THE EUROPEAN OMBUDSMAN

ANNUAL REPORT 2002

http://www.euro-ombudsman.eu.int

EN

ISSN 1680-3787

THE EUROPEAN OMBUDSMAN
ANNUAL REPORT 2002

Photographs (unless otherwise mentioned), and layout : Services of the European Parliament

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

Strasbourg, 10 February 2003

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 2002.

Yours sincerely,

Jacob Söderman

Ombudsman of the European Union

1 FOREWORD

1 FOREWORD

In 2002, a Eurobarometer opinion poll was carried out to see how well European citizens know their rights. The people interviewed had to reply true or false to statements about their rights as citizens of the European Union. The best known right was the right to work in another Member State closely followed by the right to complain to the European Ombudsman – 87% of European citizens correctly believe that they have this right. In Ireland, the score was as high as 96% and in Spain 92%. Far less known was the right to vote in local or European Parliament elections in another Member State.

The Ombudsman's office started work on the first of September 1995. That year, we received 298 complaints and the following year 842 complaints. In 2002, we received more than 2,200 complaints. This growth shows that people are increasingly aware of the service the European Ombudsman can provide. This is largely due to our commitment to mtaking the Ombudsman's office better known.

Reaching out to citizens

2002 was a busy year for public relations. We issued an average of one press release every ten days on topics ranging from freedom of expression to the Ombudsman's contribution to the European Convention. In June, we sent the Ombudsman's brochure to around 10,000 bodies active in EU affairs, while more than 20,000 copies of the Ombudsman's guide for citizens were sent to key EU information centres in December. I presented the Ombudsman's work at seminars, conferences and meetings all over Europe - from Lisbon to Luxembourg and Cardiff to Copenhagen. The Ombudsman's office participated in the Open Days organised by the Parliament in Brussels and Strasbourg, with over 60,000 visitors attending these events.

With one Ombudsman and a staff of thirty, it is hard to reach citizens all over the Union. This is why we rely more and more on spreading the word via the Internet. We added information in the 12 languages of the applicant states for EU membership. The European Ombudsman's website remains the most linked to ombudsman website in the whole of Europe and visits to the site have continued to increase as a result. As well as helping to make us better known, the website makes it easier for citizens to complain. Throughout 2002, more and more people chose to complain using the electronic complaint form. Indeed since September 2002, over 50% of all complaints have been submitted through the Internet.

In some Member States, there is still much to be done. But we must be careful about how we do this. There is no point in campaigning so loudly that the first thing citizens think about when they wake up in the morning is the European Ombudsman. Instead, the information campaign must be focused on those citizens, organisations and enterprises that are involved with the EU and its administration. The message should be that presenting grievances to the Ombudsman is useful as is clearly demonstrated by the commitment of the institutions and bodies to a better administration.

Results over the years

A good result for an Ombudsman is to achieve what is right for the citizens or at least to obtain an accurate explanation or to give useful advice.

Over 7 years, the Office has received more than 11,000 complaints of which about 70% were outside the mandate – often complaints against public administrations in Member States relating to the application of Community law. In more than 5,000 cases, the complaints have been transferred to a competent body or the citizens have been advised where to go for help.

Almost 1500 investigations have been opened, including 19 own initiatives. In more than 500 cases, the institution in question has settled the matter to the citizens' benefit. In more

than 200 cases, a critical remark has been issued to promote better administration in similar situations in the future. Friendly solutions, draft recommendations and special reports have been used increasingly and now total about 50. In only a handful of cases have the institutions rejected what the Ombudsman proposed.

In about 700 cases, the Ombudsman has, after an investigation, found that no maladministration has occurred. Indeed, public administrations often have to take decisions that do not please everybody involved. A finding of no maladministration is not always a negative result for the complainant who at least receives the benefit of a full explanation of what has occurred.

These numbers might appear small in a continent with a vast population but one must remember that every case has a preventive effect, paving the way for a better procedure and a more positive outcome in a thousand cases to come. By way of comparison, it is interesting to note that the number of cases fully investigated each year by the Court of First Instance is around the same.

Progress and problems

During 2002, there has been progress in establishing principles on how to compensate citizens for damages in cases where the administration has not fulfilled its obligations on time. The Commission has demonstrated a citizen-friendly attitude on this issue, in line with the most progressive of the Member States[1]. Similarly, much progress was made in 2002 to implement the EU Charter of Fundamental Rights, with the Commission and Parliament abolishing age limits in recruitment and the Commission taking steps to tackle sex discrimination. 2002 also saw the settlement of a 1.5 million Euro contractual dispute – one of the highest sums ever involved in a decision of the Ombudsman. The Ombudsman's guide for citizens published in 2002 in all of the Union's official languages gives an overview of many of these achievements.

On the question of a law on good administration and freedom of expression for officials, there was less progress at the EU level. There is surely room for improvement in these areas.

Special thanks

I would like to take this opportunity to express my gratitude to all the people I have met during my time as Ombudsman and for all the support and interest they have shown. I would particularly like to thank all those we have worked with in the EU institutions and bodies, all the citizens who have turned to us and the media for reporting on our work.

I would like to thank the President and all the active Members of the Committee on Petitions and Parliament at large for the advice and views they have expressed. I would further like to thank my staff for their work and commitment.

It is a little risky to pay special tribute to people when you have many to be grateful to. Still, I would like to state publicly that the open, fair and consistent approach of the two Commissioners responsible for contacts with the Ombudsman – first Anita Gradin and then Loyola de Palacio – has meant a lot as we built up the Office and its procedures. To my mind, they and their staff have served the European citizens in a remarkable way.

Complaints and complainants may give the institutions extra work and create bad feeling. However, they give the possibility to study what has happened. If everything has gone right, this can be noted and explained. If something has gone wrong, the matter can be remedied, better advice can be given, better procedures installed or understaffing met with

[1] See letter of 16 October 2002 from the Ombudsman to the Commission and Commission's reply of 16 December 2002 on the Ombudsman's website (www.euro-ombudsman.eu.int)

proper resources. So, in the end, complaining is a democratic input which is good for any administration and its development.

For the future

In the past, I have compared the EU administration with a castle that should reform and open up. There have been a lot of reforms taking place in the castle. There is more light to be seen in the windows but we are still waiting for the castle to open up into a modern administration.

Why? I do not believe that it is so much bad will as old traditions and ways of working. I just hope that there will come a day in the European Union when all the relevant players truly believe that open administration is a good thing. Citizens have a right to know and should know what is being done in their name; only then can their confidence really be won.

I wish you all every success in building a citizen's Europe.

Jacob Söderman

2 COMPLAINTS TO THE OMBUDSMAN

2 COMPLAINTS TO THE OMBUDSMAN

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.

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 2002, the Ombudsman dealt with 2511 cases. 2211 of these were new complaints received in 2002. 2041 of these were sent directly by individual citizens, 87 came from associations and 70 from companies. 7 complaints were transmitted by Members of the European Parliament. 298 cases were brought forward from the year 2001. The Ombudsman also began 2 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 2002, 12 complaints were transferred, with the consent of the complainant, to the European Parliament to be dealt with as petitions. There were 215 cases in which 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[2] and the implementing provisions adopted by the Ombudsman under Article 14 of the Statute. The text of the implementing provisions and of the Statute of the Ombudsman, in all official languages, are published on the Ombudsman's Website (http://www.euro-ombudsman.eu.int). The texts are also available 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 come into effect on 1 January 2003. The new implementing provisions are available in all official languages on the Ombudsman's website. The relevant annoucement was published in the Official Journal on 19 October 2002 (OJ C 252/24).

In accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[3], the Ombudsman appointed a data protection officer, to carry out

2 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.

3 2001 OJ L 8/1.

the functions laid down in Article 24 of Regulation 45/2001, and adopted implementing rules concerning the tasks, duties and powers of the data protection officer. Both the decision appointing the Ombudsman's data protection officer and the implementing rules are available on the Ombudsman's website. The relevant annoucement 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

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 case which did not concern an instance of maladministration

In March 2002, Mrs T. complained to the European Ombudsman. Her complaint was against the Council of the European Union and its decision to restrict the access to and the use of vitamin and mineral products.

Article 2(2) of the Ombudsman's Statute provides that the Ombudsman can deal with complaints in respect of instances of maladministration in the activities of Community institutions or bodies. The present case could not be considered as a possible instance of maladministration as it related to the merits of Community legislation. The complaint was rejected on this basis.

The complainant was informed of the Ombudsman's decision and was advised to petition the European Parliament.

Case 441/2002/ME

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 will therefore apply 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 calls 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.

Incorporating the Code in a Regulation would emphasise to both citizens and officials the binding nature of the rules and principles that it contains. Article 192 of the EC Treaty gives the European Parliament the right itself to initiate the legislative procedure, if necessary.

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).

Decision on the admissibility of a complaint against the Court of Auditors

In April 2002, Mr X. made a complaint to the European Ombudsman against the Court of Auditors.

The complainant did not request confidentiality, but in accordance with Article 10 (1) of the Implementing Provisions, the Ombudsman decided to treat the complaint confidentially, in order to protect the complainant's interests and the interests of third parties.

The complaint appeared to have three aspects, which the complainant considered to be linked.

1 The complainant's personal case

The first aspect of the complaint concerned the complainant's personal circumstances. He alleged that he was insulted or defamed by the Court for his refusal to follow an improper and possibly unlawful decision made by his Head of Division.

The documents annexed to the complaint showed that the complainant made a request to the Secretary General of the Court on 4 December 2001 for assistance under Article 24 of the Staff Regulations and that, on 21 February 2002, this request received a reasoned rejection, following an administrative inquiry in which the complainant was heard. However, the complainant appeared not to have used the procedure of Art. 90 (2) in order to complain against the negative decision. The Ombudsman therefore informed the complainant that he would not be entitled to deal with this aspect of the complaint unless and until all possibilities for internal administrative requests and complaints had been exhausted, as required by Article 2 (8) of the Statute.

2 Alleged abuses in the Court of Auditors

The complaint also alleged: nepotism; payment to Members of the Court of Auditors of allowances to which they are not entitled; and other abuses.

After careful examination of the complaint, it was unclear which persons in the Court the complainant alleged to be guilty of nepotism, or to have received improper payments. As regards the allegation of other abuses, it was unclear what these were alleged to consist of. The Ombudsman therefore informed the complainant that he could not deal with this aspect of the complaint. The Ombudsman invited the complainant to give sufficient details of the alleged maladministration to make his allegations clear and to provide adequate supporting evidence. In particular, the complaint should identify the persons alleged to have performed acts of maladministration and the details of what they are alleged to have done. No reply was received from the complainant.

3 Structural weaknesses in the organisation of the Court of Auditors

The complainant explained this aspect of his complaint mainly through proposals for reform. He mentioned two cases, apparently as examples of the consequences of the alleged structural weaknesses, rather than as cases of maladministration which he wished the Ombudsman to investigate.

The Ombudsman considered that Article 2 (4) of the Statute, which requires that a complaint must be preceded by the appropriate administrative approaches to the institutions and bodies concerned, meant that the Court of Auditors should have the opportunity itself to examine the complainant's proposals for reform before any complaint of maladministration could be made. The Ombudsman therefore suggested to the complainant that if he wished to pursue his proposals for reform, he could first address them to the Court itself.

Case 0769/2002/IJH

Example of a complaint which was not made within two years

Mrs P. had applied to participate in open competition COM/A/21/98 in the field of general administration organised by the European Commission. In April 1999, her application was rejected because she did not fulfil the requirement of 12 years of professional experience. The complainant appealed against the Commission's decision twice and the Commission rejected both appeals in June 1999.

In May 2002, the complainant lodged a complaint with the European Ombudsman about the Commission's decision to reject her application in 1999.

As Article 2(4) of the Ombudsman's Statute states that a 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, the Ombudsman informed the complainant that he was not entitled to deal with the complaint.

Case 1011/2002/ME

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, even though 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

In May 2002, an MEP wrote asking the Ombudsman to investigate the reasons for the sackings or transfers of the Commission's Director-General for Fisheries Mr Steffen SMIDT and Accounting Officer Ms Marta ANDREASEN and whether there have been instances of maladministration in that connection.

As regards the case of the Commission's Accounting Officer, the Committee on Petitions had informed the Ombudsman that Ms ANDREASEN herself had submitted a petition to the European Parliament concerning her case and that the petition had been declared admissible. The Ombudsman therefore informed the MEP that, in accordance with the Ombudsman's normal practice, there appeared to be no grounds for the Ombudsman to open an inquiry, since another competent body was already dealing with the matter.

As regards the case of the Director-General for Fisheries, the Ombudsman informed the MEP that the Ombudsman's procedure for investigating a complaint involves sending the complaint to the institution concerned for an opinion. In order to obtain a useful opinion, it is essential that the complainant clearly specify the allegations of maladministration to which the institution should respond. This requirement is embodied in Article 2 (3) of the Statute of the Ombudsman which requires that the complaint must allow the object of the complaint to be identified. Since the MEP's letter of 27 May 2002 did not contain an allegation of maladministration on which the Commission could be asked to provide an opinion, the Ombudsman informed him that he could not open an inquiry.

The Ombudsman sent the MEP a complaint form, which could be used to formulate an allegation of maladministration. However, no reply was received.

Case 988/2002/IJH

2.5 ANALYSIS OF THE COMPLAINTS

Of the 11087 complaints registered from the beginning of the activity of the Ombudsman, 12% originated from France, 15% from Germany, 15% from Spain, 8% from the UK, and 10% from Italy. A full analysis of the geographical origin of complaints registered in 2002 is provided in Annex A, Statistics.

During 2002, 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 97% of the cases. 28% of the complaints examined appeared to be within the mandate of the Ombudsman. Of these, 331 met the criteria of admissibility, but 109 did not appear to provide grounds for an inquiry. Inquiries were therefore begun in 222 cases.

Most of the complaints that led to an inquiry were against the European Commission (75%). 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 21 complaints against the European Parliament and 12 complaints against the Council of the European Union.

The main types of maladministration alleged were lack of transparency (92 cases), discrimination (26 cases), unsatisfactory procedures or failure to respect rights of defence (40 cases), unfairness or abuse of power (45 cases), avoidable delay (53 cases) negligence (37 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 (6 cases) and legal error (21 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 2002, advice was given in 1299 cases, most of which involved issues of Community law. In 618 cases, the complainant was advised to take the complaint to a national or regional Ombudsman or similar body. 215 complainants were advised to petition the European Parliament and, additionally, 12 complaints were transferred to the European Parliament, with the consent of the complainant, to be dealt with as petitions, 11 cases were transferred to the European Commission and 19 cases were transferred to a national or regional ombudsman. In 241 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 183 cases, the complainant was advised to contact other bodies.

Example of a case transferred to the European Commission

In July 2002, the European Ombudsman received a complaint from Mr B., who had been working as a maritime officer in vessels under both Italian and Spanish flags. As a resident of Spain, he requested the payment of his pension from the Spanish Social Security. In order to calculate his pension rights, the Spanish authorities contacted the responsible Italian officials who appeared unwilling to transfer the relevant information. Upon the intervention of the European Commission, the pertinent documents from the Italian authorities were finally forwarded to the Spanish Social Security.

Mr B. complained to the Ombudsman because he considered that the final computation of his pension rights by the Spanish Social Security had not fully taken into account the contributions made to both administrations. He alleged that by not taking full account of his contributions to both the Italian and Spanish systems, the responsible authorities in Spain were in breach of Community law.

As the complaint related to the actions of national authorities, the European Ombudsman was not entitled to deal with it. Nevertheless, it appeared to involve the application of Community law by a Member State. The European Ombudsman decided, therefore, to transfer the complaint to the European Commission, which in its role as Guardian of the Treaty, should ensure the proper application of Community law by all Member States.

Case 837/2002/JMA

2.7 THE OMBUDSMAN'S POWERS OF INVESTIGATION

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*".

2.7.1 The hearing of witnesses

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 2002, the Ombudsman's power to hear witnesses was not invoked.

2.7.2 Inspection of documents

During 2002, the Ombudsman's powers to inspect files and documents relating to an inquiry were invoked in 2 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.

2.7.3 Clarifying the Ombudsman's powers of investigation

In the Annual Report for 1998, the Ombudsman proposed that his powers of investigation should be clarified, both as regards the inspection of documents and the hearing of witnesses. The European Parliament adopted a Resolution which urged the Committee on Institutional Affairs to consider amending Article 3 (2) of the Statute of the Ombudsman, as proposed in the report drawn up by the Committee on Petitions.[4]

On 6 September 2001, the European Parliament adopted a Resolution amending Article 3 (2) of the Statute, based on the report of the Constitutional Affairs Committee (rapporteur, Teresa Almeida Garrett) A5-0240/2001 - PE 294.729DEF.

The text adopted by the Parliament is as follows:

The Community institutions and bodies shall be obliged to supply the Ombudsman with any information that he requests of them and to allow him to consult and take copies of any document. 'Document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording)

They shall give him access to all classified documents originating in a Member State after having informed the Member State concerned.

In all cases where documents are classified as SECRET (secret) or CONFIDENTIEL (confidential), in accordance with Article 4, the Ombudsman may not divulge the content of such documents.

Officials and other servants of Community institutions and bodies shall testify at the request of the Ombudsman. They shall give complete and truthful information.

In accordance with Article 195 (4) EC, the Commission has the opportunity to give an opinion on the revised text, which will also require the approval of the Council acting by qualified majority before it can enter into force.

In its opinion dated 6 March 2002 (COM (2002) 133 final), the Commission argued that concerning the lifting of secrecy for access to a dossier, it is necessary to comply with requirements concerning the protection of privacy, industrial secrets and classified information, and future institutional developments. With regard to documents coming from the Member States, it is necessary to be consistent with the principles set out in the new Regulation 1049/2001 of the European Parliament and the Council on public access to documents and in the framework agreement between the Commission and Parliament. The principle of obtaining prior authorisation from the Member State in question should be maintained. Declaration 35 annexed to the Final Act of the Amsterdam Treaty points in the same direction. With regard to the giving of evidence, the Commission can accept the removal of the obligation to give evidence under instructions. However, it is important to maintain the principle whereby officials do not speak on a personal basis but as officials.

The European Ombudsman replied to the Commission's opinion on 27 June 2002 regretting its negative views on the proposal and explaining that the European Ombudsman's intention is only to see that the Statute fulfils the normal requirements of a modern Ombudsman institution and thus reflects the EU institutions' commitment to the principles of good administration and accountability.

In a letter of 17 December 2002 addressed to the President of the European Parliament, the Ombudsman suggested that in view of the time that has elapsed since the beginning of the procedure and the important legal developments which have taken place in the European Union concerning the powers of investigation attributed to other institutions or bodies dealing with inquiries, it seemed appropriate to envisage a thorough overhaul of the provisions of the statute. He therefore suggested that the European Parliament withdraw the amendments which it has submitted for the Council's approval under Article 195 EC

[4] Report of the Committee on Petitions on the Annual Report of the activities of the European Ombudsman in 1998 (A4-0119/99) Rapporteur : Laura De Esteban Martin

and that its Legal Service and the services of the Ombudsman jointly examine the question of revision of the Ombudsman's Statute when a new European Ombudsman has taken office on 1 April 2003.

2.8 INQUIRIES BY THE OMBUDSMAN AND THEIR OUTCOMES

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.

If the Ombudsman's inquiries reveal an instance of maladministration, if possible he seeks a friendly solution to eliminate it and satisfy the complainant.

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 draft recommendations.

A critical remark is considered appropriate for cases where the instance of maladministration appears to have no general implications and no follow-up action by the Ombudsman seems necessary.

In cases where follow-up action by the Ombudsman does appear necessary (that is, more serious cases of maladministration, or cases that have general implications), the Ombudsman makes a decision with draft recommendations 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. The detailed opinion could consist of acceptance of the Ombudsman's decision and a description of the measures taken to implement the recommendations.

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.

In 2002, the Ombudsman began 224 inquiries, 222 in relation to complaints and 2 own-initiatives. (For further details, see Appendix A, Statistics)

During the course of the year, 66 cases were settled by the institution or body itself. Of this number 45 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). 6 cases were dropped by the complainant. In 128 cases, the Ombudsman's inquiries revealed no instance of maladministration.

A critical remark was addressed to the institution or body concerned in 29 cases. A friendly solution was reached in 6 cases. 10 draft recommendations were accepted by the institutions in 2002 and 3 cases were closed following a special report adopted by the European Parliament (see section 3.6).

In 2 cases, a draft recommendation was followed by a special report to the European Parliament. One concerned complaint 1542/2000/(PB)SM and the other concerned complaint 341/2001/(BB)IJH (see section 3.8).

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

3 DECISIONS FOLLOWING AN INQUIRY

3 DECISIONS FOLLOWING AN INQUIRY

3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND

3.1.1 The European Commission

NUTS CLASSIFICATION OF THE ISLE OF WIGHT (UK)

Decision on complaints 500/2001/IJH and 552/2001/IJH against the European Commission

THE COMPLAINT

The complainant in case 552/2001/IJH ("the complainant") is a member of the Isle of Wight Council in the United Kingdom.

The previous complaint 1372/98/OV

In December 1998, the complainant submitted, jointly with the Leader of the Council, a complaint to the European Ombudsman on behalf of the Isle of Wight Council. The complaint, which was registered as 1372/98/OV, concerned the decision of Eurostat not to classify the Isle of Wight as a separate Level 2 area in the NUTS system of statistical classification[5]. This is of concern to the complainant because only areas identified at the NUTS 2 level can be eligible for Objective 1 funding from the EU Structural Funds.

On 13 March 2000, the Ombudsman made a draft recommendation to the Commission in case 1372/98/OV that it should reconsider the matter of the NUTS classification of the Isle of Wight. On 22 March 2001, the Ombudsman closed case 1372/98/OV on the basis that the Commission had duly executed the draft recommendation, even though the Commission had confirmed its decision to classify the Isle of Wight only at NUTS level 3, not at level 2.

In April 2001, the complainant sent letters and faxes to the Ombudsman concerning the decision to close case 1372/98/OV. The complainant alleged that an additional opinion, which the Commission had submitted to the Ombudsman on 5 December 2000, contained certain incorrect information. He also argued that the Ombudsman should have sent the Commission's additional opinion to the complainant in case 1372/98/OV for possible observations. The complainant claimed that the Ombudsman should set aside his decision in case 1372/98/OV and re-open the case.

The Ombudsman's reply concerning the procedure used in case 1372/98/OV and the claim that the case should be re-opened.

In reply to the complainant's argument that the Ombudsman should have sent the Commission's additional opinion to the complainant in case 1372/98/OV for possible observations, the Ombudsman stated that he is always conscious of the need for fair procedure. However, it is necessary to conclude every inquiry at some point, which means that one of the parties must have the last word. In this case, the Ombudsman considered that it was unnecessary to send the Commission's further opinion to the complainant for possible observations (which could in turn have necessitated sending such observations to the Commission for a further opinion) since the points made in the Commission's additional opinion had already been made in substance in its detailed opinion on the draft recommendation, on which the complainant had already made observations. The Ombudsman therefore declined to re-open case 1372/98/OV.

As regards the allegations of incorrect statements in the Commission's additional opinion, the Ombudsman informed the complainant that they had been registered as a new complaint against the Commission with the registration number 552/2001/IJH.

The allegations in complaint 552/2001/IJH

The complainant alleged that, in dealing with a previous complaint (1372/98/OV) concerning the NUTS level classification of the Isle of Wight, the Commission supplied incorrect information to the Ombudsman. According to the complainant:

---

5 This system divides each Member State into a number of NUTS 1 regions, each of which is subdivided into NUTS 2 regions and so on. NUTS is the acronym of Nomenclature des Unités Territoriales Statistiques

1 There are fifteen islands classified at NUTS level 2, not seven as stated by the Commission.

2 Contrary to the information provided by the Commission, only one of the six other islands identified by the Commission has a higher density of population than the Isle of Wight.

3 The Commission wrongly interprets Article 158 EC as relating only to "least favoured islands", whereas it applies to all islands, as is made clear by Declaration 30 attached to the Treaty of Amsterdam and paragraph 57 of the Presidency conclusions of the Nice meeting of the European Council.

The complainant also suggested that the Ombudsman should organise a tripartite meeting between the complainant, the Ombudsman and Commissioner BARNIER.

As regards the complainant's third allegation, the Ombudsman noted that the complainant's underlying claim is that, on the basis of a comparison with other islands, the Isle of Wight should be classified at NUTS level 2. Since the question of legal interpretation raised by the complainant's allegation appeared to have no bearing on the comparison between the Isle of Wight and other islands, the Ombudsman informed the complainant that he did not consider that there were grounds, as required by Article 195 EC, for him to inquire into the matter.

As regards the complainant's suggestion of a tripartite meeting, the Ombudsman informed the complainant that he only seeks to organise meetings which could have a precise purpose in dealing with a complaint and that he did not consider such a meeting appropriate at this stage.

The Ombudsman therefore opened an inquiry only into the first and second of the above-mentioned allegations. Since the second allegation appeared similar to the allegation in complaint 500/2001/IJH, made by a Member of the European Parliament, the Ombudsman decided to conduct a joint inquiry into the two cases.

The complainant subsequently sent a further letter making an additional allegation that the Commission had failed to apply its announced criteria for classification at NUTS level 2. To support this allegation, the complainant referred to a table showing ranges, deciles and quartiles of EU-wide data for NUTS level 2, taken from a document entitled "*When is an island not an island?*", which the Isle of Wight Council prepared for the Island Regeneration Partnership on 15 October 1998. The table shows, amongst other things, that the statistics for minimum population (in 1992), area and population density (in 1992) for NUTS level 2 regions in the EU are respectively 24,920, 31.0 square kms and 1.6 per square km, whereas the comparable statistics for the Isle of Wight are respectively 125,000, 380.0 square kms and 328.0 per square km. The Ombudsman forwarded the additional allegation to the Commission for an opinion.

THE INQUIRY

The Commission's opinion

The Commission's opinion on the two cases that were the subject of the inquiry was, in summary, as follows.

As regards the number of islands classified at NUTS level 2, the Commission argued that there are only eight islands which are classified in their own right at NUTS level 2: Crete, Corsica, Guadeloupe, Martinique, Réunion, Sicily, Sardinia and Åland. The other cases cited by the complainant are regarded as archipelagos made up of a number of islands and thus cannot be compared directly with the Isle of Wight. The Commission argued that

including these geographic entities in a comparison could only strengthen its case since they have a higher population than the Isle of Wight.

As regards the question of population density, the relevant part of the Commission's opinion to the Ombudsman in case 1372/98/OV was in French.[6] The correct translation of the relevant part of the Commission's opinion is as follows:

"*Classifying the Isle of Wight at NUTS level II would put this region at the same level as Crete, Corsica, Guadeloupe, Martinique, Réunion, Sicily, Sardinia and Åland, the only islands in this class in their own right, all of which have a much larger population (with the exception of Åland) and much larger area"*

In accordance with normal procedure, the Commission later sent a translation into the language of the complaint, English. Unfortunately, the above sentence was inaccurately translated, with the French expression "beaucoup plus peuplées" being rendered as "far denser population" rather than the correct "much larger population".

As regards the allegation that it had failed to apply its announced criteria for classification at NUTS level 2, the Commission first commented on the question of eligibility for the Structural Funds. It pointed out that since the Isle of Wight has not been classified at the NUTS level 2 it could not be eligible for Objective 1 funding. As far as Objective 2 funding is concerned, the Commission pointed out that the UK authorities did not propose that the Isle of Wight be included in the list of eligible regions for the current programming period. The Commission nonetheless believes that the special situation of the various territories of the EU, including islands, warrants more detailed analysis. For that reason, the Commission produced a declaration for the meeting of the Council on 31 May 2001. The declaration, which the Commission quoted in full in its opinion, includes the information that the Commission has launched a study with a view to acquiring in-depth information on the situations of islands in the EU by the end of 2001.

The Commission also pointed out that the document "*When is an island not an island?"*, including the table concerning characteristics of NUTS level 2 regions, already formed part of the file on case 1372/98/OV. The Commission added that:

"*Given the absence in the United Kingdom of a geographical administrative level which could serve as the basis for drawing up level 2 of the classification, this level was based, as in the past, on aggregations of smaller administrative units (counties or unitary authorities). These groupings were carried out in such a way as to avoid forming overly small units, particularly in terms of population. In this context, the population of the Isle of Wight (125,000 inhabitants) was considered too low for level 2 (in Europe as a whole, the average population of NUTS 2 units is some 1.8 million, while within the United Kingdom it is 1.6 million). It should, moreover, be noted that among the more than 200 level 2 regions in the EU, only two have a smaller population than the Isle of Wight : Åland in Finland and the Valle d'Aosta in Italy. Both of these, however are defined within the national structure used as the basis for constituting the NUTS level 2 of their respective countries ("Suuralueet" in Finland and "Regioni" in Italy).*"

The Commission therefore maintained that the decision it took in agreement with the UK authorities not to classify the Isle of Wight at NUTS level 2 is in accord with the basic principles underlying the NUTS system: i.e. using the country's administrative structure and ensuring as far as possible that regions are comparable in terms of population size.

6 "Or classer l'Ile de Wight au niveau II de la NUTS mettrait cette région au même niveau que la Crète, la Corse, la Guadeloupe, La Martinique, la Réunion, la Sicile, la Sardaigne et Åland, seules îles individuellement dans ce cas, et qui sont toutes beaucoup plus peuplées (à l'exception d'Åland) et beaucoup plus grandes".

The complainant's observations

The complainant in case 500/2001/IJH did not make any observations on the Commission's opinions.

The complainant in case 552/2001/IJH observed, as regards the number of islands classified at NUTS level 2, that the Commission had applied an aggregating procedure by classifying islands as archipelagos. The complainant argued that this procedure is not open to the Isle of Wight, which has therefore been assessed only by its geographic location, with its actual needs being ignored completely.

The complainant also referred to the Commission's proposal for a Regulation on the establishment of a common classification of Territorial Units for Statistics (NUTS)[7] and the Opinion of the Economic and Social Committee on the Commission's Proposal.[8] The complainant pointed out that the Commission's explanatory memorandum on the proposed NUTS Regulation states:

"*The NUTS classification has so far no legal basis of its own, i.e. there is no Regulation yet setting out in detail the rules for compiling and updating the system. These matters are settled so far by "gentlemen's agreements" between the Member States and Eurostat, sometimes after long and difficult negotiations"*

The complainant also referred to Article 6 of the proposed Regulation, which provides for the Commission to take the necessary measures to ensure the consistent management of the NUTS classification, including examination of problems arising from the implementation of NUTS in the Member States' classifications of regions. The complainant pointed out that the Commission's discretionary powers in relation to NUTS classification would have enabled it to make an examination of this kind, even before the enactment of the Regulation. Furthermore, he argued that the Commission enjoyed unlimited discretionary powers in relation to NUTS classification and that it should have exercised those discretionary powers in relation to the Isle of Wight. The complainant asked why the Commission did not exercise its discretionary powers in relation to the Isle of Wight, especially as the UK Office of National Statistics had clearly demonstrated to Eurostat the effects this would have on the Island and its community not only in relation to EU funding, but also national funding.

The complainant then referred to the Commission's Second Report on Economic and Social Cohesion[9], which lists suggested priorities, including areas with severe geographical or natural handicaps. He also mentioned the *Opinion of the Economic and Social Committee: Guidelines for integrated actions on the island regions of the European Union following the Amsterdam Treaty (Article 158).*[10] According to the complainant, this Opinion contains a most telling and damning opinion of how the Commission has failed to address the problems of the EU islands.

The complainant concluded his observations by arguing that the Commission acted unfairly and unreasonably in not exercising its discretionary powers and in not taking into

7 COM/2001/0083 final - COD 2001/0046, 2001 OJ C 180 E/108

8 2001 OJ C 260/57

9 Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions COM(2001) 24 final, Brussels, 31.1.2001

10 ECO/029, 12 July 2000, available on the website of the Economic and social Committee at: http://www.esc.eu.int/pages/avis_prin/eco/029/ces805-2000_ac_en.pdf

account relevant geographic, economic and social considerations. The complainant argued that the Commission is therefore guilty of maladministration.

THE DECISION

1 The allegation concerning the number of islands classified at NUTS level 2

1.1 The complainant alleged that the Commission supplied incorrect information to the Ombudsman in dealing with a previous complaint concerning the NUTS level classification of the Isle of Wight. According to the complainant, there are fifteen islands classified at NUTS level 2, not seven as stated by the Commission.

1.2 In its opinion, the Commission replied that there are only eight islands which are classified in their own right at NUTS level 2: Crete, Corsica, Guadeloupe, Martinique, Réunion, Sicily, Sardinia and Åland. The other cases cited by the complainant are regarded as archipelagos made up of a number of islands and thus cannot be compared directly with the Isle of Wight. The Commission also pointed out that including these geographic entities in a comparison could only strengthen its case, since they have a higher population than the Isle of Wight.

1.3 In his observations, the complainant argued that the Commission had applied an aggregating procedure by classifying islands as archipelagos. The complainant argued that this procedure is not open to the Isle of Wight, which has therefore been assessed only by its geographic location, with its actual needs being ignored completely.

1.4 The Ombudsman does not consider that it is misleading or artificial for the Commission to present information in a form that distinguishes between archipelagos and *"islands…classified in their own right"*. The Ombudsman therefore finds no maladministration in relation to this aspect of the complaint.

2 The allegation concerning density of population

2.1 The complainant alleged that, in dealing with a previous complaint concerning the NUTS level classification of the Isle of Wight, the Commission supplied incorrect information to the Ombudsman. According to the complainant, contrary to the information provided by the Commission, only one of the other islands identified by the Commission has a higher density of population than the Isle of Wight.

2.2 The Commission explained that its opinion to the Ombudsman in the previous complaint was in French and that the translation into English which it later sent to the Ombudsman contained an error, in that the French expression "beaucoup plus peuplées" was rendered as "far denser population" rather than the correct "much larger population".

2.3 The Ombudsman considers that the Commission is responsible for the translations, which it supplies to the Ombudsman and notes that the language of this complaint is English. The complainant was therefore correct to point out the error in the information supplied in English by the Commission. However, the evidence available to the Ombudsman is that the Commission formulated its policy towards the Isle of Wight on the basis of correct information and that it intended to communicate correct information to the complainant. Furthermore, the Commission's opinion in the present case has identified and corrected the translation error that occurred. In these circumstances, the Ombudsman finds no maladministration in relation to this aspect of the complaint.

3 The allegation that the Commission failed to apply its announced criteria for classification at NUTS level 2

3.1 The complainant alleged that the Commission failed to apply its announced criteria for classification at NUTS level 2. The complainant referred to a table showing ranges, deciles and quartiles of EU-wide data for NUTS level 2. The table shows, amongst other things, that the statistics for minimum population (in 1992), area and population density (in 1992) for NUTS level 2 regions in the EU are respectively 24,920, 31.0 square kms and 1.6 per square km, whereas the comparable statistics for the Isle of Wight are respectively 125,000, 380.0 square kms and 328.0 per square km.

3.2 In its opinion to the Ombudsman, the Commission defended its decision not to classify the Isle of Wight at NUTS level 2. The Commission stated that there is no geographical administrative level in the United Kingdom, which could serve as the basis for drawing up level 2 of NUTS. This level was therefore based, as in the past, on aggregations of smaller administrative units, carried out in such a way as to avoid forming overly small units, particularly in terms of population. In this context, the population of the Isle of Wight, 125,000 inhabitants, was considered too low for level 2. According to the Commission, the average population of NUTS 2 units in Europe as a whole is some 1.8 million, while within the United Kingdom it is 1.6 million. The Commission also pointed out that among the more than 200 level 2 regions in the EU, only two have a smaller population than the Isle of Wight : Åland in Finland and the Valle d'Aosta in Italy. Both of these, however are defined within the national structure used as the basis for constituting the NUTS level 2 of their respective countries ("Suuralueet" in Finland and "Regioni" in Italy)." The Commission therefore maintained that the decision not to classify the Isle of Wight at NUTS level 2 is in accord with the basic principles underlying the NUTS system: i.e. using the country's administrative structure and ensuring as far as possible that regions are comparable in terms of population size.

3.3 The Ombudsman understands the complainant's allegation of failure to apply announced criteria to be based on the fact that there are certain regions, including one island (Åland) which are classified at NUTS level 2, but which have smaller population, area, and population density than the Isle of Wight. The Ombudsman considers the Commission's explanation that the situation of the regions concerned is different from that of the Isle of Wight because those regions are defined within the national structure used as the basis for constituting the NUTS level 2 of their respective countries to be reasonable. The Ombudsman is not aware of any rule or principle, which could prevent the Commission taking this factor into account in determining NUTS classifications.

3.4 In his observations, the complainant also argued that the Commission could have exercised its discretionary powers in order to reach an agreement with the UK authorities classifying the Isle of Wight at NUTS level 2. The complainant pointed out the effects this would have on the Island and its community not only in relation to EU funding, but also national funding. According to the complainant, the Commission acted unfairly and unreasonably in not exercising its discretionary powers and in not taking into account relevant geographic, economic and social considerations.

3.5 The evidence available to the Ombudsman does not appear to contradict the complainant's argument that the Commission could have exercised its discretionary powers in order to reach an agreement with the UK authorities classifying the Isle of Wight at NUTS level 2. The Ombudsman points out, however, that the essence of a discretionary power is that the decision-making authority has the possibility to choose legally between two or more possible courses of action. Maladministration in the exercise of a discretionary power occurs if the institution or body concerned steps outside the limits of its legal authority. The relevant question for the Ombudsman is not, therefore, whether the Commission could have decided differently, but whether the Commission was legally entitled to decide as it did.

3.6 As the Ombudsman's previous inquiry (case 1372/98/OV) made clear, the Commission must take all relevant factors into account in considering the exercise of discretionary powers. The weight to be accorded to the various relevant factors is a matter for the exercise of discretion: it could constitute maladministration only if it were manifestly unreasonable or unfair, or otherwise contrary to law. The Ombudsman does not consider that the evidence supplied by the complainant and drawn from various reports by the Commission and opinions by the Economic and Social Committee could demonstrate unreasonableness, unfairness or other unlawful action by the Commission in its decision not to classify the Isle of Wight at NUTS level 2. The Ombudsman did not therefore request further information from the Commission on the basis of the arguments raised in the complainant's observations.

3.7 For the reasons stated above, the Ombudsman finds no maladministration in relation to this aspect of the complaint. The Ombudsman points out however, that the complainant could pursue his claim to NUTS level 2 status for the Isle of Wight by presenting a petition to the European Parliament, which can take political and moral arguments into account as well as legal ones.

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.

DEGREE NECESSARY FOR ADMISSION TO TENDER

Decision on complaint 1081/2001/SM against the European Commission

THE COMPLAINT

The complainant, a Swedish national and translator, applied for the European Commission's call for tender for translation services to Swedish (ref. 2000/S 144-094475). The Commission rejected the complainant's application by letter of 29 March 2001 on the basis that her American university "Degree of Bachelor of Science" did not have the level required for the open call to tender. The complainant who considers that her degree is sufficient appealed this decision to the Commission and informed it that the degree from Mankato State University in the USA is equivalent to the Swedish degree "Fil kand" which may lead to a doctoral degree in Sweden and which is accepted in the Terms of reference of the open call to tender. The Commission however maintained its initial position. The complainant then requested an attestation from the National Board for Higher Education in Sweden ("Högskoleverket") which confirms that her four-year long education in the USA is equivalent to the level and scope of a Swedish "Fil kand" degree.

The complainant alleges that her application is eligible and that the Commission incorrectly rejected her application.

The complainant claims that the Commission declares its decision void, accepts her application and grants her a translation services contract.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

On 29 July 2000, the Commission launched eleven open calls for tenders with a view to hiring external translators for translation services in various thematic fields (reference 2000/S 144-094475 for translation services into Swedish). The deadline for the thirty applications received was on 2 October 2000. The Commission's eleven selection committees consisting of experienced officials then proceeded with the procedure for awarding the contracts which consisted of two phases: a selection phase during which the eligibility

with the tender's terms of reference was checked and a award phase during which a comparison of the eligible tenders took place. The results of the selection committees were presented in a report to the CCAM ("Commission Consultative des achats et des marchés de la Commission").

The complainant's application was considered eligible but was rejected during the award procedure on the basis that it did not fulfil one of the five cumulative conditions in the terms of reference, that is the required university degree giving access to doctoral degree. The Commission informed the complainant by letter of 29 March 2001 that her application was rejected as her diploma, a US Bachelor of science from the Mankato State University, was not alone sufficient for the award of the contract. The complainant contested the Commission's decision by letter of 4 April 2001 informing the Commission that her degree, Bachelor of Science, was equivalent to a Swedish degree, "Kandidatexamen", which allows for a doctoral degree and which is referred to in Annex 2 of the Terms of Reference. The complainant also informed the Commission that she had successfully been awarded contracts with both the European Parliament and the Translation Centre for the Bodies of the European Union (CdTOU) on the basis of her US Degree and maintained that she was eligible for the award of a translation contract with the Commission.

After a re-examination of the complainant's application by the Commission's authorising department and the chairman of the Swedish selection committee, the Commission orally informed the complainant that according to its internal administrative practice a US Bachelor degree is considered insufficient. Such a degree does not qualify for a recruitment procedure for which a degree leading to a doctoral degree is necessary. The Commission moreover compared the European Parliament/CdTOU tender and noted that the award criteria were not the same in that the latter tender referred to only requested the tenderer to have a university degree without requiring access to a doctoral degree. The Commission therefore confirmed its initial position by letter to the complainant of 6 June 2001. The complainant then contacted the Commission's authorising department twice to discuss her point of view. The Commission again informed the complainant that the Commission has its own equivalence criteria for degrees, that it is not bound by a statement from a competent national authority and that the complainant could consider lodging a complaint to the European Ombudsman.

The Commission states that the two main arguments of the complainant are firstly that the US Bachelor of Science degree is equivalent to a Swedish "Kandidatexamen" which is considered as sufficient for the call for tender in question as indicated in the Annex 2 of the terms of reference. Secondly, the complainant considers that as the European Parliament/CdTOU accepted her tender application the Commission should accept it also.

In reply, the Commission stresses firstly that the complainant did not provide a copy of the document certifying that her US Bachelor degree is equivalent to the Swedish degree leading to doctoral studies. The Commission informs that it visited the web site of the National Board for Higher Education in Sweden, Högskoleverket, which indicated that the equivalencies established by this Board mainly referred to degrees and employers on a national level only.

The Commission secondly states that it consulted its Directorate General for Administration (DG Admin) which confirmed that the admission to A and LA competitions is restricted to candidates who have a degree leading to a master or doctor degrees. In accordance with its established administrative practice it does not alone consider a US Bachelor degree sufficient for admission to these competitions.

The Commission thirdly informs that its practice is to fix the same criteria of admission for free-lance translators as its own LA-officials in order to reinforce the same level of qualifications between call for tenders for external translators on one hand and competitions for internal translators on the other. This is not the case of the European

Parliament/CdTOU. Applying this practice means that candidate with a "Bachelor of Science" degree will not fulfil the admission criteria for the A/LA competitions. It also means that in the context of an open call for tender for external free-lance translators, the Bachelor candidate's application, for which the same admission criteria apply, will be rejected.

In this context, the Commission informs that it respects the inter-institutional approach whereby the European Parliament/CdTOU tender had served as a basis for its call for tenders, reference 2000/S 144-094475. It points out however that the admission criteria were not the same in the two separate tenders and that this explains why the European Parliament/CdTOU accepted the complainant's application but that the Commission did not do so. The European Parliament/CdTOU did not request that the candidates' degrees had to allow for a master or doctoral studies.

The Commission finally considers that the rejection of the complainant's application during the award procedure is regrettable but nonetheless perfectly legitimate.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Alleged eligibility and incorrect rejection of tender application

1.1 The complainant alleges that her application is eligible and that the Commission incorrectly rejected her application.

1.2 The Commission argues that the application is ineligible in that the complainant did not fulfil the award criteria stipulated in the Terms of reference and that it therefore correctly rejected it. The complainant's US "Bachelor of Science" degree is insufficient, as it does not lead a doctoral degree.

1.3 The Ombudsman notes the complainant successfully passed the selection procedure but was rejected in the award procedure on the basis that her US "Bachelor of Science" degree was below the minimum education level required under Article 2.2.4. entitled "Compétence professionnelle" in the Terms of reference of the tender. This Article reads as follows.

"*The minimum level of qualification, which the Commission considers acceptable for a translator/reviser within the context of the present call for tender is a university degree leading to doctoral studies in any discipline. It is in any case for the tenderer to verify the level of his or her degree with the competent national authorities. A non-exhaustive table indicating examples of degrees is enclosed in table 2.*"[11]

1.4 A Bachelor degree in the US system corresponds to a successful termination of "undergraduate" studies, as a prerequisite of beginning "graduate" studies in various fields leading to a master or doctoral degrees. The Commission considers that only such grad-uate degrees are comparable to university degrees in Europe giving access to the profession, not the intermediate Bachelor degree. This degree is more than a baccalau-reate but less than a graduate degree. In her application, the complainant did not provide any documentation certifying that her US Bachelor degree was equivalent to a national degree leading to a doctoral degree. The Ombudsman considers that the Commission has

[11] This Article reads as follows in the Terms of reference: "Le niveau minimal de qualification que la Commission juge acceptable pour un traducteur/réviseur aux fins du présent appel d'offres est l'obtention d'un diplôme de niveau universitaire donnant accès aux études doctorales dans quelque discipline que ce soit. Il appartient au soumissionnaire de vérifier, le cas échéant, le niveau de ses diplômes auprès des autorités nationales compétentes. Un tableau reprenant quelques exemples de diplômes est joint à titre indicatif en annexe 2."

applied the Terms of reference correctly when it rejected the complainant and that the complainant did not fulfil the requirements in the Terms of reference.

1.5 In these circumstances, there appears to be no maladministration by the Commission as regards this aspect of the complaint.

2 The complainant's claims

2.1 The complainant claims that the Commission should declare its decision void, accept her application and grant her a translations services contract. The Ombudsman notes that the Commission's award criteria in the present case appear not to be the same as the ones in the European Parliament/CdTOU call for tender where only a university degree, not a university degree leading to a doctoral degree, was required. These award criteria would only be relevant in so far as they fix the same ones, which appears not to be the case.

2.2 In view of the findings of no maladministration in sections 1.1 to 1.5 above, the Ombudsman does not consider it necessary to inquire further into the complainant's claims.

3 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.

3.1.2 The Court of Justice of the European Communities

AVAILABILITY OF LANGUAGE VERSIONS OF JUDGEMENTS ON THE COURT'S WEBSITE

Decision on complaint 624/2002/ME against the Court of Justice of the European Communities

THE COMPLAINT

The complainant lodged a complaint with the European Ombudsman in April 2002. The complainant put forward that on the Court of Justice's Website (http://www.curia.eu.int), judgements are published in full in the languages available on the date of publication. When a proper translation is available on a later date, that version is not added to the Website. This is in particular a problem as regards judgements of the Court of First Instance and the opinions of the Advocates General. As far as the opinions of the Advocates General are concerned, they are only published in the language of the Advocate General and in French. Anyone not able to read French and the other language has to wait until the information is published in the printed document (Reports of Cases before the Court of Justice and the Court of First Instance). The complainant stated that according to the Court's Information Department there are no plans to add more language versions to the Website.

In summary, the complainant alleged that despite the fact that the Court of Justice has several language versions of its judgements at its disposal, only the ones available on the date of publication are added to its Website. The complainant claimed that the Court should introduce a routine in which all language versions available to it are added to its Website.

THE INQUIRY

The Court of Justice's opinion

In its opinion, the Court of Justice referred to Article 31 of its Rules of Procedures, which states that the texts of judgements are authentic in the language of the case, which is also the version notified to the parties. It is also made available to the public once the judgement has been delivered. According to Article 68 of the Rules of Procedures, a report of cases shall be published before the Court. For that purpose, the Court translates the judgements into the other official languages of the Communities. The Court Reports contain the

definitive version of the judgements in all languages and are the sole official source of information on the Court's case law.

The Court then stressed that, in recent years, it had taken steps to facilitate the rapid access to its case law. Since 1994, it made considerable efforts to ensure that all translations are available on the actual date of delivery of the judgement. It is not, however, possible to ensure that translations are available on that date in every case. This varies between languages according to each translation division's workload and staffing situation.

In addition, since 1997, the Court's judgements may also be consulted on its Website from the date of delivery. The texts and translations available are loaded onto the Website on that date. The system gives immediate access to 95% of all the language versions of the Court's judgements. As a result of lack of staff and the fact that the Website is still managed manually, it has until now been impossible to add at a later date translations that were not available on the date of delivery. However, an automatic loading process for those translations should be in operation by the end of the year.

