	38	2	0,1
Finland	88	4	1,3
Belgium	199	8	2,7
Portugal	110	5	2,6
Greece	100	4	2,8
Spain	284	12	10,6
Ireland	33	1	0,9
The Netherlands	87	4	4,1
Austria	50	2	2,1
France	320	13	15,6
Sweden	53	2	2,4
Germany	432	18	21,9
Denmark	31	1	1,4
Italy	196	8	15,4
United Kingdom	140	6	15,7
Others	275	11	-



B THE OMBUDSMAN'S BUDGET

An independent budget

The Statute of the European Ombudsman provided originally for the Ombudsman's budget to be annexed to section I (European Parliament) of the general budget of the European Union.

In December 1999, the Council decided that the Ombudsman's budget should be independent. Since 1 January 2000[4], the Ombudsman's budget has been an independent section of the budget of the European Union (section VIII-A).

Structure of the budget

The Ombudsman's budget is divided into three titles. Title 1 of the budget contains salaries, allowances and other costs related to staff. This title also includes the cost of missions undertaken by the Ombudsman and his staff. Title 2 of the budget covers buildings, equipment and miscellaneous operating expenditure. Title 3 contains a single chapter, from which subscriptions to international ombudsmen organisations are paid.

Co-operation with the European Parliament

To avoid unnecessary duplication of administrative and technical staff, many of the services needed by the Ombudsman are provided by, or through, the European Parliament. Areas in which the Ombudsman relies, to a greater or lesser extent, on the assistance of the Parliament's services include:

- personnel, including contracts, salaries, allowances and social security ;
- financial audit and accounting ;
- preparation and partial execution of title 1 of the budget ;
- translation, interpretation and printing ;
- security ;
- informatics, telecommunications and mail handling.

The co-operation between the European Ombudsman and the European Parliament has allowed for considerable efficiency savings to the Community budget. The co-operation with the European Parliament has in fact allowed the administrative staff of the Ombudsman not to increase substantially.

Where the services provided to the Ombudsman involve additional direct expenditure by the European Parliament a charge is made, with payment being effected through a liaison account. Provision of offices and translation services are the largest items of expenditure dealt with in this way.

The 2003 budget included a lump-sum fee to cover the costs to the European Parliament of providing services, which consist solely of staff time, such as administration of staff contracts, salaries and allowances and a range of computing services.

The co-operation between the European Parliament and the European Ombudsman was initiated by a Framework Agreement dated 22 September 1995, completed by Agreements on Administrative Cooperation and on Budgetary and Financial Cooperation, signed on 12 October 1995.

In December 1999, the Ombudsman and the President of the European Parliament signed an agreement renewing the co-operation agreements, with modifications, for the year 2000 and providing for automatic renewal thereafter.

4 Council Regulation 2673/1999 of 13 December 1999 OJ L 326/1.

The 2003 budget

The establishment plan of the Ombudsman showed in 2003 a total of 31 posts.

The total amount of initial appropriations available in the Ombudsman's 2003 budget was 4.438.653 €. Title 1 (Expenditure relating to persons working for the Institution) amounted to 3.719.727 €. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounted to 715.926 €. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounted to 3.000 €.

The following table indicates expenditure in 2003 in terms of committed appropriations.

Title 1	€	3.415.448,87
Title 2	€	634.877,91
Title 3	€	2.161,49
Total	€	4.052.488,27

Revenue consists primarily of deductions from the remuneration of the Ombudsman and his staff. In terms of payments received, total revenue in 2003 was 434.833 €.

The 2004 budget

The 2004 budget, prepared during 2003, provides for an establishment plan of 38 posts, representing an increase of seven from the establishment plan for 2003. This increase is mainly due to the future enlargement of the European Union and to the need of the European Ombudsman's Office to dispose of an adequate knowledge of both the languages and of the legal systems of the new Member States.

Total appropriations for 2004 are 5.684.814 €. Title 1 (Expenditure relating to persons working with the Institution) amounts to 4.811.846 €. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounts to 869.986 €. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounts to 3.000 €.