The complainant's observations

In his observations, the complainant pointed out that the Court only referred to its judgements while his complaint specifically highlighted the problems of the availability of the judgements of the Court of First Instance and the opinions of the Advocates General. The complainant also questioned whether 95% of the judgements were in fact added to the Website. In a phone call with the Ombudsman's Secretariat, the complainant asked the Ombudsman to request official statistical information on the number of language versions available on the Court's Website. In his observations, the complainant also questioned whether it was "impossible" to add the other language versions to the Website for the reasons put forward by the Court.

THE DECISION

1 Language versions available on the Court's Website

1.1 The complainant stated that judgements are published in full in the languages available on the date of publication on the Website of the Court of Justice. Translations available on a later date are not added to the Website. This is in particular a problem as regards judgements of the Court of First Instance and the opinions of the Advocates General. The complainant alleged that despite the fact that the Court of Justice has several language versions of its judgements at its disposal, only the ones available on the date of publication are added to its Website. The complainant claimed that the Court should introduce a routine in which all language versions available to it are added to its Website.

1.2 The Court of Justice referred to its Rules of Procedures, according to which the texts of judgements are authentic in the language of the case and a report of cases shall be published. The Court Reports contain the definitive version of the judgements in all languages and are the sole official source of information on the Court's case law. Since 1994, it made considerable efforts to ensure that all translations are available on the actual date of delivery of the judgement. Since 1997, the Court's judgements and the translations available on the date of delivery may also be consulted on its Website. The system gives immediate access to 95% of all the language versions of the Court's judgements. As a result of lack of staff and the fact that the Website is still managed manually, it has been impossible to add, at a later date, translations that were not available on the date of delivery. However, an automatic loading process for those translations should be in operation by the end of the year.

1.3 The Ombudsman notes that Council Regulation No 1 determining the languages to be used by the Communities[12], prescribes in Article 7 that *"The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure."* Article 68 of the Rules of Procedures of the Court of Justice states that *"The Registrar shall arrange for the publication of reports of cases before the Court."* The Ombudsman has already held in previous cases that the provisions of Community law concerning use of languages do not appear to prevent a Community institution or body from publishing, on a Website, documents in the language in which they are drafted[13]. It must thus be concluded that the Court has not breached any rule or principle binding upon it by not publishing, on its Website, its judgements in all official languages. The Ombudsman notes that the Court fulfils its legal obligations by publishing all the official language versions in the Reports of Cases before the Court of Justice and the Court of First Instance.

1.4 Despite the fact that there is no legal obligation on the Court to publish judgements on its Website, the Ombudsman welcomes the fact that the Court already publishes judgements on its Website to the benefit of the European citizens. The Ombudsman furthermore welcomes the Court's intention to extend this practice to include more language versions by the end of the year. In doing so, the Ombudsman calls upon the Court to consider the suggestions raised by the complainant as far as the availability of the judgements of the Court of First Instance and the opinions of the Advocates General are concerned.

2 Conclusion

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

3.1.3 The European Investment Bank

ALLEGED PROFESSIONAL HARASSMENT AND DENIAL OF JUSTICE

Decision on complaint 1164/2001/(BB)MF against the European Investment Bank

THE COMPLAINT

The complainant lodged a complaint with the European Ombudsman in August 2001.

The complainant has been an official of the European Investment Bank (EIB) since 1985. He began working as a translator in the Spanish translation section and now occupies the post of Head of the Spanish Translation section.

On 15 January 1999, the complainant's secretary went on maternity leave. At the time of her departure, the complainant told his superior that he no longer required the usual temporary replacement secretary. He confirmed his wish to continue to work without a secretary to the Head of Division in March 1999. His request was accepted and on her return to work in September 1999, the secretary was transferred to another service in the EIB.

On 19 December 2000, the complainant wrote to the EIB Human Resources Department claiming that a high-ranking official of the EIB had informed him that a procedure had been instituted against him for having said that he did not need a secretary. According to the complainant, the high-ranking official had said to him that he might as well leave the EIB since, at some future date, the remaining translators would be made redundant anyway, due to a new linguistic policy. In the complainant's view, the ultimate aim was to push him to early retirement.

Following errors found in the Spanish translation of the EIB's Annual Report, the Management Committee decided to organise an external expert assessment of the complainant's translation work.

---

12 Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 1958 L 17/385.

13 See case 281/99/VK, reported in the European Ombudsman Annual Report 1999, section 3.1.5, also available on the Website of the European Ombudsman: http://www.euro-ombudsman.eu.int, and case 939/99/ME, available on the Website of the European Ombudsman.

The complainant criticised the organisation of this expert assessment and claimed that his former secretary had been involved in it. In order to prove this, he called on a certified graphologist to conduct a calligraphic study. The EIB then presented a hand-written statement by the expert to confirm the *bona fide* analysis of the translations. The complainant further requested confirmation by the expert that this statement was a typical example of his handwriting but did not receive any answer. He therefore referred to a graphologist for the second time to conduct another calligraphic study.

On 19 March 2001, the complainant lodged a complaint with the European Ombudsman (411/2001/BB). The complaint was declared inadmissible in accordance with Article 2.3 of the Statute of the Ombudsman, because the object of the complaint was not identified. The complainant later wrote to the European Ombudsman on 2, 3 May and 5 June 2001 requesting a review. In his reply, the European Ombudsman explained that the complainant had to make prior administrative approaches, in accordance with Article 2.8 of the Statute of the European Ombudsman, in particular the conciliation procedure under Article 41 of the Staff Regulations of the European Investment Bank.

A duly constituted conciliation panel convened on 16 July 2001 in order to seek an amicable settlement of the matter. The panel agreed to recommend to the two parties the following position of conciliation:

- The EIB should confirm that the complainant is a translator and that there is no express intention to move him from that post;

- Reference to the external expert assessment has already been excluded from the complainant's 1999 annual appraisal and all traces of it should be removed from the complainant's personal file;

- As a sign of goodwill, the EIB should make an *ex gratia* payment to the complainant of 15 000 Euro;

- The complainant should accept that all the issues raised in his letter of 19 December 2000 are now closed and are not to be resurrected later.

On 1 August 2001, the complainant wrote to the President of the EIB informing him that the attempt at conciliation under Article 41 of the EIB's Staff Regulations had failed.

On 2 August 2001, the complainant renewed his complaint to the Ombudsman and alleged:

1 professional harassment by a high-ranking official of the EIB;

2 denial of justice by the EIB.

The complainant claimed protection against arbitrary eviction and a professional rehabilitation from the European Investment Bank. He also claimed compensation for material and non-material damage and censure of the offenders.

THE INQUIRY

The European Investment Bank's opinion

The opinion of the European Investment Bank was, in summary, the following:

1 Regarding the allegation of professional harassment, the EIB considered that it was a serious accusation that would be followed up without delay. Nevertheless, the complainant failed to provide the identification of the official concerned and any evidence to substantiate his claim. Moreover, in a letter of 30 November 1999, the department Director

provided the complainant with formal assurances that his feelings of professional harassment were unfounded.

Concerning the external expert assessment of the complainant's work, the policy of the EIB is that, unless a query is received from outside a language section, no further controls are made once a translation has passed the quality control stage of the language section concerned. In the case of the Spanish section, there is only one translator in charge of his own quality control. The EIB decided consequently to organise an external expert assessment after full discussion with the complainant and responded to all of the complainant's notes on the matter. The EIB communicated in full the results of the external expert assessment to the complainant as soon as they were available. The complainant wrongly alleged that his former secretary took part in the review of his work. A hand-written statement by the expert confirmed this.

2 As regards the allegation of denial of justice, the EIB considered that the complainant's claims and requests had always been handled fairly, in compliance with the principles of good administration and with the prevailing rules and procedures, including recourse to appeal procedures.

Concerning the complainant's claim of protection against arbitrary eviction, the EIB took the view that the legal framework in which it operates protects all staff against arbitrary eviction. The claim of professional rehabilitation was unfounded in the sense that the complainant presently occupies the post of Head of the Spanish translation section. In the EIB's view, it has not caused any material or moral damages nor is it apprised of any instance of professional harassment. It therefore considered the claims of compensation for material and moral damages and censure for the offenders unfounded.

The complainant's observations

The European Ombudsman forwarded the European Investment Bank's opinion to the complainant with an invitation to make observations. In his reply, the complainant repeated his allegation of professional harassment by a high-ranking official and stated that the hierarchy has consistently sided with the high-ranking official against the complainant.

The complainant repeated his claims of protection against arbitrary eviction, censure for the offenders, compensation for material and non-material damage and professional rehabilitation.

In addition, the complainant questioned the decision of 30 November 2001 of the EIB Adjudication Panel concerning the appeal he lodged against his annual appraisal for 2000. He alleges that all his claims have been rejected out of hand. The European Ombudsman notes that this new allegation falls outside the scope of the original complaint. The Ombudsman does not consider it necessary or appropriate to examine the new allegation in the framework of his inquiry into the present complaint. A new complaint could be lodged if necessary.

THE DECISION

1 The allegation of professional harassment by a high-ranking official

1.1 The complainant alleged that he was victim of professional harassment by a high-ranking official of the EIB. He criticised the organisation of an external expert assessment of his work and alleged that his former secretary was involved in the assessment.

1.2 The European Investment Bank stated that the complainant failed to provide identification of the official concerned or any evidence to substantiate his claim. It also explained

that in the case of the Spanish section, there is only one translator in charge of his own quality control. It decided consequently to organise an expert assessment after full discussion with the complainant.

1.3 The European Ombudsman notes that the EIB tried to seek a friendly settlement of the matter by using a conciliation panel, further to the complainant's request. The complainant refused the conclusions of the panel in a letter to the President of the EIB. The European Ombudsman considers that the EIB has made a reasonable conciliation effort with which the complainant has not been satisfied.

1.4 The European Ombudsman also notes that the EIB stated in its opinion that it would itself follow up the allegation of professional harassment without delay if the complainant could give more information on the identification of the official concerned and produce evidence to substantiate his claim.

1.5 In the light of the above, the Ombudsman's inquiry into the complainant's allegation has revealed no maladministration in relation to this aspect of the complaint.

2 The allegation of denial of justice by the European Investment Bank

2.1 The complainant alleged that the European Investment Bank denied him justice.

2.2 The EIB argued that the complainant's allegations have always been dealt with fairly, without discrimination and in compliance with the principles of good administration and the prevailing rules and procedures, including recourse to appeal procedures.

2.3 On the basis of the information provided by the complainant and the EIB, the Ombudsman considers that it appears that the EIB always endeavoured to deal correctly with the complainant's allegations. He also notes the willingness of the EIB to discuss with the complainant the possibility of re-establishing working relations based on the principles of loyalty and reciprocal trust between staff and superiors.

2.4 The Ombudsman therefore concludes that there is no maladministration as regards 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 Investment Bank.

In view of the findings of no maladministration in sections 1 and 2 of this decision, the Ombudsman did not consider it necessary to inquire further into the complainant's claims. The Ombudsman therefore closed the case.

Note:

On 13 May 2002, the complainant wrote to the Ombudsman contesting the above decision on the grounds that it gives no weight to the evidence that he provided to support his complaint and that most of the evidence is not even mentioned in the decision. According to the complainant, the consequence of the contested decision is to deprive the victim of the benefit of due process of law and to countenance harassment as a management tool. The complainant requested the immediate annulment of the decision or, alternatively, the Ombudsman's co-operation to put the matter before the European Parliament as a test case.

On 27 May 2002, the Ombudsman instructed the Head of the Legal Department to examine the file on the case and make a report. The complainant was informed accordingly and replied stating his agreement to this course of action.

The report by the Head of the Legal Department concluded that the contested decision deals properly with the allegations and claims put forward by the complainant and answered by the EIB in its opinion. Furthermore, the contested decision does not imply that victims of harassment should be deprived of due process of law, nor that harassment is acceptable as a management tool. On the contrary, the EIB has a duty to respond to and assist a victim of harassment, who can complain to the Ombudsman if that duty is not properly carried out. Moreover, in accordance with Article 41 of the Staff Regulations of the EIB, the Court of Justice has jurisdiction in disputes between the EIB and its staff.

In view of the foregoing, the Ombudsman considered that there was no reason to withdraw the contested decision, or to begin a new inquiry into the complainant's allegations against the EIB. Nor is there any basis for the Ombudsman to agree to the complainant's request to put the matter before the European Parliament, other than through the normal procedure of making an annual report to Parliament on the Ombudsman's activities, as required by Article 195 EC and the Statute of the Ombudsman. The complainant, however, has the possibility to put the matter before the European Parliament himself by addressing a petition to that institution.

On 22 July 2002, the Ombudsman informed the complainant accordingly, enclosing a copy of the report by the Head of the Legal Department.

3.1.4 The Office for Official Publications of the European Communities

ALLEGEDLY ABUSIVE PRICES FOR CD-ROM EDITION OF OFFICIAL JOURNAL

Decision on complaint 993/2002/GG against the Office for Official Publications of the European Communities

THE COMPLAINT

Since 1998, the Office for Official Publications of the European Communities ("the Office") publishes the L and C series of the Official Journal also on CD-ROM. The complainant is a subscriber of this edition. The subscription price that was set in 1998 amounted to € 144 plus VAT.

In January 2002, the complainant was informed by the German sales agent of the Office that the subscription price had been increased to € 350 plus VAT for 2002 and to € 400 plus VAT for 2003. The complainant submitted that he could not see any objective reason for such a price increase of 243% (2002) and 278% (2003) since the price had been held stable for four years. He considered that by doing so, the Office had abused its monopolistic position.

The complainant further took the view that the Office had used deceptive advertising since the price mentioned on the EUR-Lex website was that of 2001 whereas the rates for 2002 and 2003 were not indicated.

The complainant pointed out that complaints to the German sales agent of the Office had been unsuccessful and that his efforts to contact the Office directly in the past (in other cases) had been futile.

In his complaint to the Ombudsman lodged in May 2002, the complainant thus made the following allegations:

1 The Office abused its monopolistic position by increasing the annual subscription rate for the L and C series of the Official Journal on CD-ROM from € 144 in 2001 to € 350 in 2002 and € 400 in 2003;

2 The Office used deceptive advertising with regard to the annual subscription rate of the L and C series of the Official Journal on CD-ROM.

The complainant claimed that the price should be drastically reduced, perhaps to the level of 2001 plus an increase of 10% at maximum, that the real prices for 2002 and 2003 should be stated on the EUR-Lex website and that the present subscribers should receive a letter of excuse regarding the deceptive advertising.

THE INQUIRY

The Office's opinion

In its opinion, the Office made the following comments:

The rates of the annual subscriptions for the different series and editions of the Official Journal were laid down by the Management Committee for the Office, composed of a representative of each institution of the European Communities. The price of the annual subscription for the CD-ROM version of the Official Journal (L and C series) had remained unchanged from 1998 to 2001. This rate corresponded to a launching price.

For 2002 and 2003, the Management Committee for the Office had taken the decision of increasing perceptibly the subscription price, on the basis of several considerations:

to take into account the real production costs of the product ;

to ensure a more realistic remuneration for the sales agents ;

- from mid-2002 a new version of the product would be delivered to subscribers; this version would be largely improved in terms of performance, presentation, search and browsing facilities ;

- in comparison, the price of the annual subscription for the paper version of the Official Journal (L and C series) was € 1 000 plus VAT.

It was a fact that the EUR-Lex website only mentioned the annual subscription prices from 1998 to 2001. This was simply a failure to update this page of the site, which would be updated as soon as possible. It was not the intention of the Office to deceive potential subscribers.

In addition, the prices of the 2002 annual subscriptions were available on the Internet site of the Office. Finally, the information concerning the prices of the annual subscriptions for 2002 and 2003 had been communicated to the sales agents network in October 2001.

The complainant's observations

In his observations, the complainant submitted that a "launching price" had to be labelled as such, which had not been done by the Office, and that usually it was not used over a period of four years. The complainant further alleged that, on the assumption that the new prices covered the "real production costs", the Office confirmed that the price for the years 1998 to 2001 had been a dumping price, in violation of EU trade policy, and that the Office had thus abused its monopolistic position.

As to the "real production costs", the complainant took the view that since the files on the CD-ROM were the same as those offered free of charge via EUR-Lex, the costs of producing and delivering the CD-ROM could not justify price increases of 243% and 278% respectively. The complainant queried whether this meant that the price increases for the CD-ROM had to compensate for any conceivable present or future losses of the Office with regard to the print version.

The complainant concluded that the Office had failed to provide a serious explanation for the price increases, thus confirming that it had abused its monopolistic position to the detriment of subscribers.

THE DECISION

1 Abuse of monopolistic position by increasing price of CD-ROM

1.1 Since 1998, the Office for Official Publications of the European Communities ("the Office") publishes the L and C series of the Official Journal also on CD-ROM. The subscription price that was set in 1998 amounted to € 144 plus VAT. This price was increased to € 350 plus VAT for 2002 and to € 400 plus VAT for 2003. The complainant, a subscriber, alleges that by proceeding to these increases, the Office abused its monopolistic position.

1.2 In its opinion, the Office replies that the price set in 1998 was a launching price and that it was decided to increase the prices for 2002 and 2003 in order to take into account the real production costs of the product and to ensure a more realistic remuneration for the sales agents. The Office also points out that from mid-2002 a new, largely improved version of the product would be delivered to subscribers and that the price of the annual subscription for the paper version of the Official Journal (L and C series) was € 1 000 plus VAT.

1.3 In his observations, the complainant argues that, on the assumption that the new prices covered the "real production costs", the price for the years 1998 to 2001 was a dumping price, in violation of EU trade policy, and that the Office thus abused its monopolistic position. The complainant further expresses the view that since the files on the CD-ROM were the same as those offered free of charge via EUR-Lex, the costs of producing and delivering the CD-ROM could not justify price increases of 243% and 278% respectively.

1.4 The Ombudsman notes that the complainant, in his observations, submitted a further allegation to the effect that the Office had charged a "dumping price" from 1998 until 2001. Given that the Office has not yet had the opportunity to express its views on this allegation, the Ombudsman considers that it is not appropriate to deal with this issue in the present inquiry. The complainant is of course free to submit his allegation to the Office and, if necessary, consider submitting a further complaint to the Ombudsman. The present decision therefore deals only with the complainant's allegation that by increasing its prices, the Office abused its monopolistic position.

1.5 The complainant thus effectively reproaches the Office for having infringed Article 82 of the EC Treaty according to which the abuse, by an undertaking, of a dominant position within the common market or in a substantial part thereof shall be prohibited in so far as it may affect trade between member states. The imposition of unfair selling prices is mentioned as an example of such an abuse (Article 82, second sentence, sub a).

1.6 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[14]. Maladministration may thus also be found when an institution infringes rules of EC competition rules, to the extent that these rules are applicable to this institution.

1.7 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. According to the case-law of the Court of Justice, prices charged by an undertaking in a dominant position can be considered abusive where they are "excessive in relation to the economic value" of the product or service concerned[15] or where they are excessive because they have "no reasonable relation to the

[14] See Annual Report 1997, pages 22 sequ.

[15] Case 26/75 *General Motors v Commission* [1975] ECR 1367 paragraph 16.

economic value of the product supplied"[16]. Determining whether this is the case requires a thorough analysis of all the relevant facts, including the market concerned. This analysis could be carried out effectively only by an authority such as the European Commission's Directorate-General Competition or a court which would have the possibility to evaluate conflicting evidence on any disputed issues of fact.

1.8 The Ombudsman therefore takes the view that in cases like the present one 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 actions do not infringe EC competition rules. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration.

1.9 In the present case, the Office has put forward a number of considerations in order to justify the price increases for 2002 and 2003 that do not appear to be unreasonable at first sight. It should be pointed out in particular that even the increased price for the CD-ROM version of the Official Journal is still considerably lower than the price for the paper version. The Ombudsman concludes, therefore, that his inquiry into this aspect of the complaint has not revealed an instance of maladministration on the part of the Office.

2 Deceptive advertisement

2.1 The complainant alleges that the Office used deceptive advertising since the price mentioned on the EUR-Lex website was that of 2001 whereas the rates for 2002 and 2003 were not indicated there.

2.2 In its opinion, the Office points out that this was simply a failure to update this page of the site which would be updated as soon as possible. The Office also notes that the correct prices for 2002 are mentioned on its own website and that its sales agents were informed of the prices for 2002 and 2003 already in October 2001.

2.3 The Ombudsman has checked the contents of the EUR-Lex website (http://europa.eu.int/eur-lex) that is managed by the Office itself. To his surprise, even today, that is to say more than two months after the Office had announced that it would be updated "as soon as possible", the relevant page (accessible via "Buy the OJ on CD-ROM") only shows the prices for the 1998, 1999, 2000 and 2001 editions but not the prices for 2002 and 2003.

2.4 The Ombudsman trusts that the Office will proceed to update the relevant page without further delay. He does not, however, consider it necessary or appropriate to submit a proposal for a friendly solution or a draft recommendation to this effect to the Office. The fact that no information for 2002 (and 2003) is available on the EUR-Lex website is certainly deplorable. However, the absence of this information would not appear to amount to deceptive advertising on the part of the Office as alleged by the complainant. The Ombudsman considers that the information provided on that website, albeit incomplete, does not induce the informed reader to believe that the price will remain unchanged in so far as 2002 and later years are concerned. Furthermore, the Office's own website (http://publications.eu.int) displays the correct price for the 2002 subscription of the CD-ROM version of the Official Journal. Finally, the Office claims that it informed its sales agents of the 2002 and 2003 prices already in October 2001, and the complainant himself points out that this information was passed on to him by the German sales agent of the Office in January 2002.

16 Case 27/76 *United Brands v Commission* [1978] ECR 207 paragraph 250.

2.5 In these circumstances, the Ombudsman concludes that the complainant's second allegation according to which the Office resorted to deceptive advertising cannot be regarded as having been established.

3 Conclusion

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

3.1.5 Europol

ACCESS TO EUROPOL DOCUMENTS

Decision on complaint 785/2002/OV against Europol

THE COMPLAINT

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

On 5 February 2002, the complainant wrote to Europol asking access to the documents of a conference on terrorism held in Madrid from 29 January to 2 February 2001. The complainant asked for the preparatory documents of the conference, the report of the conference and the so-called "Madrid-document", i.e. the closing document of the conference.

On 5 March 2002, Europol rejected the complainant's request, stating that the documents in question relate to the activities of Europol and the Member States in preventing and combating terrorism. Europol pointed out that these documents contain operational and strategic information the disclosure of which could be harmful for the protection of public interest.

On 15 March 2002, the complainant made a confirmatory application. On 12 April 2002, Europol rejected the confirmatory application stating that, in matters of public access, it applies by analogy Council Decision 93/731/EC on public access.

On 25 April 2002, the complainant made the present complaint to the Ombudsman claiming that Europol should give access to the documents concerned, as the refusal is contrary to Council decision 93/731 of 20 December 1993.

THE INQUIRY

Europol's opinion

Europol pointed out that, by a decision of its Management Board of 21 June 2000, it applies ad interim, by analogy, Council Decision of 20 December 1993 on public access to Council documents.

The application by the complainant, dated 5 February 2002, concerned the documents related to a Counter Terrorism Conference held in Madrid from 29 January to 2 February 2001. The complainant requested more specifically the meeting documents, the minutes as well as the so-called Madrid-document, the conclusions of the conference.

Both the initial application and the confirmatory application dated 15 March 2002 led to a decision by the Director to refuse access on the ground of protection of public interest in accordance with Article 4 of the Council Decision of 1993 on Public Access. The reasons for the refusal of access are the following.

The documentation related to the Conference - preparatory documents, minutes and conclusions of the high level meeting as well as of the different Working groups - contains not only information on the internal working methods of Europol and/or of relevant competent authorities of the Member States in the field of combating terrorism but also

includes information on the positions expressed by the different delegations of the Member States subject to an expectation of confidentiality.

Furthermore some documents include information on specific operational activities, such as the identification of confidential operational projects or information related to the content and the functioning of analysis work files.

Public knowledge of these documents could be harmful for the international relations of Europol and jeopardise the confidence in Europol. Disclosure of the documents could also provide indications on the activities of the Member States in the area of counter terrorism.

Revealing specific information related to the functioning of the national authorities of the Member States as well as the functioning of Europol could interfere with the effectiveness of combating crimes related to terrorism.

In conclusion, the decision by Europol to refuse access was based on the protection of public interest. In weighing the legitimate interest of the complainant to have access to the documents against the legal obligation of Europol and the Member States of the EU to prevent and combat terrorism, the latter one was deemed to clearly outweigh the first one. Europol therefore believes that its refusal to grant access to the documents was justified, and that the arguments presented to the complainant to reason that decision were convincing.

The complainant's observations

The complainant made no observations on the opinion of Europol.

THE DECISION

1 The claim for access to documents of a conference on terrorism

1.1 The complainant claimed that Europol should give access to the documents concerned, as the refusal is contrary to Council decision 93/731 of 20 December 1993.

1.2 Europol stated that in weighing the legitimate interest of the complainant to have access to the documents against the legal obligation of Europol and the Member States of the EU to prevent and combat terrorism, the latter one was deemed to clearly outweigh the first one. Its refusal to grant access to the documents was justified, and that the arguments presented to the complainant to reason that decision were convincing.

1.3 The Ombudsman notes that the complainant's request for access to the documents of a conference on terrorism held in Madrid from 29 January to 2 February 2001 has to be considered under the Council Decision 93/731/EC which is applicable at Europol as an interim measure on basis of the decision of its Management Board of 21 June 2000 and which is published on Europol's Website[17]. The exceptions on the access to documents are mentioned in Article 4 of the Council Decision. Article 4.1 provides that *"access to a Council document shall not be granted where its disclosure could undermine the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations)"*.

1.4 In its judgement in case T-174/95, the Court of First Instance held that "the objective of Decision 93/731 is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration"[18]. The Ombudsman however notes

[17] New rules on public access to Europol documents are still under consideration. In the meantime, Europol continues to apply by analogy the rules contained in Council Decision 93/731/EC.

[18] Case T-174/95, *Svenska Journalistförbundet v. Council*, [1998] ECR II-2289, par. 66.

that the very nature of police work necessarily involves handling information and documents which, in the interests of citizens, must be treated confidentially[19].

1.5 In the present case, the reasons invoked by Europol to refuse access to the documents requested by the complainant, namely that they contain information on the internal working methods of Europol and of relevant competent authorities of the Member States in the field of combating terrorism, appear to be justified.

1.6 In view of the above, the Ombudsman considers that Europol was entitled to refuse access to the documents on the basis of the protection of public interest (public security) as specified in Article 4 of the Decision 93/731. No instance of maladministration was therefore found by the Ombudsman.

2 Conclusion

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

3.2 CASES SETTLED BY THE INSTITUTION

3.2.1 The European Commission

REFUSAL TO REIMBURSE LEONARDO PROJECT: INTERPRETATION OF CONTRACTUAL CLAUSES

Decision on complaint 1131/2000/JMA against the European Commission

THE COMPLAINT

The "Lycée Régional d'Enseignement Technologique et Professionnel" of Anglet (France) had established a joint venture with Mid Kent College of London (UK), ALECOP of Mondragon (Spain), and OFE Installatie of Zoetermeer (the Netherlands) for the development of a multilingual CD ROM on home automation. The project was selected by the Community's Leonardo Da Vinci programme for financial assistance. The final product had to be available in four different languages: Dutch, English, French, and Spanish. Work on the project was undertaken between 1 December 1995 and 30 November 1997.

Following the submission of the final report in February 1998, the complainant claimed that the Commission services kept requesting additional information. Even though the demands were swiftly met, there did not seem to be any follow up on the requested information. As a result, at the end of 2000, the Commission had not reached a decision on the project, nor had it made the final payment of it. The complainant enclosed a lengthy annex consisting mainly of copies of numerous exchanges with the Commission services.

In summary, the complainant alleged that the Commission had not;

(1) replied properly and in due time to the information submitted by the complainant;

(2) paid the amounts corresponding to the project in due time.

THE INQUIRY

The Commission's opinion

The Commission explained in its opinion that the complainant's project (F/95/2393) had been selected in 1995 within the framework of the first phase of the Leonardo Da Vinci programme. The institution then referred to the two allegations made in the complaint:

As regards the alleged lack of a proper and timely reply to the complainant's final report, the Commission described how the evaluation of the project was carried out:

19 Annual Report of the Ombudsman 1999, page 257.

(i) From March 1998 to February 1999: The final report had been sent to the Commission in March 1998. Its evaluation comprised both its outcome as well as the financial aspects. It was undertaken by the "Bureau of Technical Assistance" (BAT), which was managed by Agenor, an independent firm contracted by the Commission. However, in February 1999, at the end of the contractual relation with Agenor, the Commission did not renew the contract. The tasks carried out by the BAT could not therefore be completed.

(ii) From May 1999 to January 2000: In order to complete the work previously done by the BAT, the European Commission set up the CLEO cell, a specific Unit within the Directorate-General for Education and Culture. This service was only in operation in May 1999, and the evaluation of the complainant's final report was taken up again in June 1999. Additional information was requested from the contractor in June 1999, to which he replied by forwarding diverse supportive materials in July, September, October and November 1999. The Commission still requested further details in December 1999, which were forwarded on 8 December 1999. Having completed the evaluation of the report at the end of December 1999, the Commission concluded that the financial requests of the complainant were unfounded and that part of the sums already paid had therefore to be reimbursed. Accordingly, it launched the appropriate procedures to have this part of the funding recovered.

As for the Commission's failure to complete the final payment of the project, the institution explained that it had filed a first request for reimbursement at the end of January 2000. Even though this type of request used to be directly sent to the consultants, the procedure was changed when CLEO took over BAT in March 2000. Under the new scheme, requests for reimbursement of sums already paid had first to be forwarded to the Commission's financial service. Once the authorising officer had agreed, the requests along with the necessary supportive evidence were transmitted to the Directorate-General Budget, which is the responsible DG to forward the requests directly to the contractor.

As a result of this cumbersome procedure, the request of reimbursement for an amount of 14.399 € was set at the end of February 2001.

The Commission concluded by refuting the existence of any material damages on the part of the complainant. Since the delay did not concern a payment, but rather a request for the reimbursement of sums already paid, the complainant could not claim damages.

The complainant's observations

In his observations, the complainant considered that the Commission had taken a very administrative perspective, which did not correspond to the importance of the project and the efforts all the parties had made for its development.

The complainant explained that the institution had not clearly identified the reasons, which justified the request for reimbursement. From the information received, he contested the financial evaluation carried out by the institution, in particular as regards personnel expenses. At the time the project was set out, in 1995, it was hard to forecast how the work would unfold. As a result, it had become necessary to increase the amount initially devoted to personnel at the expense of other budget lines. Nevertheless, the total cost of the project had remained unchanged. The Commission, on the other hand, never informed the complainants about the procedure to be followed to change the initial estimates. The complainant also requested that the request for reimbursement be suspended until the Ombudsman had taken a decision on this matter.

FURTHER INQUIRIES

In view of the available information, the Ombudsman requested further details from the Commission concerning the two allegations made by the complainant. In a letter dated 31 May 2001, the Ombudsman asked for the following information:

(i) Lack of a proper and timely reply to the final report from the complainant: The Ombudsman inquired whether the Commission's services kept the complainant properly informed of the situation, and/or apologised for any potential inconvenience it might have caused; and

(ii) Failure to complete the payment of the project: Since the Commission had not spelled out the reasons justifying its request for reimbursement of part of the funds already paid, the Ombudsman asked for more details of this aspect of the case, in particular on the application in this case of point 1.1 of Annex II (Financial Aspects) of the contract[20].

The Commission's second opinion

The Commission in its second opinion stressed that following the submission of the final report in March 1998, its services had held numerous exchanges with the complainant on both the content and the financial aspects of the project. In a detailed table, the institution described the nineteen exchanges, which took place between January 1998, and December 1999, which included two requests on the outcome of the project and four on its financial aspects. In addition to these formal contacts, the Commission confirmed that its services had had regular telephone contacts with the complainant, in the course of which they had kept him informed of their intent to request a reimbursement of part of the payments already made.

As for the Commission's failure to complete the final payment, it explained that the costs which could not be paid had been thoroughly described both in a letter and a fax addressed to the complainant in December 2000, and February 2001, respectively. As regards the ineligibility of certain personnel costs requested by the complainant, the Commission justified its refusal on the basis of the rules set out in the "Financial and Administrative Manual", which had been sent to the complainant in December 1996. Point II.2.3 of these Rules establishes that transfers between budget lines, may be accepted if they do not alter the project's goals. However, if the proposed change goes beyond 15% of the amount initially foreseen for that line, and involves more than 1.500 €, prior authorisation from the Commission is required. The institution explained that in this case, the changes made by the complainant regarding the personnel costs of the project went beyond the aforementioned limits, and the complainant never requested prior authorisation from the Commission. As a result, the institution could not fund these costs.

The Commission also referred to other reasons which supported its request for reimbursement of part of its contribution, such as the lack of sufficient details on the nature of some expenditures, the failure to provide documentary evidence of some personnel costs, or the trips carried out outside the contractual period.

In view of the Ombudsman's inquiry, the Commission agreed to postpone the deadline for the reimbursement of sums already paid, but suggested that the complainant submit a letter to its services detailing his objections.

---

20 *"Les montants prévisionnels indiqués par le Contractant en regard des différentes catégories de dépenses n'auront qu'une valeur indicative et le Contractant pourra procéder à des virements entre ces différentes catégories, à condition toutefois que ces virements n'affectent pas fondamentalement l'objet ou le contenu des travaux à effectuer".*

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

The complainant replied to the arguments put forward by the Commission and pointed out that he had received no suggestion or advice on how to improve the situation. He underlined that his main disagreement with the Commission related to the amount of personnel expenditures reflected in their final report, and insisted on the fact that the total costs foreseen in the initial proposal had not suffered any increase.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman did not consider that the Commission had responded adequately to the complainant's claims.

The Commission had justified its request for the reimbursement of part of the expenses, on the grounds that the complainant's final financial request was unfounded. In particular, the institution had taken the view that the increase of the project's personnel costs without prior approval from the institution was improper. The Ombudsman noted that on the basis of point 1.1 of Annex II of the contract (Financial Aspects), the consultant was allowed to modify the initial project's estimates, and thus transfer money between different budget lines.

The Ombudsman's provisional conclusion was that in the absence of a more convincing explanation, the reasoning given by the Commission to reject the complainant's request for a final payment of his project did not appear to be founded in the rules of the contract. The Ombudsman therefore proposed that the Commission modify its stand in accordance with the previous considerations and reconsider the complainant's request for the final payment.

The Commission sent its reply in February 2002. The institution explained that on the basis of the considerations made by the Ombudsman, it had reviewed the case with a conciliatory spirit. Taking into account that the contractor had not been given the Commission's administrative and financial handbook but only after the signature of the convention and also that the foreseen aims of the project had been fully achieved, the Commission expressed its willingness to accept the proposed budgetary changes. A letter in that regard was to be sent to the contractor.

It pointed out, however, that in a letter of October 2001, the complainant had contested the ineligibility of some other expenditures. In a reply dated December 2001, the Commission requested further evidence as regards these dues.

In summary, the Commission agreed to reconsider its request for reimbursement, and to complete the payment of the project for almost the whole amount foreseen in the contract. This outcome should only be dependent on the need for the complainant to furnish some additional evidence.

In his reply to the Commission's proposal, the complainant welcomed the solution suggested by the Commission, and agreed to furnish, as many as possible of the requested documents. The complainant expressed his willingness to do his utmost, so that the best possible solution could be achieved. He thanked the Ombudsman for the efforts undertaken on his behalf.

THE DECISION

On the basis of the information gathered in the course of his inquiry, the Ombudsman concludes that the case has been settled by the European Commission to the complainant' satisfaction.

Against this background, the European Ombudsman decides therefore to close the case.

COMMISSION COMPENSATES COMPLAINANT FOR A TERMINATED PROJECT FINANCED BY THE EUROPEAN DEVELOPMENT FUND

Decision on complaint 848/2001/IP against the European Commission

THE COMPLAINT

On 8 June 2001, the Ombudsman received a complaint against the European Commission, made by Mr G., on behalf of GEOPROGETTI S.r.l., concerning the alleged failure of the Commission to make a settlement in a case of a terminated project which involved the complainant's company.

According to the complainant, the facts were as follows.

GEOPROGETTI S.r.l. was engaged in 1991 to work as supervisor on a technical assistance project in Rwanda, financed by the 6th European Development Fund (hereinafter EDF). As a consequence of the revolution in April 1994, GEOPROGETTI S.r.l. had to terminate its work and all the personnel had to leave the country. The complainant informed the Commission accordingly and asked to be paid for the work carried out until April 1994 and to be compensated for the financial and material losses and damages, for a total amount of 407.680,56 €.

From the correspondence which took place between the company and the Commission from April 1994 to the lodging of the complaint with the Ombudsman, it appears that the institution recognised that the complainant's company has no liability in the case. In order to try to find a settlement of the matter, correspondence on a regular basis and several meetings between the two parties took place in Brussels from 1994 to March 2001. However, no agreement could be achieved. The complainant therefore made a complaint to the Ombudsman.

In his complaint to the Ombudsman, the complainant alleges that the European Commission failed to act with due diligence when dealing with the requests made by GEOPROGETTI S.r.l., since it took five years to study the dossier.

The complainant claimed that the Commission should take into account the situation of force majeure in which the related events took place and propose a settlement of the matter. Contrary to what the institution stressed in its note of 26 March 2001, the complainant had supplied all the invoices in his possession when he submitted the request for payment.

The Commission's opinion

The complaint was forwarded to the Commission for an opinion. As regards the complainant's allegation that the Commission failed to act with due diligence when dealing with his case, the Commission stated the following:

On 23 October 1991, GEOPROGETTI S.r.l. and the Government of the Republic of Rwanda concluded a Technical Assistance contract for a duration of 36 months, concerning the supervision of the construction of the Gitamara-Kibuye road, in Rwanda. The project was financed under the 6th EDF. The execution of the contract started in October 1992 and continued until April 1994, when the revolution broke out in Rwanda.

On 28 April 1994, the complainant notified the Commission headquarters that due to force majeure, the Italian expatriate staff had to leave the country.

By letter of 20 May 1994, the Commission, in its capacity as Chief Authorising Officer of the EDF, informed the complainant that it had decided to assume the functions of National Authorising Officer (NAO) temporarily and to suspend the execution of the performance of the contract provisionally until 1 June 1994.

On 5 August 1994, the complainant informed the Commission that the expatriate staff would be disengaged as from 1 August 1994 unless otherwise requested by the

Commission. On 24 November 1994, the complainant submitted a file containing his claims for indemnification.

By letter of 23 October 1997, the Commission informed the complainant that his file was still being investigated and apologised for the time elapsed since he submitted his claims. Having received the mandate from the Government of Rwanda to finalise the processing of the case in September 1998, the Commission then transmitted a preliminary analysis of the claims to the complainant, by letter of 18 February 1999. In this letter the Commission pointed out that a formal termination of the contract was not necessary in view of the circumstances which had led thereto. According to the Commission, the contract could be considered expired from 1 August 1994. The complainant was therefore requested to submit the supporting documents necessary to establish a proposal for the amount to be indemnified. He submitted some further information regarding the contracts of the expatriate staff. However, he argued that most of the documents had remained in Rwanda when the staff had been forced to leave the country and it was therefore impossible for him to submit any other additional documentation more than five years after the conclusion of the contract.

Furthermore, the Commission pointed out that during the whole procedure, the correspondence with the complainant regarding his claims was based on the mandate given to the institution by the Rwandan Government. According to this mandate, the Commission would carry out the processing of the complainant's claim directly with the contractor. However, in spite of this, the contract remained a national contract between the complainant and the Rwandan authorities[21]. The intervention of the Commission in similar cases is limited to examining whether the conditions for Community funding are fulfilled.

Thus, by letter of 20 May 1994, it had been explained to the complainant that all indemnification had to be in conformity with the rules and procedures for EDF funding. Any compensation disregarding these requisites would have been beyond the mandate of the Commission and would have resulted in an unjustified advantage for the beneficiary to the detriment of other potential beneficiaries.

The Commission stressed that the analysis of the complainant's claim was done in accordance with the principles governing indemnification in the case of force majeure as laid down in article 43 of the General conditions for service contracts financed by the EDF and on the basis of the contractual obligations of the Contracting Authority.

The Commission accepted in principle to indemnify some of the items mentioned in the complainant's claim, if duly justified by supporting documents. The Commission accepted to indemnify the expenses occurred for the stand by of the personnel which had to be kept available in view of a possible resumption of the activities, and the expenses for repatriation. It also asked the complainant to submit evidence in order to ascertain whether the indemnification of overhead costs that he had requested was justified. Any other request for indemnification would not have been acceptable under the rules of EDF. According to the Commission, the complainant did not submit any new element which could have justified a change in its position.

The Commission finally regretted the long time elapsed between the submission of the complainant's claim in 1994 and the final analysis of the file in 1999. The institution explained that the complexity of the case, the limited human resources, the internal restructuring of the responsible services and the backlog had been at the origin of the delay. The Commission also pointed out that it understood the complainant's disappointment and it undertook to make every effort to solve the matter shortly with a view to an equitable solution in accordance with the EDF rules.

[21] See case C-126/183, STS Consorzio per Sistemi di Telecomunicazione via Satellite Spa v Commission of the European Communities, ECR 1984 Page 2769, points 13 and 16.

The complainant's observations

The complainant sent his observations on the Commission's opinion on 27 January 2002.

As regards the Commission's statement that "the intervention of the Commission limits itself to the examination whether the conditions for Community funding are fulfilled", the complainant stressed that by note of 20 May 1994, the Commission undertook to indemnify GEOPROGETTI s.r.l. for the material damages and losses, according to the supporting documents and the relevant rules. However, despite a period of almost seven years from the request for indemnification for financial and material losses and damages made on 24 November 1994, and the complaint to the European Ombudsman, the Commission had still not made a concrete proposal to settle the case.

It was only following the Ombudsman inquiry that, on 19 November 2001, the Commission proposed a settlement of the case. However, the complainant stressed that he could not accept the Commission's proposal to pay 53.779 € in comparison to 407.680,56 € requested by GEOPROGETTI s.r.l. in November 1994 and supported by documentary evidence. Furthermore, the Commission had not even included in its proposal the payment of the legal interest accrued from the beginning of the proceedings in 1994.

The complainant expressed his concerns about the Commission's attitude and asked the Ombudsman to monitor the further actions of the institution.

FURTHER INQUIRIES

On 24 April 2002, the complainant forwarded to the Ombudsman a copy of a letter sent the same day to the Commission, in which he commented on the Commission's proposal of 19 November 2001 and made a new proposal. In this letter, received by the Ombudsman on 6 May 2002, the complainant stated that, in order to achieve a friendly solution with the Commission, GEOPROGETTI s.r.l. would be ready to accept the payment of a total amount of 210.000 € plus the interest accrued during the time to be considered, calculated on the basis of the lending rate of the bank of Italy, increased by 4,5%.

In view of the above, the Ombudsman considered that further inquiries were necessary. He therefore wrote a letter to the Commission in which he asked to be informed about the further actions the Commission intended to take, also in view of the complainant's letter of 24 April 2002.

On 12 June 2002, the Ombudsman received the Commission's reply to his request for further information and he forwarded it to the complainant on 14 June 2002, by fax.

The Commission stated that, after careful examination of the complainant's proposal for a settlement of the case made on 24 April 2002, it appears that some slight changes in the proposal made in November 2001 were justified. The Commission was now ready to pay 61.379 € instead of 53.779 € originally proposed. As regards the request for interest, the Commission pointed out that according to the relevant rules, interest is paid taking into account the moment in which all the elements for the appreciation of the request for payment are available. In this case, the complainant appeared to have provided the supporting document only in 1999, after several requests by the Commission. However, in view of an equitable solution, the Commission stated that it is ready to pay interest from 1 November 1995. They would be calculated on the basis of 6% per year, which is the normal lending rate applied by the European Central Bank in cases of payments following a situation of force majeure.

No written observations have been received by the complainant. However, on 31 July 2002, a telephone conversation took place between him and the Ombudsman's services. The complainant pointed out his disappointment for the way in which the Commission has

dealt with the case concerning GEOPROGETTI from the beginning. He also stated that he would provide the Commission with a detailed response to the letter of 12 June 2002, which the Ombudsman forwarded to him on 14 June 2002, and that he would consider the opportunity of bringing the case before the Court of Justice. As regards the request for payment of interest, the complainant agreed that the proposal made by the Commission, i.e. to consider the period from 1 November 1995 was reasonable. Furthermore, the complainant pointed out that the Commission took the first concrete steps on the case only after the Ombudsman opened his inquiry and thanked the Ombudsman for the way in which he has dealt with his case.

By letter of 16 October 2002, the Ombudsman asked the complainant, in order to help him close the inquiry into the case, to inform him whether he had accepted the Commission's proposal or not.

On 28 October 2002, the complainant informed the Ombudsman's services that by letter of 22 October 2002, he accepted the Commission's proposal to pay 61.379 € plus the interests accrued from 1 November 1995 calculated on the basis of 6% per year.

THE DECISION

1 Alleged failure of due diligence by the Commission in dealing with the complainant's file

1.1 On 23 October 1991, GEOPROGETTI S.r.l. and the Government of the Republic of Rwanda concluded a Technical Assistance contract for a duration of 36 months, concerning the supervision of the construction of the Gitamara-Kibuye road, in Rwanda. The project was financed under the 6th EDF. The execution of the contract started in October 1992 and continued until April 1994, when the revolution broke out in Rwanda. The complainant therefore notified the Commission headquarters that due to force majeure, the Italian expatriate staff had to leave the country, and on 24 November 1994, he submitted a file containing his claims for indemnification.

In his complaint, the complainant alleged that the European Commission failed to act with due diligence when dealing with the requests made by GEOPROGETTI S.r.l., since it took five years to study the dossier.

1.2 In its opinion, the Commission regretted the long time elapsed between the submission of the complainant's claim in 1994 and the final analysis of the file in 1999. The institution explained that the complexity of the case, the limited human resources, the internal restructuring of the responsible services and the backlog had been at the origin of the delay. The Commission also pointed out that it understood the complainant's disappointment and it undertook to make every effort to solve the matter shortly with a view to an equitable solution in accordance with the EDF rules.

1.3 It is good administrative behaviour to take decisions and act upon requests within a reasonable period of time. In the present case, GEOPROGETTI s.r.l. presented claims for indemnification for damages and financial losses to the Commission, in November 1994. The Commission took five years to examine the file. The Ombudsman accepts that the matter was of a complex nature and therefore required some time to deal with. In view of the fact that the Commission has apologised for the delay and that following the Ombudsman's inquiry the institution has made a proposal of settlement in November 2001, it is not necessary to pursue the inquiry as regards this aspect of the case.

2 The complainant's claims for compensation

2.1 In his complaint, the complainant claimed that the Commission should take into account the situation of force majeure in which the related events took place and propose

a settlement of the matter. Contrarily to what the institution stressed in its note of 26 March 2001, the complainant supplied all the invoices in his possession when he submitted the request for payment.

2.2 The Commission pointed out that during the whole procedure, the correspondence with the complainant regarding his claim was based on the mandate given to the institution by the Rwandan Government. According to this mandate, the Commission would carry out the processing of the complainant's claim directly with the contractor. However, in spite of this, the contract remained a national contract between the complainant and the Rwandan authorities. The intervention of the Commission in similar cases is limited to examining whether the conditions for Community funding are fulfilled. The analysis of the complainant's claim has therefore been done in accordance with the principles governing indemnification in the case of force majeure as laid down in article 43 of the General conditions for service contracts financed by the EDF and on the basis of the contractual obligations of the Contracting Authority.

The Commission accepted in principle to indemnify some of the items mentioned in the complainant's claim, if duly justified by supporting documents, and made a first proposal to settle the case in November 2001. The Commission accepted to indemnify the expenses occurred for the stand by of the personnel which had to be kept available in view of a possible resumption of the activities, and the expenses for repatriation. Any other request for indemnification would not have been acceptable, according to the Commission, under the rules of EDF.

2.3 In his letter of 24 April 2002, received by the Ombudsman on 6 May 2002, the complainant pointed out that GEOPROGETTI could not accept the Commission's proposal made in November 2001. He also asked for payment of the interests accrued from the submission of his claims to the Commission, calculated on the basis of the lending rate of the bank of Italy, increased by 4,5%.

2.4 By letter of 12 June 2002, the Commission stated that, after careful examination of the complainant's proposal for a settlement of the case made on 24 April 2002, it appears that some slight changes in the proposal made in November 2001 were justified. The Commission was now ready to pay 61.379 € instead of 53.779 € originally proposed. Furthermore, it pointed out that it was ready to pay interests from 1 November 1995, calculated on the basis of 6% per year, which is the normal lending rate applied by the European Central Bank in case of payments following a situation of force majeure.

2.5 On 28 October 2002, the complainant informed the Ombudsman that by letter of 22 October 2002, he accepted the Commission's proposal to pay 61.379 € plus the interests accrued from 1 November 1995 calculated on the basis of 6% per year. He also thanked the Ombudsman for his efforts to solve the case in a satisfactory way.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it appears that the Commission has taken steps to settle the matter and that an agreement has been achieved between the Commission and the complainant. The Ombudsman therefore closes the case.

ALLEGED DISCRIMINATION AND UNFAIRNESS BECAUSE OF LACK OF GREEK FONTS ON COMPUTER AVAILABLE TO CANDIDATES

Decision on complaint 938/2001/OV against the European Commission

THE COMPLAINT

In June 2001, Mrs K. made a complaint to the European Ombudsman concerning her exclusion from the reserve list of selection procedure COM/R/A/01/1999 organised by DG Research (DG RTD) of the Commission. According to the complainant, the relevant facts were as follows:

The complainant participated in selection procedure COM/R/A/01/1999 organised by the European Commission. The Community languages she had selected for the competition were Greek as her main language and English as her second language. After having successfully passed the first two stages of the competition, she was invited to sit the oral test in the Commission premises in Brussels on 17 May 2001.

After having completed the first two stages of the oral test, she was taken to a separate room for the third and final stage of the oral test. There she had to draft, within 30 minutes, a written summary of her previous discussion with the Selection Committee. According to the notice of selection, this summary could be either hand-written or typewritten. For that purpose a computer was put at the disposal of the candidates. The complainant opted for a typewritten summary on the computer. However, when she accessed the computer and opened the MS Word software, she noticed that no Greek fonts had been installed on it. She then asked a member of the Selection Committee whether she could write the summary in her second language, namely English. This request was rejected. The complainant had finally no other choice than drafting a hand-written summary in Greek.

The complainant lost precious time because she tried to find the Greek fonts and asked for the permission to typewrite the summary in English. This inconvenience made it difficult for her to concentrate. In addition, the complainant lost considerable time in copying the hand-written summary from one page to another in order to submit a presentable text. The fact that she could not use a computer deprived her of obvious typing advantages, such as “copy”, “paste” and “word spelling”, which would have enabled her to prepare a better summary in terms of synthesis and drafting. The overall performance of the complainant was therefore affected and she finally produced a text of a lesser quality than the one she would have drafted if a computer with Greek fonts had been available.

On 17 July 2000, the Commission informed the complainant that she had obtained a total mark of 137.6/200. However, this result was below the minimum mark of 138.8/200, which was required in order to be placed on the reserve list of the 30 best candidates.

On 7 August 2000, the complainant made an appeal to the Selection Committee asking for a reconsideration of her case in order to be put on the reserve list. The complainant alleged that according to the notice of selection only the 60 best candidates would be admitted to the oral tests. However, the Commission in fact admitted 61 candidates and therefore the reserve list should accordingly have been enlarged to 31 laureates. In addition, the complainant alleged that she had been a victim of unfair and discriminatory treatment and that the Selection Committee had not respected the notice of selection because, unlike the other candidates, she had not been given the possibility to typewrite her summary.

On 1 March 2001, the Head of the Personnel Policy and Equal Opportunities Unit sent a letter to the complainant re-confirming the marks awarded to her. As regards the complainant’s first allegation, the Commission stated that 61 persons were admitted to the oral tests, because there were two candidates with the same marks. The reserve list could therefore only have been increased if the 30th and 31st candidates had the same mark. As regards the second allegation, the Commission stated that the candidates had the choice between a hand-written summary and a summary made on the computer, and that no advantage of quotation was given to one of these options. The decision of the Selection Committee to exclude the complainant from the reserve list was therefore confirmed.

In the light of the aforementioned facts, the complainant wrote to the European Ombudsman, on 25 June 2001. In her complaint, the complainant made the following allegations and claims:

1 The Selection Committee did not respect the notice of selection, because due to the lack of Greek fonts it did not give the complainant the possibility to typewrite her summary on the computer, an option specified in point V.C.3.c) of the notice of selection.

2 The Selection Committee discriminated against and was unfair to the complainant, because, unlike the other candidates, she was not given the possibility to typewrite her summary in her mother tongue.

3 The Commission did not reply to the complainant's appeal of 7 August 2000 within a reasonable time limit.

4 The complainant claimed that the Commission should reconsider the matter and accept that it would be fair to place her on the reserve list as the 31st laureate of the 61 candidates who took part in the oral exam.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission in July 2001. In its opinion of 30 November 2001, the Commission first recalled the facts of the case and described the selection procedure in detail.

The Commission noted that, as regards the organisation of the oral test, and more specifically the third part (described in section V.C.3 of the notice of selection), candidates had to write their summaries on either three hand-written pages or two typewritten pages. It apologised for the absence of Greek characters on the computer, which was made available to candidates.

With regard to the first two allegations, the Commission observed that the Selection Committee was aware of the complainant's situation. When it re-examined the case, the Selection Committee took full account of the fact that the complainant did not have the possibility to type her summary. She was however given the option of writing it by hand, which she did. The Selection Committee therefore considered that the non-availability of a computer with Greek fonts could not, in any event, be regarded as constituting substantial prejudice, as both hand-written and typewritten texts were accepted, and no advantage in terms of marks was given to either of these options. The Commission however acknowledged that it understood the problem experienced by the complainant and would endeavour to avoid any repetition of this problem in the future.

As regards the third allegation, the Commission apologised for the very long delay in replying to the complainant's letter of 7 August 2000, to which it replied only on 1 March 2001.

The Commission also stated that, even though the number of candidates indicated in the notice of selection was 60, 61 were finally admitted to the oral test because two candidates had obtained the same mark.

Independently of the aforementioned comments, the Commission informed the Ombudsman that, following the discovery of a factual error, which was not connected with the above circumstances, the Selection Committee had decided to include in the reserve list the next two candidates in terms of marks achieved who had not been included in the initial list. The complainant was amongst these two candidates.

The Commission finally noted that it informed the complainant about this positive outcome on 9 November 2001.

The complainant's observations

On 10 December 2001, the complainant sent a letter to the Ombudsman informing him that she had received a letter from the Commission dated 9 November 2001 according to which she had been placed on the reserve list.

The complainant stated that, since her basic claim was to be placed on the reserve list, she was satisfied with the Commission's reaction, although she was disappointed by the Commission's failure to actually respond to her allegations and to acknowledge the unfair treatment that she had received. She however considered the matter to be settled. Since the issue had no practical importance anymore at this stage, the complainant noted that it was not necessary anymore for the Ombudsman to invest undue time on the case.

The complainant also thanked the Ombudsman for his enormous contribution to this case, as his involvement resulted in the Commission's reconsideration of the case and, eventually, on what she believed to be a fair settlement of the issue.

THE DECISION

1 The alleged discrimination and failure to respect the notice of selection

1.1 The complainant alleged that the Selection Committee did not respect the notice, because due to the lack of Greek fonts it did not give the complainant the possibility to typewrite her summary on the computer, an option specified in point V.C.3.c) of the notice of selection. The complainant alleged that the Selection Committee thus discriminated against her and was unfair to her. In its opinion, the Commission stated that the Selection Committee considered that the non-availability of a computer with Greek fonts could not in any event be regarded as constituting substantial prejudice, as both hand-written and typewritten texts were accepted, and that no advantage in terms of marks was given to either of these. The Commission however apologised for the absence of Greek characters on the computer.

1.2 The principle of non-discrimination is a fundamental principle of Community law, recognised by the case law of the Court of justice. In that respect, point II of the notice of selection more particularly provided that *"The Commission takes great care to avoid any form of discrimination, both during the selection procedure and when making appointments"*.

1.3 The Ombudsman notes that point V.C.3.c) of the notice of selection provided that *"the candidate must make a written summary of his/her discussion with the selection committee on two typewritten pages or three hand-written pages. A computer with MS Word (Windows 95 of Windows NT) software will be available to candidates"*. It appears from the notice of selection that candidates had thus the choice between a hand-written or a typewritten summary.

1.4 In the present case, the fact that the computer at the complainant's disposal did not have Greek fonts clearly put the complainant in a weaker position than the other candidates who could chose between using the computer or hand-write the requested summary. However, taking into account the positive outcome of this case as described below, it is not necessary to further inquire into this aspect of the complaint.

2 The alleged delay in the Commission's response

2.1 The complainant alleged that the Commission did not reply within a reasonable time limit to her letter of appeal of 7 August 2000. The Commission in its opinion expressed its apology for this delay.

2.2 Principles of good administration require that Community institutions and bodies reply to letters from citizens within a reasonable time. In the present case, the Commission only replied on 1 March 2001 to the complainant's appeal of 7 August 2000, i.e. nearly seven months later. However, as the Commission expressed its apology for this delay, no further inquiries into this aspect of the complaint are necessary.

3 The claim to be put on the reserve list

3.1 The complainant asked the Commission to reconsider the matter and accept that it would be fair to place her on the reserve list as the 31st laureate of the 61 candidates who took part in the oral exam. The Commission in its opinion indicated that, following the discovery of a factual error, which was not connected with the circumstances in question, the Selection Committee had decided to include the complainant in the reserve list. The complainant was informed of these developments by a letter dated 9 November 2001. In her letter to the Ombudsman dated 10 December 2001, the complainant stated that she was satisfied with the Commission's reaction and that she considered the matter to be settled.

3.2 In the light of the above, the Ombudsman notes that the Commission appears to have taken steps to settle the matter and has thereby satisfied the complainant.

4 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.

HANDLING OF APPLICATION IN SELECTION PROCEDURE

Decision on complaint 1092/2001/(BB)VK (Confidential) against the European Commission

THE COMPLAINT

In July 2001, the complainant lodged a complaint with the European Ombudsman concerning the Commission's handling of his application for selection procedure MANUT 2000.

In March 2001, the complainant applied to take part in selection procedure MANUT 2000 for packers (manutentionnaires) organised by the European Commission. He enclosed the necessary documents as required by the notice of the selection procedure. On 7 June 2001, he was informed by the Commission that his application was not successful. No reasons were provided by the Commission.

By letter of 12 June 2001, the complainant requested the Commission to review its decision concerning the application. The Commission subsequently confirmed its previous decision. It stated that it only retained those applications which corresponded best to the required experience and career profile.

The complainant argues that his application and his career profile met the requirements imposed by the Commission. He claims that the Commission should not have proceeded with the selection based only on evidence provided and he should have been heard by the Selection Board in order to defend his case in person. Furthermore, the Commission should have provided the complainant with the reasons for the rejection of the application. The complainant was therefore dissatisfied with the way the Commission handled the case.

THE INQUIRY

The opinion of the European Commission

In summary, the Commission makes the following points:

Any work experience has to be proved by an attestation of the employer. During the period of October 1991 to April 1994, the complainant, although working *intra muros*, was employed as *interimaire* by other companies. Since he did not provide relevant attestations by his employers for this period, the Selection Committee could not take into account this period as relevant work experience.

The complainant only proved a 3 years' work experience in the field of packing of goods and 5 months' experience concerning the driving of a vehicle. Point 4 of the notice for the selection procedure requires: "Posséder une expérience prouvée de 3 ans minimum dans la manutention de biens et la conduite de véhicules type camionnette". The Selection Board interpreted this clause as requiring a minimum of 3 years work experience in each of the two fields.

However, the Commission has come to the conclusion that the clause can be seen as being ambiguous since it reasonably allows the interpretation that a work experience in both fields amounting to at least 3 years was sufficient.

The Commission regrets that point 4 of the general conditions was unclear and that this fact caused avoidable inconvenience for the complainant. With a view to a friendly settlement of the case the Commission is prepared to offer the complainant a payment of 2000 Euro.

The complainant's observations

In his observations, the complainant argued that the Commission should have accepted the work certificates which he submitted.

However, the complainant acknowledged that the selection procedure is now closed. He therefore accepted the Commission's offer to pay him a financial compensation of 2000 Euro.

THE DECISION

1 Handling of the complainant's application

1.1 The complainant's application to take part in selection procedure Manut 2000 was rejected by the Commission. The complainant argues that his application and his career profile met the requirements imposed by the Commission and that the latter did not handle his case satisfactorily.

1.2 The Commission stated that it has come to the conclusion that the relevant provision of the general conditions is unclear since it allows the interpretation that a work experience in both required fields amounting to at least 3 years was sufficient. The Commission regrets that this fact caused avoidable inconvenience for the complainant. With a view to a friendly settlement of the case the Commission is prepared to offer the complainant a payment of 2000 Euro. The complainant has accepted this offer.

1.3 It thus appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant.

2 Conclusion

On the basis of the Ombudsman's inquiries into the complaint, it appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

THE EUROPEAN COMMISSION ANNULLED A PROCEDURE FOR THE SELECTION OF PERSONNEL IN THE FIELD OF RESEARCH

Decision on complaint 1452/2001/IP against the European Commission

THE COMPLAINT

The complainant participated in selection procedure COM/R/A/02/2000 carried out by the Joint Research Centre of the European Communities at Ispra. In March 2001, she was notified that she was not among the six best candidates included in the reserve list. The complainant therefore lodged a complaint under Article 90 of the Staff Regulations against the decision of the Selection Committee. The complaint was registered on 17 April 2001 by the Commission's Secretariat General under number R/210/2001. It appears that no reply was given by the Commission within four months.

In October 2001, the complainant made a complaint to the Ombudsman on the same subject as matter of the complaint made to the Commission. In her complaint to the Ombudsman, the complainant alleged:

1) administrative irregularities as regards the composition of the Selection Committee

2) to have been discriminated against during the oral examination and regarding the evaluation of her academic degrees.

She also claimed that the selection procedure should be annulled and she should be admitted to a new oral examination and her dossier evaluated by a different Selection Committee.

THE INQUIRY

The Commission's opinion

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

The Commission regretted the delay in replying to complaint R/210/2001 made by the complainant under Article 90 of the Staff Regulations and apologised for it.

A reply was finally forwarded to the complainant on 21 November 2001. The content of this letter was basically the same as that of the opinion to the Ombudsman.

As a result of the investigations carried out following the complainant's complaint, the Authority empowered to conclude contracts of employment concluded that selection procedure COM/R/A/02/2000 should have been annulled because of procedural irregularities. The investigation revealed the existence of economic interests between a member of the Selection Committee and one of the successful candidates.

The Authority empowered to conclude contracts of employment took the view that the impartiality and the equal opportunity for all candidates was not duly assured during the procedure and that the evidence of partiality of one of the members of the Selection Committee vitiated the final results of the procedure. No one of the candidates included in the reserve list has been offered a contract in the meantime and the whole procedure would be re-started after the nomination of a new Selection Committee.

The complainant's observations

In her observations to the Commission's opinion, the complainant pointed out that the Commission should explain if the new selection procedure would be open only to candidates who have participated in the annulled procedure or also to other candidates, and if it would be possible to integrate the dossiers with new supporting documents. She would also like to be informed of the provisional calendar of the new selection procedure and of the measures the Commission will adopt to guarantee the impartiality of the members of the new Selection Committee and to assure that she will not be discriminated against.

The Ombudsman considers that it is not pertinent to ask the Commission for comments on these questions raised by the complainant at this stage. The Ombudsman notes that the Commission had formally recognised that the procedure had been vitiated by administrative irregularities and that it have been annulled, as requested by the complainant in her original complaint.

The complainant could thus consider addressing the new questions to the responsible services in the Commission, as an appropriate administrative approach in accordance with Article 2 § 4 of the Statute of the European Ombudsman.

THE DECISION

1 Alleged irregularities in the composition of the Selection Committee

1.1 The complainant, who participated in selection procedure COM/R/A/02/2000, alleged administrative irregularities as regards the composition of the Selection Committee.

1.2 In its opinion, the Commission stated that the investigations carried out following the complainant's complaint revealed the existence of economic interests between a member of the Selection Committee and one of the successful candidates. The Authority empowered to conclude contracts of employment concluded that the impartiality and the equal opportunity for all candidates was not duly assured and that the selection procedure was therefore annulled.

1.3 The Ombudsman considers that the Commission has taken steps in order to settle the matters as concerns this aspect of the case.

2 The complainant's allegation to have been discriminated against

2.1 The complainant alleged to have been discriminated against during the oral examination and regarding the evaluation of her academic degrees.

2.2 The Ombudsman notes that, in its opinion, the Commission did not deal with this specific allegation. However, in view of the institution's decision to annul the selection procedure and of his conclusion in point 1 of this decision, the Ombudsman does not consider it necessary to pursue the inquiry into this aspect.

3 The complainant's claim

3.1 The complainant claimed that the selection procedure should be annulled and she should be admitted to a new oral examination and her dossier evaluated by a different Selection Committee.

3.2 When annulling the selection procedure, the Commission pointed out that the new selection would be re-started after the nomination of a new Selection Committee.

3.3 The Ombudsman considers that the Commission has taken steps in order to settle the matter as concerns this aspect of the case.

4 Conclusion

It appears from the Commission's opinion and the complainant's observations that the European Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

THE COMMISSION PUTS AN END TO UNPAID TRAINEESHIPS

Decision on complaint 1456/2001/ADB against the European Commission

THE COMPLAINT

The complainant was a student who applied for a traineeship at the European Commission. The Commission offered him an unpaid traineeship. Given that he had no income, he had to face a difficult choice. Either accepting the offer with its consequences on his daily life, or refusing this important opportunity because of his limited financial resources. Hence he complained to the Ombudsman and alleged that the Commission's offering unpaid traineeships constituted a discrimination against applicants with limited financial resources; especially because the number of unpaid traineeships represented only a small part of all the traineeships offered by the Commission.

The complainant claimed that the Commission should reconsider its position towards his personal situation.

THE INQUIRY

The European Commission's opinion

Since 1997, the Commission progressively increased its appropriations for traineeships in order to pay the highest possible number of trainees. The Commission informed the Ombudsman that from March 2002 onwards all recruited trainees shall be paid.

In 2001, 97% out of 1200 trainees were offered paid traineeships. Trainees who accepted an unpaid traineeship however benefited from funds available further to late arrivals or early departures of paid trainees. In the complainant's case, the Commission was able to pay him a full five-month grant for his five-month traineeship.

THE DECISION

It appears from the Commission's comments that the European Commission has taken steps to settle the matter. The Ombudsman therefore closes the case.

ALLEGED FAILURE TO PAY THE LAST SECTION OF FINANCIAL AID AS AGREED UPON

Decision on complaint 108/2002/OV (Confidential) against the European Commission

THE COMPLAINT

In January 2002, Mr X made a complaint to the European Ombudsman on behalf of a French regional Chamber of Commerce and Industry (hereafter "the complainant") concerning the Commission's financial aid to the operation M. under the ECIP (European Community Investment Partners) programme. According to the complainant the relevant facts were as follows:

On 1 December 1997 the complainant made a request for financial aid to the Commission for a budget of 170 000 € for the operation M. - ECIP. This operation started in January 1998. In a letter of 21 January 1998, the Commission accepted the request for financial help for an amount of 85 000 €. The principal mission was carried out in April 1998. On 10 July 1998, the Commission sent the Financial Contract, confirming a financial aid of 85 000 €.

On 16 September 1999, the complainant received the first payment of 42 500 €. On 19 October 2000, the Commission confirmed that the payment of the final section would be 4 707 € instead of 42 500 € as expected by the complainant. This payment was executed on 3 November 2000.

On 22 November 2000, the complainant contested the final payment. The Commission then accepted to proceed with a further payment of 8 005 € on 30 April 2001.

On 28 September 2001, the complainant again contested the final payment of the Commission.

On 17 January 2002, the complainant wrote to the Ombudsman making the following 4 allegations:

1 The Commission's dealing of the file was abnormally long.

2 The text of the General Conditions, which is drafted in English, is ambiguous and not precise.

3 The Commission's services refuse to take into account the financial aid as agreed.

4 The Commission's representatives were partial in their argumentation based on a restrictive interpretation of the contract.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission. In its opinion, the Commission observed that this complaint has to be seen in the framework of the decentralised co-operation programme ECIP (European Community Investment Partners) which offered to companies 5 types of financial facilities for helping to develop joint ventures in developing countries of Asia, Latin America, the Mediterranean and South Africa.

The Council's Regulation (EC) No 213/96 of 29 January 1996, which constituted the legal basis for managing the financial instrument ECIP expired on 31 December 1999. Given the absence of a legal basis and awaiting the adoption of a new ECIP Regulation, the budgetary authority has put the credits for 2000 in a reserve (section B0-40), which made any engagement before the adoption of the new legal basis impossible. No new action could therefore be assessed, approved or be subject of a contract after 31 December 1999.

On 31 January 2000, the Commission proposed that the Council and the Parliament adopt a new regulation[22] in order to finance the management costs for the running ECIP projects. This regulation was adopted on 21 April 2001. On 22 December 2001, the Commission decided not to propose to the Council and the Parliament to extend the validity of the Regulation, which meant that the ECIP programme was terminated. This decision was necessary given the rationalisation of the Commission's policies and the will to reform and simplify the management tasks.

As regards the facts of the case, the Commission recalled that in December 1997, the complainant submitted an ECIP Facility 1 application to the Commission. This Facility should allow the beneficiary to identify, in the automobile industry, Argentinean and Brazilian partners for French companies ready to conclude co-operation agreements.

22 COM(1999)726.

The ECIP Directing Committee recommended that the Commission consider the project eligible under action number 3207. This was notified to the complainant by letter of 21 January 1998 which stated that this neither prejudiced the Commission's formal approval of the proposal nor constituted a commitment on the part of the Commission. The Commission's formal decision was sent on 25 August 1998 together with the Specific Contract to be signed by the complainant, the Final Beneficiary and the Commission. This contract contained in annex 2 the provisional budgetary costs presented by the applicant, namely a total amount of 170 000 €, with a Community co-financing of 50%, namely 85 000 €.

On 24 February 1999, the complainant presented the financial balance for the final payment. The Commission services evaluated the eligible costs to be 94 415,63 €. On 19 October 2000, the Commission informed the complainant of the result of the financial evaluation and of the transfer of 4 707,81 € (a first payment had been made and received on 16 September 1999, for the amount of 42 500 €, namely 50% of the subvention granted on basis of Facility 1, Article 5 of the contract). This final payment brought the Commission's participation to an amount of 47 207,81 €.

On 22 November 2000, the complainant informed the Commission of its disagreement on the evaluation of the eligible costs, considering that certain costs had unjustifiably been considered as ineligible. The Commission's services replied on 30 April 2001 recalling the rules and procedures of the ECIP programme contained in the specific contract[23] between the EC and the Final Beneficiary.

On 27 September 2001, considering that the project had been implemented by the complainant in a satisfactory way, the Commission's services re-examined certain costs and re-evaluated the total eligible cost from 94 415,63 € to 101 011,70 €.

Notwithstanding this conciliation effort, the complainant persisted in requesting the reimbursement of certain costs, which had been judged ineligible, and this on the basis of a diverging interpretation of the General Conditions' provisions annexed to the contract. Afterwards, the complainant informed the Commission that it would bring the matter to the European Ombudsman.

As regards the complainant's allegations, the Commission, pointing out the Court of Justice's competence to deal with disputes arising from the contract, wished to clarify to the Ombudsman the legal basis of its action and the arguments on which it based its interpretation:

1 As regards the allegation that its dealing of the file was abnormally long, the Commission regretted the delays in the treatment of the case. The Commission explained that these delays were due to the problems encountered in the management of the programme such as the shortage of personnel and the various internal restructuring procedures, as well as to the decision to terminate the ECIP programme.

In accordance with its own commitments, the Commission is ready to pay to the Final Beneficiary the interests for the delay in transferring the subvention amounts, even if this is not explicitly foreseen in the contract.

2 As regards the allegation concerning the ambiguity of the texts drafted in English, the Commission observed that by signing the contract, the complainant accepted its terms, which presupposes that he understood them. The complainant can therefore not a posteriori invoke the incomprehension of the terms. The Commission services could always have provided answers to clarification requests or a translation.

[23] The specific contract contains the following annexes : the terms of reference (annex 1), the budgetary costs (annex 2) and the general conditions (annex 3).

The ambiguity invoked by the complainant results from reading together provisions of the General Conditions which are not competitive, as they concern different stages of the application of the ECIP programme (see below). The Commission thus rejected the complainant's allegation that its interpretation of the General Conditions was restrictive and wrong.

The Commission provided detailed comments as regards its interpretation of the provisions concerning the fees, the covering of non eligible costs (the Commission finally agreed to finance 28 supplementary days as well as 4 trips and the supplementary "per diem") and the administrative costs (the Commission received no bills from the complainant, even if Article 3.3 of the General Conditions clearly states that "*the eligible costs will be based on actual costs as evidenced by the relevant documents*").

3 As regards the allegation that it refused to take into account the financial aid as agreed, the Commission observed that the complainant probably confused the budgetary costs with the eligible costs. The financial services intervene only to verify, with the aim of the final liquidation, which are the costs that comply with the eligibility criteria of the programme, and this in accordance with the provisions accepted by both parties (which are mentioned in the General Conditions annexed to the Specific Contract). It is evident that the eligible costs do not always correspond to the amounts as initially foreseen. The Commission's role is to make sure that the terms of the subvention contract are respected by the Final Beneficiary. In the present case, compared with the contractual budget of 170 140 €, the Commission accepted 109 559 € as eligible expenses. The amount of the final transfer is therefore 12 279,86 €, over and above the 42 500 € already received by the Final Beneficiary.

4 As regards the alleged partiality of its representatives in the interpretation of the contract, the Commission observed that this allegation is not founded. The Commission's services look to apply objectively the same conditions to the subvention contracts of the ECIP programme. In the analysis of the balances, the Commission always verifies that the final calculation takes into account the real costs as shown in the justifying documents. The Commission therefore does not understand the complainant's allegation of partiality.

The Commission finally stated that its services accepted to meet with the beneficiary soon in order to close the file. This meeting was due to take place in Brussels in the month of May 2002.

The complainant's observations

The complainant pointed out that the meeting with the Commission's services took place on 15 May 2002. This meeting made it possible to come to an equitable agreement for a definitive payment of 29 067,50 €. This amount was credited to the complainant's account on 24 May 2002. The complainant expressed his thanks for the Ombudsman's intervention, which led to a positive outcome of this file.

THE DECISION

1 The alleged maladministration in the handling of the project M. - ECIP and the alleged failure of payment of the final sum

1.1 The complainant made several allegations concerning the Commission's handling of the project M. - ECIP: 1) the Commission's dealing of the file was abnormally long; 2) the text of the General Conditions, which is drafted in English, was ambiguous and not precise; 3) the Commission's services refused to take into account the financial aid as

agreed, and 4) the Commission's representatives were partial in their argumentation based on a restrictive interpretation of the contract.

1.2 In its opinion, the Commission rejected the complainant's allegations. The Commission however stated that its services accepted to meet the beneficiary of the payment in order to close the file, and that a meeting was scheduled to take place in Brussels in the month of May 2002.

1.3 In his observations, the complainant pointed out that the meeting with the Commission's services took place on 15 May 2002. At this meeting an equitable agreement was found for a definitive payment of 29 067,50 €. This amount was credited to the complainant's account on 24 May 2002. The complainant thanked the Ombudsman for his intervention, which positively solved the present case.

1.4 It appears from the complainant's observations that the Commission has finally agreed to pay the final sum of 29 067,50 € and has settled the case.

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.

THE COMMISSION ACCEPTS TO CHANGE A CONTRACT IN ORDER TO TAKE INTO CONSIDERATION ALL THE COSTS OF A PROJECT

Decision on complaint 114/2002/ADB against the European Commission

THE COMPLAINT

The complainant's company Schlumberger Industries S.A. (France), together with the Université catholique de Louvain (Belgium), the Consejo Superior de Investigaciones Científicas (Spain) and the École Nationale Supérieure des Télécommunications (France), entered into an IST (Information Society Technologies) contract with the Commission in order to receive funds for a project.

The contract itself, as well as Annex I were negotiated with the Commission. Annex II is a standard annex for all IST contracts. The contract was signed in December 1999 and the project started in March 2000. On 22 March 2001, the Commission informed the contracting parties that there was an inconsistency between the contract itself and the standard part (Annex II). In fact, the latter excluded the funding of items that had been negotiated and agreed in the contract and in Annex I.

Despite several contacts with the complainant, the Commission failed to find an acceptable solution. The complainant therefore lodged a complaint with the European Ombudsman and claimed a solution leading to the acceptance of the disputed costs and the conclusion of a workable contract.

THE INQUIRY

The Commission's opinion

The Commission did not contest the complainant's allegations. As requested by the complainant in his complaint, the Commission accepted to change the contract to enable all costs incurred by the project to be taken into consideration.

In order to avoid similar situations in the future, the Commission expressed its intention to reduce the number of standard contracts and to simplify them.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. On 4 June 2002, the complainant orally informed the Ombudsman's services, that the Commission's offer completely satisfied his claim.

THE DECISION

It appears from the Commission's comments that the European Commission has taken steps to settle the matter and satisfy the complainant. The Ombudsman therefore closes the case.

PAYMENT OF FUNERAL COSTS

Decision on complaint 902/2002/ME against the European Commission

THE COMPLAINT

The complainant lodged a complaint with the European Ombudsman in May 2002. The complainant's son had been a Commission official and had died suddenly in November 2001. At the time the complaint was lodged, the complainant had still not received full payment for the costs incurred on her son's death.

The costs for the transportation of the body to Finland had at first only been partly paid. They had since been fully paid, but only after the complainant had contacted the Commission on several occasions.

As regards the costs for the funeral, she had still not received payment. She stated that the Commission had informed her that it would reimburse up to 94 000 BEF. The complainant had sent an invoice of € 2833,13 to the Commission at the end of 2001. When the complainant called the Commission at the beginning of 2002, it informed her that it would pay only € 218 and stated that the reason therefore was unpaid medical bills. The complainant however considered that any outstanding debts should be charged from the estate of the deceased and not from her. The responsible official promised to call her back in the afternoon but he never did.

In summary, the complainant alleged that six months after her son passed away, the Commission had still not paid her the costs for the funeral, amounting to € 2833,13.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission put forward the following.

When an official dies, in the majority of cases, the funeral costs are paid to the official's bank account, to which his or her heirs have access. Reimbursement can also be made to any other person who proves that he or she has borne the funeral expenses. For such direct payment, it is required that the person shows that the expenses were covered from the same bank account as the one indicated in the reimbursement request.

In the present case, as the medical officer had to examine whether the medical costs incurred could be reimbursed in full or not under the Staff Regulations, a certain delay arose. In April 2002, once the amount to be paid was fixed, a problem arose since the reimbursement request indicated a bank account that was different from the one used to cover the expenses. On 7 June 2002, the Commission received confirmation that both bank accounts belonged to the complainant. The payment order was launched on the same day.

As regards the costs for the funeral, those costs are limited to an amount of € 2 330.20. From this amount, the advance payment of € 1 419.62 already made to the complainant

was to be deducted. The amount to be reimbursed was thus € 910.58. However, according to Article 72(3) of the Staff Regulations, exceptional payments can be granted if the total medical bill, over a certain period of time, exceeds a certain percentage of the official's salary. Applied to the present case, another € 1 088.82 were to be paid to the complainant. An amount of € 1 999.40 was therefore paid to the complainant on 13 June 2002.

As regards the transportation costs, the Commission had reviewed the file and decided to fully reimburse some elements of the bill. As a result, an additional payment of € 509.74 was made to the complainant on 14 June 2002.

The complainant's observations

In her observations, the complainant pointed out that only on 7 June 2002 had she been informed that the Commission needed a confirmation from her bank that both bank accounts belonged to her. The confirmation had been faxed by the bank on that same day. Furthermore, the original bill for the funeral costs was lost by the Commission. The complainant however underlined that it was soon one year since her son passed away and she wanted to put it all behind her and did not wish to make any new allegations. She thus stressed that the matter was closed as far as she was concerned and she thanked the Ombudsman for his help in the matter.

THE DECISION

1 Reimbursement of costs due to the complainant

1.1 The complainant's son had been a Commission official and had died suddenly in November 2001. The complainant alleged that six months after her son passed away, the Commission had still not paid her the costs for the funeral, amounting to € 2833,13.

1.2 The Commission explained the delays that had occurred and informed the Ombudsman that it had issued payment to the complainant of € 1 999.40 on 13 June 2002 and a further payment of € 509.74 on 14 June 2002.

1.3 The Ombudsman notes that the Commission has issued two payments to the complainant. Furthermore, the complainant has expressed that she considers the matter to be closed and has thanked the Ombudsman for his help. The case therefore appears to be settled.

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.

3.2.2 The Court of Justice of the European Communities

REIMBURSEMENT OF TRAVEL EXPENSES FOR JOB APPLICANT

Decision on complaint 141/2002/JMA against the Court of Justice of the European Communities

THE COMPLAINT

The complainant had applied for the post of Director of Translation at the Court in April 2001. Subsequently, he was invited for an interview in May 2001. An official from the Court administration informed the complainant by telephone that all his travel expenses from Lithuania, where he worked at the Delegation of the European Commission, would be covered by the Court. At the end of May 2001, the complainant submitted a request to the Court for the reimbursement of his expenses, which amounted to € 1,938.05.

At the end of August 2001, the complainant's wife contacted the administrative services of the Court and was told that the Director of the Personnel Department would be back from holidays at the beginning of September and would then sign the payment authorisation.

In the absence of reply, the complainant sent several faxes and e-mails to the Court requesting payment in October 2001. The Court acknowledged by email dated 8 November 2001 that a payment had been made. Soon after, the complainant received a payment by bank transfer, which amounted to € 512.59.

Since the Court's payment did not cover his entire travel expenses and there was an outstanding amount of € 1,425.46, the complainant requested full payment by letter in December 2001. He received no reply from the Court to that reminder.

In summary, the complainant alleged that the Court failed to respond to his numerous enquiries and claimed full reimbursement of the travel expenses related to his application for a job vacancy at the Court.

THE INQUIRY

The European Court of Justice's opinion

In its opinion, the Court explained that the complainant had submitted a claim for reimbursement for an amount of € 1,938.05, which exceeded the maximum permitted under the Court's Rules on the reimbursement of travel expenses incurred by candidates. The Court pointed out that a copy of the rules is, in principle, sent to all candidates who are invited for interviews. On the basis of the Rules, the Court paid the maximum amount allowed, namely € 516.09.

Having re-examined the file, the Court's Administration discovered that a copy of the Rules might not have been sent to the complainant and sought an opinion from its Legal Adviser in administrative matters as to whether it was possible in this case to pay the outstanding amount.

On its Legal Adviser's advice, the Court decided to transfer the outstanding sum to the complainant. The transfer was made in July 2002. The Court also indicated that its Director of Personnel and Finance had written to the complainant informing him of this decision and expressing his apologies.

The complainant's observations

The complainant confirmed that the European Court of Justice had paid the outstanding amount. He expressed his gratitude to the Ombudsman for having brought the complaint to a successful conclusion, and added that had it not been for the efforts carried out by the Ombudsman, his rights could not have been realised.

THE DECISION

On the basis of the information provided by the complainant and the observations submitted by the European Court of Justice, the Ombudsman concludes that the case has been settled by the European Court of Justice to the complainant's satisfaction. Against this background, the European Ombudsman decides to close the case.

3.3 FRIENDLY SOLUTIONS ACHIEVED BY THE OMBUDSMAN

3.3.1 The European Parliament

PUBLICATION OF A REJOINDER TO REPORT OF THE COMMITTEE OF INDEPENDENT EXPERTS

Decision on complaint 375/2001/IJH against the European Parliament

THE COMPLAINT

The complainant was formerly Director General of DG XXIII (Enterprise Policy, Trade, Tourism and Social Economy) of the Commission. He complained to the Ombudsman against the European Parliament in March 2001. According to the complainant, the relevant facts are as follows.

In 1993, the complainant began an internal investigation into allegations of corruption made against the head of the tourism division of DG XXIII, who has since been tried and convicted in France for corruption. This person then launched a disinformation campaign against the complainant. Elements of this disinformation found their way into a report (rapporteur R. WEMHEUER) which was adopted by the European Parliament, without the complainant having been heard. After correspondence with the European Parliament, the complainant considered that the matter had been satisfactorily resolved by the then President of the Parliament. Subsequently, however, the European Parliament established the Committee of Independent Experts, which examined amongst other things, the so-called "tourism affair". The European Parliament failed to supply to the Committee of Independent Experts its correspondence with the complainant concerning the Wemheuer report. As a result, the Committee of Independent Experts mistakenly assumed that elements of the Wemheuer report critical of the complainant were uncontested and, in its own report, blamed the complainant for failure to exercise his responsibilities without hearing him.

On the basis of the above, the complainant alleged that the European Parliament:

1 negligently failed to supply to the Committee of Independent Experts certain relevant information: i.e. the correspondence between himself and the European Parliament concerning the Wemheuer report;

2 is responsible for the violation of his fundamental right to be heard in the tourism affair.

The complainant claimed that the European Parliament should publish a rectification, or alternatively a rejoinder both in print and on the website of the European Parliament.

THE INQUIRY

The European Parliament's opinion

In its opinion, the European Parliament made, in summary, the following points:

The Committee of Independent Experts was itself exclusively responsible for the interpretation of its mandate and for the manner in which it drew its conclusions. It met in camera and always insisted that its deliberations remain confidential in order to guarantee its independence.

The President of the European Parliament has no way of knowing which documents the Committee of Independent Experts scrutinised, nor their sources, nor what contacts were

established between the experts and third parties, nor the reasons and considerations which led the Committee to draw whatever conclusions it did draw.

The Parliament's institutional position therefore precludes it from answering any question of substance as regards the Committee's working methods, its sources and assessment of information, the merits of its conclusions or the manner in which they were expressed in the Committee's report. Accordingly the Parliament is not competent to answer the question of whether the Committee of Independent Experts respected the complainant's fundamental rights.

As regards the supply of information by the European Parliament to the Committee of Independent Experts, all the information, which the Administration possessed relating to the Wemheuer report on tourism, was made available to the Committee. However, the Parliament can give no opinion as to whether third parties forwarded information to the Committee, such as an exchange of letters between MEPs and the complainant, or any other information held in a personal capacity by a third party.

The President of the European Parliament informed the chairman of the Committee of Independent Experts, Mr MIDDELHOEK of her letters to the complainant, most of which were written after the Committee had concluded its work. Furthermore the Secretary General of the European Parliament took the initiative to ask the former members of the Committee of Independent Experts to undertake an additional analysis of the arguments and documents put forward by the complainant. That request was refused on the grounds that the Committee of Independent Experts no longer existed and was therefore incapable of deliberating.

As regards the complainant's claim that the European Parliament should publish a rejoinder on the website of the European Parliament, since Parliament has no responsibility for the substance of the Committee's reports it can hardly feel obliged to publish any and every objection to those statements.

The complainant's observations

In his observations, the complainant made, in summary, the following points:

The European Parliament's opinion failed to address the central issue of whether the Parliament had respected the complainant's fundamental rights. The Parliament cannot delegate its obligations concerning the respect of fundamental rights to a temporary private body, which is responsible only to itself.

The formulation of the mandate of the Committee of Independent Experts was entirely the responsibility of the European Parliament. The Parliament was competent to control the Committee's working methods, as is made clear by the Terms of Reference adopted by the Conference of Presidents of Political Groups on 27 January 1999. The fact that the Secretary General of European Parliament took the initiative mentioned in the Parliament's opinion demonstrates the European Parliament's competence in the matter.

The complainant's letters to the rapporteur, to the President of the responsible Committee, to the Presidents of Political Groups and to the President of the European Parliament should have been made available to the Committee of Independent Experts. These letters were addressed to the holders of official functions in the European Parliament and cannot therefore be equated to information held in a "personal capacity by a third party", regardless of whether the Parliament's Administration was aware of them.

By its own admission, the European Parliament did not transmit the complainant's correspondence to the Committee of Independent Experts and neglected its oversight role. Redress in the form of a review of the relevant passages of the Committee's report is there-

fore called for. Alternatively, the European Parliament should also publish the complainant's replies to the Committee's first report.

The complainant concluded his observations by asking whether the maze of mutually exclusive arguments about competence would not make any citizen feel like Josef K. in Kafka's The Trial.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman considered that there could be an instance of maladministration by the European Parliament. In accordance with Article 3 (5) of the Statute[24], he therefore wrote to the President of the European Parliament to propose a friendly solution on the basis of the following analysis of the issues in dispute between the complainant and the European Parliament.

1 The allegation of negligence

1.1 The complainant alleged that the European Parliament negligently failed to supply information to the Committee of Independent Experts about his correspondence with office holders of the Parliament concerning the Wemheuer report on tourism. For the avoidance of doubt, the Ombudsman points out that he does not understand the complainant to allege that any specific individual or individuals are to blame for this failure.

1.2 In its opinion, the European Parliament stated that all information, which the Administration possessed relating to the Wemheuer report, was made available to the Committee of Independent Experts. However, the Parliament stated that it could give no opinion as to whether third parties forwarded information to the Committee, such as an exchange of letters between MEPs and the complainant, or any other information held in a personal capacity by a third party.

1.3 In his observations, the complainant points out that his letters were addressed to office holders in the European Parliament and cannot therefore be equated to information held in a "personal capacity by a third party", regardless of whether the Parliament's Administration was aware of them.

1.4 The Ombudsman considers that it was incumbent upon the Parliament as an institution to take appropriate corrective action, within its competence, once it became known that relevant information and documents acquired by the European Parliament's office holders in their official capacity had not been communicated to the Committee of Independent Experts. Whether the Parliament has complied with this obligation is examined below.

2 The alleged violation of the complainant's fundamental right to be heard

2.1 The complainant alleged that the European Parliament is responsible for the violation of his fundamental right to be heard in the tourism affair. According to the complainant, the Parliament's failure to supply the Committee of Independent Experts with correspondence between himself and office holders of the Parliament concerning the Wemheuer report resulted in the Committee mistakenly assuming that elements of that report critical of the complainant were uncontested. In its own report, the Committee of Independent Experts therefore blamed the complainant for failure to exercise his responsibilities without hearing him. The complainant claimed that the European Parliament should now publish a rectification or, alternatively, his rejoinder.

---

[24] *"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."*

2.2 In its opinion, the European Parliament argued that the Committee of Independent Experts was itself exclusively responsible for the interpretation of its mandate and for the manner in which it drew its conclusions. According to the opinion, the European Parliament has no way of knowing which documents the Committee scrutinised, nor their sources, nor what contacts were established between the experts and third parties, nor the reasons and considerations which led the Committee to draw whatever conclusions it did draw. The Parliament is not, therefore, competent to answer the question of whether the Committee of Independent Experts respected the complainant's fundamental rights.

2.3 The Ombudsman considers that the European Parliament has not satisfactorily addressed the question of its own responsibility for ensuring respect for the complainant's fundamental rights.

2.4 The Ombudsman's finding in paragraph 1.4 above is that it was incumbent upon the Parliament as an institution to take appropriate corrective action, within its competence, once it became known that relevant information and documents acquired by the European Parliament's office holders in their official capacity had not been communicated to the Committee of Independent Experts.

2.5 According to the European Parliament, the Secretary General of the European Parliament took the initiative to ask the former members of the Committee of Independent Experts to undertake an additional analysis of the arguments and documents put forward by the complainant. That request was refused on the grounds that the Committee of Independent Experts no longer existed and was therefore incapable of deliberating.

2.6 The Ombudsman considers that the European Parliament did, therefore, attempt to take appropriate corrective action. However, since that attempt failed to achieve its objectives, the Ombudsman does not consider that the European Parliament has thereby discharged its institutional obligation to take corrective action. The Ombudsman's provisional conclusion, therefore, is that the European Parliament should take further steps to discharge its institutional obligation to take appropriate corrective action, within its competence, and that failure to do so could be an instance of maladministration.

The proposal for a friendly solution

The Ombudsman informed the President of the European Parliament, of the above findings and recalled that Parliament had argued that, since it has no responsibility for the statements contained in the reports of the Committee of Independent Experts, it can hardly feel obliged to publish any and every objection to those statements. The Ombudsman pointed out that the present case concerns not any and every objection, but the objection of a specific individual who was not heard before being subject by the Committee of Independent Experts to public criticism, which the Parliament continues to publish on its website. The Ombudsman proposed that appropriate corrective action could be for the Parliament also to publish the complainant's rejoinder on its website.

The European Parliament's response

In reply to the Ombudsman's proposal, the President of the European Parliament agreed, as a gesture of goodwill to the complainant, to allow him to publish his replies to the relevant chapter of the first report of the Committee of Independent Experts via a hyperlink from the relevant page on the European Parliament's website in its different language versions. The European Parliament did not undertake to translate the complainant's replies, but to publish, in the form specified above, all the language versions he supplies in a suitable format.

The European Parliament emphasised that this agreement is given without prejudice to Parliament's position of principle that it cannot be held responsible for the contents of the

reports of the Committee of Independent Experts or for the manner in which the Committee conducted its work, the information on which it based its conclusions, nor its relations with persons actually or potentially concerned by its inquiries. Moreover, the European Parliament emphasised that it cannot be expected to provide a "notice-board", open to all, where arguments in which it has no part and the merit of which it cannot assess are published. Agreement to publish the complainant's replies cannot therefore be taken as a precedent of any sort for further publication of material in its website, either in respect of the Report of the Committee of Independent Experts or in any other context.

The European Parliament proposed to contact the complainant once it had received the Ombudsman's confirmation that it may proceed on this basis.

The complainant's observations

The complainant confirmed by letter that he is able to acquiesce in the arrangements outlined in the reply from the President of the European Parliament to the Ombudsman's proposal for a friendly solution and looked forward to the European Parliament contacting him to discuss the implementation of the friendly solution.

THE DECISION

1 The allegations of negligence and of violation of the complainant's fundamental right to be heard

1.1 The complainant alleged that the European Parliament is responsible for the violation of his fundamental right to be heard in the tourism affair. According to the complainant, the Parliament's negligent failure to supply the Committee of Independent Experts with correspondence between himself and office holders of the Parliament concerning the Wemheuer report resulted in the Committee mistakenly assuming that elements of that report critical of the complainant were uncontested. In its own report, the Committee of Independent Experts therefore blamed the complainant for failure to exercise his responsibilities without hearing him. The complainant claimed that the European Parliament should now publish a rectification or, alternatively, his rejoinder.

1.2 The Ombudsman considers that it was incumbent upon the Parliament as an institution to take appropriate corrective action, within its competence, once it became known that relevant information and documents acquired by the European Parliament's office holders in their official capacity had not been communicated to the Committee of Independent Experts. The Ombudsman further considered that the European Parliament did attempt to take appropriate corrective action. However, since that attempt failed to achieve its objectives, the Ombudsman did not consider that the European Parliament had thereby discharged its institutional obligation to take corrective action. The Ombudsman's provisional conclusion, therefore, was that the European Parliament should take further steps to discharge its institutional obligation to take appropriate corrective action, within its competence, and that failure to do so could be an instance of maladministration. The Ombudsman therefore proposed as a friendly solution that the European Parliament publish the complainant's rejoinder on its website.

1.3 In reply to the Ombudsman's proposal, the European Parliament, whilst reserving its position on the substance, agreed as a gesture of goodwill to the complainant to allow him to publish his replies to the relevant chapter of the first report of the Committee of Independent Experts via a hyperlink from the relevant page on the European Parliament's website in its different language versions. The complainant confirmed his acceptance of the arrangements outlined by the European Parliament and looked forward to the Parliament contacting him to discuss the implementation of the friendly solution.

2 Conclusion

Following the Ombudsman's initiative, it appeared that a friendly solution to the complaint had been agreed between the European Parliament and the complainant. The Ombudsman therefore closes the case.

3.3.2 The European Commission

COMMISSION ACCEPTS OMBUDSMAN'S PROPOSAL FOR FRIENDLY SOLUTION REGARDING A CLAIM FOR REMUNERATION

Decision on complaint 1230/2000/GG against the European Commission

THE COMPLAINT

According to the complainant, a British journalist who used to live and work in Brussels, the facts underlying his complaint that was lodged in September 2000 were as follows:

In March 1998, the complainant was telephoned by Mrs D., head of Unit D.3 in the Commission's Directorate-General ("DG") V (now Directorate-General Employment and Social Affairs) and asked whether he could urgently edit the draft interim report from the so-called High Level Group on the Economic and Social Implications of Industrial Change, otherwise known as the 'Gyllenhammar group'. Mrs D. knew of the complainant through Mrs K., the complainant's wife, who was working as an auxiliary agent in unit D.3 at that time. She made clear that she needed help urgently to improve the draft report and offered the complainant a fee of € 3 000 for the work. The complainant accepted this offer.