The 2004 budget provides for total revenue of 513.764 €.

C PERSONNEL

EUROPEAN OMBUDSMAN

JACOB SÖDERMAN
(until 31 March 2003)

P. NIKIFOROS DIAMANDOUROS
(from 1 April 2003)

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D INDICES OF DECISIONS

1 BY CASE NUMBER

2 BY SUBJECT MATTER

Agriculture (CAP)

Citizens' Rights

Competition Policy

Contracts

Development cooperation

Economic and monetary policy

Environment

Free movement of goods

Institutions

Miscellaneous

Public access

Public health

Research and Technology

Staff

– *Recruitment*

– *Other questions*

Tax provisions

3 BY TYPE OF MALADMINISTRATION ALLEGED

Abuse of power

Avoidable delay

Discrimination

Failure to ensure fulfilment of obligations

Infringement of rights of defence

Lack or refusal of information

Lack of transparency

Legal error

Negligence

Procedural errors

Reasoning

Unfairness

Other maladministration

E THE ELECTION OF THE EUROPEAN OMBUDSMAN

The legal provisions

Article 195(2) EC provides that "The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment."

The Rules of Procedure of the European Parliament set out details of the election procedure:

Rule 177

"1. At the start of each parliamentary term, immediately after his election or in the cases referred to in paragraph 8, the President shall call for nominations for the office of Ombudsman and set a time limit for their submission. A notice calling for nominations shall be published in the Official Journal of the European Union.

2. Nominations must have the support of a minimum of thirty-two Members who are nationals of at least two Member States.

Each Member may support only one nomination.

Nominations shall include all the supporting documents needed to show conclusively that the nominee fulfils the conditions required by the Regulations on the Ombudsman.

3. Nominations shall be forwarded to the committee responsible, which may ask to hear the nominees.

Such hearings shall be open to all Members.

4. A list of admissible nominations in alphabetical order shall then be submitted to the vote of Parliament.

5. The vote shall be held by secret ballot on the basis of a majority of the votes cast.

If no candidate is elected after the first two ballots, only the two candidates obtaining the largest number of votes in the second ballot may continue to stand.

In the event of any tie the eldest candidate shall prevail.

6. Before opening the vote, the President shall ensure that at least half of Parliament's component Members are present.

7. The person appointed shall immediately be called upon to take an oath before the Court of Justice.

8. The Ombudsman shall exercise his duties until his successor takes office, except in the case of his death or dismissal."

The 2003 election

The European Parliament published a call for nominations in the Official Journal of 7 September 2002[5], setting 3 October 2002 as the deadline for submission of nominations.

By letter of 21 October 2002, the President of the European Parliament informed the Committee on Petitions that 17 applications had been received.

On 25 and 26 November 2002, the Committee on Petitions organised public hearings of the seven candidates whose applications had been declared admissible, namely Mr Georgios ANASTASSOPOULOS, Mr P. Nikiforos DIAMANDOUROS, Mr Giuseppe FORTUNATO, Mr Xabier MARKIEGI, Mr Pierre-Yves MONETTE, Mr Roy PERRY and Mr Herman WUYTS.

Mr ANASTASSOPOULOS and Mr MARKIEGI withdrew their applications on 9 January 2003.

5 OJ C 213/10 of 7 September 2002.

On 15 January 2003, Mr P. Nikiforos DIAMANDOUROS was duly elected European Ombudsman by the Members of the European Parliament in plenary session in Strasbourg on the second ballot by 294 votes out of 535 votes cast.

The decision of the European Parliament appointing Mr DIAMANDOUROS until the end of the current parliamentary term in 2004 was published in the Official Journal of 8 March 2003[6].

Detailed information on the election of the European Ombudsman can be found on Parliament's website at: http://www.europarl.eu.int/comparl/peti/election/default_en.htm.

6 OJ L 065/26 of 8 March 2003.

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