The editing work was carried out over a period of about two weeks through an iterative process involving regular contacts and e-mails between the complainant and Mrs D. It was completed in early April 1998. Because of the urgency of the situation, DG V did not manage to draw up a contract until after the work was completed, in June 1998. The verbally agreed fee of € 3 000 was mentioned in the contract dated 26 June 1998 (reference no. 980114) and paid to the complainant.

In late September 1998, Mrs D. telephoned the complainant again and asked him whether he could edit the final report from the Gyllenhammar Group. Mrs D. explained that the situation was again urgent since the report was to be submitted to the European Council to be held in Vienna in December 1998 and needed to be translated into all the Community languages and printed well in advance of that meeting. It was agreed between Mrs D. and the complainant that 'the same terms and conditions would apply' as to the interim report, i.e. that the complainant would complete the work quickly and would be paid € 3 000 for doing so. No further discussion of the fee took place.

The complainant agreed to do the work and, after following the same iterative process as for the interim report, completed it in mid-October 1998. The final report of the Gyllenhammar Group was duly published and submitted to the European Council.

On the basis of his experience with the interim report, the complainant assumed that a contract would be drawn up and payment made within a short space of time. However, months passed without the arrival of a contract or any communication from the Commission. Eventually, on 25 September 1999 the complainant sent an invoice for payment of € 3 000 to Mrs Q., Director of Directorate D and acting Deputy Director-General of DG V.

In early November 1999 (13 months after the work had been completed), the Commission sent the complainant a draft contract (reference no. VC/1999/0020) and a notification letter from Mr C., head of sector 'Contracts & Subsidies' at DG V. According to this draft contract, the complainant was to produce, within a period of two months from the date on which it took effect (the date of notification by the Commission to the complainant of the signed contract), a "Report on the economics and social implications of industrial changes". The draft specified a fee of € 2 000.

Soon after receiving the draft contract, the complainant contacted Mrs D. to point out that the fee was € 1 000 lower than agreed and to seek an explanation. Mrs D. said she would look into the matter and get back to the complainant. However, she never called back.

On 21 December 1999, Mr C. sent the complainant a reminder, asking him to sign and return the draft contract within ten calendar days. The complainant wrote back on 30 December 1999, explaining what had happened and expressing his surprise at the deadline that had been set. He then re-contacted Mrs D. who did not deny that a fee of € 3 000 had been agreed. Mrs D. said, however, that DG V's financial department had in the meantime cut the fee to € 2 000 for budgetary reasons and advised him to settle for this sum if he wanted to be paid at all. The complainant thereupon reluctantly signed the draft contract on 19 January 2000 and returned it to the Commission. In his cover letter dated 20 January 2000, he made the following comments: "I wish to state again, however, that in this affair DG V has unilaterally deviated from the terms I agreed with Mrs D., and which she does not deny, namely a payment of € 3 000. Such cheating does the Commission's reputation no good." The complainant further pointed out that it was unacceptable that the Commission had allowed a full year to pass after the work had been completed before sending him a contract, and that he expected that payment would be made without further delay. On 9 February 2000, the Commission notified the signed contract to the complainant.

Having already submitted an invoice, the complainant did not immediately submit another one. On 4 April 2000, he sent an e-mail to Mr C. in which he drew attention to his earlier invoice and asked when he would be paid. Later the same day, Mr C. sent the complainant an e-mail in which he asked the latter to submit a final invoice, together with a final report, in accordance with the contractual provisions. The complainant replied that he had already sent an invoice in September 1999 and that he had completed the report he had been asked to work on in October 1998.

On 5 April 2000, the complainant received an e-mail from Mrs V., a colleague of Mr C., who informed him that the final report could not be dated 1998 since the contract had been signed on 31 December 1999 and the period for performance had ended on 29 February 2000. In his reply, the complainant pointed out that these dates were wrong and once again explained the background of his claim. He also pointed out that he had not been asked to present a 'report', but that his work had consisted in making numerous textual changes to a manuscript prepared by someone else for the Commission. The complainant nevertheless promised to send a new invoice, which he did on 1 May 2000.

In the absence of any payment, the complainant turned to the Ombudsman in September 2000. The complainant pointed out that he was now no longer ready to content himself with the reduced payment of € 2 000 but claimed (1) full payment of the agreed fee of € 3 000, (2) interest on that amount as from 25 September 1999 and (3) a formal apology from Mrs. D. and Mrs Q..

The complainant made the following allegations:

(1) The Commission had failed to pay him the agreed fee of € 3000;

(2) The Commission had unilaterally reduced the fee that had been agreed;

(3) The Commission had only sent him a draft contract 13 months after he had completed his work.

THE INQUIRY

The opinion of the Commission

In its opinion, the Commission made the following comments:

The Commission had facilitated a high level group of experts convened to consider industrial change and the social consequences thereof. The group was chaired by Mr P. Gyllenhammar and the report later became known as the 'Gyllenhammar report'. The group prepared an interim report, which was to be sent to the European Council in June 1998 in Cardiff. The chairman of the group was concerned that the text should read fluently and to that end a journalist was retained to write the text. The complainant was contracted to perform this work, which entailed attendance at meetings of the expert group as well as writing the English text of the interim report. He was paid € 3 000 for this work on 6 October 1998. The complainant was not retained to write the final report. He did make some minor changes to the English text although he did not have a contract for this, which seems to have given rise to the misunderstanding.

In 1999 a further document with the title "Report on the economic and social implications of industrial change" was to be prepared. This report had as an objective to overview the issue of industrial change based on the final Gyllenhammar report. The complainant was selected as expert to prepare this report due to his previous experience in this field (including involvement in the writing of the interim Gyllenhammar report) and his experience as a journalist. Contract VC/1999/0020 that was thereupon drawn up provided that the period of performance was two months from 9 February 2000. The relevant fee was established on the basis that, as an expert in the area, and drawing very largely on published work including the final Gyllenhammar report, it would have been possible to prepare the report within a few weeks. This had also been reflected in the period of performance that was set at two months. Equally, a figure of € 2 000 had been established since there had been no necessity to attend meetings unlike the case for the interim Gyllenhammar report.

To date, no report had been received from the complainant and, as a consequence, it had not been possible to pay him the sum of € 2 000. The invoices that had been received from the complainant referred to work done during 1998 rather than the report requested in the contract.

There had been a considerable amount of confusion in the dealings with the complainant. It had been repeatedly explained to the complainant, both in telephone conversations and by e-mail, that contract VC/1999/0020 had been drawn up for a separate piece of work (encompassing the Gyllenhammar report but not the same as the final report).

Whilst there was no contract with the complainant, nonetheless the Commission did benefit from the amended English text (tracked changes). Therefore, in order to demonstrate 'good faith' in its relations with contractants and to pay for 'the value' of the work from which it benefited, the Commission was prepared to make an ex-gratia payment of € 1 000.

The complainant's observations

In his observations, the complainant maintained his complaint and made inter alia the following submissions:

In its opinion, the Commission resorted to a series of untruths and claims of 'confusion' and 'misunderstanding'. There had however been no misunderstanding between the complainant and Mrs D. Their agreement on the final report had been absolutely clear, as it had been on the interim report.

New information had become available to the complainant in the meantime. In February or March 1999, his wife had mentioned to Mr T., an official working on budgetary matters in unit D.3, that the complainant had not yet received any contract for the work performed in October 1998. Consequently Mr T. went to see Mrs D. to ask what should be done. Mrs D. asked him to make a commitment in the budget for € 2 000 in preparation for drawing up a contract. This information contradicted the Commission's contention that the contract had been drawn up for prospective work and not to cover the work that the complainant had completed in October 1998. It also showed that the instruction to reduce the complainant's fee came from Mrs D. in person.

A Frenchman, Mr B., had been contracted to write the reports of the Gyllenhammar group, both interim and final. When Mrs D. first approached the complainant to help edit the interim report, she told him that she was not happy with Mr B.'s approach, that she would have to revise the report and that it would be the complainant's job to ensure that the end result of this rewriting process read well in English. This had been purely an editing job. It had not been necessary for the complainant to attend the meetings of the group since Mr B.'s was the rapporteur. At Mrs D.'s suggestion that it would be useful to get a 'flavour' of the discussions, the complainant did however sit in on one meeting for up to one and a half hours. There was a clear distinction between *preparing* and *editing*. The complainant had never claimed to have prepared (i.e. written) either of the reports : this was done by Mr B. and then Mrs D. and her team. The complainant's job involved *editing* them intelligently so that they made sense to the non-specialist reader and read well in English.

It was true that there had been no written contract at the time when the complainant had worked on the final report. However, this had been due to the urgency of the situation, as had been the case with the interim report. Mrs D. and the complainant had agreed verbally on the work and the fee during the telephone conversation in late September 1998 when she had asked for the complainant's urgent help. The work was, therefore, covered by that « gentlemen's agreement ». The complainant further pointed out that it would have been highly unusual for him to work on the final report for free.

The Commission's claim that contract VC/1999/0020 was for a prospective report was very strange since the complainant had not been contacted by Mrs D. or anyone else about doing such a project. Moreover, the complainant had never claimed to have expertise in social affairs.

The offer of an ex-gratia payment of € 1 000 was no substitute for the payment of the full sum of € 3 000. The complainant thus maintained his demand for payment of the full sum agreed, namely € 3 000, plus interest as from 25 September 1999, the date on which he had sent his first invoice.

FURTHER INQUIRIES

In the light of the Commission's opinion and the complainant's observations thereon, the Ombudsman considered that he needed further information to deal with the present complaint. He therefore inspected the Commission' file and heard the testimony of Mrs D. and of Mr T.

Inspection of the file

The Commission's file contained inter alia the following documents:

The '*Notes from the Meeting' on 22 and 23 June 1998* point out that the deadline for the final report was 16 October 1998 and add : « An editor would be sought (to start already in August) ».

In a *note dated 3 April 1998*, Mrs D. asked for a commitment over € 3 000 to be made for a contract to be concluded with the complainant. According to the accompanying note justifying the choice of contractor and describing the tasks to be carried out, the relevant job consisted in the « rédaction » of the interim report for 23 April 1998. An *internal note dated 4 May 1998* from DG XX (Financial Control) to DG V refers to this date and asks for its signification. A manuscript addition on this note reads « changer la date ! ». On 22 July 1998, DG V received the *complainant's invoice* for « editing work on report of high-level group on industrial change ». In a *note dated 24 July 1998*, Mrs D. confirmed, using the same expression that this job had been carried out satisfactorily.

In a *note dated 14 April 1999*, Mrs Q. asked for a commitment over € 2 000 to be made for a service contract to be concluded with the complainant. According to the accompanying note, the complainant had been chosen in view of the urgency of the work, of the complainant's qualifications and of the latter's readiness to carry out the work. I*n a note dated 4 June 1999*, DG V's service in charge of administering resources asked Mrs Q. to explain why the relevant service could only be provided by the complainant. In *her reply dated 14 June 1999*, Mrs Q. noted that the complainant had already carried out work in relation to the Gyllenhammar group « on the economics and social implications of industrial change » and continued as follows : « Il a donc une très bonne connaissance du dossier dont le rapport final doit être rédigé et en plus il est disponible et capable de le remettre dans les plus brefs délais. » Mrs Q. further noted that the price was considered to be very good, taking into account that the « rédaction du rapport intérimaire a été effectuée pour un montant de 3.000,00 euros. »

Testimony of Commission officials

Two Commission officials, Mrs D. and Mr T., were heard as witnesses by the Ombudsman's services.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's analysis of the issues in dispute

After careful consideration of the opinion and observations and the results of the further inquiries, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claims.

This provisional conclusion was based on the following considerations:

1 In April 1998, the complainant, a British journalist, carried out work for the Commission (contract 980114) on the interim report of a high level group of experts convened to consider industrial change and the social consequences thereof (the 'Gyllenhammar group') and was paid a fee of € 3 000 for this work. The complainant claimed that in September 1998 he had been asked to carry out work on the final report of that group and that it had been orally agreed that this should be done on the same terms as before, i.e. that a fee of € 3 000 should be paid for this work. According to the complainant, the Commission had failed to pay this fee, had unilaterally reduced the said fee to € 2 000 and had only sent him a contract 13 months after he had completed his work. The complainant claimed (1) full payment of the agreed fee of € 3 000, (2) interest on that amount as from 25 September 1999 and (3) a formal apology from two Commission officials, Mrs D. and Mrs Q.

2 The Commission claimed that there was no contract for work on the final report of the Gyllenhammar group but that the complainant had been commissioned, in a contract signed in early 2000 (contract VC/1999/0020) and for a fee of € 2 000, to draw up a "Report on the economic and social implications of industrial change". According to the

Commission, this sum could however not be paid out since the complainant had failed to produce the said report. In view of the fact that it had benefited from the work the complainant had done on the final report of the Gyllenhammar group, the Commission was nevertheless ready to make an ex-gratia payment of € 1 000.

3 In his observations, the complainant strongly criticised the Commission's views and claimed that there had at least been a 'gentlemen's agreement' according to which he was to work on the final report of the Gyllenhammar group.

4 The Ombudsman considered that it was appropriate to consider the complainant's allegations together, given that they were based on the same assumption, namely that in September 1998 the complainant had been asked by the Commission to edit the final report and that it had been agreed on that occasion that a fee of € 3 000 should be paid for this work.

5 The Ombudsman noted that the Commission did not dispute the fact that editing work on the final report of the Gyllenhammar report had been carried out by the complainant. The complainant had moreover submitted evidence to establish this fact. It had further been established that this work had been carried out with the knowledge and the approval of the Commission. In her testimony, Mrs D., the head of the Commission's unit dealing with the report, confirmed that the draft of the final report had been passed on to the complainant who had then worked on it and returned it to the Commission. Such services were not normally provided for free, and there was nothing to suggest that the complainant had intended to work for nothing. The complainant claimed that it had been agreed orally between himself and Mrs D. that he would work on the same terms as he had done before in relation to the interim report. In her testimony, Mrs D. admitted that it was "entirely possible" that the words "on the same terms" may, as the complainant claimed, have been used during the discussions. She further confirmed that she had understood this as referring to the terms of the contract relating to the interim report (contract 980114). In these circumstances, the complainant's claim that he had offered to carry out the work on the same terms as the previous job, i.e. for a fee of € 3 000, and that Mrs D. had accepted this offer appeared plausible. Mrs D.'s suggestion that the complainant had intended to convey by these words that he was ready to carry out the work for the fee that had been paid under contract 980114 (and thus effectively for nothing) was not convincing. On the contrary, all the other evidence available appeared to confirm the complainant's version of events.

6 First, the sequence of events alleged by the complainant matched the one that had followed, as the Commission accepted, with regard to the work carried out on the interim report. In view of the urgency, no written contract had been drawn up before the work on the interim report was carried out. A contract had however been prepared and signed subsequently. Second, given that the Commission had considered it necessary to obtain the services of a journalist to edit the interim report it would have been surprising if less care had been taken with regard to the final report that, after all, was to be presented to the European Council. In her testimony, Mrs D. confirmed that it proved to be necessary to perform editing work on the text of the final report that had been prepared by the rapporteur of the group. Third, the notes of the meeting of the Gyllenhammar group of 22 and 23 June 1998 themselves pointed out that an editor would be sought for the final report. Fourth, all the elements available suggested that the matter had been urgent, given that the rapporteur had submitted his draft final report at a time (end of September 1998) when the deadline set for this report (16 October 1998) was fast approaching. In her testimony, Mrs D. confirmed furthermore that this report had been one of the « major production items » of her unit at the time. It was therefore most unlikely that the official in charge should have left the work that needed to be done to the goodwill of a third party who was not an official of the Communities, without making any specific arrangements as to how and on what terms it was to be carried out. The Ombudsman's provisional conclusion was therefore that

the complainant's view that there had been an understanding between Mrs D. and the complainant according to which the latter would carry out editing work on the final report for a fee of € 3 000 was supported by the evidence available. If there should have been a misunderstanding as the Commission claimed there was, it appeared that it had been entirely on the part of the Commission and had not been caused by the complainant.

7 The Commission argued, however, that a contract (VC/1999/0020) had indeed been concluded with the complainant, but not for work on the final report of the Gyllenhammar group but for the production of a separate report.

8 The Ombudsman considered that there were several factors that militated against the Commission's version of events. *First of all*, there did not appear to be a satisfactory explanation as to the exact nature of the report allegedly to be prepared by the complainant under contract VC/1999/0020. *Second*, and to some extent linked to the first point, it was difficult to see why the complainant had been chosen for this task. The complainant pointed out that he was a journalist with no particular expertise in the field of social affairs. *Third*, if such a new report had indeed been needed and if the matter was urgent (as the documents on the Commission's file suggested) it was inexplicable why the Commission did not try and force the complainant to produce the report he had allegedly agreed to provide or terminate the contract and try and obtain the report from someone else. *Fourth*, the Commission officials who were interviewed by the Ombudsman's services confirmed that in February or March 1999, the complainant's wife had asked questions in relation to the contract her husband expected to receive for his work on the final report. Shortly afterwards, on 14 April 1999, the services of DG V applied for a commitment over € 2 000 to be made for a contract to be concluded with the complainant. The contents of the internal note drawn up by or for Mrs Q. on that occasion strongly suggested that contract VC/1999/0020 was indeed meant to cover the complainant's work on the final report of the Gyllenhammar group and not a new report. It was true that the final report of the Gyllenhammar group had already long been finalised when this note was drawn up. It should be borne in mind, however, that contract 980114 relating to the work on the interim report had also been concluded several months after the work had been carried out.

9 *Finally*, the Ombudsman noted that according to the evidence submitted to him, the complainant appeared to have claimed from the very beginning that contract VC/1999/0020 was meant to cover his work on the final report. The complainant's letter to the Commission of 20 January 2000 reiterated this view and complained about what the complainant perceived to be the unilateral change of the terms of the contract by DG V. In such circumstances, the Ombudsman considered it inexplicable that the Commission nevertheless at no time wrote to the complainant to explain its position. The Commission's claim that it did provide such explanations by telephone failed to convince, given that there was no record whatsoever of any such conversations and that there was no reference to such explanations in any of the letters that were exchanged between the Commission and the complainant.

10 The Ombudsman's provisional conclusion, therefore, was that the Commission's failure to pay the complainant the sum of € 3 000 that appeared to have been agreed orally between the complainant and Mrs D. for his work on the final report of the Gyllenhammar group could be an instance of maladministration.

The possibility of a friendly solution

On 15 November 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should

consider paying the complainant the sum of € 3 000, together with interest as from 25 September 1999.

In its reply of 14 January 2002, the Commission informed the Ombudsman that despite the fact that the signed contract only amounted to € 2 000, it agreed to accept the Ombudsman's proposal and would pay the complainant the sum of € 3 000 with interest as from 25 September 1999.

In his observations sent on 30 January 2002, the complainant informed the Ombudsman that he was satisfied with the outcome and thanked the Ombudsman for his help.

THE DECISION

1 Failure to pay for work performed by the complainant

1.1 The complainant claimed that the Commission should pay him a sum of € 3 000 for work carried out by him for the Commission in 1998, together with interest as from 25 September 1999. He also asked for a formal apology from two Commission officials.

1.2 The Commission initially rejected this claim but offered to make an ex-gratia payment of € 1 000 to the complainant.

1.3 On 15 November 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should consider paying the complainant the sum of € 3 000, together with interest as from 25 September 1999.

1.4 On 14 January 2002, the Commission informed the Ombudsman that it agreed to accept his proposal and would pay the complainant the sum of € 3 000 with interest as from 25 September 1999.

1.5 The complainant informed the Ombudsman that he was satisfied with the result that had been reached.

1.6 It appears from the Commission's comments and the complainant's observations that the Commission has taken steps to settle the complaint and has thereby satisfied the complainant.

2 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes his file.

EUROPEAN COMMISSION REVOKES ITS DECISION TO REDUCE THE AMOUNT OF A FINANCIAL CONTRIBUTION

Decision on complaint 300/2001/IP against the European Commission

THE COMPLAINT

On 19 February 2001, the complainant lodged a complaint with the European Ombudsman in his quality as Secretary General of SI.GE.MA (*Sindacato della gente di mare*). On 1 October 1997, SI.GE.MA replied to the call for tenders launched by the Commission to carry out a pilot project to assist small-scale coastal fishing and women family members in small-scale coastal fishing communities[25]. On 31 March 1998, the Commission informed SI.GE.MA that its proposal was successful. The financial contribution from the Commission would be of a maximum amount of 125.901 € corresponding to 75% of the total eligible costs as indicated in the proposal presented to the Commission.

On 22 October 1998, the complainant informed the services of DG Fisheries that, due to personal reasons, two of the 16 designated technical experts had to refuse the appointment. They would be substituted by 13 additional experts who would give 200 of the total of 760 hours of lessons, without any repercussion on the costs of the project. On 12 December 1998, SI.GE.MA sent the interim report to the Commission, which paid the first advance at the beginning of March 1999. The project was completed at the end of March 1999 and the final report was sent on 27 July 1999, followed by an addendum on 26 August 1999. On 13 December 1999, the Commission informed the complainant that two representatives of DG fisheries would carry out an on-the-spot inspection at the beginning of the year 2000. This inspection was carried out on 17-18 January 2000. On 6 March 2000, since the Commission considered that the salary received by the 14 teachers who were paid on monthly-based salary (935 € per month for 40 hours of lessons each and for six months) was extremely high, it asked the complainant to explain how it had been calculated. By letter of 5 April 2000, the complainant pointed out that when calculating the salary for the teachers paid on monthly rate, it had considered not only the number of hours taught by each teacher, but also the time spent on preparatory work, namely 538 in total.

On 31 May 2000, the Commission informed the complainant about its conclusions after the final report and the on-the-spot inspection on 17-18 January 2000. The Commission stated the following:

" *(...) Regarding the labour cost, we find it extremely high and we cannot accept it as such. The 14 teachers on monthly salary have only given lessons for 40 hours each during 6 months, which gives a salary of 140,25 €/hour. (...) We cannot take into consideration (...) that the work of the teachers on monthly salary should be considered as a whole including preparation and not per hour as there are no documents showing how many hours were spent on the preparation. (...) We will proceed with the final payment of 6.643 € within 30 days, if you do not send us any new information during this time.*"

By letter of 20 June 2000, the complainant underlined that the preparatory works had been necessary, namely for the preparation of the didactic strategy and for the material to be distributed to all the participants. The complainant also pointed out that all the hours worked by any single teacher were duly proved and justified, since the teachers had to sign a register. Such a register was shown to the Commission's inspectors during their on-the-spot visit of 17-18 January 2000. Furthermore, he underlined that the Commission did not react within 30 days from the receipt of the final report forwarded on 27 July 1999, as foreseen in Article 5.1.b) of the Annex 3 of the Declaration.

On 20 July 2000, the Commission sent to the complainant a compromise proposal to close the case. It stated that it was ready to accept to pay 50% of the hours of preparatory work, thus 269 hours at 62 €/hour.

The complainant did not accept the Commission's proposal and since it appeared that it was not possible to achieve a settlement of the case, the complainant lodged a complaint with the Ombudsman, in which he claimed the following:

[25] OJ C-97 216/09 and C-97 216/10 of 17.07.1997

SI.GE.MA has respected the relevant rules concerning the project and complied with the contents of the Declaration, as approved by the Commission. The institution should therefore reconsider its decision to reduce the total amount of the financial contribution approved in favour of SI.GE.MA.

The Commission's opinion

The complaint was forwarded to the Commission for an opinion. In its opinion, the Commission raised in summary the following points:

According to the proposed budget enclosed to the proposal presented by SI.GE.MA and approved by the Commission, the labour costs for all categories was indicated on a monthly basis. For the 16 experts, an amount of 935 €/month/expert was foreseen during 6 months.

In March 1999, the Commission asked the beneficiary to explain the basis for calculating the salary of the experts paid on monthly rate, which appeared to be extremely high. The complainant, however, did not provide useful information. Also during the on-the-spot inspection of 17-18 January 2000 carried out by two representatives of DG fisheries, the complainant was unable to explain how the lump sum of 5 610 € (935 € x 6 months) for each of the 14 experts paid on monthly rate had been calculated. The Commission therefore sent two further letters on 6 and of 23 March 2000 to the complainant, who answered on 20 June 2000. He explained that when foreseeing the salary for the 14 experts paid on monthly rate, he also considered the time spent for preparatory work, which resulted in 538 hours.

On the basis of all the information received by the complainant and of those in possession of the Commission, the institution tried to find a compromise and proposed to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62 €.

The complainant's observations

In his observations on the Commission's opinion, the complainant basically maintained his original complaint.

On 11 December 2001, the complainant forwarded to the Ombudsman a further document as supporting evidence to his complaint. This document consisted of a copy of the register filled in by each teacher with the date, his/her own name, his/her signature, the period of the activity and a short description of the activity carried out in the framework of preparatory work.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's analysis of the issues in dispute

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claim.

The Ombudsman welcomed the Commission's efforts to solve the case and its proposal to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62 €. In his view, this showed that the Commission had accepted the principle that 14 teachers had spent time on preparatory work. However, it was unclear why the Commission was not ready to pay the full amount originally approved, since it appeared that the complainant provided evidences for the 538 hours of work.

The Ombudsman considered that the refusal by the Commission to pay the totality of hours spent on preparatory work might establish an instance of maladministration.

The possibility of a friendly solution

On 28 February 2002, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman invited the Commission to reconsider its position by accepting also to pay the remaining preparatory hours, thus 269 working hours.

In its reply of 2 May 2002, the Commission pointed out that it encountered several problems concerning the quality of the information provided by the complainant and the difficulties to obtain them during the whole procedure. The Commission underlined that, from the beginning, its objective has been to apply sound financial management and to ensure the protection of the Community's financial interests.

Furthermore, the Commission pointed out that it had already made a proposal to solve the case with the complainant. However, it declared to be ready to go further, as proposed by the Ombudsman, in order to close the case. Before proceeding to such a proposed payment, the institution required an assurance that all the employees of the project have been paid.

On 14 May 2002, the complainant accepted the Commission's proposal. He also sent to the Ombudsman some documents, which in his view were relevant to give the Commission the requested assurances and asked the Ombudsman to forward them to the Commission. The Ombudsman sent the documents to the Commission together with the present decision.

THE DECISION

1 The Commission's decision to reduce the financial contribution

1.1 SI.GE.MA, of which the complainant is the Secretary general, replied to the call for tenders launched by the Commission to carry out a pilot project to assist small-scale coastal fishing and women family members in small-scale coastal fishing communities[26]. The Project was successful and would be granted with a financial contribution by the Commission of a maximum of 125.901 €, corresponding to 75% of the total eligible costs as indicated in the proposal presented to the institution. The project was carried out according to the time schedule and was concluded at the end of March 1999. On 31 May 2000, the Commission communicated the complainant its decision to reduce the financial contribution originally foreseen. The total eligible cost for the project would amount to 141.789 € of which the Commission's part is 75%, corresponding to 106.341 €.

In his complaint to the Ombudsman, the complainant pointed out that SI.GE.MA has respected the relevant rules concerning the project and complied with the contents of the Declaration, as approved by the Commission. He claimed that the institution should therefore reconsider its decision to reduce the total amount of the financial contribution approved in favour of SI.GE.MA.

1.2 In its opinion, the Commission stressed that its decision to reduce the original amount foreseen was fully justified. The labour cost for the experts appeared to be extremely high and the complainant was unable to explain how the lump sum of 5 610 € (935 € x 6 months) for the 14 experts paid on monthly rate had been calculated.

1.3 On the basis of all the information received by the complainant and of those in possession of the Commission, the institution tried to find a compromise and proposed to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62 €.

[26] OJ C-97 216/09 and C-97 216/10 of 17.07.1997

1.4 The Ombudsman welcomed the Commission's efforts to solve the case and its proposal to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62w, this showed that the Commission had accepted the principle that 14 teachers had spent time on preparatory work. However, it was unclear why the Commission was not ready to pay the full amount originally approved, since it appeared that the complainant provided evidences for the 538 hours of work.

The Ombudsman considered that the refusal by the Commission to pay the totality of hours spent on preparatory work might establish an instance of maladministration.

1.5 The Ombudsman therefore submitted a proposal for a friendly solution to the Commission. He invited the Commission to reconsider its position by accepting also to pay the remaining preparatory hours, thus 269 working hours.

1.6 The Commission accepted the Ombudsman's proposal and the complainant expressed his satisfaction with the outcome of the inquiry.

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.

CONVERSION OF AN ECIP LOAN INTO A GRANT

Decision on complaint 1544/2001/IJH against the European Commission

THE COMPLAINT

In October 2001, the Finance Director of a company, SRE, complained to the Ombudsman against the Commission on behalf of SRE. The complaint concerns a European Community Investment Partners (ECIP) loan made to SRE in 1998. According to the complainant, the facts are as follows:

The ECIP loan was funded by the Commission and made available to the complainant through a financial intermediary, Banque Paribas Luxembourg (Paribas). The purpose of the loan was to finance a feasibility study and a pilot project for the setting up of a joint venture with China.

In February 2000, the complainant applied for the loan to be converted into a grant in accordance with the terms of the finance agreement and the regulations governing the ECIP programme. The application was based on the central finding of the Final Report that a joint venture was not feasible.

On 27 July 2000, the Commission's technical assistance unit informed the complainant that it had recommended approval of the conversion, but no decision had been taken because of a reserve entered by the Financial Secretariat. The technical assistance unit recommended the complainant to contact the Financial Secretariat for further information. The complainant did so, but the responsible person refused to discuss the matter, referring the complainant to Paribas. Paribas could provide the complainant with no information other than that the Commission was in the process of re-organising the ECIP programme.

The complainant sent letters to the ECIP unit in DG 1 (External Relations) of the Commission on 10 January 2001 and 26 February 2001, but the letters were not answered. On 10 August 2001, Paribas informed the complainant that the Commission refused to convert the loan to a grant and that the complainant must therefore repay the amount of almost EUR 200 000. The reason given was that "the terms of reference have been respected in the final report, however, the reasons for non-investment are not acceptable".

In the complaint to the Ombudsman, the complainant alleges that the Commission acted arbitrarily and without giving adequate reasons in refusing to follow the recommendation of its technical assistance unit in favour of conversion of the ECIP loan to a grant.

The complainant also alleges unnecessary delay and lack of information in the procedure.

The complainant claims that the loan should be converted to a grant.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first explained the development of the ECIP programme. The legal basis for the Commission's management of the ECIP financial instrument expired on 31 December 1999. On 22 December 1999, the Commission decided not to propose its extension, which was tantamount to a decision not to continue the ECIP programme. In the absence of a legal basis, and pending adoption of a new ECIP regulation, the Budget Authority entered the 2000 appropriations in a reserve, thus ruling out any new commitments until the new legal basis was adopted. On 31 January 2000, the Commission proposed a new Regulation concerning the funding of management costs associated with the closure and liquidation of current ECIP projects. In accordance with a specific requirement imposed by the European Parliament's Budgets Committee, the 2000 budget did not allow the funding of new ECIP operations. Consequently, no new operations could be evaluated, approved or made the subject of a contract after 31 December 1999.

As regards the complainant's case, the Commission's opinion was in summary as follows:

On 20 June 1997, SRE submitted an ECIP application via the financial intermediary Paribas. The agreement was signed by Paribas and the Commission on 29 April 1998, covering total co-financing of EUR 234 474. The Commission transferred the envisaged sum to Paribas at the end of 1998. Paribas then made an initial payment of EUR 117 237 to the complainant.

In February 2000, SRE submitted its final report on the feasibility study to Paribas. This report concluded that it had not been possible to identify a sufficiently reliable partner to set up a joint venture. As the feasibility study had not brought the results hoped for, the investment project was abandoned.

On 26 April 2000, Paribas forwarded the final report to the Commission and informed it of SRE's request for the sum advanced to be converted into a grant. The ECIP Steering Committee examined this request on 11 July 2000, when the technical assistance unit recommended that conversion into a grant be approved. However, the Commission's financial departments expressed a general reservation about the amounts for conversion.

On 19 July 2001, in a note to the Commission's financial departments, the technical departments rejected conversion, on the grounds that the reasons put forward by the beneficiary for the failure to invest were not acceptable. Around the same time, following a financial analysis of SRE's final report, Paribas arrived at the conclusion that the eligible expenditure incurred by SRE came to EUR 199 345. On the basis of this assessment, it transferred the balance of EUR 82 108 to SRE.

Following rejection of the conversion request, the Commission departments concluded that repayment of the sum advanced (EUR 199 345) would have to be requested and announced the technical winding-up of the operation.

As regards the complainant's allegations and claim, the Commission argued that the recommendation made by the technical assistance unit does not prejudge the

Commission's formal approval of the proposed conversion and does not constitute any commitment until a decision is adopted and validated by the signing of an amendment to the agreement between the Commission and Paribas.

The Commission also stated that it has re-examined the complainant's case and contacted Paribas. The latter provided the Commission with a detailed explanation as to why the final beneficiary had decided not to proceed with the investment. On 11 December 2001, the technical departments reconsidered their position and expressed a positive opinion on the conversion into a grant. The Commission informed Paribas of this by letter dated 19 December 2001.

Following a check on the eligible expenditure by the Commission's financial departments, the total grant amount has been assessed at EUR 199 345, thus confirming Paribas' assessment. The financial departments have prepared a proposal for an amendment to the specific agreement to convert the sum advanced into a grant and wind up the operation. The letter will be sent to Paribas very soon.

Finally, the Commission expressed regret for the delay between the request for conversion and the reply from its departments. The delay is partly explained by the complex procedures associated with winding up the ECIP programme, which led to a bottleneck of operations to be processed and made it impossible to deal with things as quickly as the Commission would have liked. Furthermore, in this specific case the matter was re-examined, as a result of which the complainant was able to gain partial satisfaction.

The complainant's observations

In observations on the Commission's opinion the complainant referred to a recent discussion with Paribas in which the latter expressed the view that the complainant may only have an 80% chance of obtaining conversion of the loan to a grant. Paribas also believed that there could be a long delay before they receive the necessary letter from the Commission. The complainant stated that it had gained the impression from Paribas that the Commission was having difficulty in writing the letter due to circumstances that are nothing to do with the merits of the complainant's case.

The complainant stated, until the matter is finalised, vital capital investment needed to secure the future of its business cannot be made. The complainant requested the Ombudsman to leave the file on the case open until receipt of the written confirmation from the Commission necessary for the matter to be resolved.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

On 28 March 2002 and 7 May 2002, the Ombudsman's services contacted the Secretariat General of the Commission by telephone to inquire into progress towards the final settlement of the case. The Commission services were unable to specify a date for the final settlement of the case.

The Ombudsman therefore wrote to the President of the Commission in accordance with Article 3 (5) of the Statute, to propose a friendly solution on the basis of the following analysis.

The Ombudsman's inquiry into the complainant's allegations and claim led the Commission to explain and express regret for the delay between the application for conversion of the ECIP loan to a grant and the reply from its departments.

The Ombudsman notes that, in its opinion dated 22 February 2002, the Commission stated that its financial departments have prepared a proposal for an amendment to the specific agreement to convert the sum advanced into a grant and wind up the operation. According

to the Commission's opinion, "(t)he letter will be sent to the financial institution very soon."

On 14 May 2002, nearly three months later, the Commission services were still unable to specify a date for the final settlement of the case. This delay appears inconsistent with the Commission's statement in its opinion that "(t)he letter will be sent to the financial institution very soon." Having undertaken to act promptly to settle the complainant's case, the Commission should have done so. Its failure to do so is an instance of maladministration. The Ombudsman considers that the maladministration could be ended by a friendly solution, which would consist of the Commission completing the procedure for conversion of the ECIP loan into a grant.

In view of the harmful effects of the current uncertainty on the complainant's company's plans for future capital investment, the Ombudsman kindly requests the Commission to give this matter a high priority.

On 2 July 2002, the Commission replied attaching a copy of a letter to Paribas, dated 21 June 2002, confirming the conversion of the ECIP loan to a grant. The Commission also apologised to the Ombudsman and to the complainant for the delay in the handling of the file.

On 18 July 2002, the Ombudsman's services contacted the complainant by telephone. The complainant informed the Ombudsman that, following its receipt of the Commission's letter of 21 June 2002, Paribas wrote to the complainant to complete the procedure for conversion of the ECIP loan to a grant. The complainant considers the case to have been satisfactorily resolved and has placed the capital investment order which was pending. The complainant thanked the Ombudsman for his efforts.

THE DECISION

1 Conversion of a European Community Investment Partners loan to a grant

1.1 The complainant alleged that the Commission acted arbitrarily and without giving adequate reasons in refusing to follow the recommendation of its technical assistance unit in favour of conversion of a European Community Investment Partners (ECIP) loan to a grant. The complainant also alleged unnecessary delay and lack of information in the procedure. The complainant claimed that the ECIP loan should be converted to a grant.

1.2 The Commission stated that its technical departments had reconsidered the position and expressed a positive opinion on the conversion into a grant. Following a check on the eligible expenditure, the total grant amount was assessed at EUR 199 345. The financial departments had prepared a proposal to convert the loan into a grant and a letter would be sent to the financial intermediary Paribas very soon. The Commission also explained and expressed regret for the delay between the complainant's application for conversion of the ECIP loan to a grant and the reply from its departments.

1.3 In the apparent absence of further progress on the file, the Ombudsman made a proposal on 15 May 2002 for a friendly solution, which would consist of the Commission completing the procedure for conversion of the ECIP loan into a grant. The Ombudsman kindly requested the Commission to give the matter a high priority. On 2 July 2002, the Commission forwarded a copy of its letter to Paribas, dated 21 June 2002, confirming the conversion of the ECIP loan to a grant. The Commission also apologised to the Ombudsman and to the complainant for the delay in the handling of the file.

The complainant informed the Ombudsman's services that the case is now satisfactorily resolved.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been achieved. The Ombudsman therefore closes the case.

ALLEGED FAILURE TO PAY SPECIAL ALLOWANCE TO IMPREST ADMINISTRATOR

Decision on complaint 1824/2001/OV against the European Commission

THE COMPLAINT

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

The complainant is a local agent working in the administrative department of the Commission representation in a Member State (hereafter "the Commission Representation").

Since 7 September 1989 the complainant had to sign bank and cash transactions, in order to replace the administrative assistant when necessary. She was thus in fact acting as assistant imprest administrator. Also, from 1 September 2000 onwards, she had to replace the administrative assistant responsible for accountancy and personnel, and was thus serving as substitute imprest administrator.

The complainant alleges that, although she was working as assistant imprest administrator and substitute imprest administrator, she has never been appointed to these posts. Similarly, she was not granted a special allowance on a guarantee account which accompanies this post and is the counterpart for the financial risk linked to it. The complainant observed that this is however foreseen in Article 13 (appointment of imprest administrators), as well as in Article 31 (special allowance and guarantee account) of Commission Regulation 3418/93/EC[27] which implements the Financial Regulation.

The complainant enclosed several documents to her complaint, such as the hand-over of the imprest account dated 23 January 2001 and mentioning as date of replacement 1 September 2000, her letter of 23 January 2001 to the Head of Unit "Cash Office and Treasury Management" informing that she is acting as imprest administrator, the latter's reply of 13 February 2001 to the complainant, a note of 1 March 2001 from the Head of Unit "Service Press and Communication" to the Head of Unit "Cash Office and Treasury Management" and the latter's final decision of 13 March 2001.

After having exhausted, without success, the internal staff remedies, the complainant made on 13 December 2001 a complaint to the Ombudsman in which she made the following two allegations :

1 The Commission Representation required her to undertake the duties of assistant imprest administrator from 7 September 1989 onwards, but did not appoint her as assistant imprest administrator and has not granted her the corresponding special allowance foreseen by Commission Regulation 3418/93/EC of 9 December 1993. The complainant claims that the Commission should do so with retroactive effect.

2 The Commission Representation required her to undertake the duties of substitute imprest administrator from 1 September 2000 until 9 March 2001, but did not appoint her as substitute imprest administrator and has not granted her the corresponding special allowance foreseen by Commission Regulation 3418/93/EC of 9 December 1993. The complainant claims the capitalisation of the special allowance on her guarantee account for the period from 1 September 2000 to 9 March 2001.

On 15 January 2002, the Ombudsman informed the complainant that the first allegation was inadmissible on basis of Article 2.4 of the Statute of the Ombudsman which foresees

[27] Commission Regulation 3418/93/EC of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977, OJ 1993 L 315/1.

that a complaint shall be made within two years of the date on which the facts on which it is based came to the complainant. This was confirmed in a second letter sent to the complainant on 18 February 2002. The Commission was thus requested to submit an opinion only on the second allegation.

THE INQUIRY

The Commission's opinion

As the first allegation was considered inadmissible by the Ombudsman, the Commission's opinion only concerned the second allegation.

In its opinion, the Commission first recalled the rules applicable in this matter: Article 75(2) of the Financial Regulation defines the specific responsibilities of the imprest administrators. Paragraph 3 of this article provides that *"the administrators of advance funds shall insure themselves against the risks arising under this Article"*. Paragraph 4 provides that *"a special allowance is granted (…) to the administrators of advance funds…*." The reason for this allowance is "to establish a guarantee fund for the purpose of covering any cash or bank shortage for which the person concerned might render himself liable, in so far as such shortages have not been covered by refunds from insurance companies".

Articles 31 and 32 of the detailed rules for the implementation of certain provisions of the Financial Regulation (Commission Regulation 3418/93/EC) give supplementary details on the management of the guarantee accounts.

The Commission pointed out that certain allegations of the complainant had to be rectified. The complainant has been formally designated as substitute imprest administrator with effect from 23 January 2001. She exercised these functions until 31 May 2001. This period is defined both by the date of the notification to the Commission's Accounting Officer of the effective replacement of the imprest administrator by the complainant, and by the date of the formal designation of a new imprest administrator (Mrs C.) in the Commission Representation from 1 June 2001 onwards. This was done in conformity with Article 2 of the "Modification of the Decision creating an advance fund" of 29 July 1999. During this period, a guarantee account was opened and credited in the name of the complainant, as foreseen by the applicable provisions.

It clearly appears from the above rules that the special allowance aims to cover a risk and could not be considered as a contribution for a particular responsibility. Moreover, it appears from the absence of a formal nomination of the complainant as substitute imprest administrator before 23 January 2001 that during the period in question, the specific responsibilities of the imprest administrator as fixed by Article 75 of the Financial Regulation were not opposable to the complainant. During this period, she could sign cheques on behalf of the imprest account on basis of the sole authorisation of signature with the bank.

Given that the applicable rules link the granting of the special allowance for the imprest administrators to the designation as such by the Accounting officer on the proposal of the Authorising officer, and given that the very object of this allowance is to cover the risks which might arise in the framework of the exercise of specific responsibilities, the complainant is not entitled to the special allowance for the period between 1 September 2000 and 23 January 2001.

The Commission annexed the decisions of 29 July 1999 and 28 May 2001 concerning the imprest account of the Representation and nominating respectively Mr V.S. and Mrs C. as imprest administrators.

The complainant's observations

In her observations to the Ombudsman, the complainant argued that Mrs C. began work in the Commission Representation on 9 March 2001. Contrary to the Commission's opinion, the period during which the complainant replaced the imprest administrator was thus from 1 September 2000 to 9 March 2001.

She further pointed out that her tasks between 1 September 2000 and 9 March 2001 consisted in preparing and controlling all accounts and salaries of the local agents of the Commission Representation. She signed all payments without the presence of an administrative assistant, but with a second signature of the responsible persons. She also communicated with the Bank via electronic banking and made these payments alone.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman considered that there were instances of maladministration by the Commission. In accordance with Article 3(5) of the Statute[28], he therefore wrote to the President of the Commission on 24 July 2002 to propose a friendly solution on the basis of the following analysis of the issue in dispute between the complainant and the Commission:

1.1 The complainant alleged that the Commission Representation required her to undertake the duties of substitute imprest administrator from 1 September 2000 until 9 March 2001, but did not appoint her as substitute imprest administrator and has not granted her the corresponding special allowance foreseen by Commission Regulation 3418/93/EC of 9 December 1993. The complainant claims the capitalisation of the special allowance on her guarantee account for the period from 1 September 2000 to 9 March 2001.

1.2 The Commission argued that the complainant was formally designated as substitute imprest administrator with effect from 23 January 2001. She exercised these functions until 31 May 2001. This period is defined both by the date of the notification to the Commission's Accounting Officer of the effective replacement of the imprest administrator by the complainant, and by the date of the formal designation of a new imprest administrator in the Commission Representation from 1 June 2001 onwards. During this period, a guarantee account was opened and credited in the name of the complainant, as foreseen by the applicable provisions. The complainant is not entitled to the special allowance for the period between 1 September 2000 and 23 January 2001.

1.3 The Ombudsman's findings of fact on the basis of his examination of the documents submitted by the complainant and by the Commission are as follows:

(i) By decision of the Director General of DG Budget, dated 29 July 1999, Mr V.S. was appointed as imprest administrator. The decision included the following provision: "*In case of absence or impediment notified to the Accounting Officer, the functions of the imprest administrator will be exercised by* [the complainant]."

(ii) Mr V.S. left the Representation on 30 August 2000 and from 1 September 2000 the complainant handled the imprest account. However, the Representation failed to notify the Accounting Officer of these changes. This led to the situation where the complainant carried out the work of an imprest administrator from 1 September 2000 until 9 March 2001, when she was replaced by Mrs C.

(iii) The complainant was not granted the special allowance on a guarantee account foreseen by Article 75(4) of the Financial Regulation and Articles 31 and 32 of Commission

[28] "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".

Regulation 3418/93/EC. Until 23 January 2001, the Commission continued to credit the guarantee account in the name of Mr V.S. who had left the Representation on 30 August 2000.

(iv) The departure of Mr V.S. and the subsequent carrying out of functions of imprest administrator by the complainant were not officially notified until 1 March 2001, when the Head of Unit "Service Press and Communication" sent a note to the Head of Unit "Cash Office and Treasury Management". In order to regularise the situation and to allow the complainant to benefit from the guarantee account, the Head of Unit "Service Press and Communication" asked DG Budget to modify the imprest decision with retroactive effect from 1 September 2000.

1.4 From the above, the Ombudsman infers that the dates mentioned in the official documents to which the Commission refers in its opinion do not correspond with the real situation as regards the work done by the complainant.

1.5 The Ombudsman's provisional conclusions were that the following constitute instances of maladministration: i) the failure of the Commission Representation to give prompt notification of Mr V.S.'s departure and of the subsequent carrying out of the functions of imprest administrator by the complainant; ii) the continued crediting of the guarantee account in the name of an official who was no longer imprest administrator; and iii) the failure to ensure that the complainant benefited from a guarantee account, in accordance with Article 75(4) § 2 of the Financial Regulation and 33.2 of the implementing Regulation 3418/93/EC, for the period she actually carried out the work of an imprest administrator (1 September 2000 - 23 January 2001).

The proposal for a friendly solution

On the basis of the above considerations and in accordance with Article 3(5) of the Statute of the Ombudsman, the Ombudsman proposed a friendly solution between the complainant and the Commission. If the maladministration had not occurred, the complainant would have been entitled to be paid the credit balance of a guarantee account for the period she served as an imprest administrator[29].

The friendly solution consisted in asking from the Commission to ensure that the complainant gets paid the pro rata of the credit balance for the period from 1 September 2000 till 23 January 2001. The Commission was requested to reply by 31 October 2002.

The Commission's response

The Commission replied on 31 October 2002 that it accepted the Ombudsman's proposal for a friendly solution.

THE DECISION

1 The alleged non appointment as substitute imprest administrator

1.1 On 24 July 2002, the Ombudsman proposed a friendly solution between the complainant and the Commission. This was based on the conclusion that there were

[29] Article 75(4) § 2 of the Financial Regulation provides that *"the credit balance in these guarantee accounts shall be paid over to the persons concerned when they terminate their appointment as (…) administrator of advance funds"*. Article 31 of Regulation 3418/93/EC foresees that *"the monthly amount of the special allowance referred to in Article 75(4) of the Financial Regulation shall be : € 40 for imprest administrators, where the amount of the imprest is at least € 3300 and where the period of imprest is at least 30 consecutive days"*. Article 33.2 of Regulation 3418/93/EC provides that "when an imprest administrator terminates his duties, any balance standing to his credit in the guarantee account shall he paid to him or to those entitled through him, after agreement and verification by the accounting officer and the authorising officer concerned and after the financial controller has given a favourable opinion".

instances of maladministration because the complainant did not benefit from a guarantee account, in accordance with Article 75(4) § 2 of the Financial Regulation and 33.2 of the implementing Regulation 3418/93/EC, for the period she actually carried out the work of an imprest administrator (1 September 2000 - 23 January 2001).

1.2 The friendly solution consisted in asking from the Commission to ensure that the complainant gets paid the pro rata of the credit balance for the period from 1 September 2000 till 23 January 2001 when she served as an imprest administrator.

1.3 On 31 October 2002, the Commission informed the Ombudsman that it accepted the friendly solution. In a telephone conversation with the Ombudsman's office on 7 November 2002, the complainant stated that she had received a letter from the Commission dated 31 October 2002 informing her that the Commission had accepted the Ombudsman's friendly solution and that it would pay an amount of 236,90 € to the complainant upon reception of the complainant's bank account details. The complainant thanked the Ombudsman's office for the efforts as a result of which she was reinstalled in her rights.

2 Conclusion

Following the Ombudsman's initiative, it appeared that a friendly solution to the complaint had been agreed between the Commission and the complainant. The Ombudsman therefore closed the case.

3.4 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN

3.4.1 The European Commission

APPLICATION OF DIRECTIVE 85/337/EEC

Decision on complaint 1288/99/OV against the European Commission[30]

THE COMPLAINT

In October 1999, Mrs K. made a complaint to the European Ombudsman concerning the way the European Commission dealt with and closed its investigation of the complaint she and 23 other inhabitants of Parga lodged on 7 July 1995 alleging an infringement of Community law (more particularly Directive 85/337/EEC) by the Greek authorities with regard to a project for a sewerage system and a biological treatment plant in Parga, Preveza (Greece).

The complainant's allegations as they appear from the initial complaint of 22 October 1999 and the following successive exchanges of opinions and observations between the complainant and the Commission can be summarised as follows:

1 From 7 July 1995, when the complaint was lodged, until 9 December 1998, i.e. nearly three and a half years, the complainant did not receive any letter from the Commission informing her about the developments of the complaint. For this reason, the complainant was unable to defend her position. In observations, the complainant also alleged that the Commission had not informed her that it had decided, by decision E(98)2297 of 27 July 1998 to fund the project under the Cohesion Fund, but on the contrary had sent letters - such as the one of 9 December 1998 - which indicated that the case was still under consideration.

2 The complainant alleged that the Commission's decision to close the case was wrong in law: the Commission has in fact manipulated the matter and has tried to find means to close the case, as is shown by the reasoning of the final decision of 20 April 1999: it took the Commission four years to come to the conclusion that the project predated the entry into force of Directive 85/337/EEC. However, earlier - on 26 March 1997 and on 19 March 1998 - the Commission proposed including this case as a representative example in proceedings against Greece for failure to comply with Directive 85/337/EEC.

30 The full-text of this decision can be found on the European Ombudsman's website at the following address: http://www.euro-ombudsman.eu.int

3 The complainant alleged a lack of impartiality in the handling of the case by the Commission. According to the complainant, the responsible official holds a party political position in Greece which is incompatible with his duty to verify that the project under consideration is carried out in accordance with Community law. In support of her allegation, the complainant referred to various newspaper articles. Furthermore, the complainant argued that the written expression of thanks in the Greek Foreign Ministry records (minutes of the meeting of 20 May 1998) to representatives of the Commission for delaying the processing of complaints indicates that some officials of DG XI set themselves the objective not to ensure the proper implementation of Community law, but to ensure that the project would receive Community funding.

THE INQUIRY

The Commission's opinion

The Commission's opinion, as it appears from the various answers of the Commission, can be summarised as follows:

As regards the first allegation, the Commission observed that, if it was regrettable that no single letter was addressed to the complainant during the period July 1995 - December 1998, it is clear that through telephone conversations and via the information given to the Committee on Petitions of the European Parliament, the complainant has been informed of the evolution of the file and of the changing of the Commission's position in the light of the new documents transmitted by the Greek authorities.

With regard to the second allegation, the Commission observed that in March 1997 it considered that the project was launched after the entry into force of Directive 85/337/EEC. It concluded that the realisation works of the project had commenced before the definitive approval of the environmental conditions of the project, thus violating the Directive. However, having obtained new information from the Greek authorities, it informed the complainant in April 1999 that it considered that the project in question was described in the decision of the Prefecture of Preveza n° 667 of 28 February 1986 which predates the entry into force of the Directive 85/337/EEC. The Commission considered that this decision approved the site for the installation of the biological treatment plant, because it contained an annex with the topographical map of the "Varkas" site. It therefore closed the case.

As regards the third allegation, the Commission gave the official in question the opportunity to present his views at a hearing. It appears from the summary of the hearing that the Commission concluded that there was no reason to believe that the said official had influenced any decision taken on this case and moreover that he was not involved in it, being on annual leave from 15 December 1998 till 31 January 1999, and on unpaid leave on personal grounds from 1 February till 15 June 1999.

THE DECISION

1 The alleged failure to provide adequate information to the complainant

1.1 The complainant alleged that from 7 July 1995, when the complaint was lodged, until 9 December 1998, i.e. nearly three and a half years later, she did not receive any letter from the Commission informing her about the developments of the complaint. For this reason, the complainant was unable to defend her position. In observations, the complainant also alleged that the Commission had not informed her that it had decided, by decision E(98)2297 of 27 July 1998 to fund the project under the Cohesion Fund, but on the

contrary had sent letters - such as the one of 9 December 1998 - which indicated that the case was still under consideration.

1.2 The Commission observed that, if it was regrettable that no single letter was addressed to the complainant during this period, it is clear that through telephone conversations and via the information given to the Committee on Petitions of the European Parliament, the complainant has been informed of the evolution of the file and of the changing of the Commission's position in the light of the new documents transmitted by the Greek authorities.

1.3 The Ombudsman notes that, in the framework of his own initiative inquiry into the Commission's administrative procedures for dealing with complaints concerning Member States' infringement of Community law (303/97/PD[31]) the Commission stated that the complainant is informed about the action taken in response to a complaint, including representations made to the national authorities concerned, and that, under its rules of procedure, a decision to close the file on a complaint without taking any action must be taken within one year from the date on which the complaint was registered, except in special cases, the reasons for which must be stated.

1.4 The Ombudsman notes that, in the present case, the complaint to the Commission was lodged on 7 July 1995. However, it is only in its letter of 9 December 1998, i.e. nearly three and a half years after the lodging of the complaint, that DG XI (Environment) of the Commission for the first time wrote directly to the complainant with regard to her complaint. With this letter the Commission replied to the complainant's letter of 7 December 1998 and observed that it had received the new information from the complainant and that on basis of this information it would decide which follow-up to give to the complaint.

1.5 The Ombudsman however notes that the complainant had made a petition to the European Parliament in October 1996 (ref. 570/96) and that, on two occasions, namely on 26 March 1997 and on 19 March 1998, the Commission informed the Committee on Petitions about the handling of the case. The Committee on Petitions subsequently communicated the Commission's position to the complainant. For the period between October 1996 and March 1998, the Ombudsman therefore considers that the allegation that the Commission failed to inform the complainant cannot be sustained, as it was the responsibility of the Committee on Petitions to inform the complainant during that time. However, it appears that, during the period from March 1998 until December 1998, when the Commission's position on the case changed, the Commission failed to inform the complainant about the dealing of the case.

1.6 The Ombudsman considers that the Commission should have informed the complainant of the decision of 27 July 1998 at the time when this decision was taken, as it in fact meant that the project in question had been approved and obtained funding and that the decision on the complaint had in substance been made. The Ombudsman notes that, in its opinion of 27 March 2000, the Commission kept this important information concealed equally from the Ombudsman.

1.7 The Commission failed to provide the Ombudsman with an acceptable explanation for the question why it informed the complainant on 9 December 1998 that it would take into consideration the new elements which she had transmitted, and also informed her on 20 April 1999 that it would close the case, unless new information was sent by the complainant in one month, when already on 27 July 1998 it had approved the project and decided to fund it under the Cohesion Fund.

---

[31] 303/97/PD, reported in the European Ombudsman's Annual Report for 1997, pages 270-274.

1.8 Finally, with regard to the Commission's argument that the judgement of the Court of First Instance of 23 September 1994 in case T-461/93 has recognised the independence of the Community funding procedure from the infringement procedure, the Ombudsman points out that the independence of the two procedures deduced by the Commission from this case merely concerns the administrative aspects of these procedures. This judgement does not put into question the principle according to which the projects, which benefit from Community funding have to comply with Community law. The Ombudsman therefore considers that it was irrelevant for the Commission to refer to the above Court case and to the independence of the two procedures in the framework of the present complaint.

1.9 It appears from the above that, during the period from March 1998 until December 1998, when the Commission's position on the case changed, the Commission has failed to provide adequate information, because it concealed from the complainant a fundamental element in the case, namely that by decision E(98)2297 of 27 July 1998 the Commission had in the meantime decided to fund under the Cohesion Fund the project which was subject of the complaint. By doing so, the Commission left the complainant in the belief that it was still investigating the case. The Commission's failure to provide the complainant with adequate information about her case constitutes an instance of maladministration. The Ombudsman therefore makes the critical remark below.

2 The allegation concerning the reasons why the Commission closed the case

2.1 The complainant alleged that the Commission's decision to close the case was wrong in law. The Commission has in fact manipulated the matter and has tried to find means to close the case, as is shown by the reasoning of the final decision of 20 April 1999. It took the Commission four years to come to the conclusion that the project predated the entry into force of Directive 85/337/EEC. However, earlier - on 26 March 1997 and on 19 March 1998 - the Commission proposed including this case as a representative example in proceedings against Greece for failure to comply with Directive 85/337/EEC.

2.2 In its opinion, the Commission observed that in March 1997 it considered that the project was launched after the entry into force of Directive 85/337/EEC. It concluded that the realisation works of the project had commenced before the definitive approval of the environmental conditions of the project, thus violating the Directive. However, having obtained new information from the Greek authorities, it informed the complainant in April 1999 that it considered that the project in question was described in the decision of the Prefecture of Preveza n° 667 of 28 February 1986 which predates the entry into force of the Directive 85/337/EEC. The Commission considered that this decision approved the site for the installation of the biological treatment plant, because it contained an annex with the topographical map of the "Varkas" site. It therefore closed the case.

2.3 The Ombudsman has carefully analysed the documents from the file and from the Commission's file inspected on 12 September 2001. From the documents at the disposal of the Ombudsman, it appears that the chronology of the follow-up of the case is as follows: On 26 March 1997 (first Commission's reply to the Committee on Petitions), the Commission considered that the project had been launched after the entry into force of the Directive 85/337/EEC. Considering that the works of the project had started before the definitive approval of the environmental impact assessment, the Commission concluded that the Directive had been violated. The Commission therefore suggested that this case would be included in a horizontal proceeding against Greece for infringement of the Directive. For this reason, the Commission also suspended the funding of the project from the Cohesion Fund.

2.4 On 19 March 1998 (Commission's second reply to the Committee on Petitions), the Commission confirmed the violation of Directive 85/337/EEC and postponed all procedures relating to the funding of the project. The Commission also confirmed that this case

would be included in a horizontal proceeding against Greece for infringement of the Directive 85/337/EEC.

2.5 On 27 July 1998, the Commission decided to fund the project under the Cohesion Fund (decision E(98)2297). On 20 April 1999, the Commission informed the complainant that it would close the case, as the Directive did not apply to the project in question which was described in the decision of the Prefecture of Preveza n° 667 of 28 February 1986, which predates the entry into force of the Directive.

2.6 In observations, the complainant argues that the Directive 85/337/EEC is applicable to the project in question, because the application for the implementation of the project was submitted by the municipality of Parga on 28 February 1995, i.e. after the entry into force of the Directive. The complainant referred to ruling 744/1997 of the Greek Council of State, which confirms this date. The complainant argued that the decision of the Prefecture of Preveza n° 667 of 28 February 1986 merely approved a preliminary study for the biological treatment plant and contained no specific reference to the site of the proposed biological treatment plant.

2.7 It appears from the above that the main dispute between the complainant and the Commission concerns the question whether Directive 85/337/EEC is applicable to the project under consideration. The Ombudsman notes that Directive 85/337/EEC entered into force on 3 July 1988[32]. The complaint to the Commission was lodged on 7 July 1995, seven years later.

2.8 As a preliminary point, the Ombudsman would like to underline that the Greek Council of State, in its judgements 744/1997 and 3221/1999, neither addressed the question of applicability of Directive 85/337/EEC in time, nor made a reference to this Directive. Nor does it mention at all the decision of the Prefecture of Preveza n° 667 of 28 February 1986.

2.9 The law which transposed the Directive 85/337/EEC into Greek national law is the *Law n° 1650/1986 "For the Protection of the Environment" of 10 October 1986 (ΦΕΚ 160/A)*[33]. As regards the authority which is competent to decide on the project, article 4.2.b of the above law provides that *"the consent for environmental requirements for the works and the activities falling within this category is granted by a joint Decision of the Minister of Environment, Regional Planning and Public Works in conjunction with the competent Minister at issue"* (translation from Greek by the Ombudsman's services)[34]. It appears from this law that the consent for the project is given by a joint Ministerial Decision.

2.10 In the present case, it appears from the documents in the file that, on 28 February 1995, the municipality of Parga submitted an application (document 233/28.2.1995) to the Ministry of Environment, Regional Planning and Public Works. On 10 October 1995, a first decision 85202/5142/10-10-1995 from the Ministry of the Environment, Regional Planning and Public Works was taken concerning the location of the sewage treatment plant at the "Varkas" site. Later, on 18 March 1997, the Joint Ministerial Decision 121227/18-3-1997 was taken which approved the environmental conditions for the biological treatment plant at the "Varkas" site. It was this Joint Ministerial Decision which gave definitive approval to the project.

2.11 As regards now the application of the directive in time, the Court of Justice has, in its judgement C-431/92 of 11 August 1995, stated that *"the date when the application for*

---

32 Article 12 (1) provides that Member States shall take the measures necessary to comply with this Directive within three years of its notification. The Directive was notified to the Member States on 3 July 1985.

33 Νόμος 1650/1986 "Για την προστασία του περιβάλλοντος" (ΦΕΚ 160/Α).

34 Άρθρο 4 παρ. 2β : "Η έγκριση περιβαλλοντικών όρων για τα έργα και τις δραστηριότητες της κατηγορίας αυτής χορηγείται με κοινή απόφαση του Υπουργού Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων και των κατά περίπτωση συναρμόδιων υπουργών".

consent was formally lodged (...) constitutes the sole criterion which may be used. Such a criterion accords with the principle of legal certainty and is designed to safeguard the effectiveness of the Directive"[35]. Article 1(2) of the Directive provides that "development consent" means *"the decision of the competent authority or authorities which entitles the developer to proceed with the project"*.

2.12 From the documents in the file, it firstly appears that the decision of the Prefecture of Preveza n° 667 of 28 February 1986 was not a new element in the consideration of the file as claimed by the Commission in its letter to the complainant of 20 April 1999. This decision was already mentioned on the second page, line 7, of the initial complaint made to the Commission in July 1995. According to its own terms, this decision is merely an *"approval of the definitive study of the works of the first stage and of a preliminary study (προμελέτη) on the installation of a biological treatment plant, included in the study "sewerage system of Parga" by the researcher K. Karadimou and associates"*. Therefore, the Ombudsman considers that this decision of the Prefecture of Preveza of 28 February 1986 cannot be considered as the authorisation of the project, and thus as approval of an application in the sense of the above judgement of the Court of Justice.

2.13 From the documents in the file, it appears that the Commission services themselves considered that it was the Ministerial Decision of 18 March 1997 which definitely approved the project. This appears explicitly from two notes in the Commission's file, dated 4 and 27 May 1998, in which the official in question and another official from DG Environment stated that this Decision gave definitive approval for the start of the project and confirmed the location of the site.

2.14 The Ministerial Decision of 18 March 1997 appears thus to constitute the development consent in the sense of Article 1(2) of the Directive, further to the application by the municipality of Parga dated 28 February 1995, when the Directive was already applicable for more than six years, namely since 3 July 1988.

2.15 The Ombudsman also notes that the competent Greek authorities themselves considered that the Directive was applicable. This appears from the environmental impact assessment drawn up by the municipality of Parga in September 1993 which states that *"the impact assessment takes place on the basis of the provisions of Directive 85/337/EEC"*.

2.16 It appears from the above considerations that the Commission was wrong to consider that Directive 85/337/EEC was not applicable to the project in question, because the application for consent which led to the authorisation of the project, in the sense of the judgement C-431/92 of the Court of Justice of 11 August 1995, was formally lodged on 28 February 1995, i.e. after the entry into force of Directive 85/337/EEC. This constitutes an instance of maladministration and the Ombudsman makes the critical remark below. The Ombudsman however wants to recall that the Court of Justice is the highest authority on questions of interpretation and application of Community law.

3 The allegation concerning lack of impartiality by a Commission official

3.1 The complainant alleged a lack of impartiality in the handling of the case by the Commission. According to the complainant, the responsible official holds a party political position in Greece which is incompatible with his duty to verify that the project under consideration is carried out in accordance with Community law. In support of her allegation, the complainant referred to various newspaper articles. Furthermore, the complainant argued that the written expression of thanks in the Greek Foreign Ministry records (minutes of the meeting of 20 May 1998) to representatives of the Commission for delaying the processing of complaints indicates that some officials of DG XI set them-

[35] Case C-431/92, *Commission v. Germany*, [1995] ECR I-2189, par. 32.

selves the objective not to ensure the proper implementation of Community law, but to ensure that the project would receive Community funding.

3.2 The Commission gave the official in question the opportunity to present his views at a hearing. It appears from the summary of the hearing that the Commission concluded that there was no reason to believe that the said official had influenced any decision taken on this case and moreover that he was not involved in it, being on annual leave from 15 December 1998 till 31 January 1999, and on unpaid leave on personal grounds from 1 February till 15 June 1999.

3.3 The Ombudsman notes that the Commission invokes the official's leave as an argument to support that he had not influenced the decision on this case and that he was not involved in it. It appears however that this is put in doubt by the following facts of the case which all date from when the official in question was still in charge of the file.

3.4 On 27 May 1998, the official in question added a note to the file concluding, on the basis of the new elements in the case, to drop the infringement procedure. In this note, he stated that a letter would be sent to the complainant to inform her about the Commission's intention to close the file. Two months later, on 27 July 1998, further to the decision on the substance that there was no infringement of Directive 85/337/EC, the Commission took the decision to fund the project in question. On 9 December 1998, one week before taking leave, the official in question sent a final letter to the complainant informing her that the Commission would consider what follow-up to give to the case further to the documents which the complainant had sent. In this letter it was not mentioned that, in the meantime, the project had been approved.

3.5 From the above facts it is evident that the official in question was deeply involved in the decision to drop the case, which was a necessary condition for the funding of the project by the Commission.

3.6 As regards the argument of the complainant that the official's party political position in Greece is incompatible with his duty to supervise Community law, the Ombudsman's inquiry has revealed - as it also appears from the Greek press - that in the period preceding the closure of the case, the official in question had been appointed as adviser for European affairs for the President of Nea Dimokratia Party, and had attended a party meeting in the region where he gave a speech about EU environmental legislation. It appears that the information on his appointment was made public already on 30 November 1998, two months before taking leave on personal grounds.

3.7 The Ombudsman considers that, from the point of view of the complainant, who did not know that the official in question was on annual and later on unpaid leave on personal grounds, and who had moreover recently received a letter signed by the official on 9 December 1998 stating that the case was still being investigated, there appear to be sufficient reasons to mistrust the impartial and proper handling of the case by the Commission and to question that the official in question did not conduct himself solely with the interests of the Communities in mind. In fact it would be difficult for any citizen in any Member State not to doubt the impartiality of the Commission's actions as the Guardian of the treaty if a Commission official who is deeply involved in dealing with an infringement case also holds a post in a political party in the very Member State that the case concerns and acts publicly in that capacity at a time when the case is being dealt with. In the eyes of European citizens, this kind of incident may put at risk the reputation of the Commission as Guardian of the Treaty, responsible for promoting the rule of Community law.

3.8 The Ombudsman therefore finds that the Commission, as Guardian of the Treaty, has failed to secure that this case was dealt with impartially and properly. This constitutes an instance of maladministration and the Ombudsman makes the critical remark and further remark below.

4 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following three critical remarks:

1 During the period from March 1998 until December 1998, when the Commission's position on the case changed, the Commission has failed to provide adequate information, because it concealed from the complainant a fundamental element in the case, namely that by decision E(98)2297 of 27 July 1998 the Commission had in the meantime decided to fund under the Cohesion Fund the project which was subject of the complaint. By doing so, the Commission left the complainant in the belief that it was still investigating the case. The Commission's failure to provide the complainant with adequate information about her case therefore constitutes an instance of maladministration.

2 The Commission was wrong to consider that Directive 85/337/EEC was not applicable to the project in question, because the application for consent which led to the authorisation of the project, in the sense of the judgement C-431/92 of the Court of Justice of 11 August 1995, was formally lodged on 28 February 1995, i.e. after the entry into force of Directive 85/337/EEC. This constitutes an instance of maladministration.

3 From the point of view of the complainant, who did not know that the official in question was on annual and later on unpaid leave on personal grounds, and who had moreover recently received a letter signed by the official on 9 December 1998 stating that the case was still being investigated, there appear to be sufficient reasons to mistrust the impartial and proper handling of the case and to question that the official in question did not conduct himself solely with the interests of the Communities in mind. In fact it would be difficult for any citizen in any Member State not to doubt the impartiality of the Commission's actions as the Guardian of the treaty if a Commission official who is deeply involved in dealing with an infringement case also holds a post in a political party in the very Member State that the case concerns and acts publicly in that capacity at a time when the case is being dealt with. In the eyes of European citizens, this kind of incident may put at risk the reputation of the Commission as Guardian of the Treaty, responsible for promoting the rule of Community law. The Ombudsman therefore finds that the Commission, as Guardian of the Treaty, has failed to secure that this case was dealt with impartially and properly. 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 has therefore decided to close the case.

FURTHER REMARK

According to the Court of Justice, the European Community is based on the rule of law. As Guardian of the Treaty, the European Commission has an essential role in promoting this fundamental principle. In the light of the findings in this case 1) that the Commission failed to provide adequate information to the complainant, 2) that the Commission was wrong to consider that Directive 85/337/EEC was not applicable and 3) that the Commission failed to secure that the case was dealt with impartially and properly, the Ombudsman concludes that failures have been revealed in the Commission's actions as Guardian of the Treaty.

With this regard, the Ombudsman would like to refer to the recent Commission Communication of 20 March 2002 to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law[36], which contains procedural rules on the matter. The Ombudsman foresees that the procedural rules contained in this Communication and in the handbook for Commission

[36] COM (2002) 141 final.

officials announced in the Commission's opinion of 30 November 2001, correctly applied and supervised, will prevent that instances of maladministration similar to the one in the present case occur in the future.

FAILURE TO PAY FOR SERVICES RENDERED

Decision on complaint 1689/2000/GG against the European Commission[37]

THE COMPLAINT

The complaint was submitted by a British firm of consultants in December 2000. According to the complainant, the facts underlying its complaint are as follows:

On 17 June 1999, the unit in charge of Portugal at the European Commission's Directorate-General XVI (Regional Policy and Cohesion) invited Mr G., a director of the complainant to take part in a seminar in Portugal. This seminar was meant to serve for the discussion of the realisation of infrastructures through partnerships between the public and the private sector ("PPP"). The complainant was informed that the seminar was to be organised by DG XVI in collaboration with the Portuguese authorities and that the Commission's official responsible for the preparation of the seminar would be Mrs C.

In a fax to Mr G. dated 29 June 1999, Mrs C. pointed out that she "should like to propose that the budget for the seminar provide for a final report where you bring together the different contributions of the participants in the Conference in a coherent document. This would later be used by desk officers at DG XVI." She concluded by asking Mr G. to let her know whether he accepted the proposal and to indicate the estimated cost.

In his reply of 30 June 1999, Mr G. confirmed that he was ready to prepare a "final report bringing together the Conference contributions" for a price of about 3 000 €. According to the complainant, Mrs C. subsequently confirmed by telephone that Mr G. could proceed at the indicated cost.

The seminar was held in Portugal on 16 July 1999. On 26 July 1999, DG XVI forwarded most of the contributions made at that seminar to Mr G., noting that this had been agreed and so as to allow Mr G. to proceed with his work ("[c]omme convenu et pour vous permettre d'avancer vos travaux"). On this basis, Mr G. prepared a draft summary of the contributions made at the seminar, which he submitted, to DG XVI on 16 August 1999. The Commission thanked Mr G. in a letter of 31 August 1999 and announced that it would forward its comments on the document in due course. On the same occasion, the Commission forwarded three further documents that had not yet been available on 26 July 1999 so as to enable Mr G. to finalise the summary ("pour vous permettre de finaliser le texte du sommaire"). According to the complainant, the draft summary was accepted by the Commission at a meeting in Brussels with Mrs C. and a colleague of hers on 13 October 1999 after some changes had been made to it. Mr B. who was present at this meeting would be able to confirm this. At this meeting, and still according to the complainant, there was also talk of developing a guide or manual. A further meeting was held on 25 November 1999 with Mrs C. and the person who was to be in charge of the guide at the Commission. In a letter sent on 2 December 1999, the complainant offered to prepare such a guide for a fee of 12 000 €. According to the complainant, however, it was later informed that this plan would not be pursued for the time being.

On 26 October 1999, the complainant sent a letter to the Commission, which noted that three copies of the amended version of the summary were enclosed and which asked the Commission to indicate to whom and how the invoice for this document was to be sent. According to the complainant, the Commission thereupon referred it to a Mrs S. from a Portuguese Ministry. The complainant thus sent an invoice over 3 000 € to this person on 3 December 1999. In the absence of a reply, the complainant sent a reminder on

[37] The full-text of this decision can be found on the European Ombudsman's website at the following address: http://www.euro-ombudsman.eu.int.

7 February 2000. In a letter dated 8 February 2000, Mrs S. explained that the complainant had not submitted the PPP manual for which a sum of 3 000 € was to be paid and that she had written to Mrs C. in order to receive clarifications.

On 22 May 2000 and on 11 September 2000, the complainant sent reminders to Mrs C.. According to the complainant, Mrs C. informed Mr G. on the occasion of a subsequent telephone conversation that she had given Mrs S. the 'green light' for making the payment. However, when the complainant wrote to Mrs S. again, the latter replied on 17 November 2000 that payment of the 3 al for which this sum had been earmarked.

Further contacts with Mrs C. were unsuccessful. The complainant thus turned to the Ombudsman. In substance, the complainant made the following allegations:

(1) The Commission failed to pay the fee of 3 000 € that had been agreed for the preparation of the summary;

(2) The Commission should have paid a reasonable sum to compensate for the late payment and the time and effort that the complainant had to spend trying to pursue its claim.

The complainant also asked for a written apology from the officials concerned.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission had decided to co-finance a conference on PPP in Lisbon. Under the grant agreement, the conference was to be organised under the responsibility of the Portuguese authorities. Mr G. had been invited to estimate the cost of preparing a final report based on the various contributions of the participants at the conference. Mr G. had declared himself willing to undertake this work for the amount of 3 000 € and pointed out the need to discuss the form of the report (cf. fax by Mr G. of 30 June 1999). The Commission never accepted this offer, but informed Mr G. (during a telephone conversation in July 1999) of the need to discuss the terms of the report with the Portuguese authorities. The Commission had proposed that an amount of approximately 3 000 € of the total budget for the conference should be earmarked for the report. This proposal was accepted by the parties to the grant agreement, as shown in the budget specification. Consequently, the Portuguese authorities had 3 000 € available to pay for this work.

The subcontracting of the work required, as Mr G. must have known, the conclusion of a service contract specifying, inter alia, the contents of the final report and the date of delivery. Such a contract was, of necessity, to be concluded between the beneficiary holding the funds (i.e. the Portuguese authorities) and the service provider.

The draft summary had never been accepted by either the Commission or the Portuguese authorities as a final report that could serve as a basis for a practical guide on the assessment of PPP projects. The Portuguese authorities' refusal to pay until the final report was delivered was in accordance with sound management of Community funding. The Commission did however not wish to prejudge their final decision since it was for the Portuguese authorities alone to decide whether any compensation could be awarded for the draft summary. A solution thus had to be found with the Portuguese authorities. The Commission had written to the Portuguese authorities to see whether they would make a payment to Mr G..

The complainant's observations

In its observations, the complainant maintained its complaint.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's analysis of the issues in dispute

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claims.

The Ombudsman's provisional conclusion was that the Commission's failure to ensure that the complainant was paid the amount that had been agreed for the preparation of the summary could be an instance of maladministration.

THE OMBUDSMAN'S PROPOSAL FOR A FRIENDLY SOLUTION

On 31 July 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should consider ensuring that the complainant was paid the sum that had been agreed for the preparation of the summary of the contributions made at the conference in Lisbon on 16 July 1999, and that the Commission should further consider indemnifying the complainant for the delay that had occurred and for the time and effort that the complainant had to sacrifice in trying to pursue its claim, so as to facilitate a friendly solution.

On 13 August 2001, the complainant forwarded to the Ombudsman a copy of a letter it had addressed to the Commission the same day. In this letter, the complainant claimed that a further 2 350 € should be paid to it on account of the time and effort it had had to spend pursuing its claim.

The Commission's reply

In its reply of 31 October 2001, the Commission repeated its view that there had been no contract between the Commission and the complainant.

The Portuguese authorities had now indicated to the Commission that, further to their appraisal of the quality of the report delivered by Mr G., they were prepared to pay a large part of the amount initially foreseen (i.e. 1ion was legally not enabled either to put this position into question or to take a final decision on its own as regards the quality of the work. It rather took note of this position and was ready to co-finance the expenditure as foreseen in its grant decision, including the Commission's share of the said 1 600 €, (i.e., 1 200 €). The Commission therefore considered the proposed payment of 1 600 € as a 'friendly solution' to the present complaint.

The complainant's observations

In its observations sent on 19 December 2001, the complainant took the view that the Commission sought to put forward an interpretation that flew in the face of the documented exchanges and plain common sense. The complainant announced that if the Commission should fail to meet its demands, it would wish to claim a further amount of around 4 500 € to cover the time and cost involved in the meetings with the Commission of October and November 1999 and the proposals it had subsequently developed. On 16 January 2002, the complainant forwarded to the Ombudsman a letter from Mr B. dated 21 December 2001.

The Ombudsman's appraisal

In these circumstances, the Ombudsman considered that a friendly solution had not been achieved.

THE DRAFT RECOMMENDATION

The Ombudsman's letter of 7 February 2002

In these circumstances, the Ombudsman addressed a draft recommendation to the Commission on 7 February 2002, which was worded as follows:

The European Commission should ensure that the complainant is paid the sum of 3 000 € that had been agreed for the preparation of the summary of the contributions made at the conference in Lisbon on 16 July 1999. The Commission should further indemnify the complainant for the delay that has occurred and for the time and effort that the complainant had to sacrifice in trying to pursue its claims.

The Commission's detailed opinion

In its detailed opinion of 29 April 2002, the Commission refused to accept the Ombudsman's draft recommendation, maintaining the views it had already put forward previously.

The complainant's observations

In its observations, the complainant maintained its complaint and made detailed comments on the Commission's reply. The complainant further informed the Ombudsman that in the light of the Commission's reaction, it now claimed a total amount of 17 200 € for compensation.

In the complainant's view, resorting to judicial process in the present case would be a waste of valuable time and resource for all parties. It therefore appealed to the Ombudsman to make a final decision in the matter.

THE DECISION

1 Refusal to pay the fee of 3 000 € for the summary

1.1 The complainant, a UK consultancy firm, claims that the Commission ought to pay it a fee of 3 000 € that was agreed for the preparation, by its director Mr G., of a summary of the contributions of the participants of a seminar held in Lisbon on 16 July 1999 that was organised by the Commission and the Portuguese authorities.

1.2 The Commission takes the view that it never accepted the complainant's offer to prepare such a report but informed Mr G. of the need to discuss the terms of the report with the Portuguese authorities. It further claims that the draft summary submitted by the complainant has never been accepted by either itself or the Portuguese authorities as a final report that could serve as a basis for a practical guide on the assessment of PPP projects. The Commission states that it told Mr G. several times on the phone that this paper alone was of no use to the Commission or the member state.

1.3 The complainant's view that the Commission ought to pay it the sum of 3 000 € is based on the assumption that a contract for the preparation of the summary was concluded between the Commission and itself.

1.4 According to his established practice, the Ombudsman considers that in cases concerning contractual disputes like the present one 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.

1.5 In the present case, the Commission appears to put forward two main arguments, namely (a) that it did not accept the complainant's offer to prepare a summary and (b) that in any event the document prepared by the complainant was not satisfactory and had therefore not been accepted.

1.6 In its fax of 29 June 1999, the Commission asked Mr G. whether he was ready to prepare a summary of the contributions made at the seminar to be held on 16 July 1999 and what the estimated cost would be. On 30 June 1999, Mr G. confirmed his readiness to prepare such a document and indicated a price of about 3ly show that the Commission entered into a contract for the preparation of a report with Mr G. or the complainant along these lines. However, there are several facts, which point in that direction. First, the 'budget specification' for the seminar submitted by the Commission does indeed include an amount of approximately 3 000 € (2 993 €) for the preparation of a document in relation to this seminar. Although this fact does not prove the existence of a contract between the Commission and the complainant, it is fully compatible with the complainant's account of events. Second, the Commission sent the contributions made at the seminar to the complainant in late July and August 1999 in order to allow the complainant to prepare the summary. The wording of at least one of these cover letters refers to an agreement that had been reached (cf. the letter of 26 July 1999 – "[c]omme convenu et pour vous permettre d'avancer vos travaux"). The Commission itself, in its reply to the Ombudsman's proposal for a friendly solution, accepts that it entered into an agreement with Mr G. or the complainant, although it argues that this agreement concerned only a formal aspect. Third, when the complainant sent its draft summary to DG XVI on 16 August 1999, the Commission replied that it would comment on this document and forwarded three further documents that should be taken account of in the summary. This behaviour would be hard to understand if there was no contract between the Commission and the complainant. On the contrary, if the quality of the work was indeed to be judged exclusively by the Portuguese authorities, the text ought to have been sent to them. However, there is no proof that this was done. Fourth, there is no evidence to support the Commission's claim that it informed the complainant that it should turn to the Portuguese authorities, or that it needed to conclude a contract with the latter. Fifth, the Commission's claim that the complainant ought to have known, from its previous work for the Commission, that legally binding contracts could only be concluded by the national authorities is not supported by sufficient evidence, particularly in view of the fact that the Commission's fax of 29 June 1999 notes that the report to be prepared was to be used "by desk officers at DG XVI". The complainant could hardly be expected to assume that a contract for work that was to benefit the Commission itself should have to be concluded by it with the Portuguese authorities. Finally, the complainant's claim that it was told at a meeting between itself and DG XVI on 13 October 1999 that the report had been accepted is supported by the evidence given by Dr. B. who also took part in this meeting. It is also supported by the fact that on 26 October 1999, i.e. shortly after that meeting, Mr G. sent "three clean copies of the 'compte rendu' of the Lisbon conference" to Mrs C. and asked to be told to whom he should send the invoice. If the Commission had in effect not accepted the report by the complainant and if this had to be left to the Portuguese authorities, one would have expected the Commission to inform the complainant accordingly at this stage. However, no such letter appears to have been written. On the contrary, in its letter to Mrs S. of 3 December 1999, the complainant noted that it had been informed by Mrs C. that she held

the funds to cover the costs of the seminar and that it therefore enclosed the fee note for the summary "that has been presented to and accepted by Mme C. in Brussels".

1.7 In the light of these considerations, the Ombudsman takes the view that the complainant's claim that there was an agreement between itself and the Commission according to which the complainant should prepare a summary of the contributions presented at the conference held in Lisbon appears plausible. The Ombudsman further considers that the Commission has been unable to provide 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.

1.8 The Commission's second main argument is that in any event the document prepared by the complainant was not satisfactory. This is based on the assumption that the complainant was obliged to produce a document that should identify the main elements of a PPP project that required special assessment (whether in the definition, assessment and implementation phases) and suggest tools and methods to conduct this appraisal. The requirement on which the Commission here relies is quoted (virtually literally) from the Commission's fax of 29 June 1999. However, this letter clearly distinguishes between the guide to be produced ultimately and the summary of the contributions made at the seminar. The above-mentioned requirement applies to the guide, not the summary. The only indication that what the Commission wished to obtain was a guide and not a summary might be seen in the fact that the 'budget specification' allocated the sum of 3 000 € to a 'manual'. However, the Commission itself, in its reply to the draft recommendation, accepts that this document had not been handed out to the complainant. Furthermore, the Commission's letter to the complainant of 31 August 1999 clearly referred to a summary, not a manual[38]. The Commission has submitted a copy of the summary prepared by the complainant. At first sight, this document appears to conform to the standards set for this document in the fax of 29 June 1999. The complainant has provided a detailed account of how the document was drafted by it, submitted to, discussed with and finally approved by the Commission. The Commission has not provided any documentary evidence to contradict this account. If the Commission had indeed informed the complainant "several times" by telephone that the document was of no use to it, it appears difficult to understand why it failed to confirm this view in writing, at the latest when it received the final version of the document sent on 26 October 1999.

1.9 The Ombudsman therefore takes the view that on the basis of the evidence in his possession, the Commission has failed to establish its second argument.

1.10 The Ombudsman's conclusion, therefore, is that the fact that the Commission has not ensured that the complainant is paid the amount that had been agreed for the preparation of the summary constitutes an instance of maladministration.

2 Compensation for late payment and for time and effort spent pursuing the claim

2.1 The complainant claims that the Commission ought to pay it a reasonable sum to compensate for the late payment and the time and effort that it had to spend trying to pursue its claim. In subsequent correspondence, the complainant has specified the amount it claims. In its final observations, the complainant notes that it claims a total amount of 17 200 € for compensation.

2.2 The Commission takes the view that there is no basis for such a claim.

2.3 As indicated above, the Ombudsman's finding in relation to the complainant's main claim is that the complainant does appear to have a claim for the payment of the 3 ble.

[38] « …pour vous permettre de finaliser le texte du sommaire. »

However, even if the Commission should have been correct in assuming that it had not contracted any obligations towards the complainant it should have clearly and promptly informed the complainant of its position. On the basis of the evidence available to the Ombudsman it appears, however, that the Commission, despite various reminders sent by the complainant, first informed the complainant on the occasion of a telephone conversation between Mr G. and Mrs C. that took place on 22 November 2000. The Ombudsman's conclusion, therefore, is that the Commission's failure to compensate the complainant for the delay in paying and for the time and effort the complainant had to spend trying to pursue its claim is another instance of maladministration.

3 Conclusion

3.1 On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Commission's failure to ensure that the complainant is paid the amount that had been agreed for the preparation of the summary and its failure to compensate the complainant for the delay in paying and for the time and effort it had to spend trying to pursue its claim constitute instances of maladministration.

3.2 In his proposal for a friendly solution, the Ombudsman suggested that the Commission should ensure that the complainant is paid the sum of 3 000 € that appeared to have been agreed. The Ombudsman further suggested that the complainant should be indemnified for the delay that had occurred and for the time and effort that it had to sacrifice in trying to pursue its claims. The Commission rejected this proposal. The Ombudsman then repeated his suggestion in the form of a draft recommendation to the Commission. In its detailed opinion, however, the Commission confirmed that it continued to reject this proposal.

3.3 The Ombudsman deplores that the Commission did not accept this proposal. He considers that the arguments put forward by the Commission to support its position fail to convince.

4 Report to the European Parliament

4.1 Article 3 (7) of the Statute of the European Ombudsman[39] provides that after having made a draft recommendation and after having received the detailed opinion of the institution or body concerned, the Ombudsman shall send a report to the European Parliament and to the institution or body concerned.

4.2 In his Annual Report for 1998, the Ombudsman pointed out that the possibility for him to present a special report to the European Parliament was of inestimable value for his work. He added that special reports should therefore not be presented too frequently, but only in relation to important matters where the Parliament was able to take action in order to assist the Ombudsman[40]. The Annual Report for 1998 was submitted to and approved by the European Parliament.

4.3 The Ombudsman considers that the present case, which concerns the duties of the European Commission in relation to a specific contract, important as it may be for the parties concerned, does not raise issues of principle. Neither is it apparent which action the European Parliament could take in order to assist the Ombudsman in the present case. Given these circumstances, the Ombudsman concludes that it is not appropriate to submit a special report to the European Parliament.

---

39 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, page 15.

40 Annual Report for 1998, pages 27-28.

4.4 The Ombudsman will therefore send a copy of this decision to the Commission and include it in the annual report for 2002 that will be submitted to the European Parliament. The Ombudsman thus closes the case.

4.5 The complainant of course retains the right to submit his claims against the Commission to a court that has jurisdiction in this matter.

FAILURE TO EXCLUDE BIDDER FROM CALL FOR TENDERS

Decision on complaint 232/2001/GG against the European Commission[41]

THE COMPLAINT

The complainant, a consortium composed of three companies and bodies, had submitted an offer in reply to a call for tenders published by the European Commission for project SCR-E/110582/C/SV/TM (Integrated support for Agriculture and the Food Industry – Turkmenistan) in May 2000 as part of the Tacis Programme. The complainant was put on a shortlist, together with seven other bidders including TDI Natural Resources Division ("TDI NRD") and Landell Mills Limited ("LM").

According to the complaint lodged in February 2001, the following provisions were relevant for the present case:

- Point 9 of the Contract Notice provides that candidates should submit only one application for the current contract "whatever the form of participation (as an individual candidate, or as leader or partner of a consortium candidate)" and that where a person submitted more than one application, "all applications in which that person has participated will automatically be excluded"

- Article 2 (3) of the SCR (Common Service for External Relations) Manual of Instructions provides that natural or legal persons "are not entitled to participate in competitive tendering or be awarded contracts where (…) they are in one of the situations allowing exclusion referred to in the Ethics Clauses (section 7) in connection with the tender or contract"

- Article 7 (3) of the SCR Manual of Instructions obliges a candidate or tenderer to declare "that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project"

In a letter to the Commission dated 5 December 2000, the complainant took the view that these provisions had been infringed and that TDI and LM should therefore be excluded from the tender. In its reply of 11 December 2000, the Commission informed the complainant that it had examined the information supplied by the complainant but come to the conclusion that there was no possible conflict of interest or unfair competition that could put into question the inclusion of these two companies in the shortlist.

In a letter to the Commission of 22 December 2000, the complainant reiterated its allegations and produced documentary evidence to support them. In the absence of a reply, the complainant sent a further letter to the Commission on 9 January 2001 in which it again set out the facts and conclusions referred to in its previous letter and made further allegations. On 22 January 2001, the EuropeAid Co-operation Office of the Commission acknowledged receipt of the letters of 22 December 2000 and of 9 January 2001. The Commission claimed that it was investigating the matter anew and would revert to the complainant as soon as this was done.

In a letter of 31 January 2001, the SCR of the Commission informed the complainant that its tender had been unsuccessful and that the contract had been awarded to TDI NRD.

41 The full-text of this decision can be found on the European Ombudsman's website at the following address: http://www.euro-ombudsman.eu.int.

In its complaint to the Ombudsman lodged in February 2001, the complainant made, in substance, the following three allegations:

(1) The Commission wrongly failed to exclude TDI NRD and LM from the tender

(2) The Commission failed to react to the complainant's letters of 22 December 2000 and 9 January 2001 within an appropriate period

(3) The award of the contract to TDI NRD constituted an abuse of power

The complainant asked the Ombudsman to recommend that the Commission should suspend the contract immediately and cancel it in time.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

First allegation

Regarding the allegation that TDI and LM should have been excluded because of a conflict of interest and unfair competition, TDI had already provided clarifications in October 2000 following a similar complaint from another competitor. Having already received this information, the Commission had been able to reply to the complainant's letter of 5 December 2000 on 11 December 2000, informing the latter that it had been unable to find any proof of a conflict of interest or unfair competition which should lead to an exclusion of TDI and LM from the tender procedure.

Second allegation

Regarding the time it had taken the Commission to reply to the complainant's letters, the fax from the complainant dated 22 December 2000 had been sent after the Commission's close of business. The Commission had been closed between 23 December 2000 and 2 January 2001. A holding reply had been sent on 22 January 2001. This was in accordance with the Code of Good Administrative Behaviour for Staff in their Relations with the Public (according to which a holding reply was to be sent if a reply could not be sent within 15 working days) and section 8 of the Manual of Instructions[42] (according to which the contracting authority had to reply within 90 days of receipt of the complaint).

Third allegation

The decision to award the contract to the TDI consortium had been taken before the complaints of 22 December 2000 and 9 January 2001 had been received. Since then, the question had therefore been for the Commission to examine and evaluate the evidence put forward by the complainant in order to find out whether there was any serious evidence that should oblige the Commission to stop the project by cancelling the contract. The examination had taken longer than foreseen since the complainant had added new elements in its letters of 22 December 2000 and 9 January 2001 as well as in its complaint to the Ombudsman, received by the Commission on 7 March 2001.

Subsequent to the information thus provided, the Commission's services had contacted TDI again. It had also decided to re-examine the evaluation report of the tenders. The file had thereafter been sent to the legal service of EuropeAid for examination. The conclusion

[42] 'Manual of instructions: Contracts for works, supplies and services concluded for the purposes of Community co-operation with third countries', SEC (1999) 1801, adopted by the Commission on 10 November 1999.

had been that the examination had not provided any evidence that would justify a cancellation of the contract. There had been no serious irregularities in the procedure that would have prevented normal competition. No corrupt practices or any breach of ethical clauses had been discovered. There had been no attempts to enter into unlawful agreements with competitors.

FURTHER INQUIRIES

Having examined the Commission's opinion, the Ombudsman considered that he needed further information in order to be able to deal with the complaint. In its reply, the Commission submitted the information requested by the Ombudsman. The complainant submitted detailed observations regarding the Commission's reply.

THE DRAFT RECOMMENDATION

The Ombudsman's letter of 13 February 2002

Upon a careful examination of the submissions of both parties, the Ombudsman concluded that the Commission had failed to carry out a comprehensive examination of all the relevant facts and arguments. In these circumstances, the Ombudsman addressed a draft recommendation to the Commission on 13 February 2002, which was worded as follows:

The European Commission should carry out a comprehensive examination of all the relevant issues in the present case. This examination should also cover the additional allegations and claims made by the complainant in its observations. The Commission should further reconsider its decision not to exclude TDI and LM from the tender and its subsequent decision not to cancel the contract with TDI in the light of the results of this examination.

The Ombudsman asked the Commission to submit an opinion by 31 May 2002. A copy of the complainant's observations that had been received on 21 December 2001 was also forwarded to the Commission.

The Commission's detailed opinion

In its detailed opinion of 29 May 2002, the Commission made the following comments:

Having noted the Ombudsman's recommendations, the relevant services of the European Co-operation Office, EuropeAid, had launched a wider investigation in order to gather the information required.

In parallel with its approach to the Ombudsman, the complainant had also brought its complaints to the attention of the President of the European Commission, who had referred the matter to the European Anti-Fraud Office (OLAF), asking it to conduct an internal and external investigation. In order to accomplish its investigation, OLAF had asked EuropeAid to provide it with certain information, including the information required by the Ombudsman.

In order to comply with the Ombudsman's recommendations and to meet the request from OLAF, the Director-General of EuropeAid had asked EuropeAid's internal audit service to conduct these investigations, with the help of external personnel if necessary.

As this investigation was currently in progress, the Commission was not able to comply with the Ombudsman's recommendations within the time limit laid down. The Commission would notify the Ombudsman of the results of the inquiry once it had been completed.

The complainant's observations

In its observations, the complainant expressed its disappointment about the Commission's reply. The complainant pointed out that the Commission had been informed about the case already in December 2000 but had chosen a policy of delaying the answers in order to maintain the "status quo". In the complainant's view, the fact that OLAF had asked for an investigation was welcome, but this was not a good reason for the Commission for asking additional time and for replying by saying that the results of the inquiry would be communicated once the latter had been completed, without giving any indication as when this would happen. According to the complainant, the Commission might well need several years.

The complainant expressed the hope that the Ombudsman would be able to close the case without having to wait for answers from the Commission that were promised to come in an undefined future.

THE DECISION

1 Preliminary remarks

1.1 The complainant, a consortium composed of three companies and bodies, had submitted an offer in reply to a call for tenders published by the European Commission for project SCR-E/110582/C/SV/TM (Integrated support for Agriculture and the Food Industry – Turkmenistan) in May 2000 as part of the Tacis Programme. It was put on a shortlist, together with seven other bidders including TDI Natural Resources Division ("TDI NRD") and Landell Mills Limited ("LM"). The complainant asked the Commission to reject the applications of TDI NRD and LM on the basis of Point 9 of the Contract Notice and Article 2 (3) of the SCR (Common Service for External Relations) Manual of Instructions, read in conjunction with Article 7 (3) thereof. The Commission rejected this application and awarded the contract to the consortium to which TDI NRD belonged. In its complaint to the Ombudsman, the complainant argued (1) that the Commission had wrongly failed to exclude TDI NRD and LM from the tender, (2) that the Commission had failed to react within an appropriate period to two letters the complainant had addressed to it and (3) that the award of the contract to TDI NRD had constituted an abuse of power. These allegations were based on an alleged infringement of the above-mentioned rules.

1.2 In December 2001, the complainant submitted its observations on the Commission's opinion and the Commission's answer to a request for further information. In these observations, the complainant alleged that various other rules relating to the call for tenders had also been violated in the present case. In the complainant's view, the Ombudsman should therefore recommend that the Commission should immediately terminate its contracts with TDI NRD and with Technical Management Services ("TMS"), take measures to ensure that such unfair practices were stopped and that the SCR should no longer award contracts to such competitors acting unfairly.

1.3 The Ombudsman considers that in the light of his appraisal of the issues raised by the original complaint set out below, it appears neither necessary nor appropriate to consider these additional allegations and claims within the context of the present inquiry.

2 Failure to exclude TDI NRD and LM from the tender

2.1 The complainant claims that the offers submitted by TDI NRD and LM ought to have been excluded from the tender on the basis of two main considerations. First, the complainant points out that Point 9 of the Contract Notice provided that candidates should submit only one application for the current contract "whatever the form of participation (as an individual candidate, or as leader or partner of a consortium candidate)" and that

where a person submits more than one application, "all applications in which that person has participated will automatically be excluded". In the complainant's view, the applications of TDI NRD and of LM should be regarded as two applications submitted by the same person. Second, the complainant relies on Article 2 (3) of the SCR Manual of Instructions which provides that natural or legal persons "are not entitled to participate in competitive tendering or be awarded contracts where (…) they are in one of the situations allowing exclusion referred to in the Ethics Clauses (section 7) in connection with the tender or contract". Article 7 (3) of the SCR Manual of Instructions obliges a candidate or tenderer to declare "that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project".

2.2 Before examining the detailed allegations made by the complainant in this context, the Ombudsman considers it useful to review the facts on which the complaint is based. The Ombudsman notes that some of these facts have been confirmed, expressly or implicitly, by the Commission. These are the following: LM is a company registered in the United Kingdom. At the relevant time, 100 % of its shares were owned by an Irish company called Development Consultants International Ltd. ("DCI"). TDI NRD is part of TDI Group, a company registered in Ireland. All the shares but one (i.e., 99.9995 %) in TDI Group were also held by DCI. The remaining share in TDI Group was owned by Mr B. who was a director in both TDI and LM. TMS, a company registered in Ireland, was part of the consortium managing the Tacis Co-ordinating Unit in Turkmenistan. TMS is also a subsidiary of DCI[43]. Mr B. is a director of TMS as well. TMS played a certain role in preparing the call for tenders. Mr M. was one of the five evaluators who had examined the bids lodged in reply to the call for tenders. Mr M. had worked for a company called DEVCO (an Irish company) as an independent consultant between 1998 and September 2000. DEVCO had been taken over by DCI in 1999.

2.3 Turning to the complainant's detailed allegations, the complainant claims that the bids submitted by TDI NRD and LM should be regarded as two applications submitted by the same person, within the meaning of Point 9 of the Contract Notice. The Commission rejects this view. The Ombudsman notes that the relevant bids were submitted by two companies[44] that, although owned by the same parent company, nevertheless constitute two separate entities. The complainant suggests, in its observations on the Commission's opinion, that DCI fully controlled its subsidiaries TDI and LM and that the submission of bids by these companies was orchestrated by DCI. The Ombudsman considers, however, that this allegation is not supported by sufficient evidence. The mere fact that TDI and LM are both subsidiaries of DCI is not sufficient to establish that bids submitted by TDI and LM respectively ought to be considered as bids made by DCI. In these circumstances, the Ombudsman considers that the Commission's conclusion that Point 9 of the Contract Notice had not been infringed in the present case appears to be reasonable.

2.4 The complainant's main argument is based on the assumption that there existed a "particular link" between TDI and LM on the one hand and between TDI and "other tenderers or parties involved in the project" on the other hand. In this context, the complainant relies on the facts set out above and makes the following further submissions: In addition to the financial links between DCI, TDI, LM and TMS (the latter all being subsidiaries of DCI), there were also links relating to the management, given that Mr B. was a director in all four companies and that two further persons were also directors in

43 No details regarding the relationship between DCI and TMS are given. However, given that TDI, LM and TMS are all referred to as subsidiaries of DCI it is likely that DCI holds all (or nearly all) shares in TMS, as it does with regard to LM and TDI.

44 This expression has been used for the sake of convenience. It is however not fully accurate in two respects. First, and as mentioned above, one of the bids was submitted by TDI NRD which is not itself a company but part of TDI. However, since this distinction is irrelevant for present purposes, TDI NRD and TDI will be referred to as one and the same entity in the text. Second, it should be remembered that the relevant bids were submitted not by the companies referred to above but by the consortia to which they belonged.

both DCI and TDI. Mr M., one of the persons evaluating the bids, had at least been associated with TDI Group.

2.5 The Commission takes the view that there was no "special relationship" between TDI, LM and TMS. In its view, the relevant exclusion clause and similar exclusion clauses have to be interpreted strictly so as not to jeopardise the realisation of projects, given the limited number of companies that can meet the criteria for carrying out Tacis projects. The Commission claims that although there was an established financial relationship between TDI and LM, there was no parent-subsidiary relationship. In the Commission's view, these companies were legally separate from their parent company and could therefore justifiably claim to be separate legal entities with commercial and management autonomy. The Commission submits that a "special relationship" could also exist where there is an agreement between companies to restrict competition but takes the view that there is nothing to suggest that such an agreement existed. It further claims that the fact of having a common director does not constitute a decisive factor in the circumstances of the case. On this point, the Commission agrees with the view expressed by TDI according to which Mr B. cannot participate in the daily operation of both companies. Even if there was a "special relationship" between TDI and TMS, the role of TMS in preparing the call for tenders was limited to "the provision of expertise to the Moscow Co-ordinating Unit" and would thus not allow the Commission to exclude TDI from participating in project implementation. Regarding Mr M., the relatively large number of members on Tacis evaluation committees (five) made it very difficult for a single member to influence an evaluation unduly. According to the Commission, it was also verified that Mr M.'s vote had had no influence on the choice of contractor made.

2.6 The exclusion clauses contained in the relevant contracts and provisions serve the purpose of ensuring that the competition between bidders taking part in a call for tenders is not jeopardised by a conflict of interest or by the existence of "particular" links between the participants in such a tender. The Commission argues that these clauses and rules do not need to be interpreted more widely than this purpose requires. This approach appears to be reasonable. It would also appear to be correct to assume, as the Commission argues, that such a "particular link"[45] exists where there is a parent-subsidiary relationship between the companies concerned or where these companies have entered into an anti-competitive agreement with the aim of restricting competition. On the basis of the available evidence, neither of these conditions is fulfilled in the present case. TDI, LM and TMS are subsidiaries of the same parent company but none of them is a parent or subsidiary of one of the other companies. Nor has the existence of any anti-competitive agreement between these companies (or some of them) been established.

2.7 The Ombudsman considers, however, that the question as to whether a "particular link" within the above-mentioned meaning efifsxists has to be assessed on the basis of all the facts of a given case. In the present case, there are several aspects that need to be underlined. *First*, on the basis of the evidence that has been submitted it appears that Mr B. is the managing director of TDI and also a director in LM, DCI and TMS. The presence of the managing partner of TDI on the board of LM and TMS is difficult to reconcile with TDI's claim that it competes vigorously with these companies. Even assuming that Mr B. is not involved in the operational aspects of the activities of LM and TMS, it cannot be excluded that in his capacity as director of these other companies he may obtain information that could be used for the benefit of TDI. The Commission accepts that through his presence on the boards, Mr B. might become aware of which tender each company was involved in. The Ombudsman considers that the complainant's allegation that Mr B. has indeed obtained such information and used it in the said way or that he has even 'orchestrated' the activities of all these companies in relation to the call for tenders have not been

[45] The Ombudsman assumes that the fact that the Commission refers to the term "special relationship" in this context is due to an error committed by the translator of the Commission's opinions (which were originally submitted in French).

established. In his view, however, the risk of such an exchange of information ought to have been considered by the Commission. *Second*, the complainant has submitted evidence to show that apart from Mr B., two further persons were directors of both TDI and DCI. This reinforces the complainant's claim that the links between these two companies (and indirectly between TDI on the one hand and LM and TMS on the other) were more than just financial. The Commission has not made any comment regarding this additional link, despite being asked to do so by the Ombudsman. *Third*, it cannot be excluded that 'an irrevocable and unconditional commitment' to pursue the tender in full independence could be taken into account by the Commission in this context. According to the information that has been submitted, however, TDI has *proposed* to make such a commitment. The Commission has not claimed or shown that this proposal was indeed accepted by it and implemented by TDI. *Fourth*, the Commission accepts that Mr M., who was one of the evaluators, carried out some work for Devco, a company that was subsequently taken over by DCI's group of companies. Whilst it is true that it has not been established that Mr M. was an employee of TDI, the Commission does not seem to have examined in detail the allegation that there was a "particular link" between this person and TDI. In this context, the discrepancy between the e-mail of TDI dated 13 October 2000 and the letter from TDI of 20 March 2001 (which were written by the same person) should be noted. Whilst the e-mail explains that Devco had been taken over by TDI, the letter notes that Devco was acquired by DCI. The relationship between Devco, DCI and TDI is further obscured by a letter from Mr M. of 26 January 2001 according to which the administration of the project run by Devco "was taken over by TDI". Finally it should be taken into account that TDI's e-mail of 13 October 2000 notes that Devco and two other companies "form the TDI Natural Resources Division". This would appear to be confirmed by the letterhead of a fax sent by TDI on 15 January 2001. The Ombudsman considers that in these circumstances, the relationship between Mr M. and TDI ought to have been examined more closely by the Commission. This applies a *fortiori* to the complainant's claim that Mr M. prepared the terms of reference for the relevant call for tenders on which the Commission has not commented. *Fifth*, in so far as TMS is concerned the Commission has limited itself to endorsing TDI's argument according to which TMS only played a minor role in preparing the call for tenders. It is hard to understand why the Commission – which had concluded an agreement with TMS regarding the work to be carried out – failed to provide its own analysis as to whether this claim was correct.

2.8 On the basis of the evidence that has been submitted, there are serious grounds that would seem to support the complainant's claim that there were "particular links" between TDI and other companies or persons involved in the tender and that TDI and LM consequently ought to have been excluded from the tender. As noted above, Mr B., the managing director of TDI, is also on the board of LM, DCI and TMS. The Commission accepts that through his presence on the boards, Mr B. may obtain information regarding the commercial activities of all these companies. There is thus a clear risk that such information on the activities of LM and TMS in particular could be used to the benefit of TDI. Furthermore, Mr M., one of the persons entrusted with the task of evaluating the bids, worked for TDI or a related company shortly beforehand. The complainant alleged that he also prepared the terms of reference for the relevant call of tenders, and the Commission has not commented on this allegation. Finally, a further company closely linked to TDI and LM, that is to say TMS, appears to have played a certain role in the call for tenders.

2.9 In such circumstances, principles of good administration would have required the Commission to carry out a comprehensive examination of the issues that had been raised. The Commission has failed to do so in the present case. As discussed above, several facts that appear to be relevant do not seem to have been considered at all by the Commission. With regard to others, the Commission appears simply to have relied on statements made by the incriminated company without using the means at its disposal to verify the correctness of these statements. In this context, regard should be had to the fact that the Commission itself points out that it already received a similar complaint regarding the

participation of TDI in the call for tender, well before the one submitted by the complainant in the present case[46]. The Commission would thus appear to have had sufficient time to clarify the situation by obtaining all the necessary information.

2.10 In these circumstances, the Ombudsman concludes that the Commission's failure to carry out a comprehensive examination of the issues raised constituted an instance of maladministration.

3 Failure to reply to letters within an appropriate period

3.1 The complainant claims that the Commission has failed to reply to its letters of 22 December 2000 and of 9 January 2001 within an appropriate period.

3.2 The Commission points out that the first of these letters was sent after the Commission's close of business in 2000 and that a holding reply was sent on 22 January 2001. Regarding the second letter, the Commission appears to claim that it had to reply to the complainant within 90 days.

3.3 The Ombudsman considers that in the light of the detailed comments submitted by the Commission in its opinion and in its reply to the request for further information, there are no grounds to continue his inquiry into this aspect of the complaint.

4 Abuse of power

4.1 The complainant claims that in the circumstances of the case, the award of the contract to TDI NRD constituted an abuse of power.

4.2 The Commission has not made any specific comments on this allegation.

4.3 The Ombudsman considers that although the Commission has failed to carry out a comprehensive examination of the issues raised, there is not enough evidence to warrant the conclusion that the Commission's decision to award the contract to TDI constituted an abuse of power.

5 Conclusion

5.1 On the basis of his inquiries into this complaint, the Ombudsman made a draft recommendation in which he suggested that the Commission should carry out a comprehensive examination of all the relevant issues in the present case. He further recommended that the Commission should reconsider its decision not to exclude TDI and LM from the tender and its subsequent decision not to cancel the contract with TDI in the light of the results of this examination.

5.2 It appears from the Commission's preliminary reply to the draft recommendation that the Commission's service concerned (EuropeAid) has since launched an investigation. It further appears that the President of the Commission has asked the European Anti-Fraud Office (OLAF) to conduct an investigation, and that OLAF has asked EuropeAid to provide certain information. According to the Commission, EuropeAid has instructed its internal audit service to conduct the investigations necessary to comply with the Ombudsman's recommendations and to provide the information requested by OLAF.

5.3 The Ombudsman welcomes the Commission's readiness to carry out an investigation. He is also pleased to note that OLAF is carrying out an investigation as well. However, the Commission's reply to the draft recommendation can nevertheless not be considered satisfactory. The Commission has been aware of the issues concerned for a considerable period

[46] See the Commission's e-mail to TDI of 26 July 2000 in which the recipient is asked, due to "a possible exclusion case", to provide "all information" regarding TDI's relationship with LM and TMS.

of time. Most of the evidence considered by the Ombudsman had already been brought to the Commission's attention in late 2000 and early 2001. It is therefore hard to understand why the Commission should have been unable to carry out the necessary investigation within the period of more than three months that have lapsed since the draft recommendation was made. In this context, the Ombudsman cannot but note that the Commission has failed to provide any indication as to how much more time EuropeAid will need to conclude its investigation. Since the Commission has pointed out that this investigation also serves the purpose of providing the information OLAF has requested, it is clear that this delay in EuropeAid's investigation inevitably also delays the investigation carried out by OLAF.

5.4 On the basis of the Ombudsman's inquiries into this complaint, it is therefore necessary to make the following critical remark:

Principles of good administration require the administration to carry out a comprehensive examination where it is confronted with serious allegations of maladministration regarding a call for tenders. In the present case, the complainant submitted serious arguments and substantial evidence to support its claim that there were "particular links" between the successful bidder and other companies or persons involved in the tender and that the successful bidder therefore ought to have been excluded from the tender. The Commission failed to carry out a comprehensive examination of the issues raised by the complainant. This is an instance of maladministration.

6 Report to the European Parliament

6.1 Article 3 (7) of the Statute of the European Ombudsman[47] provides that after having made a draft recommendation and after having received the detailed opinion of the institution or body concerned, the Ombudsman shall send a report to the European Parliament and to the institution or body concerned.

6.2 The Ombudsman notes, however, that the Commission's EuropeAid service is still investigating the matter. More importantly, the European Anti-Fraud Office also appears to have started an investigation that is still pending. It is therefore not apparent which action the European Parliament could take in order to assist the Ombudsman at the present time. Moreover, the complainant has expressed the hope that the Ombudsman would be able to close the case quickly. Given these circumstances, the Ombudsman concludes that it is not appropriate to submit a special report to the European Parliament in the present case.

6.3 The Ombudsman will therefore send a copy of this decision to the Commission and include it in the annual report for 2002 that will be submitted to the European Parliament. The Ombudsman thus closes the case.

[47] 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, page 15.

ALLEGED PROCEDURAL IRREGULARITIES IN AN INTERNAL COMPETITION

Decision on complaint 446/2001/(BB)MF against the European Commission

THE COMPLAINT

The complainant lodged a complaint with the European Ombudsman on March 2001.

The complainant had been working at the European Commission as a temporary agent for eight years. He participated in internal competition COM/TA/99. He passed the written test and was admitted to the oral test. The complainant was then informed that his name was not included on the reserve list. The Commission terminated his temporary contract on 15 February 2001. According to the complainant, the Commission had extended the deadline for candidatures for the competition and had admitted another 100 candidates to take part. The Commission had undertaken to put 110 candidates on the reserve list but finally only admitted 66 candidates.

On 20 November 2000, the complainant lodged a complaint with the European Commission under Article 90 (2) of the Staff Regulations.

On 21 November 2000, he lodged a complaint with the European Ombudsman (1523/2000/BB). The complaint was declared inadmissible in accordance with Article 2.8 of the Statute of the Ombudsman, because the time limit for the Commission's reply to the complainant's complaint under Article 90 (2) of the Staff Regulations had not expired.

On 21 March 2001, the complainant made a new complaint to the European Ombudsman. He made the following allegations:

1 Procedural irregularities:

(i) The Commission extended the deadline for candidatures for the competition and admitted another 100 candidates.

(ii) As a consequence of (i) above, the Selection Board resigned but subsequently agreed to resume its work. The circumstances of this agreement are unexplained and put the independence of the Selection Board in doubt.

(iii) The Commission admitted only 66 candidates to the reserve list, thereby breaching an undertaking, which it had given to admit 110 candidates to the reserve list.

(iv) The questions asked during the oral test bore no relation to the objectives specified in the notice of competition.

2 The Commission failed to reply to the complainant's Article 90 complaint within the time limit of four months.

3 The Commission terminated the complainant's temporary contract in violation of basic procedures laid down by national law, thereby abusing its position of immunity.

The complainant claims that the Commission should communicate to him the record of his oral test, with details of the questions asked, the name of the person asking each question and the marks awarded by each member of the Selection Board, as well as their possible comments. He also claims that the Commission should provide clear and precise explanations in relation to his complaint and make good the damage he suffered as a result of its maladministration.

THE INQUIRY

The Commission's opinion

The opinion of the European Commission on the complaint was in summary the following:

1 Regarding the allegation of procedural irregularities, the European Commission stated that the complainant's suspicions about the procedure of the competition and the independence of the Selection Board were unfounded. The European Commission had already dealt with such an allegation in its reply to the complainant's Article 90 complaint and had no additional comment to make.

2 Concerning the allegation of failure to reply to the complainant's Article 90 complaint, the European Commission stated that it had replied to the complainant on 29 March 2001.

3 In a letter dated 9 November 1999, the complainant was notified of the extension of his temporary contract as a consequence of his participation in internal competition COM/TA/99. However, he was also informed that, in case he would not be one of the successful candidates, his temporary contract would cease at the end of a three months notice period. On 23 October 2000, the complainant was informed that his name was not included in the reserve list. He was then notified that the period of notice commenced to run from 16 November 2000 and that his temporary contract would subsequently cease on 15 February 2001. The European Commission argued that it terminated the complainant's temporary contract in accordance with Article 47 (2) of the Conditions of Employment of Other Servants of the European Communities.[48]

Concerning the allegation of abuse of its position of immunity, the Commission mentioned Article 283 EC relating to the power of the Council to lay down the Staff Regulations and the Conditions of Employment of Other Servants and Article 236 EC relating to the exclusive jurisdiction of the Court of Justice in disputes between the Community and its servants. The Commission therefore considered that the allegation of termination of the complainant's temporary contract in violation of basic procedures laid down by national law and the allegation of abuse of its position of immunity were legally groundless.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply, the complainant repeated his allegations of procedural irregularities and stated that the Commission forced the Selection Board to admit another 100 candidates to the written tests. As a consequence of this interference of the Commission into the work of the Selection Board, the latter resigned. It agreed to complete its work afterwards, which put its independence in doubt. The European Commission refused to explain the circumstances of this agreement.

He repeated his allegation of lack of relation between the questions asked during the oral test and the objectives specified in the notice of the competition and maintained his claim concerning the record of his oral test.

FURTHER INQUIRIES

After careful consideration of the European Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. Therefore, the Ombudsman forwarded the complainant's observations to the Commission and requested additional information concerning the alleged procedural irregularities.

---

48 *"Apart from cessation on death, the employment of temporary staff shall cease, where the contract is for an indefinite period: at the end of the period of notice stipulated in the contract; the length of the period of notice shall not be less than two days for each completed month of service, subject to a minimum of 15 days and a maximum of three months."*

The Commission's complementary opinion

According to the Commission, the Director General of Administration and Personnel DG, acting as an Appointing Authority, actually decided to extend the deadline for candidatures for the competition. By e-mail dated 2 December 1999, he informed all the members of staff of the Commission of his decision. Moreover, the Director General of Administration and Personnel DG referred to the Joint Committee and undertook to admit 110 candidates to the reserve list, instead of the 80 originally foreseen. Its purpose was to have regard to the interests of the candidates because the notice of competition COM/TA/99 was different to the former ones published, as regards both the conditions of eligibility and the deadlines for candidatures.

The Selection Board admittedly resigned further to the decision of the Director General of Administration and Personnel DG of 2 December 1999. However, following a message delivered to all the Staff of the Commission by the Director General of the Administration and Personnel DG on 12 January 2000, the Selection Board decided to withdraw its resignation and to resume its work. The resignation and the resumption of work of the Selection Board appear therefore to be explained. No uncertainty consequently persists about the independence of the Selection Board since it decided on its own to withdraw its resignation.

The Selection Board decided on its own to admit only 66 candidates to the reserve list, acting as an independent panel, without any intervention of the Commission. According to case law of the Community Courts, assessments by the Selection Board of the abilities of the candidates may be subject to review by the Court *"only where there is a flagrant breach of the rules governing the Selection Board's work."*[49]

Concerning the alleged lack of relation between the oral test and the objectives specified in the notice of competition and the complainant's claim concerning the record of his oral test, the Commission stated that there was no individual mark given by each member of the Selection Board to the candidates or any individual comments made. The Selection Board is a collegiate body. Members of the Selection Board act in co-operation and proceedings are secret, pursuant to Article 6 of Annex III of the Staff Regulations.

At its own initiative, the Commission annexed to its complementary opinion a copy of the evaluation sheet for the complainant's oral test. The Commission specified that this document is confidential and should not be forwarded to the complainant.

The complainant's complementary observations

The Ombudsman forwarded the Commission's opinion to the complainant and informed him that the Commission had sent a copy of the evaluation sheet of his oral test to the Ombudsman as a confidential document.

The complainant questioned whether the confidentiality of the evaluation sheet is justified in his case. He also repeated his allegation of procedural irregularities, in particular the lack of independence of the Selection Board, following the intervention of the Appointing Authority in its work. In the complainant's view, the circumstances of the resignation and the subsequent resumption of work of the Selection Board remain unexplained.

---

[49] Judgements of the Court of First Instance of the European Communities of 15 July 1993 (Cases T-17/90, T-28/91 and T-17/92, *Camara Alloisio a.o. v. Commission* [1993] ECR-SC II-841) and of 1 December 1994 (Case T-46/93, *Michaël Chiou v.Commission* [1994] ECR-SC II-929).

THE DECISION

1 The allegation of procedural irregularities

1.1 The complainant alleged procedural irregularities during internal competition COM/TA/99.

(a) The actions of the Commission and the independence of the Selection Board

1.2 According to the complainant, the Commission extended the deadline for candidatures for the competition and admitted another 100 candidates to take part. As a consequence, the Selection Board resigned but subsequently agreed to resume its work in unexplained circumstances, which put the independence of the Selection Board in doubt.

1.3 According to the Commission, the Appointing Authority decided to extend the deadline for candidatures and undertook to put 110 candidates on the reserve list. The Selection Board resigned but, following a message delivered by the Director General of Administration and Personnel, decided to withdraw its resignation and to resume its work. The resignation and the resumption of work of the Selection Board appear therefore to be explained. No uncertainty consequently persists about the independence of the Selection Board since it decided on its own to withdraw its resignation.

1.4 The Ombudsman notes that in its complementary opinion, the Commission stated that the Director General of Administration and Personnel DG informed, by e-mail dated 2 December 1999, all the members of staff of the Commission of his decision to extend the deadline for candidatures. The Ombudsman considers that the extension of the deadline for candidatures constitutes a substantial change in the conditions under which the notice of competition was published. In the light of the information of the file, it appears that after the notice of competition was published on 5 July 1999, the Commission made a corrigendum on 30 July 1999 probably about a different matter. The Ombudsman takes the view that the Commission should have made another corrigendum to the notice of competition in order to extend the deadline for candidatures as this change alters substantially the notice of competition. Its failure to do so was an instance of maladministration. The Ombudsman will make a critical remark on this point.

1.5 Moreover, the Ombudsman also notes that the Commission argued, in its complementary observations, that the purpose of its undertaking to put 110 candidates on the reserve list was to have regard to the interest of the candidates. The Ombudsman considers that, according to established case law, such a duty to have regard to the interests of the officials falls to the Selection Board and not to the Appointing Authority.[50] By extending the deadline for candidatures and undertaking to increase the number of candidates foreseen in the reserve list, the Appointing Authority favoured the candidates who did not fulfil the conditions of eligibility defined in the original notice of competition. This constituted a second instance of maladministration. The Ombudsman will make a second critical remark on this point.

(b) The number of candidates admitted to the reserve list

1.6 According to the complainant, the Commission admitted only 66 candidates to the reserve list, thereby breaching an undertaking, which it had given to put 110 candidates on the reserve list.

---

50 Judgement of the Court of Justice of the European Communities of 31 March 1992, Case C-255/90 P *Burban v. Parliament*- [1992] ECR-I-2253- points 16,20.

1.7 The Commission argued that the Selection Board decided on its own to admit only 66 candidates to the reserve list, acting as an independent panel, without any intervention of the Commission.

1.8 The Ombudsman notes that according to Art. 30 of the Staff Regulations it is for the Selection Board draw up the list of suitable candidates. There appears to be no evidence that that the decision to admit 66 candidates to the reserve list was not a decision made by the Selection Board in the exercise of its functions under the Staff Regulations. The Ombudsman considers that the issue of the undertaking by the Commission has been dealt with in paragraph 1.5 above. The Ombudsman's inquiry has therefore revealed no maladministration as regards this aspect of the complainant's allegation.

(c) The questions in the oral test

1.9 According to the complainant, the questions asked during the oral test bore no relation to the objectives specified in the notice of competition.

1.10 The Commission argued that the proceedings of the Selection Board are secret, pursuant to Article 6 of Annex III of the Staff Regulations.

1.11 The Ombudsman considers that the Commission's argument does not answer the complainant's allegation. However, the Ombudsman notes that the established case law of the Community courts is that the Selection Board has wide discretionary powers in assessing candidates in a competition. Its assessment can only be set aside in case of manifest violation of a rule or principle binding upon the Selection Board. The Ombudsman considers that the complainant has not provided any evidence that could show that the Selection Board stepped outside the limits of its legal authority. The Ombudsman's inquiry has therefore revealed no maladministration as regards this aspect of the complainant's allegation.

2 The alleged failure to reply to the complainant's Article 90 complaint within the time limit.

2.1 The complainant alleged that the European Commission failed to reply to his complaint made under Article 90 of the Staff Regulations within the time limit of four months.

2.2 The Commission stated that it replied to the complainant in a letter dated 29 March 2001.

2.3 The Ombudsman notes that, according to Article 90 (2) of the Staff Regulations, "(…) The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complainant has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91".

2.4 In his decisions on complaints 1479/99/(OV)MM and 729/2000/OV, the Ombudsman considered that, in accordance with Article 90 (2) of Staff Regulations, the Appointing Authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. This is in line with principles of good administration. If the Appointing Authority fails to act in this way, i.e. does not follow the principles of good administration, the person concerned is protected from further delay by the rule that the lack of reply constitutes a negative decision. This last rule aims to establish a possibility of a legal remedy for a citizen, even when the Appointing Authority does not comply with its legal obligation to answer. It does not authorise the Appointing Authority to omit from its obligation to comply with principles of good administration.

2.5 In the present case, the Commission should have replied to the complainant by 20 March 2001. The complainant complained to the Ombudsman on 21 March 2001 and the Commission replied to the complainant on 29 March 2001, nine days late. The Ombudsman therefore considers that the Commission appears to have taken adequate steps to settle this aspect of the complaint and that no further inquiries into this aspect of the complaint are therefore justified.

3 The termination of the complainant's temporary contract by the European Commission

3.1 The complainant alleged that the Commission terminated his temporary contract in violation of basic procedures laid down by national law, thereby abusing its position of immunity.

3.2 The European Commission stated that it terminated the complainant 's temporary contract in accordance with Article 47 (2) of the Conditions of Employment of Other Servants of the European Communities.

3.3 The Ombudsman notes that the complainant worked as a temporary agent in the European Commission. His employment was therefore governed by the conditions of employment as set out in the Staff Regulations and Rules applicable to officials and Other Servants of the European Communities.

3.4 On the basis of the available information, it appears that the Commission terminated the complainant's temporary contract in compliance with the rules of the Staff Regulations, in particular Article 47 (2) of the Conditions of Employment of Other Servants of the European Communities. The complainant has provided no evidence to show that the Commission was not entitled to do so.

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

4 The Commission's transmission of confidential material to the Ombudsman

4.1 The Commission attached to its complementary opinion a copy of the evaluation sheet for the complainant's oral test. It specified that this document was confidential and should not be forwarded to the complainant.

4.2 As mentioned in the Ombudsman's Annual Report to the European Parliament for 1998, it is a basic principle of fair procedure that the Ombudsman's decision on a complaint cannot take into account information contained in documents provided by one party, unless the other party has had the chance to respond. The Ombudsman's decision on a complaint cannot, therefore, take into account information contained in documents supplied by the institution or body concerned, unless the complainant has had a chance to make observations on the documents. Moreover, if the Ombudsman needs to inspect a confidential document in order to check the accuracy and completeness of the Commission's answers, he can exercise his powers to inspect the document concerned under Art 3 (2) of the Statute of the Ombudsman.

4.3 The Ombudsman will therefore return the evaluation sheet to the Commission and it does not, therefore, form part of the Ombudsman's file on the case.

4.4 The Ombudsman has taken the opportunity to inspect the document concerned in order to check the accuracy of the Commission's statement in its complementary opinion that that the members of the Selection Board did not give individual marks or make individual comments.

4.5 In his complementary observations, the complainant questioned whether the confidentiality of the evaluation sheet is justified in his case. The Ombudsman points out that the complainant has the possibility to make a request to the Commission for access to personal data, which it holds in relation to him, in accordance with the provisions of Regulation 45/2001.[51] It would be for the Commission to deal with such an application, in accordance with the provisions of Regulation 45/2001. If the complainant were to be dissatisfied with the Commission's handling of such an application, he could consider lodging a new complaint with the Ombudsman.

5 The complainant's claims

5.1 The complainant claims that the Commission should communicate to him the record of his oral test, with details of the questions asked, the name of the person asking each question and the marks awarded by each member of the Selection Board, as well as their possible comments.

5.2 The Commission argued that the members of the Selection Board did not give individual marks or make individual comments. The Ombudsman has confirmed the accuracy of the Commission's response by inspecting the evaluation sheet for the complainant's oral test.

5.3 The complainant claims that the Commission should provide clear and precise explanations in relation to his complaint. The Ombudsman considers that this element of the complainant's claims is dealt with in paragraphs 1.4 and 1.5 above and in the critical remarks made below.

5.4 The complainant claims that the Commission should make good the damage he suffered as a result of its maladministration. The Ombudsman does not consider that the complainant has shown that he suffered any loss as a result of the maladministration identified in paragraphs 1.4 and 1.5 above. The Ombudsman therefore considers that no further inquiries are justified into the complainant's claim.

6 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remarks:

The Ombudsman notes that in its complementary opinion, the Commission stated that the Director General of Administration and Personnel DG informed, by e-mail dated 2 December 1999, all the members of staff of the Commission of his decision to extend the deadline for candidatures. The Ombudsman considers that the extension of the deadline for candidatures constitutes a substantial change in the conditions under which the notice of competition was published. In the light of the information of the file, it appears that after the notice of competition was published on 5 July 1999, the Commission made a corrigendum on 30 July 1999 probably about a different matter. The Ombudsman takes the view that the Commission should have made another corrigendum to the notice of competition in order to extend the deadline for candidatures as this change alters substantially the notice of competition. Its failure to do so was an instance of maladministration.

Moreover, the Ombudsman also notes that the Commission argued, in its complementary observations, that the purpose of its undertaking to put 110 candidates on the reserve list was to have regard to the interest of the candidates. The Ombudsman considers that, according to established case law, such a duty to have regard to the interests of the officials falls to the Selection Board and not to the Appointing Authority. By extending the

51 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L8/1

deadline for candidatures and undertaking to increase the number of candidates foreseen in the reserve list, the Appointing Authority favoured the candidates who did not fulfil the conditions of eligibility defined in the original notice of competition. This constituted a second 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.

TECHNICAL ASSISTANCE OFFICE'S FAILURE TO PAY BILLS - COMMISSION'S RESPONSIBILITY

Decision on complaint 761/2001/OV against the European Commission

THE COMPLAINT

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

In the framework of the Leonardo da Vinci programme, the complainant, a Belgian publisher, carried out printing works on behalf of the Commission (DG XXII). This was done in 1998 via Agenor, a company that acted as the Technical Assistance Office (TAO) of the Commission. The complainant printed two series of works in English, French and German and sent the invoices (98/274, 98/521 and 98/575) to the Commission's Technical Assistance Office on 25 May, 30 November and 31 December 1998.

However, on 11 February 1999, the Commission unilaterally terminated the contract with Agenor with effect from 31 January 1999. This provoked the bankruptcy of the Technical Assistance Office, which could therefore not pay the invoices anymore. The latter thus had a debt towards the complainant for a total amount of 1.971.405 BEF or € 48.869, 85.

The complainant sent a registered letter to the Commission on 28 April 1999, asking the Commission to proceed with the settlement of the invoices. The complainant noted that DG XXII approved the complainant's offer even though it had been aware for several months that serious irregularities and fraud existed within its Technical Assistance Office.

In this context, the complainant referred to paragraphs 5.3.1, 5.3.3 and 5.8.5 of the report by the Committee of Wise Men (Committee of Independent Experts) created in 1999 to investigate various irregularities. The complainant annexed parts of this report to his complaint. According to this report, the Commission knew from 1997 onwards about fraud and irregularities within Agenor, but failed to take any measure.

The Commission finally terminated the contract, which provoked the bankruptcy of the Technical Assistance Office, and thus the non-payment of the outstanding invoices. The Commission did not reply to the complainant's letter of 28 April 1999. On the telephone, the Commission replied that the complainant had first to wait for the bankruptcy procedure to be terminated. However, the liquidator informed the complainant that the bankruptcy procedure was not ready to be closed.

In May 2001, the complainant therefore wrote to the Ombudsman claiming that the Commission is responsible for the non-payment by its Technical Assistance Office "Agenor" of the three invoices for a total amount of € 48.869,85 because 1) the publications concerned were produced on behalf of the Commission, 2) the Commission approved the offers before the complainant carried out the works and 3) the Commission did not take any measure when it knew from 1997 onwards about the irregularities and fraud within Agenor.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission pointed out that in the framework of the assistance it was providing to the Commission for the management of the Leonardo da Vinci programme,

the company Agenor ordered printing works from the complainant. After the bankruptcy of Agenor, the complainant filled in a recovery declaration. However, according to information provided by the liquidator, the bankruptcy would not be closed within a short deadline, and as a consequence, three invoices from the complainant remained unpaid.

The Commission has no contractual relation whatsoever with the complainant and can therefore not be held responsible for the situation in which the complainant finds himself as a result of his commercial relations with the bankrupt company.

The complainant puts forward three grounds on the basis of which the Commission would be responsible for the non-payment of the three invoices. In this regard, the Commission made the following comments:

Agenor provided technical assistance to the Commission in the framework of the Leonardo da Vinci programme. In order to implement the work programme, which was an integral part of its contract with the Commission, Agenor concluded contracts (including employment contracts). Part of the works which Agenor delegated to the complainant was included in this work programme together with all the other tasks for which Agenor was responsible in the framework of its contract with the Commission. The delegation of certain tasks was carried out through contracts concluded between Agenor and its providers.

The fact that only Agenor and the complainant were parties to the contract is not put in question by the fact that the Commission would have approved the specifications concerning the works that Agenor delegated. This approval has to be seen in the strict framework of the relation between the Commission and Agenor. The Commission has installed a system of a priori control of the costs made by Agenor. This explains why a series of specifications were previously submitted for the Commission's approval, exclusively for reasons of financial control in the framework of the execution of the Leonardo da Vinci programme.

The analysis of the various audit reports within the Commission's services did not make them consider terminating the contractual relation with Agenor. As regards the reference to fraud activities, it was only in February 1999 that is was established that certain irregularities could eventually be categorised as penal. In the interest of the programme and of its beneficiaries, the Commission considered that it was preferable to maintain its contractual relations with Agenor, however with additional conditions in order to avoid a repetition of the irregularities. The renewal of the contract from 1 February 1999 on, presupposed a convincing restructuring of the Technical Assistance Office, the conditions of which had been communicated to Agenor. Given that the necessary changes had not been implemented, the Commission concluded in February 1999 that it was not able to pursue its contractual relation with Agenor and announced that it would not renew the contract that expired on 31 January.

The complainant's observations

The complainant maintained that the Commission's responsibility for the non-payment of the invoices is directly engaged. He referred again to the report by the Committee of Wise Men (Committee of Independent Experts) which he had mentioned in his initial complaint.

As regards the Commission's argument that no contractual relation existed with the complainant and that therefore it was not responsible for the payment of the invoices, the complainant stated that, in its report, the Committee of Wise Men observed that in principle, the Commission should not delegate to private firms the management of Community programmes with objectives of general interest. The Commission itself, and not Agenor, should therefore have entered in a contractual relation with the complainant.

The complainant rejected the Commission's argument that the publications would not have been made on behalf of the Commission, but on behalf of Agenor: the publications which are the subject of the unpaid invoices were approved by the Commission, they were made on its behalf and they were delivered directly to DG XXII and to the Office for Official Publications of the EC. Moreover, the orders to the complainant were made on headed paper with the Leonardo da Vinci programme mentioned on it, the sender being identified as the "Technical Assistance Office of the Commission for the Leonardo da Vinci Programme". It appears therefore highly unlikely that the Commission was not responsible, or at least substantially concerned, by the printing works made in the framework of the Leonardo da Vinci programme.

The complainant also indicated that the fact that Agenor had systematically to obtain the prior approval of the Commission's services before engaging costs above a certain amount, and the fact that the Commission and the Court of Auditors had access to all documents detained by Agenor only reinforced the impression that the Commission was doing more than simply supervising the activities of its Technical Assistance Office.

The complainant referred to the principle of legitimate expectations: the Commission, by maintaining its relation with Agenor, created the legitimate expectation that Agenor possessed the necessary organisation and rigor for assuming its obligations towards third parties. Given the information over which the Commission disposed, the Commission should not have created this expectation.

As regards the Commission's argument that it took sufficient measures to put an end to its contractual relation with Agenor given the numerous irregularities, the complainant observed that the contract with Agenor could have been terminated long before February 1999. A first audit report realised by DG XXII between 1 June 1996 and 31 May 1997 already pointed out several anomalies in the management of the Leonardo da Vinci programme. This was confirmed in a second examination of July 1997. Also, an official audit of February 1998 carried out jointly by DG XX and UCLAF on the bad management of the Technical Assistance Office, confirmed once again the allegations of fraud and corruption revealed earlier. However despite the remarks made in the various audit reports, the Commission services did not take any measure to tackle the problems. Had the Commission done so in 1997, when it was necessary, the Technical Assistance Office would not have been able to conclude the contract with the complainant that gave rise to the unpaid invoices. There exists therefore an immediate causal link between the non-payment of the invoices of the complainant and the Commission's delay in reacting on the fraud and irregularities in the management of Agenor.

Further information from the complainant

On 21 January 2002, the Ombudsman's office contacted the complainant in order to inquire about the situation with the liquidation procedure of Agenor. The complainant stated that the case was still in the hands of the liquidator and that the whole procedure would probably take several more years to be completed. The complainant confirmed that he had filed a recovery declaration with the liquidator.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman considered that there could be an instance of maladministration by the Commission. In accordance with Article 3(5) of the Statute[52], he therefore wrote to the President of the Commission

[52] "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".

on 13 February 2002 to propose a friendly solution on the basis of the following analysis of the issue in dispute between the complainant and the Commission:

1.1 The complainant claims that the Commission is responsible for the non-payment by its Technical Assistance Office "Agenor" of the three invoices for a total amount of € 48.869,85 because 1) the publications concerned were produced on behalf of the Commission, 2) the Commission approved the offers before the complainant carried out the works and 3) the Commission did not take any measure even though it knew from 1997 onwards about the irregularities and fraud within Agenor. The Commission, on the contrary, stated that it had no contractual relation whatsoever with the complainant and that it cannot, therefore, be held responsible for the situation in which the complainant finds himself as a result of his commercial relations with the bankrupt company.

1.2 The Ombudsman notes that, in their First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission, the Committee of Independent Experts[53] ("Committee of Wise Men") closely analysed the Commission's responsibilities in relation to Agenor in the framework of the Leonardo da Vinci programme.

1.3 As regards the chronology of the case, the Committee's report stated that *"DG XXII, which is responsible for the programme, had already found indications of irregularities as early as 1994 when it conducted an internal audit of the implementation by Agenor of a predecessor programme (…). It should have acted accordingly, if not in the selection of Agenor as TAO for Leonardo, then at least in the supervision of its activities, once selected. As DG XXII's own audit reports show, many irregularities and fraudulent practices were detected in 1997 (…). In DG XX's internal draft audit report of 20 July 1998, allegations of numerous frauds and irregularities were confirmed. It revealed important deficiencies in the control of the Leonardo/Agenor TAO by DG XXII and came to the conclusion that it was not always clear who controlled whom, DG XXII or the TAO. It was not until the beginning of November 1998 that action was taken on the final audit report, that it was officially submitted to DG XXII and thereafter to the other Commissioners"* (points 5.8.4 to 5.8.6).

1.4 The claim of the complainant has to be evaluated in the framework of the report by the Committee of Independent Experts. At the time the complainant was selected by Agenor to proceed with the publication, namely on 20 May 1998, the Commission had already been aware for a long time about the fraud and irregularities within its Technical Assistance Office Agenor but had not taken any measures.

1.5 In the present case involving the ordering of publications from the complainant and the subsequent delivering of them, the Ombudsman notes that the Commission's Technical Assistance Office was acting completely on behalf of the Commission, which was the ordering body and the de facto recipient of the publications. This appears from the following elements:

1.6 It was on behalf of DG XXII that the publications had been ordered. It was the Commission that approved the final version of the publications. This appears from the note of 27 November 1998 from the Office for Official Publications of the European Communities to DG XXII/C/3 delivering the "approval for printing".

1.7 The publications were delivered to the Commission, some directly to DG XXII, others to the Office for Official Publications. This is mentioned explicitly in an order of 23 December 1998 from Agenor to the complainant, specifying that the address of delivery was the *"Centre de diffusion de l'O.P.O.C.E., (…) Gasperich, L- 1225 Luxembourg"*. The Commission thus received the publications without having to bear the costs of them.

53 Committee of Independent Experts, First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission, 15 March 1999.

1.8 All letters sent by Agenor to the complainant were made on headed paper mentioning "Programme Leonardo da Vinci, Bureau d'Assistance Technique à la Commission européenne pour le programme Leonardo da Vinci".

1.9 Under these circumstances, the fact that the Commission denies all responsibility for the non-payment of the three invoices of the complainant does not appear to be reasonable. The Ombudsman's provisional conclusion is that this could constitute an instance of maladministration.

The proposal for a friendly solution

On the basis of the above considerations, the Ombudsman proposed a friendly solution between the complainant and the Commission which could consist in the Commission's acceptance of its responsibility for the non-payment of the three invoices amounting to € 48.869,85 and its proceeding with the payment thereof. The Commission was requested to reply by 30 April 2002.

The Commission's response

The Commission maintained that it could not be held responsible for the payment of the bills, which have their origin in the contractual relation between the complainant and the bankrupt company Agenor. In the respect of bankruptcy law, the claim of the complainant should enter in the general body of creditors and find its settlement in the framework of the liquidation of the bankrupt company. The complainant has in fact transmitted a claim declaration to the guardianship.

The fact that certain aspects of the contract to which the Ombudsman drew attention (the orders concerned publications requested by the Commission, the "good for printing" were signed by the Commission, the publications were delivered to the Commission) does not invalidate the fact that the Commission was not a party to the contract.

From this point of view, the complainant is in the same situation as all the creditors of Agenor. The Commission cannot adopt a position, which infringes bankruptcy law and the equality of creditors. The Commission can therefore not reply favourably to the Ombudsman's proposal for a friendly solution.

The complainant's observations

The complainant observed that he could not accept the Commission's reasoning which consisted in completely rejecting its responsibility for the payment of the bills, considering especially that the letters sent were with headed paper mentioning the Commission's TAO, that the publications had been approved by the Commission, realised on behalf of the Commission and delivered directly to the Commission's services.

The complainant further observed that he had lodged a complaint with the Commission for non respect of the Commission's Code of Good Administrative Behaviour for relations with the public, and that, if no friendly solution could be found, there would be no other alternative than bringing the Commission to court.

THE DECISION

1 The alleged responsibility of the Commission for the non payment of the outstanding bills by its Technical Assistance Office

1.1 The complainant claims that the Commission is responsible for the non-payment by its Technical Assistance Office "Agenor" of the three invoices for a total amount of € 48.869,85 because 1) the publications concerned were produced on behalf of the

Commission, 2) the Commission approved the offers before the complainant carried out the works and 3) the Commission did not take any measure even though it knew from 1997 onwards about the irregularities and fraud within Agenor.

1.2 The Commission argues that it has no contractual relation whatsoever with the complainant and that it cannot, therefore, be held responsible for the situation in which the complainant finds itself as a result of its commercial relations with the bankrupt company. The Commission has also rejected the Ombudsman's proposal for a friendly solution to the case on the grounds that it cannot be held responsible for the payment of bills that have their origin in the contractual relation between the complainant and its Technical Assistance Office. The Commission added that the complainant's claim could find its settlement in the framework of the liquidation of the bankrupt company.

1.3 The Ombudsman notes that Agenor acted on behalf of the Commission in administering a Community funded programme. The Commission remains responsible for the quality of the administration in organisations managing programmes on its behalf (Technical Assistance Offices - TAOs). Furthermore, principles of good administration require that the Commission should take adequate steps to verify the reliability and performance of TAOs. The latter requirement is particularly important from the point of view of third parties providing goods and services to the Commission. Such third parties may reasonably suppose that, in making contracts necessary for the management of a Community funded programme, the TAO acts on behalf of the Commission and enjoys its full confidence.

1.4 In the present case, it appears from the Committee of Wise Men's Report of 15 March 1999 that, as early as 1994, the Commission was aware of irregularities within its Technical Assistance Office Agenor. Further irregularities and fraudulent practices were discovered in 1997 and confirmed in an audit report of July 1998. However, it was only on February 1999 that the Commission decided to terminate its contract with Agenor. In the meantime - namely in May 1998 - the complainant had already been selected by Agenor to proceed with the printing of the publications for the Commission. At that time, the complainant was not aware of these irregularities and fraud and acted as if Agenor was still a reliable contractual partner having the Commission's full confidence.

1.5 In the light of the above, the Ombudsman considers that the Commission appears to have delayed unduly in tackling the identified problems of irregularities and fraudulent practices within its TAO, Agenor. The effect of this delay was that the Commission in effect continued to represent Agenor to third parties as a fit person to act on behalf of the Commission in managing a Community funded programme when the Commission knew that this was not the case. If the Commission had acted promptly to terminate its contract with Agenor, there would never have been question of the complainant concluding the contract that led to its invoices remaining unpaid. Therefore, the situation in which the complainant finds itself now is a consequence of the Commission's failure to act promptly in taking the appropriate measures to deal with the irregularities and fraudulent practices that it knew existed within Agenor.

1.6 The Ombudsman considers that the Commission was the de facto client of the complainant. This is evidenced by the following facts : It was on behalf of the Commission, namely DG XXII, that the publications were ordered. It was the Commission that approved the final version of the publication. This happened in a note of 27 November 1998 from the Office of Official Publications to DG XXII/C/3 delivering the "approval for printing". At that time, the irregularities and fraud within Agenor had already been reported several times within the Commission. Furthermore, the publications were delivered directly to the Commission, as the address of delivery was the *"Centre de diffusion de l'OPOCE"*.

1.7 Finally, the Ombudsman notes the following important element, which is that the Commission appears to have received the publications and thus benefited from them, without having to bear any of the costs of them. The Commission did not contradict this fact in its opinion on the proposal for a friendly solution. This gives the impression that there was unjust enrichment of the Commission, which would be contrary to the general principles of Community law[54].

1.8 Considering that the situation in which the complainant finds itself now is a consequence of the Commission's failure to act promptly in taking the appropriate measures to deal with the irregularities and fraudulent practices that it knew existed within Agenor, that the Commission was the de facto client of the complainant, and that there might be unjust enrichment of the Commission contrary to the principles of Community law, the Ombudsman takes the view that the Commission's refusal to take responsibility for the payment of the complainant's unpaid invoices constitutes an instance of maladministration.

2 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 the Commission should take adequate steps to verify the reliability and performance of Technical Assistance Offices. The latter requirement is particularly important from the point of view of third parties providing goods and services to the Commission. Such third parties may reasonably suppose that, in making contracts necessary for the management of a Community funded programme, the TAO acts on behalf of the Commission and enjoys its full confidence.

Considering that the situation in which the complainant finds itself now is a consequence of the Commission's failure to act promptly in taking the appropriate measures to deal with the irregularities and fraudulent practices that it knew existed within Agenor, that the Commission was the de facto client of the complainant, and that there might be unjust enrichment of the Commission contrary to the principles of Community law, the Ombudsman takes the view that the Commission's refusal to take responsibility for the payment of the complainant's unpaid invoices in this case appears to be unreasonable which constitutes an instance of maladministration.

In his observations, the complainant stated that if no friendly solution could be found he would have no alternative but to take the matter to court. In view of the fact that the Commission has rejected a friendly solution, the Ombudsman closed the case with the above critical remark.

FAILURE TO CONSULT STAFF PRIOR TO A DECISION AFFECTING THEM

Decision on complaint 821/2001/SM against the European Commission

THE COMPLAINT

By decision of 27 September 1999, the Director General of the Joint Research Centre (JRC) and the Director General of Directorate General IX (now DG ADMIN) jointly decided to abolish the transport allowance on the basis of Articles 14b and 15.2 of Annex VII of the Staff Regulations with retroactive effect. This decision annulled prior Commission staff decisions permitting the allowance.

The complainant alleges that the transport rules changed without prior consultation of staff concerned. The complainant also alleges that he never received a reasoned decision from the Commission under Article 90 of the Staff Regulations.

54 On the principle prohibiting unjust enrichment, see Case T-171/99, *Corus UK Ltd v Commission*, ECR 2001, II-2967, par. 55; Case C-259/87, *Greece v Commission*, ECR 1990, I - 2845.

He claims that the Commission declares its decision void and that it re-establishes the transport allowance in question.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments.

By way of decision of 27 September 1999 jointly adopted by the Commission's Directors General of the JRC and DG Admin, the Commission withdrew the transport allowance rights granted to a number of officials and servants with a rotating working schedule at the JRC at Ispra, Italy. The initial decision of 24 September 1971 and subsequent ones of 25 February 1986, 1 March 1995 and 1 October 1996 granting this allowance had the purpose of equitably compensating staff as they could not benefit from the daily transport facilities provided by the JRC. In the end of the 1990's, the Commission carried out a review of its transport allowances whereby it discovered that the transport allowance in question at Ispra did not have a legal basis.

The Court of Auditors had already raised this issue in an audit of the staff costs of the JRC in 1992. The Court of Auditors considered in this report that the Articles 14b and 15 of Annex VII in the Staff Regulations, which regulate reimbursement of expenses, did not allow for the particular transport allowance for rotating staff at the JRC at Ispra. It moreover considered that the JRC's use of Article 15(2) as a legal basis to justify the fixed allowance to its rotating staff was against the principle of sound financial management of Community funds. The Court of Auditors considered for instance in this respect that the transport between work and the staff's residences was not exclusively done during work hours. It moreover considered it unjustified, as staff working in Petten, Brussels or Luxembourg in the same situation did not receive the same transport allowance for their transport between their residence and work place.

Articles 14 b) and 15 of Annex VII (Remuneration and reimbursement of expenses) of the Staff Regulations concern reimbursement of expenses, transport costs in the present case. Article 14 b) stipulates that an official who is employed at a location where the transport is particularly difficult because of the distance between his residence and work may be given a transport allowance. The Council in Regulation 122/66/EEC of 28 July 1966 laid down a list of such locations, which did not include Ispra. Article 15 relates to grade A1 and A2 officials who may be entitled to a fixed allowance, a lump sum, so as to cover transport costs within the location they are employed.

Having regard to the Articles in the Staff Regulations and the review of the transport allowance, the Commission decided to abolish the transport allowance by decision of 27 September 1999 with retroactive effect as from 1 July 1999. Considering that this decision concerned several members of staff at the JRC, the Commission informed the staff representatives of the reasons for the decision during a meeting on 29 September 1999. The Commission finally states that it regrets to abolish the allowance in question but that it was necessary because there was no legal basis.

The complainant's observations

The Commission's opinion was forwarded to the complainant for observations. No observations appear to have been received by the Ombudsman.

FURTHER INQUIRIES

Request for further information

Having received the Commission's opinion, further inquiries were considered necessary. In his letter to the Commission of 12 September 2001, the Ombudsman asked the Commission to submit an opinion on the complainant's allegations and claims. Noting that the Commission did not answer the question as to why the complainant had not received a reply to his Article 90 complaint, the Ombudsman asked the Commission again to do so. The Ombudsman also asked the Commission to inform him of whether it had consulted the JRC's staff representatives prior to the decision abolishing the transport allowance, as it seemed that this was not the case. The decision abolishing the allowance in question was adopted on 27 September 1999 whereas the meeting with the JRC staff representatives took place two days later, on 29 September 1999.

The Commission's reply

In its reply, the Commission made the following comments.

Concerning the Article 90 appeal procedure under the Staff Regulations, the Commission states that the complainant's complaint under Article 90(2) was not submitted in time, that is within three months from the decision relating to the latter on behalf of his staff, in that the decision abolishing the transport allowance was taken on 27 September 1999 whereas the complainant filed his complaint on 4 April 2000. The Commission stresses that the lack of reply by the Commission was motivated by the fact that the complainant's appeal was inadmissible. The Commission also stresses that this fact does not prejudge in any way the rights of the complainant. The Commission finally states that in the meantime, it has simplified the complaints' procedure under Article 90 with a view to improve the monitoring of the replies to the complainants.

Regarding the prior consultation of staff at the JRC at Ispra, the Commission clarifies that prior to the decision adopted on 27 September 1999, it had suspended the transport allowance with effect from 1 July 1999 whilst waiting for the consultation of the local staff committee at the JRC on 29 September 1999. The decision only became applicable as at 21 October 1999 with retroactive effect from 1 July 1999. The rotating staff concerned therefore received their transport allowance up to the end of June 1999. In light of a more strict control of Community resources imposed by the Community financing authority, the Commission finally reiterates that in agreement with the Court of Auditors this decision was inevitable due to the lack of a legal basis for the allowance in question.

THE DECISION

1 Alleged failure to consult staff before abolishing the transport allowance

1.1 The complainant alleges that the transport rules changed without prior consultation of staff concerned.

1.2 The Commission considers that it informed the staff representatives of the reasons for the decision during a meeting on 29 September 1999.

1.3 The Ombudsman notes that by decision of 27 September 1999 the Commission withdrew transport allowance rights granted to a number of officials and servants with a rotating working schedule at the JRC at Ispra, Italy with retroactive effect as from 1 July 1999, as there was no legal basis for the allowance in question. On 29 September 1999, that is two days later, the staff representatives were informed about the decision and its reasons. The Ombudsman finds that the withdrawal of the allowance should have been done with prior consultation of the staff concerned; that is the staff representatives in the

present case should have been informed in advance about the Commission's coming decision and the reasons for it. A critical remark will be made in this regard.

2 Alleged failure to provide a reasoned decision under Article 90

2.1 The complainant alleges that he never received a reasoned decision from the Commission under Article 90 of the Staff Regulations.

2.2 The Commission considers that it did not have to provide a reasoned decision to the complainant as his complaint was submitted after the expiry of the deadline of three months as stipulated in Article 90(2) of the Staff Regulations.

2.3 The Ombudsman notes that under Article 90(2) of the Staff Regulations, the appointing authority shall notify the person concerned of its reasoned decision within four months from the date on which the appeal was made. In the present case, the appeal had been lodged after the time limit for presenting an appeal had expired and was therefore not dealt with. The Ombudsman considers that it would have been proper to inform the complainant in writing of the reasons why the appeal was not dealt with. The failure of duly informing the complainant in this respect constitutes an instance of maladministration. A critical remark will be made in this regard

3 Claimed re-establishment of the transport allowance

3.1 The complainant claims on behalf of the rotating staff at the JRC that the Commission declares its decision void and that it re-establishes the transport allowance in question.

3.2 The Commission considers that it was necessary to abolish the transport allowance because of a stricter control of Community budgetary expenditure and in particular because there was no legal basis for the allowance in question.

3.3 The Ombudsman notes that the Council Regulation 122/66/CEE[55] only explicitly mentions the following locations in Italy: Centrale de Latina, Centrale du Garigliano and Casaccia and that it appears that there is no legal basis for the JRC at Ispra in this Regulation laying down the list of places for which a transport allowance may be granted under the Staff Regulations. Following an assessment of different transport allowances for Community officials and other staff, the decision to abolish the transport allowance was jointly adopted by the Commission's Directors General of the JRC and DG Admin annulling all prior decisions granting the allowance in question. This decision was based on the audit report by the Court of Auditors from 1992 which concluded that the Articles 14b and 15 of Annex VII in the Staff Regulations which regulate reimbursement of expenses did not allow for the particular transport allowance for rotating staff at the JRC at Ispra and that this allowance was against the principles of sound management of Community funds. In the light of the above, the Ombudsman considers that the Commission has given a reasonable account for its decision to abolish the transport allowance in question.

3.4 In these circumstances, there appears to be no maladministration on the part of the Commission as regards 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 two critical remarks:

---

55 Regulation No 7/66/Euratom, 122/66/EEC of the Councils of 28 July 1966 laying down the list of places for which a transport allowance may be granted, the maximum amount of that allowance and the rules for granting it, Article 2.

By decision of 27 September 1999 the Commission withdrew transport allowance rights granted to a number of officials and servants with a rotating working schedule at the JRC at Ispra, Italy with retroactive effect as from 1 July 1999, as there was no legal basis for the allowance in question. On 29 September 1999, that is two days later, the staff representatives were informed about the decision and its reasons. The withdrawal of the allowance should have been done with prior consultation of the staff concerned; that is the staff representatives in the present case should have been informed in advance about the Commissions coming decision and the reasons for it. The Ombudsman concludes that this is an instance of maladministration.

Under Article 90(2) of the Staff Regulations, the appointing authority shall notify the person concerned of its reasoned decision within four months from the date on which the appeal was made. In the present case, the appeal had been lodged after the time limit for presenting an appeal had expired and was therefore not dealt with. The Ombudsman considers that it would have been proper to inform the complainant in writing of the reasons why the appeal was not dealt with. The failure of duly informing the complainant in this respect 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.

AWARD OF TACIS CONTRACT

Decision on complaint 834/2001/GG against the European Commission

THE COMPLAINT

The complainant is the director of AFCon Management Consultants, an Irish firm. In 1999, the firm was invited to tender in competition with seven other EU companies (or consortia) for Tacis project FDRUS 9902 (Agricultural Extension Services in South Russia). One of the other tenderers was GFA – Gesellschaft für Agrarprodukte mbH, a German company.

The complainant claimed that AFCon finished first in the technical evaluation and in a subsequent technical re-evaluation whilst GFA was rated third (first evaluation) and second (re-evaluation). The total value of the contract was 2.5 million €, of which 1.6 million € for fees and direct expenses and 0.9 million € for 'reimbursables'. This last item included 0.5 million € for training costs and 0.2 million € for replication and dissemination. The contract was in the end awarded to GFA since its offer (2.131.870 €) was cheaper than AFCon's.

The complainant claimed that according to the rules governing the tender and the information provided by the Commission, the tenderers had to provide (1) a document giving a breakdown of prices prepared in accordance with the format of annex D of the draft contract and (2) a summary of staff input and that these documents had to be consistent[56]. According to the complainant, GFA had failed to comply with this requirement. According to point C.2.1 of the 'Instructions to Tenderers', the 'breakdown of prices' should be prepared in accordance with the format of annex D of the draft contract. The complainant submitted a copy of this form. According to the complainant, training was clearly and unambiguously included under reimbursable costs and did not include fees. The complainant also submitted copies of what were, according to him, the breakdown of prices and the summary of staff input that had been submitted by GFA. The breakdown of prices that had allegedly been submitted by GFA recorded a total of 2 190 man-days for EU experts and of 2 250 man-days for local experts whilst the summary of staff input lists 2 687 man-days for EU experts and 4 615 man-days for local experts. The complainant

[56] The draft form for the 'summary of input' (Annex B) submitted by the complainant contains the following note: "Important: Above summary must be consistent with the input given in the Breakdown of Remuneration (Annex D)".

claimed that this was only possible since GFA had used the amount foreseen for 'reimbursables' to include staff costs and thus masked its real costs, contrary to the rules. In its view, this also reduced the amount available for training purposes, to the detriment of the beneficiaries in Russia.

The complainant submitted a copy of a fax message that appeared to have been sent by the Commission's services in reply to a question asked by the complainant's firm in relation to Tacis project FDRUS 9901. According to this reply, the budget for training, replication and dissemination should stay entirely under 'reimbursables' in order "to keep the bids comparable". According to the complainant, this project was established under the same programme, at the same time and governed by the same rules and regulations as the one at issue in the present case.

On 31 January 2001, the complainant wrote to the Commission's EuropeAid Co-operation Office to ask the latter to reconsider its tender. In this letter, the complainant raised the issue of the alleged discrepancy between GFA's 'breakdown of prices' and 'summary of staff input'. In its reply dated 28 February 2001, the Commission took the view that there were no inconsistencies between GFA's technical and financial proposal and that the clarification issued by the Commission for project FDRUS 9901 could not be applied to project FDRUS 9902.

The complainant further claimed that according to Article 12 (4) of the General Regulations applicable to the tender, no tenderer or member of its staff or any associated person "shall take part in the evaluation" of the tender. However, according to the complainant Mr F., a full-time employee of one of GFA's junior partners, was one of the evaluators in the first evaluation. In the complainant's view, a contract awarded to a company in such circumstances should have been cancelled according to the relevant rules. The complainant added that since Mr F. had been a team leader on a project in Ukraine before and after the evaluation, the evaluator and the tenderer had both been aware of the serious breach of rules regarding the direct conflict of interest yet neither had revealed it. The records would show that Mr F. placed GFA ahead of AFCon in his evaluation. According to the complainant, the Commission had remained silent until it called for a second evaluation in May 2000.

Finally, the complainant alleged that the rules applicable did not permit subsequent changes in the financial presentation or methodology of project implementation but provided for the possibility of staff changes in the case of the unavailability of staff proposed in the original tender. According to the complainant, the result of the second evaluation had been that GFA was promoted to second place behind AFCon on technical merit but won the project on the financial package. The complainant alleged that GFA's financial presentation broke normal accepted practice and regulations for financial presentation and that the regulations allowed for cancellation of such a tender.

According to the complainant, GFA had installed its team leader in September 2000 and had notified the Tacis officials six weeks later that he was no longer available. Still according to the complainant, another long-term team member proposed by GFA had not even been asked to take up his position.

On 18 December 2000, the complainant wrote to the Commission to raise this matter. He took the view that the price that had been proposed by GFA was not enough to allow this company to achieve a sufficient margin, given that GFA had proposed "a non market price for good quality professionals". In the complainant's view, "unscrupulous" companies had two options to recover their profit position in such circumstances. First, they could try and reduce the fee rates agreed with the experts they had proposed or replace these experts by cheaper ones. In this context, the complainant raised the question as to whether the technical quality of GFA's bid had been enhanced by the "ploy of using the best available but expensive senior experts, whom they had no intention of putting into the field for longer

than a month or two, and then substituting [them] with other specialists who would not have gained as much marks at the technical evaluation". Second, these companies could try and reduce the rates paid to local experts and omit paying social security contributions and other amounts to them. The complainant took the view that both options were improper. To support his view, he referred to Special Report no. 16/2000 of the Court of Auditors on tendering procedures for service contracts under the Phare and Tacis programmes. The complainant concluded that the fact that GFA was replacing the majority of its long-term team very early in the project implementation phase clearly indicated that it had secured the contract by deception. According to the complainant, this letter had not been replied to by the Commission.

The complainant further noted that in January 2001, he had received a copy of GFA's financial proposal from a source that he needed to protect. According to the complainant, it emerged from this information that the project was implemented by a contractor who was only supplying a fraction of the inputs that AFCon had proposed.

In his complaint lodged in May 2001, the complainant made five allegations, which however overlapped each other and could therefore more suitably be summarised as follows:

1) The Commission incorrectly awarded the contract to GFA although the latter had failed to comply with the rules applicable to the tender, namely the rule that the breakdown of prices and the summary of staff input had to be consistent and the rule that the budget for 'training' had to remain entirely under 'reimbursables'.

2) The Commission failed to take appropriate action although there was a conflict of interest, given that Mr F. was one of the evaluators.

3) The Commission failed to take appropriate action although GFA replaced more than two thirds of its long-term team within a matter of weeks after the signature of the contract.

The complainant subsequently forwarded to the Ombudsman a transcription of part of the 3rd Monitoring and Evaluation report for the project dated 6 August 2001 that in his view clearly confirmed the views he had expressed in his complaint. In the complainant's view, there was clear evidence of a misapplication and waste of EU taxpayer's funds. The complainant asked the Ombudsman to include the two issues numbered 4 and 5 respectively in the original complaint in his inquiry. In the former of these points, the complainant had taken the view that the Commission had permitted the substantial diminution of the overall budget of the project by allowing the transfer of reimbursable expenses to technical inputs and support services, which had the double effect of reducing the overall total funds for project implementation and reducing the amount really available for training procedures and dissemination. In the last point, the complainant had queried what mechanism had been used to keep the bids comparable when obviously different presentations of the use of reimbursables had been submitted by tenderers.

The complainant's further letter was forwarded to the Commission who was asked to take account of its contents in its opinion.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

Following the publication of a restricted tender procedure, the complainant's firm and consortium GFA were among the short-listed companies invited to submit a tender for the

relevant Tacis project. The evaluation took place on 16 and 17 December 1999. The result of this was that GFA was recommended best bidder, with the complainant's firm in second place. In March 2000, it was decided to cancel the tender evaluation when it was discovered that a potential conflict of interest existed between a member of the evaluation committee and GFA. The re-evaluation of the tenders took place on 15 and 16 May 2000, with a newly constituted evaluation committee. The outcome was the same as for the first evaluation committee. The contract was thus signed with GFA in August 2000.

The complainant's firm had written to the Commission in this matter on 9 October 2000. A reply had been sent on 9 November 2000. Further letters had been sent by the complainant's firm on 18 December 2000 and on 31 January 2001 to which the Commission had replied on 28 February 2001. On 15 March 2001, the complainant had acknowledged receipt of this last letter but reaffirmed his view that the GFA proposal was in breach of the regulations.

Regarding the individual allegations, the Commission made the following comments:

1 The terms of reference for the project concerned gave no specific instructions regarding the allocation of funds under the budgets for training and replication/dissemination. The provisions of the terms of reference concerning the budget breakdown were complied with by GFA in its proposal.

Clarifications regarding tender dossiers referred specifically to the tender in question. The clarification issued to tenderers for Tacis project FDRUS 9901 could not be applied to project FDRUS 9902. New formats had however been introduced since that contained very precise instructions to tenderers in order to avoid different interpretations.

GFA had indicated the same man-day input in its technical proposal and its financial proposal, and the division of man-days between technical assistance and replication/dissemination was also indicated in both the technical and financial proposal. There was therefore no distortion of intended project outputs in GFA's proposal. GFA's fee rates were in line with market rates.

2 After the evaluation of tenders had been carried out on 16/17 December 1999, the Commission learnt that Mr F. had at that time been working as a team leader on a project in Ukraine for a company belonging to Stoas-Holding Group (Stoas Agri-projects Foundation being a member of the GFA consortium). Mr F.'s CV had contained no reference to this activity, and he had made no mention of it at any point during the evaluation procedure. The Commission investigated the matter as soon as it had been made aware of the situation. Given the conflict of interest arising from these circumstances, it had been decided to cancel the tender evaluation and to re-evaluate the offers using evaluators who had not been members of the original evaluation committee. Furthermore, task managers had been instructed that Mr F. should not be appointed as a member of evaluation committees in the future. According to Article 12.4 of the General Regulations for Tacis tenders, "No Tenderer, member of his staff or any other person anyhow associated to the Tenderer for the purpose of the Tender shall take part in the evaluation of the Tender in question". The Commission had ensured compliance with this provision by cancelling the evaluation committee in which Mr F. had participated.

3 Three months after the signature of the contract, the Commission had been informed that the team leader originally proposed by GFA was unable to perform his duties due to ill health. On this basis, the Commission had accepted the replacement of this expert. According to Article 18.2 of the General Conditions for Service Contracts, if it becomes necessary to replace a member of staff on account of sickness, the contractor may propose a replacement provided that it receives the written approval of the Contracting Authority. Contrary to the complainant's claim, there had been no further replacement of long-term experts for this contract. A proposal for the replacement of a second long-term expert had been received by the Commission in recent weeks, and was currently under consideration.

In its letter of 18 December 2000, AFCon had accused GFA of making drastic changes in its team without however substantiating this allegation. AFCon had put forward specific grounds for reconsideration of the contract award in its subsequent letter of 31 January 2001, which the Commission had answered on 28 February 2001.

The Commission thus rejected the complainant's allegations and maintained that the contract had been awarded to GFA in conformity with Tacis tender rules.

The complainant's observations

In his observations, the complainant maintained his complaint and submitted the further following comments:

Mr F. and GFA had both hidden the fact causing the conflict of interest to their advantage. According to the rules, both should have been removed from the tender process.

Only one of the three resident specialists nominated by GFA had taken up a full-time position.

The Guidelines for the preparation of the technical and financial proposal clarified that the figures given in Annex D (breakdown of remuneration) should exactly reflect the figures in annex B (summary of input of staff).

The result, especially of the transfer of reimbursable items to mask a very under-staffed project, was evident in the Monitoring and Evaluation Report of the project dated 6 August 2001 that had indicated that there were problems and an urgent need to review the situation.

FURTHER INQUIRIES

Request for further information

In the light of the above, the Ombudsman considered that he needed further information to be able to deal with the complaint. He therefore asked the Commission (1) to explain the reasons for which it considered that experts' fees could be included under section D of the 'breakdown of prices' despite the fact that the latter distinguished between "A. Fees" and "D. Reimbursable items" and (2) to specify the reasons why the clarification issued to tenderers for Tacis project FDRUS 9901 should not be applicable to project FDRUS 9902.

The Commission's reply

In its reply, the Commission made the following comments:

At the time when the tender was launched, there were no specific rules to prohibit the inclusion of fees under reimbursable items. On the contrary, it was common to include budgets for specific activities under reimbursable expenses even though parts of these budgets were effectively fees or direct expenses. Concerning the disputed training element, tender FDRUS 9902 only provided that a sum of 0.5 million € should be allocated for training. Thus, it was not prohibited to include fees for trainers in the training budget. The tender dossier was unspecific in this regard and therefore opened different interpretations. The approach to include fees for trainers under the budget for training had been applied not only by GFA but also by another tenderer (Swedfarm). Also the proposal by a further tenderer (ADAS) to partly subcontract the training budget was not in contradiction with the requirements stipulated in the tender dossier. The different approach used by AFCon was an interpretation that had been considered acceptable as well. However, it was not more justified than any other approach that had been applied.

At the time of tender FDRUS 9902, tender information could only be clarified in accordance with Article 9 of the General Regulations, requiring a written response to all tenderers to a request for clarification. While a clarification received in another tender procedure could serve as a justification for the own chosen approach in a similar situation, it was not possible to argue that another tender had failed to comply with the rules applicable. Otherwise, tenderers could no longer rely on the information they received in the tender dossier for the project for which they tendered.

Regarding the specific substance of the clarification for project FDRUS 9901, this clarification did not stipulate that reimbursable items should not include fees in order to keep the bids comparable. It stipulated that in order to keep the bids comparable it was requested that the budget for training remain entirely under "Reimbursable".

The complainant's observations

In his observations on the Commission's reply to the Ombudsman's request for further information, the complainant maintained his complaint.

THE DECISION

1 Incorrect award of contract

1.1 The complainant is the director of an Irish company (AFCon) that took part in the tender for the Tacis project FDRUS 9902 (Agricultural Extension Services in South Russia) organised by the European Commission. The contract was in the end awarded to GFA, a German company that had quoted a better price. The complainant claims that by doing so, the Commission acted incorrectly. He claims that GFA failed to comply with the rules applicable to the tender, namely the rule that the breakdown of prices and the summary of staff input had to be consistent.

1.2 The Commission takes the view that the terms of reference for the project concerned gave no specific instructions regarding the allocation of funds under the budgets for training and replication/dissemination and that the provisions of the terms of reference concerning the budget breakdown were complied with by GFA in its proposal. According to the Commission, GFA had indicated the same man-day input in its technical proposal and its financial proposal, and the division of man-days between technical assistance and replication/dissemination was also indicated in both the technical and financial proposal. The Commission adds that it was not prohibited to include fees under reimbursable items and that another tenderer had used the same approach. In the Commission's view, the approach used by AFCon was also acceptable but not more justified than GFA's approach.

1.3 The Ombudsman notes that according to the documents submitted by the Commission[57], GFA indicated in its summary of staff input that its EU experts falling within one of four categories (I to IV) would provide a total of 2 687 man-days, 2 200 of which under heading A ('Technical Assistance') and 487 under heading B ('Training/Replication and Dissemination'). Similarly, it was indicated that local experts would provide 4 615 man-days, 2 250 under heading A and 2 365 under heading B. The same figures appear on the bottom of GFA's 'Financial proposal' (or breakdown of prices). Technically speaking, the Commission is thus correct in claiming that GFA used the same figures in both documents.

[57] There is a slight discrepancy between these documents and the documents submitted by the complainant in that the latter show only 2 190 (instead of 2 200) man-days for EU experts in the main table of the financial proposal.

1.4 Regard should be had to the fact, however, that according to point C.2.1 of the 'Instructions to Tenderers', the 'breakdown of prices' had to be prepared in accordance with the format of annex D of the draft contract[58]. This annex D is a table divided in four parts (A. Fees, B. Per-diem, C. Direct Expenses and D. Reimbursable items). Part 'A. Fees' is sub-divided into three sections – 'Western Experts', 'Local Experts' and 'Support staff'. The section 'Western Experts' is again sub-divided into four categories (I to IV). According to the documents provided by the Commission, GFA duly used this form and gave figures for each of these four categories of EU experts, for local experts and for support staff. Regard should further be had to the 'Guidelines' for the preparation of Annex D. Point 4 under 'Fees' reads as follows: "Clearly separate western experts, local experts, local support staff. Please use the same category/title in the Annex D as in Annex B and C. The figures given in Annex D (for each category or individual expert) should exactly reflect the figures in the time allocation chart (time spent on the project for each expert) submitted as part of Annex B (Summary input of staff)."

1.5 The instructions given to tenderers thus stress that the information provided in the 'breakdown of prices' should *exactly* and *for each category* reflect the information given in the 'summary of staff input'. It can hardly be denied that this condition is not met in GFA's case, even if one takes into account the information added at the bottom of the 'breakdown of prices' submitted by that company. An exact correspondence only exists for the man-days provided by EU experts (2 200) and local experts (2 250) under heading A.

1.6 The Commission submits that the approach used by GFA was nevertheless acceptable, since there were no rules expressly excluding it. This argument cannot be accepted in the present case for at least three reasons.

1.7 First of all, the above-mentioned instructions would be without purpose if tenderers could simply disregard them. In particular, the structure of Annex D inviting tenderers to set out the man-hours provided by EU experts for each of the four categories listed there would make no sense if further man-hours provided by such experts could be added elsewhere.

1.8 Second, it has to be borne in mind that the relevant rules appear to have the aim of making the bids submitted comparable. In a clarification issued with regard to Tacis project FRDUS 9901, the Commission expressly referred to the need "to keep the bids comparable". The Commission is correct in arguing that this clarification is not directly applicable to other projects such as the one at issue here, although it did not appear to dispute the complainant's claim that both projects were established under the same programme, at the same time and governed by the same rules and regulations. However, the Commission has not shown that the need to keep bids comparable only applied to project FDRUS 9901 and not to the one at issue here.

1.9 Third, accepting the approach followed by GFA allowed this company to increase the number of experts and of the man-days provided by these experts at the expense of the budget for training. The Commission has provided a table setting out the weight to be attributed to the various factors on the occasion of the technical evaluation of bids. It emerges from this table that the profile of the experts fielded by tenderers accounted for 45 % and thus nearly half the mark that was given. The Commission's approach was thus clearly likely to favour tenderers who adopted an approach such as GFA's.

1.10 It is good administrative practice in tender procedures for the administration to adhere to the rules established for these procedures. In view of the foregoing, the Ombudsman considers that by allowing tenderers to include experts' fees under reimbursable items the Commission failed to comply with the rules applicable to the tender and

[58] Point C.2.1 of the 'Instructions to Tenderers' informs tenderers that an incorrect presentation of the breakdown of prices "may lead to the rejection of the tender".

the aim pursued by these rules. This constitutes an instance of maladministration. In view of the fact that the complaint to the Ombudsman does not include any claim for redress and that the maladministration does not appear to have any general implications, the Ombudsman will close the case with a critical remark.

1.11 In the light of this finding, the Ombudsman considers that there is no need for him to continue his inquiry into the two further allegations raised by the complainant in his further letter.

2 Failure to take appropriate action in the case of a conflict of interest

2.1 The complainant points out that one of the original evaluators, Mr F., had links with one of GFA's partner firms. He takes the view that both Mr F. and GFA should therefore have been removed from the tender process.

2.2 The Commission points out that when it learnt of Mr F.'s links and thus discovered that there was a potential conflict of interest, it decided to cancel the tender evaluation and to re-evaluate the offers using evaluators who had not been members of the original evaluation committee. Furthermore, task managers were instructed that Mr F. should not be appointed as a member of evaluation committees in the future. According to Article 12.4 of the General Regulations for Tacis tenders, "No Tenderer, member of his staff or any other person anyhow associated to the Tenderer for the purpose of the Tender shall take part in the evaluation of the Tender in question". The Commission takes the view that it ensured compliance with this provision by acting as it did.

2.3 It appears that when the Commission discovered that there was a conflict of interest due to the presence of a member of the evaluation committee who had links to one of the tenderers, it took steps to rectify the situation by cancelling the first evaluation and arranging for a re-evaluation by new evaluators. The Commission furthermore gave instructions to ensure that the relevant person should not be entrusted with the task of an evaluator again. The Ombudsman considers that the steps taken by the Commission appear to be appropriate in the circumstances of the case. The complainant has not established that in the case of such a conflict of interest the Commission would, under the rules governing the tender, have been obliged to exclude both the relevant evaluator and the tenderer concerned. Article 12.5 of the General Regulations for Tacis tenders provides that where a contract is signed with a tenderer who is in violation of Article 12.4, the Contracting Party "may terminate the contract with immediate effect." The termination of the contract is thus not obligatory but within the discretion of the Commission. The Ombudsman considers that the complainant has not shown that the Commission exceeded the margins of its discretion in the present case by acting as it did.

2.4 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as the second allegation is concerned.

3 Failure to take appropriate action in the face of substantial changes

3.1 The complainant claims that the Commission failed to take appropriate action although GFA had replaced more than two thirds of its long-term team within a matter of weeks after the signature of the contract.

3.2 The Commission replies that three months after the signature of the contract, it was informed that the team leader originally proposed by GFA was unable to perform his duties due to ill health. On this basis, the Commission accepted the replacement of this expert, in accordance with the rules. Contrary to the complainant's claim, there was no further replacement of long-term experts for this contract. A proposal for the replacement of a second long-term expert was received by the Commission a few weeks before the date on which it sent its opinion in this case.

3.3 The Ombudsman considers that the explanations provided by the Commission are reasonable and that the complainant has not been able to prove his allegation.

3.4 In these circumstances, there appears to be no maladministration on the part of the Commission in so far as the third allegation is concerned

4 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

It is good administrative practice in tender procedures for the administration to adhere to the rules established for these procedures. The Ombudsman considers that by allowing tenderers to include experts' fees under reimbursable items in the present case, the Commission failed to comply with the rules applicable to the tender and the aim pursued by these rules. This constitutes an instance of maladministration.

Given that these aspects of the case concern specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

COMMISSION GRANT FOR EU SCIENTIST WORKING IN JAPAN

Decision on complaint 1100/2001/GG against the European Commission

THE COMPLAINT

The EU provides grants to enable scientists from member states to do research in Japan, presently under the "Fifth Framework Programme of the European Community for Research, Technological development and Demonstration activities". Grants are provided for a duration of two years and for overlapping periods. This means that the group that started in 1999 (the thirteenth group of Science and Technology Fellows since the beginning of the scheme, hence known as "STF 13") stayed in Japan from March 1999 until March 2001. The following group ("STF 14") started in 2000 and stays until 2002 etc.

All grants were paid in Yen until and including group STF 12. Some of the scientists belonging to group STF 13 received their grant in Euro. As a result of the deterioration of the exchange rate between the two currencies, these scientists received a sum that was worth far less than the sum paid out in Yen. After these scientists had complained to the Commission and subsequently to the Ombudsman, they were compensated for this loss[59].

The complainant in the present case, a German scientist, belongs to group STF 14 (2000 until 2002). The members of this group are paid in Euro. In October 2000, the Commission decided to increase the monthly grant paid to members of STF 14 in so far as the second half of their stay in Japan was concerned. The complainant claimed that he and his colleagues still received considerably less than their colleagues from group STF 13 (in so far as the first year was concerned) and their colleagues from group STF 15 (in so far as the second year was concerned) for the same period of time and that they were therefore being discriminated against.

On 5 December 2000, the complainant and several colleagues wrote to the Commission in order to demand compensation. In its reply of 21 March 2001, the Commission took the view that it had complied with the terms of the individual agreement and that there was no legal right to compensation. It also referred to its decision of October 2000 to increase the monthly indemnities. On 15 June 2001, the complainant wrote to the Commission again. According to the complainant, this letter had not been answered by the time the present complaint was lodged with the Ombudsman. The complainant claimed that the Commission had failed to reply to his letters within a reasonable period and had omitted to give reasons for its decision to reject the demand for compensation. He further alleged that the Commission was deliberately delaying the matter. In his view, the Commission

[59] See the Ombudsman's decision of 30 March 2001 on complaint 1393/99/(IJH)/BB, available on the Ombudsman's website (http://www.euro-ombudsman.eu.int) and in the Annual Report 2001.

had thus infringed his right to good administration under Article 41 of the Charter on Fundamental Rights.

In summary, the complainant submitted the following claims and allegations in his complaint lodged in July 2001:

(1) The Commission failed to grant him compensation on account of the deterioration of the exchange rate between the Yen and the Euro

(2) The Commission infringed his right to good administration.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

In so far as STF 13 was concerned, a monthly grant of 445 000 Yen had been announced. Some of the contracts that were thereupon concluded with the scientists included that sum. Other contracts that were dealt with by different services referred to the equivalent in Euro (€ 3 063). As a result of the deterioration of the exchange rate between the Yen and the Euro, the Commission had subsequently decided to compensate those scientists whose grant had been expressed in Euros so as to ensure that they received the equivalent of 445 000 Yen.

For both STF 14 and STF 15 a monthly grant of € 3 063 had been announced. At the time when the contracts where negotiated, however, and in order to take account of the deterioration of the exchange rate between the Yen and the Euro, the Commission had decided to increase the monthly grant to € 3 600 for STF 14 and to € 4 470 for STF 15. The monthly grant for scientists belonging to STF 14 had also been increased to € 4 470 in so far as their second year was concerned.

The Commission thus considered that it had complied with its commitments and had infringed neither the principle of legitimate expectations nor that of equal treatment. However, the Commission's services had carried out a comparative analysis of the financial conditions for the different selections. On that basis, all the scientists belonging to STF 14 had been informed in November 2001 that the Commission intended to grant them a further indemnity. This indemnity would be paid as soon as the sum resulting from this analysis had been agreed by them.

It was true that the Commission had only replied on 21 March 2001 to the letter of 5 December 2000. This had been due to the need for many internal discussions with different services on such a complex matter, and it had been necessary to analyse the situation and possible solutions with great care. Whilst the complainant and several of his colleagues had written a further letter to the Commission on 15 June 2001, the Tokyo Delegation had been in constant touch with the fellows. Furthermore, the Commission's services had met seven of the fellows belonging to STF 14, including the complainant, on 12 June 2001, and had explained the situation.

The complainant's observations

In his observations, the complainant informed the Ombudsman that on the occasion of a video conference that took place in early December 2001, the Commission had offered to make further payments ranging between € 11 037 and € 11 726 to the scientists belonging to the STF 14 and that he and the others had accepted this offer. The money had however not yet been paid out.

However, the complainant reiterated his view that the Commission had infringed his right to good administration. He stressed that he had had to wait for three months before he received a short reply to his letter of December 2000. A reply to his letter of June had only been sent in August 2001. According to the complainant, the Commission had contacted him just four times within a period of twelve months, and that on the last two occasions this had only been done because of the pressure brought to bear by the Ombudsman. The complainant noted that at the video conference he had expressed the view that an apology would be appropriate. No formal apology had however been given.

THE DECISION

1 Failure to grant compensation on account of deterioration of exchange rate

1.1 The complainant, a German scientist, was awarded by the European Commission a grant expressed in Euros under the "Fifth Framework Programme of the European Community for Research, Technological development and Demonstration activities" for a stay of two years in Japan. He claimed that as a result of the deterioration of the exchange rate between the Yen and the Euro, he received less than comparable scientists that had arrived the year before or the year after and that he was thus being discriminated against.

1.2 In its opinion, the Commission took the view that it had complied with its commitments and had infringed neither the principle of legitimate expectations nor that of equal treatment. However, the Commission also noted that it had carried out a comparative analysis of the situation and that on the basis of this analysis it intended to grant a further indemnity to the complainant and his colleagues.

1.3 In his observations, the complainant informed the Ombudsman that the Commission had offered to make further payments ranging between € 11 037 and € 11 726 to the complainant and his colleagues and that this offer had been accepted.

1.4 The complainant stressed that the relevant sum had not yet been paid. The Ombudsman trusts, however, that the Commission will pay the sum due to the complainant as soon as possible.

1.5 It thus appears that the Commission has taken steps to settle this aspect of the complaint and has thereby satisfied the complainant.

2 Infringement of right to good administration

2.1 The complainant alleges that the Commission failed to reply to his letters of 5 December 2000 and of 15 June 2001 within a reasonable period and omitted to give reasons for its decision to reject the demand for compensation. He further considers that the Commission was deliberately delaying the matter. In his view, the Commission has thus infringed his right to good administration under Article 41 of the Charter on Fundamental Rights.

2.2 The Commission accepts that it only replied to the first letter of 5 December 2000 on 21 March 2001. According to the Commission, this was due to the need for many internal discussions with different services on such a complex matter and the need to analyse the situation and possible solutions with great care. Whilst the complainant and several of his colleagues had written a further letter to the Commission on 15 June 2001, the Tokyo Delegation had been in constant touch with the fellows. Furthermore, the Commission points out that its services met seven of the fellows belonging to STF 14, including the complainant, on 12 June 2001, and explained the situation.

2.3 Article 41 (1) of the Charter on Fundamental Rights provides that every person has the right to have his affairs handled "within a reasonable time by the institutions and

bodies of the Union". The Ombudsman notes that in the present case the complainant first wrote to the Commission in early December 2000. The video conference at which the Commission proposed to make a further payment took place in early December 2001.

2.4 It has thus taken the Commission nearly a whole year to come up with a solution to the problem raised by the complainant and his colleagues. In this context, regard should be had to the fact that it was comparatively easy to ascertain, on the basis of a simple mathematical operation, the accuracy of the complainant's claim that his grant was effectively lower than that given to comparable scientists. The Ombudsman understands that it may take some time to decide on the action to be taken and to find the funds necessary to finance further, compensatory payments. Given that the complainant's stay in Japan was limited to two years and that the grant was intended to help him cover the expenses of this stay, it would however have been all the more important to react as quickly as possible. Moreover, the Commission was already aware of the problem before the complainant turned to it, given that a similar complaint had been lodged in November 1999[60]. In these circumstances, the Ombudsman considers that the Commission has failed to handle the matter within a reasonable time. This is an instance of maladministration, and the Ombudsman considers it necessary to make a critical remark.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark:

Article 41 (1) of the Charter on Fundamental Rights provides that every person has the right to have his affairs handled "within a reasonable time by the institutions and bodies of the Union". The Ombudsman notes that in the present case it has taken the Commission nearly a whole year to come up with a solution to the problem raised by the complainant. He further notes that the Commission was already aware of the problem before the complainant turned to it, given that a similar complaint had been lodged in November 1999. In these circumstances, the Ombudsman considers that the Commission has failed to handle the matter within a reasonable time. This is 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.

ESTABLISHMENT OF A RESERVE FUND

Decision on complaint 1165/2001/ME against the European Commission

THE COMPLAINT

The complainant was the Secretary General of the European Environmental Bureau (EEB), a non-profit umbrella organisation aiming to improve EU environmental policies, who lodged the complaint in July 2001 on behalf of the organisation. The EEB is financially mainly dependent on funding from the European Commission (up to 50%) and from government grants. Further, the membership fees contribute with around € 45.000 per year. Its complaint to the Ombudsman related to the Grant Agreement SUF 99/84875 and concerned a dispute it had with the Commission following the Commission's decision to reduce the final payment of its grant for the year 1999 by € 30,787.27.

The background to the complaint was the following:

The complainant explained that the EEB has had a structural financial weakness, namely that it did not have financial reserves. Reserves are necessary to cover for unexpected losses and to ensure that when grants are not forthcoming, the legal obligations the EEB

60 See the Ombudsman's decision of 30 March 2001 on complaint 1393/99/(IJH)/BB, available on the Ombudsman's website (http://www.euro-ombudsman.eu.int) and in the Annual Report 2001.

has towards its staff and others can still be fulfilled. In 1996, its auditors encouraged the EEB to set up a working capital/reserve fund. The organisation agreed to work on this on the basis of the income from the membership fees, as other donors such as the Commission, sponsor activities only. Until 1999, the reserve had to be spent on dealing with pending debts. After 1999, money was set aside in a working capital/reserve fund. The EEB thought it had an agreement from the Commission's DG Environment for doing so, but in 2000 it appeared that it could not accept this and reduced its final instalment to the EEB with this amount, i.e. € 30,787.27.

The EEB challenged this decision in meetings and letters with the Commission's DG Environment as well as the Financial Control and Mrs Michaele SCHREYER, Member of the Commission responsible for Budget. These efforts were fruitless as regards the 1999 grant. However, the complainant pointed out that they positively resulted in the Commission adapting the contract for EEB and other NGOs in the same position in 2000, to avoid a similar conflict. Whether it will eliminate the problem remains to be seen according to the complainant.

The EEB could not accept the result of the 1999 dispute as both the amount at stake and the principle was very important to it. It found the Commission's reasoning questionable and unreasonable and it undermined the policy the EEB undertook to follow after 1996 to prevent financial crisis that it had in the past. The complainant remained convinced that the Commission was misinterpreting its own rules and put forward in summary the following arguments. First, the Commission requires the EEB to have a sound financial management, as stipulated in the Vade mecum on Grant Management. This includes in the complainant's view and in the view of EEB's auditors, building up a reasonable working capital/reserve fund. Second, the EEB had not used any money from the Commission to set up the reserve nor money that counted for the so called matching funds required to receive the Commission's grant. Only income from EEB's members was used for that purpose. Third, the Commission was sponsoring EEB's activity programme, not the EEB as organisation. The activity programme for 1999 in fact resulted in a loss of € 11,002, which was balanced with membership income originally determined to go into the reserve. As a result, only € 30,787.27 was put into the reserve. Fourth, the Commission called this amount a 'profit', however the EEB is a non-profit organisation. The amount is a non-eligible cost according to Article 10(4) of the General Terms and Conditions Applicable to Grant Agreements of the European Communities (as annexed to the Grant Agreement). The complainant accepted that it was non-eligible for a Commission contribution and that was why it was entirely paid by membership income and not calculated by matching funds. Fifth, the Commission confiscated the entire amount that was aimed for the reserve, and not a proportion of it, related to its contribution to EEB's work. This was not in accordance with the Vade mecum and violated Article 11(3) of the General Terms and Conditions.

In summary, the complainant alleged that the Commission wrongfully decided to reduce the final payment to the EEB under the Grant Agreement SUF 99/84875 with € 30,787.27. The complainant claimed re-payment of the same amount.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission for comments. In its opinion, the Commission pointed out that its view did not differ with that of EEB as far as the facts were concerned, but as regards their interpretation.

The Commission stated that the Vade mecum only serves as a guidance and is not legally binding. Sound financial management should be seen as a prerequisite for receiving

Community funding rather than a justification for building up financial reserves. As regards the complainant's argument that neither the Commission's grant nor the matching funds had been used to build up a reserve, the Commission rejected this argument and put forward that under the NGO funding programme, towards running costs and activities (so called activity funding) all incomes and expenditure must be considered. This implies that membership fees cannot be set aside for the creation of a reserve as they must be used to offset expenditure.

Contrary to the complainant's view that the Commission was not sponsoring EEB's organisation as such, the Commission stated that the Grant Agreement (the contract) covered all types of expenditure with only a few exceptions mentioned in the General Terms and Conditions, which is an integral part of the Agreement. In particular, it covers overhead expenditures with no limitation as regards an allowance percentage. The loss referred to was an accounting artefact, as the EEB chose to make a provision for a reserve with money it was not allowed to keep. The money should have been considered as regular incomes under the rules of the Agreement.

The term 'profit' may be misleading, as non-profit organisations cannot make a profit. Article 3(4) of the Grant Agreement is clear in that respect: "The beneficiary agrees that the grant may in no circumstances give rise to profits and that it must be restricted to the amount required to balance revenue and expenditure for the operation". Provisions for possible future losses or debts are not considered as eligible costs (Article 10(4) of the General Terms and Conditions) which, according to the Commission means, that the beneficiary does not have any discretion to create provisions with the effect that the revenue available for balancing expenditure is reduced.

The Commission stressed that it had not confiscated the amount of the membership income. Instead the amount had to be used to balance the expenditure of the operation. As a consequence, the grant was limited to the remaining difference between income and expenditure.

The Commission stated that it could understand that the complainant seeks to improve its financial standing as recommended by its auditors. However, the contract concluded in 1999, which was the subject of EEB's complaint, does not provide a suitable legal base for supporting the EEB's claim to set up a reserve. The Commission concluded that the Grant Agreement had to be followed and that it did not allow for any other interpretation than a total recovery of money in excess. The Agreement foresees such a reduction and makes it binding for the beneficiaries.

The complainant's observations

In its observations, the complainant maintained its complaint. It stated that the key issue relating to good administration is whether the Grant Agreement allows for only one interpretation. The complainant was convinced that it gives the Commission the opportunity to allow the building up of a modest working capital/reserve fund. This would be consistent with the general requirement laid down in the Vade mecum and be consistent with the principles of sound financial management.

It is true that the Vade mecum is not legally binding but it demonstrates the importance for the Commission that the beneficiary has the capacity to deal with financial risks and losses that may appear. As regards the complainant's second and third argument, it stated that the Grant Agreement uses the word "operation". To EEB this meant the implementation of the work programme it sent the Commission and which forms part of the Agreement. A budget was submitted with that work programme, which did not include the income of some € 40,000 expected from membership fees. It was not included as it was to be used for building the reserve after years of repayments of debts. The Commission's DG Environment was aware of this practice which started in 1997 after discussions with that

DG. The difference in 1997 and 1998 was that the membership fees were used to deal with outstanding debts, which are recognised by the Commission as non-eligible costs.

As to the arguments about a possible 'profit' on the side of EEB, the complainant stated that the Commission's standpoint implied that an organisation gives up its right to practice sound financial management when entering into an Agreement, as it is obliged to use all its income for expenditure without the opportunity to ensure that the organisation can face any losses. The Commission confirmed that provisions for possible future losses or debts are non-eligible costs, but at the same time deprived the EEB of the possibility of making such a provision in the form of a financial reserve. The complainant stressed that the membership income of approximately € 40,000 was not part of the income side of the budget the Commission approved as part of the Agreement, meaning that there is no reduction of revenue available for the implementation of the work programme. In fact, the amount put in the reserve was very modest and the complainant did not accept the Commission's arguments indicating that the EEB arbitrarily set aside a large sum of money and artificially reduced the revenue available for balancing expenditures. In the complainant's view, the implementation of the 1999 work programme the Commission approved was not affected by the EEB's decision to set aside the membership fees.

Regarding the fact that the Commission recovered the entire amount, and not a proportion of it, the complainant referred to Article 11(3) of the General Terms and Conditions which clearly refers to proportional reduction. The complainant found the Commission's interpretation in this regard inadequate for two reasons. Firstly because the Dutch Environment Ministry, another sponsor of the EEB's work programme, put a question to EEB about the supposed surplus. In case it had been a surplus, the EEB should have repaid some 10% to the Ministry. However, it accepted EEB's explanation. If it had not accepted the explanation two sponsors would have asked for parallel repayment and the EEB would have had to pay back 110% of the supposed surplus. Secondly, while the EEB receives a significant proportion of its financing from the Commission, some other environmental organisations receive a lower percentage of their budget from the Commission, sometimes only 10%, under the same programme. Would it be right for the Commission to recover 100% of the supposed surplus if it had contributed with only 10% thereof?

The complainant concluded that it continued to differ with the Commission's opinion and interpretation. It was not consistent with principles of good administration for the Commission to force organisations it supports to operate without financial reserves.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The issues in dispute between the Commission and the complainant

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claim.

The possibility of a friendly solution

On 12 March 2002, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should consider re-paying the amount € 30,787,27 to the complainant, or, alternatively, provide the Ombudsman with a coherent and reasonable account of the legal basis for its actions and why it believed that its view of the contractual position was justified.

In its reply of 3 June 2002, the Commission firstly referred to Council Decision 97/872/EC[61], which is the legal basis for the NGO funding programme. As concerns the fact that the budget does not foresee membership fees as an income, the Commission stated that the budget is in any case an indicative estimate drawn up prior to introducing the application. There is no indication that membership fees would not be part of income from 'other sources'. Therefore, any income, foreseen or not, must be taken into account. Article 3(4) of the Grant Agreement states *"(...) the grant (...) must be restricted to the amount required to balance revenue and expenditure (...)"*.

As regards the fact that Article 10(4) of the General Terms and Conditions provides that possible future losses or debts are not considered as eligible costs, the Commission referred to Article 11(3) of the General Terms and Conditions, which reads: *"The maximum amount of the grant to be paid by the Commission shall be reduced proportionately if examination of the final statement in relation to the total budget as estimated in the agreement reveals that: (...) -total revenue exceeds total expenditure; (...)"*. As the reserve fund was not foreseen in the budget, not even as a non-eligible provision, it cannot be considered as part of the total expenditure and under no circumstances as eligible expenditure. As concerns the proportional reduction, the Commission referred to Article 3(4) as quoted above and to Article 7(2) of the Grant Agreement. According to the latter, should the provisions of the annexes and those of the Agreement differ, the provisions of the Agreement apply. The consequence is that the grant must be restricted to the amount required to balance revenue and expenditure. The proportionality applies only to eligible expenditure. Accordingly, the grant is limited by three ceilings: it cannot be more than € 580 000 equivalent to 53.73% of the eligible real costs (Article 3(2)) and it is restricted to the amount required to balance revenue and expenditure (Article 3(4)). In addition, the contracts for the years 1997-1998 differ from the contract for 1999. The contractual conditions were therefore not the same. Furthermore, the Commission has now recognised the potential build-up of debts out of non-eligible costs over a longer period of time. For that reason conditions more favourable to the complainant were introduced in the contract for 2000. The Commission concluded that it thought it had provided the Ombudsman with a coherent and reasonable account of the legal basis for its actions and why it believed that its view of the contractual position was justified. The Commission did therefore not see any reason to accept the proposal for a friendly solution.

In its observations of 26 July 2002 on the Commission's reply, the complainant maintained its complaint. It stated that the Commission's interpretation of the contract makes it impossible to foresee provisions for future losses or debts and to practice sound management. The complainant underlined that it had always accepted that such provisions should neither be paid from the EU's contribution, nor from the matching funds for that contribution. EEB therefore found other means, being the membership income. The complainant had not indicated in the budget that the membership fees, which the Commission knew EEB were receiving, were an income in the budget. It was rather clear from the budget that the membership income was not aimed to be used for the programme. The Commission's refusal to accept provisions for possible future losses or debts as non-eligible costs and to consider it instead to be a profit or surplus is contradictory to Article 10(4) of the General Terms and Conditions, which is referring to "costs". It is also logical that this so-called non-eligible cost is not mentioned in the budget, as the Commission only wanted to receive information on the eligible expenditures/costs. This is further confirmed by Article 3(1) of the Grant Agreement, which states: *"The detailed budget of the operation is set out in Annex III, which is an integral part of this agreement, and comprises only costs eligible for Community funding, as defined in Annex II."*.

61 Council Decision 97/872/EC of 16 December 1997 on a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection, OJ 1997 L 354/25.

The complainant upheld its position that it is difficult to understand how the Commission can claim the entire amount of what it considers as a surplus when there are other donors who would like to see money returned in case of such a surplus. The complainant was grateful to the Commission for having changed the contract for the year 2000, but stressed that it did not mean that it had to accept an interpretation of the previous contract that it strongly disputed and that cost EEB a lot of money. Concerning the differences between the contracts from 1997-1998 and 1999, they exist but are of no relevance for the case. For all three years the Commission was implementing the same legal framework, i.e. Council Decision 97/872/EC, that was to support activities and administrative costs in the context of the general working programme. The 1999 contract has an Annex with General Terms and Conditions, whereas the previous ones had one on Financial Conditions only. The definition of eligible costs is however similar and the reference to profits is similar (although in 1998 it was not further specified). The complainant stated that, as EEB had not generated any profit or presented a provision for possible future losses or debts as eligible costs, this is irrelevant for the final assessment. The complainant regretted that the Commission did not accept the Ombudsman's proposal for a friendly solution and asked the Ombudsman to maintain his conclusion.

In these circumstances, the Ombudsman considers that a friendly solution has not been achieved.

THE DECISION

1 Reduction of payment - the right to establish a working capital/reserve fund

1.1 The complainant had entered into a Grant Agreement (SUF 99/84875) with the European Commission in 1999. Following recommendations from its auditors and in order to practice sound financial management, the complainant aimed at setting up a working capital/reserve fund using the membership fees. No financial contribution from the Commission or from matching funds was used to set up the reserve. However, the Commission decided to reduce its contribution with the amount put in the reserve in 1999. The complainant alleged that the Commission wrongfully decided to reduce the final payment to the EEB under the Agreement with € 30,787.27. The complainant claimed repayment of the same amount.

1.2 In its first opinion, the Commission stated that the contract concluded in 1999, which was the subject of EEB's complaint, did not provide a suitable legal base for supporting the EEB's claim to set up a reserve. The Commission concluded that the Grant Agreement had to be followed and that the Agreement did not allow for any other interpretation than a total recovery of money in excess. The Agreement foresees such a reduction and makes it binding for the beneficiaries. In its reply to the proposal for a friendly solution, the Commission maintained its position and referred to the provisions of the Grant Agreement and of the General Terms and Conditions.

1.3 The Ombudsman notes that the dispute is related to an Agreement concluded between EEB and the Commission. 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. 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.

1.4 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.

1.5 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.

1.6 The Ombudsman notes that the Commission reduced its grant with the amount the complainant had put in the reserve fund. Since the complainant was acting on instructions from its auditors in order to practice sound financial management, and since no Commission grants or contributions from matching funds were used, the Ombudsman does not find the Commission's action reasonable. The Ombudsman is not convinced that the Commission has provided a coherent and reasonable justification for its actions. The Ombudsman will therefore make a critical remark to the Commission.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman notes that the Commission reduced its grant with the amount the complainant had put in the reserve fund. Since the complainant was acting on instructions from its auditors in order to practice sound financial management, and since no Commission grants or contributions from matching funds were used, the Ombudsman does not find the Commission's action reasonable. The Ombudsman is not convinced that the Commission has provided a coherent and reasonable justification for its actions.

Given that this aspect of the case concerns procedures relating to specific events in the past and given that it was not possible to achieve a friendly settlement of the matter, the Ombudsman closes the case.

The Ombudsman's conclusion does not prevent the complainant from taking the matter to a competent court.

FAILURE TO PAY GRANT

Decision on complaint 1272/2001/SM (Confidential) against the European Commission

THE COMPLAINT

In the present complaint, the underlying undisputed facts are briefly as follows.

The Commission published a call for proposals (the Notice) on 20 August 1998 with a view to improving the financial environment for European Small and Medium sized enterprises, SMEs. The complainant, a company, submitted its grant application, a feasibility study, within the first sphere of activities on networks of private investors and SMEs to the Commission on 30 September 1999 for a project starting in 2000. The Notice set out two procedures, the selection procedure based on the selection criteria in the Notice during which the eligibility of the grant applications is verified, and an award procedure during which the Selection committee compares the selected applications on the basis of the award criteria in the notice and in the end awards a contract to a recipient.

In May 2000, the Commission asked the complainant for bank details with a view to setting up a contract. Following this fax, the complainant reinforced the structure

(marketing, staff) of his company whilst waiting for approval by the Commission. The Commission's financial services however started an audit of its JOP projects, that is Community aid schemes in Phare countries, and within this audit launched an investigation of one of the company's partners. The action involving the complainant was put on hold until clearance of the allegations against his business partner. In the meantime, the Commission's program priorities changed and the present project was closed in April 2001.

The complainant, having received no contract by the end of December 2000/January 2001, contacted the Commission to inquire about the timetable of the project and the approval of a grant for its feasibility study. The complainant was informally told that an audit had been launched of the JOP Programme. In August 2001, the Commission informed the company that it had been on a reserve list but that the project had come to an end and that there would be no contract. The complainant submitted a complaint to the European Ombudsman on 30 August 2001 and asked for his assistance.

In its complaint the complainant makes the following allegations:

1) The Commission failed to pay the grant after having approved the proposal.

2) The Commission failed to inform the complainant within a reasonable time that the project had come to an end. The Commission also failed to inform the complainant that its application was put on hold and that the company's business partner, Mr X, was under investigation by the Commission services.

The complainant claims that the Commission should sign the grant contract as promised and pay the grant.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments.

On 28 August 1998, the Commission published a call for proposals aimed at supporting Small and Medium Sized Enterprises (SMEs) by developing 'Business Angels' networks through the provision of subsidies. The complainant, the company XXX, submitted a proposal for projects starting in 2000 on 30 September 1999. The Commission acknowledged receipt by letter of 29 October 1999 informing the complainant that its Selection Committee would analyse it in due course. Following this analysis the authorising department, DG Enterprise, put it on a reserve list which meant that the proposal passed the first selection phase but no decision on the award of the subsidy had been taken at that stage. On 4 May 2000, DG Enterprise asked the complainant for bank details with a view to conclude a grant agreement. Following the launch of an audit of several JOP projects the Commission services investigated more closely one of the complainant's business partner's activities. While this investigation was ongoing, DG Enterprise decided to put the company on hold whilst waiting for clearance of the allegations.

On 24 January 2001, a meeting took place between DG Enterprise and the company's representatives, who made it clear that they still expected to conclude a grant agreement with the Commission and expressed dissatisfaction with the long duration of the internal audit process. DG Enterprise then informed them that the Commission did not intend to conclude a grant agreement with their company before clearance of the allegations against the business partner and that the proposal was put on hold in the meantime. Some months later, in April 2001, DG Enterprise decided to close the Business Angels network action whereby three remaining proposals including that of the complainant were not followed up.

In reply to the complainant's letter of 11 June 2001, the Commission informed the complainant by letter of 23 August 2001 that the action had been closed and that there would be no grant agreement. On 30 August 2001, the complainant replied to the Commission's letter asking for more details and requesting that a grant agreement be signed. On the same date, the complainant submitted a complaint to the Ombudsman. The Commission sent a holding reply to the complainant on 11 October 2001 informing it that DG Enterprise was proceeding with additional verification of the complainant's proposal comprising a request for information to the "Tribunal de Commerce de Nivelles" in Belgium regarding the constitution and registration of the company.

Finally, the Commission comments on the allegations put forward by the complainant:

The Commission considers that it did not fail to pay the grant, as it has not committed itself to award such a grant to the complainant. The fact that the proposal was put on a reserve list, meaning that it passed the first selection phase but that no decision on the award of the grant was taken yet, does not correspond to an obligation to award the grant to those on that reserve list. The acknowledgement of receipt sent to the complainant on 29 October 1999 and the fax of 4 May 2000 asking for bank details are part of the Commission's administrative practice and do not amount to a promise committing the Commission.

As regards the alleged failure to inform the complainant that the project had come to an end within a reasonable period of time, the Commission states that the company was put on hold whilst waiting for clearance of suspicion of fraud. Then the remaining budget relating to the Business Angels action for the year 2000 was carried forward to the year 2001 and ceased to be valid by the end of March 2001. At that stage, DG Enterprise decided to close the Business Angels Action and informed the complainant that the action was closed and that no further subsidy would be granted.

Finally, regarding the failure to inform the complainant that it was put on hold, the Commission states that the company was informed of this during the meeting with DG Enterprise staff, which took place on 24 January 2001. Concerning the allegation that the Commission failed to inform the complainant that its business partner was the subject of an audit by the Commission services, the Commission states that the complainant was informed of this also during the latter meeting in January 2001. Futhermore, the Commission points out that the European Anti-Fraud Office, OLAF, initiated an inquiry in October 2000 in particular involving one of the complainant's business partners.

The complainant's observations

The complainant maintains its claim in the observations and makes the following remarks.

The complainant maintains that the Commission committed itself by stating in its letter of 4 May 2000 requesting bank details that "in order to set up a contract with XX, could you please be so kind to (…)." The complainant argues that the Commission's commitment is also illustrated in the minutes from the meeting with the Commission on 24 January 2001 which state that the company's proposal "received a rather high score in the evaluation, and a contract with XX was prepared in order to support the setting up and development of the (…) network". The complainant is of the view that the contract was established as the Commission had accepted its offer.

The Commission's statement that the letter of 4 May 2000 asking for bank details was automatically sent to all the bidders on the reserve list is incorrect in that the complainant did not figure on such a list as at that date.

The complainant moreover considers that the Commission should have informed it of the initiated fraud investigation against one of its business partners and notified the partner in question directly in this respect. The way the situation was handled deprived both of the

right of defence, which is a fundamental right. The complainant moreover points out that the allegations of fraud against his business partner do not in any way concern the company.

The complainant notes that the OLAF investigation is as at the date of the Commission's opinion, 7 January 2002, not finalised, having been initiated in October 2000 whilst mentioning that its partner therefore has no comments on the subject of the alleged irregularities.

The complainant also stresses that the Commission has not to date replied in substance to its letter sent to the latter of 30 August 2001.

He finally requests compensation including interest for damages suffered.

THE DECISION

1 The complainant's new allegations and claims

1.1 In his observations, the complainant alleges that the Commission has not provided a substantive reply to its letter of 30 August 2001 and that the Commission has deprived both it and his business partner of the right of defence. The complainant also claims damages including interest for the Commission's failure to pay the grant.

1.2 The Ombudsman considers that the new allegations and claim cannot be dealt with satisfactorily in the framework of the present inquiry. The allegations could be the subject of a new complaint to the Ombudsman. The complainant may address the new allegations and claim directly to the Commission and consider making a new complaint to the Ombudsman if the Commission does not provide a satisfactory reply.

2 Alleged failure to pay the grant after having approved the proposal

2.1 The complainant alleges that the Commission failed to pay the grant after having approved the proposal and claims that the Commission should sign the grant contract and pay the grant.

2.2 The Commission considers that it did not fail to pay the grant, as it has not committed itself to award such a grant to the complainant. The fact that the complainant's proposal passed the first selection phase but that no decision on the award of the grant was taken yet, does not correspond to an obligation to award the grant to the pre-selected companies on the reserve list.

2.3 The Ombudsman notes that the tender procedure applicable in the present case is set out in the notice for the call for proposals aimed at improving the financial environment of SMEs of 20 August 1998. When selecting companies with a view to strengthen the financial structure of SMEs in Europe the Commission firstly makes a pre-selection of potential candidates to whom a grant agreement might be awarded which is followed by a second phase during which the award procedure takes place. In the event the Commission approves the grant application a grant agreement will be concluded. In the present case, it appears that the complainant was selected and thus considered as an eligible contract partner but was not however awarded a contract.

2.4 On the basis of the available evidence, the Ombudsman considers that the Commission did not commit itself to conclude a grant agreement with the complainant.

2.5 In these circumstances, there appears to be no maladministration on the part of the Commission as regards this aspect of the complaint.

3 Alleged failure to inform within a reasonable time that the project had come to an end

3.1 The complainant alleges that the Commission failed to inform it within a reasonable period of time that the project had come to an end.

3.2 According to the Commission, it decided to close the Business Angels Action programme in April 2001, at a time when only three applications remained to be dealt with including that of the complainant. It informed the complainant, by letter of 23 August 2001, of the fact that it had closed the programme and that the complainant's application was therefore no longer under consideration.

3.3 The Ombudsman notes that the Commission failed to inform the complainant of the closure of the Business Angels Action programme until four months after the closure decision was made. According to Article 41 of the Charter of Fundamental Rights of the European Union, every person has the right to have his or her affairs handled within a reasonable time by the institutions and bodies of the Union. The Commission has offered no explanation for the delay. In these circumstances, the Ombudsman considers that the Commission should have informed the complainant without delay. Its failure to do so is an instance of maladministration and the Ombudsman will make a critical remark below.

4 Alleged failure to inform that the grant application was put on hold and that a business partner was under investigation

4.1 The complainant alleges that the Commission failed to inform it that its application was put on hold and that its business partner, Mr X, was under investigation by the Commission services.

4.2 The Commission argues that DG Enterprise staff met the complainant on 24 January 2001 and informed it of the audit of several JOP projects, the investigation into the activities of its business partner and of the fact that its application had been put on hold.

4.3 The evidence available to the Ombudsman does not support the complainant's allegation that the Commission failed to provide it with information. The Ombudsman therefore finds no maladministration as regards this aspect of the complaint.

5 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make one critical remark:

The Commission made its decision to close the Business Angels Action in April 2001. It informed the complainant of this fact only on 23 August 2001. According to Article 41 of the Charter of Fundamental Rights of the European Union, every person has the right to have his or her affairs handled within a reasonable time by the institutions and bodies of the Union. The Commission has offered no explanation for the delay. The Commission should have informed the complainant without delay. Its failure to do so 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.

FAILURE TO REPLY TO CITIZEN IN ARTICLE 226 PROCEEDINGS

Decision on complaint 1767/2001/GG against the European Commission

THE COMPLAINT

The complainant is an expert in environmental matters who lives in Germany and Greece. On 25 July 2001, he wrote to Mrs Wallström (the member of the Commission in charge of environmental issues) to draw attention to what he considered to be serious flaws in the environmental assessment carried out by Greek authorities in relation to a proposed new extension of the road from Athens to Marathon.

On 6 August 2001, the head of unit B.2 (Nature and biodiversity) of the Commission's Directorate-General Environment acknowledged receipt of the letter and pointed out that the questions raised by the complainant necessitated a thorough examination. He noted that the Commission would do all "to ensure that you will receive a reply within six weeks of receipt of this letter".

In the absence of a further reply, the complainant sent three reminders to the Commission (18 October, 15 November and 29 November 2001). The complainant alleges that on 1 December 2001[62] he was called by a member of the Commission's legal service who asked about the contents of the complainant's letter. According to the complainant, the caller pointed out that the complainant's letter could not be traced and that the Commission did not know therefore whether it should be dealt with by the legal or the scientific department.

On 7 December 2001, the complainant received a letter dated 3 December 2001 in which the Commission informed him that the allegations made in his letter of 25 July 2001 were being examined and that he would be kept informed.

In his complaint lodged in December 2001, the complainant made the following allegations:

1 There was undue delay in handling his case

2 His letters had been dealt with in a sloppy, chaotic and irresponsible manner

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The complainant's letter of 25 July 2001 had been attributed to unit B.2 of DG Environment. On 30 August 2001, it had been forwarded to unit D.2 (Legal implementation and enforcement) of DG Environment. However, due to various reasons the complainant's letter (in German) and the voluminous annexes (in Greek) had not been handled within an appropriate period.

As of 1 July 2001, the post of the official in charge of Greek matters had been vacant due to the Commission's policy of internal mobility. The necessary measures to remedy the situation were taken within the shortest of periods. Thus the notice of vacancy of the relevant post (COM/2001/2364) was published on 16 May 2001 whilst the official concerned left the post on 1 July 2001. The applications received from internal and external candidates had been examined. Given the number of applications and the specific nature of the post, a new official had taken up the post on 16 September 2001.

62 In his complaint, the complainant notes that he received this call on 6 December 2001. However, in his observations on the Commission's opinion the complainant refers to the call as having been made on 1 December 2001. In the light of this letter and of the context, it appears that the date mentioned in the complaint was due to a mistake.

After having examined the documents, unit D.2 had asked the Commission's Secretariat-General by note of 30 November 2001 to register the complainant's letter as a complaint. On 3 December 2001, unit D.2 had informed the complainant that the Commission's services would take the appropriate steps regarding his letter. On 14 December 2001, the Secretariat-General had informed the complainant that his letter had been registered as a complaint (reference 2001/5235).

On 21 January 2002, the Commission had asked the Greek authorities to submit its comments on the facts alleged by the complainant within two months.

The complainant's observations

In his observations, the complainant referred to the wording of the letter of 6 August 2001. He took the view that the internal mobility to which the Commission had referred served neither him nor the service in charge. The complainant stressed that delays in handling the problem rendered the solution nearly worthless and were therefore not acceptable. He also queried why he had not been informed when it had become clear that his letter could not be answered within six weeks, why his reminders had been ignored for so long and why he had been called on 1 December 2001.

THE DECISION

1 Undue delay in handling the case

1.1 The complainant submitted a complaint to the Commission on 25 July 2001. In a letter dated 6 August 2001, the Commission informed him that it would do its best to deal with the matter within six weeks. Despite three reminders sent on 18 October, 15 November and 29 November 2001, it was not before 3 December 2001 that the Commission wrote to the complainant again to inform him that it was handling the matter. The complainant claims that the Commission unduly delayed handling his complaint.

1.2 In its opinion, the Commission explains that the complainant's letter was attributed first to unit B.2 and then to unit D.2 of its Directorate-General Environment. According to the Commission, the handling of this letter was delayed for various reasons. The official in charge of Greek matters within unit D.2 left his post on 1 July 2001 within the framework of the Commission's policy of internal mobility. Measures to remedy the situation were however taken in good time. The notice of vacancy of post was published on 16 May 2001. Given the number of applications that had been received and the specific nature of the post, a new official took up the post on 16 September 2001. On 14 December 2001, the Commission's Secretariat-General informed the complainant that his letter had been registered as a complaint. On 21 January 2002, the Commission asked the Greek authorities to submit its comments on the facts alleged by the complainant within two months.

1.3 It is good administrative practice to reply to letters from citizens within a reasonable period. In the present case, the Commission sent a holding letter shortly after it had received the complainant's letter of 25 July 2001. In that letter, the Commission indicated that it would do all it could to ensure that the complainant would receive a reply within six weeks of receipt of this letter. The Ombudsman notes that it was only after it had received three reminders from the complainant that the Commission, by letter of 14 December 2001, informed the complainant that it had registered his letter as a complaint, that is to say more than four months after it had received this letter.

1.4 It is clear that what is a "reasonable" period for replying depends on the circumstances of the case. The Commission appears to rely in particular on the fact that the official dealing with Greek matters in unit D.2 had left the unit as of 1 July 2001 and that his or her successor only took up the post on 16 September 2001. The Ombudsman accepts

that a change in staff may lead to delays in handling letters sent by citizens and that there may be circumstances in which the administration could rely on this fact in order to justify such delays. However, this would not appear to be the case here. First, it was the Commission itself that decided, in August 2001, to re-attribute the complainant's letter to unit D.2 although it must have been aware of the fact that the post of the case-handler had been vacant since 1 July 2001. Second, given that the new case-handler only took up the post on 16 September 2001 it must have been clear that it was highly unlikely that a reply to the complainant's letter of 25 July 2001 could be sent within the period of six weeks mentioned in the letter of 6 August 2001. It would thus at the very least have been polite to inform the complainant accordingly before that period expired. Third, both the complainant's letter of 25 July 2001 and the three subsequent reminders were drafted in German, not in Greek. The Commission has not established that there was no one available in unit D.2 or elsewhere in the DG who could have written to the complainant in German in order to explain the situation. At the very least, a reply ought to have been sent when the complainant's reminders arrived. The Ombudsman would like to point out that no apology has been offered in the Commission's opinion, either.

1.5 The Ombudsman's conclusion, therefore is that in the light of the circumstances, the Commission has failed to reply to the complainant's letters within a reasonable period. This is an instance of maladministration. A critical remark will therefore be made in this respect.

2 Dealing with letters in a sloppy, chaotic and irresponsible manner

2.1 The complainant alleges that the Commission dealt with his letters in a sloppy, chaotic and irresponsible manner. In order to support this view, he points out that on 1 December 2001 he was called by a member of the Commission's legal service who asked about the contents of his letter of 25 July 2001. According to the complainant, the caller pointed out that the complainant's letter could not be traced and that the Commission did not know therefore whether it should be dealt with by the legal or the scientific department.

2.2 The Ombudsman notes that the Commission has refrained from commenting on this issue. Assuming that the relevant telephone call was made, there would indeed appear to have been a measure of confusion on the part of the Commission. Any such confusion would seem to have been limited, however. Already on 14 December 2001 the Commission informed the complainant that his letter had been registered as a complaint, and the Commission seems to have duly proceeded with the case since.

2.3 In these circumstances, the Ombudsman considers that there is no need for him further to pursue his inquiry regarding the second allegation made by the complainant.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark:

It is good administrative practice to reply to letters from citizens within a reasonable period. In the present case, it was only after it had received three reminders from the complainant that the Commission informed the complainant on 14 December 2001 that it had registered his letter as a complaint, that is to say more than four months after it had received this letter. Although a holding letter was sent shortly after the original letter had been received, the Ombudsman considers that given the circumstances of the case the Commission has failed to handle the matter within a reasonable time. This is an instance of maladministration.

Given that these aspects of the case concern specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

CLOSURE OF AN ARTICLE 226 ENVIRONMENTAL CASE: ALLEGED FAILURE TO REASON AND TO TAKE INTO ACCOUNT AN OMBUDSMAN'S REPORT

Decision on complaint 39/2002/OV against the European Commission

THE COMPLAINT

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

The complainant lodged a complaint with the Commission for violation of the Council Directive 85/337/EEC of 27 June 1985 (better known as the "Environmental Impact Assessment (EIA) Directive[63]) by the UK authorities. The complaint was registered in October 2000. In his complaint, the complainant alleged that a planning permission for the Anglesey Motor Racing Track had been granted without an environmental impact assessment being carried out.

On 14 August 2001, DG Environment informed the complainant that *"Whilst it would have been desirable for the local planning authority to have carried out an EIA under Directive 85/337/EEC before planning permission was granted in 1992, the information available to us does not reveal that there was a breach of the Directive when the planning authority exercised their discretion not to require such an assessment"*. The letter stated that the case would be closed, unless the complainant sent new information within 1 month. The complainant replied on 27 September 2001 with some delay as he was on vacation. Finally, on 8 November 2001, the complainant was informed by the Commission that the case had been closed.

The complainant observes that DG Environment's interpretation of the Directive appears to be unsatisfactory, as instead of invoking it to protect the rights of citizens and the environment, it appears to take the view that the Directive is in no way binding on Member States. However, the Directive, which uses the wordings "shall", "should be" and "must be" provides clearly that Member States should undertake EIA before projects receive approval. The complainant alleges that no reasons were communicated by the Commission why this particular project was exempted from an environmental impact assessment.

The complainant refers to a lengthy 1998 Report from the Local Government Ombudsman of Wales[64] containing a clear and explicit conclusion of maladministration by the local Council. Paragraph 64 of this Report clearly states that "… the track owners should have been required (but were not required) to submit an environmental assessment of their proposals with their planning application". This was not taken into account by DG Environment which did not even refer to this Report.

On 6 January 2002 the complainant wrote to the European Ombudsman and made the following three allegations:

1 The Commission did not take into account in its evaluation the 1998 report from the Local Government Ombudsman of Wales which found to maladministration.

2 The closure of the case by the Commission is based on a wrong interpretation of the Directive.

3 The Commission did not communicate the reasons why this particular project was exempted from an environmental impact assessment.

---

63 Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175/40.

64 Commission for Local Administration in Wales, Report by the Local Government Ombudsman on an investigation into complaint nos. 97/0471/AN/032, 97/0665/AN/041, 97/0987/AN1/019 & 97/0988/AN1/020 against the former Isle of Anglesey Borough Council and the Isle of Anglesey County Council, 9 March 1998.

THE INQUIRY

The Commission's opinion

As regards the first allegation that the Commission did not take into account in its evaluation the 1998 Report from the Local Government Ombudsman of Wales which found maladministration, the Commission observed that it took knowledge of this report, but that there was nothing in it which provided evidence of a breach of Community law, in particular Directive 85/337/EEC. Indeed, in its letter to the complainant of 26 January 2001, the Commission had pointed out to the complainant that the designation of an Area of Outstanding Natural Beauty was purely a national one. Since the designation had no legal basis in Community law, it was considered to have no relevance to this particular complaint.

As regards the second allegation that the closure of the case was based on a wrong interpretation of Directive 85/337/EEC, the Commission observed that the complaint related to a 1992 decision of the local planning authority to grant planning permission for a racetrack without an environmental impact assessment under the above Directive. The complaint concerned thus the provisions of that Directive before its amendment by Directive 97/11/EC.

Article 2(1) of the Directive as originally enacted provides that *"Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia of their nature, size and location are made subject to an assessment with regard to their effects. These projects are defined in Article 4"*.

Article 4(2) of the Directive provides that *"Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require. To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be the subject to an assessment in accordance with Articles 5 to 10.*

"*Permanent racing and test tracks for cars and motor cycles"* are a category of projects listed in Annex II, paragraph 11(b) of the Directive.

The European Court of Justice has held that the second subparagraph of Article 4(2) of the Directive confers on Member States a measure of discretion to specify certain types of projects which will be the subject of an EIA or to establish the criteria or thresholds applicable. However, the limits of that discretion are set out in Article 2(1) which states that projects likely, by virtue of their size, nature and location, to have significant effects on the environment are to be subject of an EIA (see case C-435/97 World Wildlife Fund & others v. Autonome Provinz Bozen & others, paragraph 36).

The Commission wrote to the UK authorities on 31 January 2001 seeking an explanation from them as to whether consideration had been given as to the need for an EIA in this case to address in particular the issue of noise nuisance. In their response of 26 March 2001, the UK advised that the relevant local planning authority at the time had considered that the proposed development would be unlikely to have a significant effect on the environment and accordingly did not require the developer to prepare an EIA. On the question of ongoing noise pollution, the UK authorities correctly observed that although the Directive did not require an EIA after a project had been given development consent, noise monitoring had nevertheless subsequently been carried out on the site and, as a result, two new acoustic barriers had been constructed there.

In the light of the UK's response, the Commission considered that there was no evidence to suggest that the UK had acted in breach of the Directive as originally enacted and, in the absence of further evidence from the complainant about such a breach, the complaint was unfounded.

As regards the third allegation that the Commission did not communicate the reasons why this particular project was exempted from an EIA, the Commission stated that in its letter of 14 August 2001, it provided a full explanation to the complainant of the UK's response to the complaint and gave him the opportunity for further comment. Although the complainant did write to the Commission on 27 September 2001 to set out his concerns about the Commission's handling of this case, his letter disclosed no additional evidence which the Commission could relevantly consider. Accordingly, in the absence of additional evidence from the complainant that the UK had acted in breach of the Directive, the Commission decided to close the complaint file, and advised the complainant accordingly by letter dated 15 October 2001. In doing so, the Commission reiterated that, given the date of the development consent application in this case, it had to assess the case on the basis of the Directive as originally enacted, rather than as subsequently amended by Directive 97/11/EC, which lays down more stringent constraints on Member States' exercise of discretion under Article 4(2).

The Article as now amended requires Member States to ensure that any determination under Article 4(2) should be made available to the public. This was not a requirement under the Directive at the time of the development consent application in this case.

The complainant's observations

With regard to the first allegation concerning the report of the Local Government Ombudsman of Wales, the complainant is of the opinion that the Commission was wrong to say that *"there was nothing in the Report which provided evidence of a breach of Community law, in particular Directive 85/337/EEC"*. This report stated that it was wholly unsatisfactory that the local authority chose to ignore the warnings of its own Director of Environmental Health and also deplored the lack of an EIA. The complainant wonders what clearer evidence of a breach of Community law the Commission requires.

As regards the Commission's position that the UK designation of an Area of Outstanding Natural Beauty had no relevance for the evaluation of the complaint as it was a purely national designation which had no legal basis in Community law, the complainant stated that the Commission was wrong in ignoring the signal sent out by this national designation.

The complainant also drew attention to the Commission's somewhat ironical phrase that *"it would be reasonable to imagine that the issue of noise pollution would have been more profoundly addressed had an EIA been carried out for this development before permission was granted"*.

With regard to the second allegation, the complainant observed that the Commission had interpreted Directive 85/337/EEC in a manner contrary to both the letter and the spirit of the Directive. The complainant referred to the words "should" and "must" which are repeated several times in the preamble of the Directive. This leaves no doubt that the protection of the environment is a matter of legal obligation for the Member States.

With regard to the discretionary power of the Member States concerning the EIA - to which the Commission referred -, the complainant observed that "permanent racing and test tracks for cars and motor cycles" are clearly mentioned as one of the many "projects subject to Article 4(2)".

As regards the response from the UK authorities that *"the relevant local planning authority at the time had considered that the proposed development would be unlikely to*

have a significant effect on the environment and accordingly did not require the developer to prepare an EIA", the complainant stated that, in the light of his complaint which showed that the race track had been a source of complaint and irritation by local residents, the Commission should have treated this claim with scepticism. The complainant asks whether there could have been any doubt in the mind of a reasonable person that a full-blown motor racing track would have a major impact on the environment, and thus should have been subject to an EIA.

The complainant does not consider that the Commission has satisfactorily communicated the reasons why this particular project was exempted from an EIA. He states that the Commission could at least have endorsed the Local Government Ombudsman's clear identification of maladministration. The complainant's perception was that of a bureaucracy that is resourceful and ingenious not in defending the public interest and the environment, but only in finding excuses why EU Directives should not be implemented and enforced. The complainant concluded that this state of affairs can only alienate EU citizens from their institutions.

THE DECISION

1 The Commission's alleged failure to take into account the report from the Local Government Ombudsman of Wales

1.1 The complainant alleged that the Commission did not take into account in its evaluation the 1998 report from the Local Government Ombudsman of Wales which found maladministration.

1.2 The Commission observed that there was nothing in the report which provided evidence of a breach of Community law, in particular Directive 85/337/EEC. The Commission stated that the designation of an Area of Outstanding Natural Beauty was a purely national one and was considered to have no relevance to this complaint.

1.3 The European Ombudsman has studied the report of 9 March 1998 by the Local Government Ombudsman of Wales. The European Ombudsman notes that the Welsh Ombudsman's finding of maladministration refers to the terms of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988. According to the explanatory memorandum accompanying these Regulations, they are concerned with the implementation in England and Wales of Directive 85/337/EEC.

1.4 Principles of good administration require that, when taking a decision, an institution takes into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration[65].

1.5 By omitting to mention the report of 9 March 1998 by the Local Government Ombudsman of Wales in its letters to the complainant, despite the fact that the complainant had specifically drawn its attention to that report, the Commission failed to take into account a relevant factor in its decision to close the case. This constitutes an instance of maladministration, and the Ombudsman makes the critical remark below.

2 The alleged wrong interpretation of the Directive

2.1 The complainant alleged that the closure of the case by the Commission was based on a wrong interpretation of the Directive.

---

65 See Article 9 (Objectivity) of the Code of Good Administrative Behaviour, as approved by the European Parliament in its Resolution of 6 September 2001.

2.2 The Commission stated that in the light of the UK's response - according to which the relevant local planning authority at the time had considered that the proposed development would be unlikely to have a significant effect on the environment and accordingly did not require the developer to prepare an EIA - , it had considered that there was no evidence to suggest that the UK had acted in breach of the Directive as originally enacted.

2.3 The Ombudsman notes that the Commission first wrote to the complainant on 26 January 2001 informing him that it had asked clarification from the UK authorities with regard to its application of Directive 85/337/EEC, and more particularly concerning the requirement of an EIA and the issue of noise nuisance.

2.4 On 14 August 2001, the Commission informed the complainant in a two pages letter of its assessment of the complaint, stating that it would propose the closure of the file, unless the complainant would submit new comments within one month. In this letter, the Commission stated that the UK authorities had replied that the local planning authority had reached the decision that an EIA was not necessary. The UK authorities also replied that noise level monitoring had been carried out by the Isle of Anglesey County Council and that two new acoustic barriers had been constructed. They furthermore informed the Commission that an application for planning consent was being prepared to make further fundamental changes to the race track to lessen the noise impact.

2.5 The Commission concluded that "whilst it would have been desirable for the local planning authority to have carried out an EIA under Directive 85/337/EEC before planning permission was granted in 1992, the information available to us does not reveal that there was a breach of the Directive when the planning authority exercised their discretion not to require such an assessment. It also appears that action is being taken to ameliorate the noise pollution emanating from the site. In coming to this decision we have also taken into account the fact that the permission for the site was given almost 10 years ago and the race track has been in operation for a considerable number of years".

2.6 On 27 September 2001, the complainant replied to the Commission's letter of 14 August 2001, expressing his disappointment with the Commission's conclusion and the apparent position according to which the Directive had no binding force. On 15 October 2001, the Commission replied referring to the Member States' wide discretion in deciding the need for an EIA under Directive 85/337/EEC before its amendment by Directive 97/11/EC. On 8 November 2001, the Commission finally informed the complainant of the definitive closure of the case.

2.7 Considering a) the case-law of the Court of Justice according to which the Member States have a measure of discretion under Directive 85/337/EEC with regard to the requirement of an EIA[66], b) the fact that the rules applicable to the racing track in question - approved in 1992 - were these of Directive 85/337/EEC and not these of Directive 97/11/EC which lays down more stringent constraints on the Member States' exercise of this discretion, but is only applicable for projects submitted after 14 March 1999[67], and c) the answers given by the UK authorities themselves which the Commission had to take into account, the Ombudsman finds that the Commission's conclusion that there was no

66 See case C-435/97, *WWF & others v. Autonome Provinz Bozen & others*, [1999] ECR I-5613, paragraph 36: "The second subparagraph of Article 4(2) of the Directive confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria or thresholds applicable. However, the limits of that discretion are to be found in the obligation set out in Article 2(1) that projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment (see Case C-72/95 *Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, paragraph 50, and Case C-301/95 *Commission v Germany* [1998] ECR I-6135, paragraph 45)".

67 Article 3(2) of Directive 97/11/EC.

infringement of the Directive appears reasonable. No instance of maladministration was therefore found with regard to this aspect of the case.

3 The Commission's failure to communicate the reasons why the project was exempted from an EIA

3.1 The complainant alleged that the Commission did not communicate the reasons why this particular project was exempted from an environmental impact assessment.

3.2 The Commission observed that, in its letter of 14 August 2001, it provided a full explanation to the complainant of the UK's response and gave him the opportunity for further comment.

3.3 The Ombudsman notes that, in its letters of 14 August and 15 October 2001, the Commission has, with the exception of an explanation with regard to report of the Local Government Ombudsman of Wales (see point 1 above), provided reasons to the complainant to understand its conclusion that in this case, considering the discretionary powers of the Member States with regard to the requirement of an EIA, there appeared to be no infringement of the Directive. 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 part 1 of this complaint, it is necessary to make the following critical remark:

Principles of good administration require that, when taking a decision, an institution takes into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

By omitting to mention the report of 9 March 1998 by the Local Government Ombudsman of Wales[68] *in its letters to the complainant, despite the fact that the complainant has specifically drawn its attention to that report, the Commission has failed to take into account a relevant factor in its decision to close the case. This constitutes an instance of maladministration.*

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

[68] Report by the Local Government Ombudsman on an investigation into complaint nos. 97/0471/AN/032, 97/0665/AN/041, 97/0987/AN1/019 & 97/0988/AN1/020 against the former Isle of Anglesey Borough Council and the Isle of Anglesey County Council, 9 March 1998.

3.4.2 The Court of Justice of the European Communities

FAILURE TO REPLY TO ARTICLE 90 COMPLAINT CONCERNING RESETTLEMENT ALLOWANCE

Decision on complaint 1751/2001/GG against the Court of Justice of the European Communities

THE COMPLAINT

The complainant, a German national, worked for the Court of Justice from 1977 until 2000. Upon retiring from the Court, he asked (in a letter to the Staff Division of the Court of 12 April 2000) whether a resettlement allowance could be granted to him pursuant to Article 6 of Annex VII of the Staff Regulations.

According to Article 6 (1) of Annex VII, an official who satisfies the requirements of Article 5(1) of Annex VII (that is to say, qualifies for expatriation allowance) shall be entitled on termination of service to a resettlement allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance or to one month's basic salary in other cases, provided that he has completed four years of service and does not receive a similar allowance in his new employment. Article 6 (4) of Annex VII stipulates that the resettlement allowance is only paid where the official has resettled "at a place situated not less than 70 km from the place where the official was employed".

The complainant claims that he used to live in Schengen (Luxembourg) and that when he retired from the Court, he moved across the border to Perl in Germany (on the other side of the Moselle from Schengen).

Relying on a certificate issued by the German railways, the complainant considers that the distance between Perl and Luxembourg (via Karthaus in Germany) is 86 km, and not 57 km as the Court appeared to have assumed.

The complainant's letter of 12 April 2000 remained unanswered. He then submitted a formal application on 18 February 2001. In the absence of a reply, the complainant lodged, on 19 July 2001, an internal complaint under Article 90 (2) of the Staff Regulations against the implied decision to reject his application. No reply was given within the period of four months referred to in Article 90 (2).

In these circumstances, the complainant turned to the Ombudsman. In his complaint lodged in December 2001, he alleges that the Court (1) failed to react to his letters of 12 April 2000 and of 18 February 2001 and to his Article 90 complaint and (2) failed to grant the resettlement allowance that was due to him. The complainant also mentions that Mr Pescatore, a former judge at the Court of Justice, obtained the resettlement allowance although he continued to live in the same house in Luxembourg.

THE INQUIRY

The Court's opinion

In its opinion, the Court made the following comments:

There was a close analogy of purpose between the installation allowance and the resettlement allowance. Both were meant to enable an official to bear the expenses incurred through integrating in new surroundings[69]. Payment of a resettlement allowance was conditional upon there being a change in the place of residence, that is to say, the effectual transfer of the official's habitual residence to the new place indicated as being that of resettlement[70]. The concept of habitual residence had to be interpreted as meaning the place where the person concerned had established, and intended to maintain, the perma-

69 Cf. Case 140/77 *Verhaaf v. Commission* [1978] ECR 2117 paragraph 18; Case T-37/99 *Miranda v. Commission* [2001] ECR SC-II-413 paragraph 29.

70 Case 79/82 *Evens v. Court of Auditors* [1982] ECR 4033 paragraph 13; joined Cases T-57/92 and T-75/92 *Yorck von Wartenburg v. Parliament* [1993] ECR II-925 paragraph 65.

nent or habitual centre of his or her interests[71]. Finally, it had to be recalled that particularly with a view towards the proper use of public funds, provisions of Community law, which created a right to financial benefits, had to be given a strict interpretation[72]. In every case, it had to be ascertained whether the social purpose of the grant of the payment was fulfilled[73].

In the present case, the resettlement allowance had manifestly not been due for three reasons.

First, the alleged resettlement had not concerned new surroundings. The dispute between the Court and the complainant had already produced itself in the same terms regarding the installation allowance. At the relevant time, the Court's administration had taken the view that a move of 2 km from Perl to Schengen could not be considered as an installation in new surroundings. The complainant's claim for an installation allowance within the meaning of Article 5 of Annex VII of the Staff Regulations had thus been rejected. The examination of this application had given rise to extensive correspondence between the complainant and the Court that was recapitulated in the judgement the Court had rendered in that matter[74]. The move back to Perl could thus not be considered as a resettlement, either.

Second, even assuming that there had been a resettlement in Perl as claimed by the complainant, this town was situated at a distance to Luxembourg that was inferior to the 70 km prescribed by the relevant provision. In this context, the Court relied on documents that appeared to show that the distance by road between Luxembourg and Perl was between 32 and 34 km. The distance of 86 km on which the complainant relied was the distance for travelling by train. However, Article 6 (4) of Annex VII did not refer to the distance by rail. This distance was without importance for the application of the said provision. In effect, this provision had to be interpreted having regard to its purpose as described above. There was therefore no reason whatsoever to determine this distance by taking into account the detour that resulted from the layout of the railway network.

Third, there were factual elements that indicated that there had been no resettlement. The complainant had limited himself to submitting an attestation showing that he was inscribed in the register of Perl. He had however not established that he had transferred his habitual residence from Schengen to Perl. In 1989 and 1994, the complainant had furthermore requested and obtained the Court's permission to act as member of the town council of Perl. This indicated that the complainant had maintained the centre of his interests in this town.

In so far as the alleged failure to reply to the complainant's letters and his Article 90 complaint was concerned, the complainant had to be aware of the fact that his application for a resettlement allowance was abusive. Although a reply by the administration could not have added any useful new element of information, it would have been preferable if the service concerned had replied to the complainant for the sake of administrative courtesy. In so far as the Article 90 complaint was concerned, the complainant could not criticise the fact that he had not been informed about the position of the administration concerning his complaint, given that Article 90 (2) specified that the absence of a response was deemed to constitute an implied decision to reject the complaint.

In his Annual Reports, the Ombudsman had taken the position that maladministration occurred where a public body failed to act in accordance with a rule or principle which is

71 Case T-63/91 *Benzler v. Commission* [1992] ECR II-2095 paragraph 25; Case T-37/99 *Miranda v. Commission* [2001] ECR SC-II-413 paragraph 31.

72 Case T-41/89 *Schwedler v. Parliament* [1990] ECR II-79 paragraph 23.

73 Case T-498/93 *Dornonville de la Cour v. Commission* [1994] SC-II-813 paragraphs 38 and 39.

74 Case 90/81 *Burg v. Court of Justice* [1982] ECR 983.

binding upon it. The Court considered that in the light of the above, there had been no maladministration in the present case.

Besides, instructions had been given to the Court's services that in the future letters should be answered even where the application was manifestly abusive and where the reply could not add any elucidation or any new element.

The complainant's observations

In his observations, the complainant maintained his complaint. He noted that the Court had not commented upon the case of Mr Pescatore. The complainant further took the view that the distance by rail was relevant (cf. Article 8 (1) of Annex VII).

THE DECISION

1 Failure to grant resettlement allowance

1.1 The complainant, a former official of the Court of Justice, alleges that the Court failed to grant him the resettlement allowance that was due to him when he left the Court's services and moved from Schengen in Luxembourg to Perl in Germany.

1.2 The Court of Justice takes the view that no such allowance was due since (1) the complainant had not resettled into new surroundings, (2) even assuming that there had been a resettlement in Perl as claimed by the complainant, this town was situated at a distance to Luxembourg that was inferior to the 70 km prescribed by the relevant provision and (3) there were factual elements that indicated that there had been no resettlement.

1.3 According to Article 6 (1) of Annex VII, an official who satisfies the requirements of Article 5(1) of Annex VII (that is to say, qualifies for expatriation allowance) shall be entitled on termination of service to a resettlement allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance or to one month's basic salary in other cases, provided that he has completed four years of the service and does not receive a similar allowance in his new employment. Article 6 (4) of Annex VII stipulates that the resettlement allowance is only paid where the official has resettled "at a place situated not less than 70 km from the place where the official was employed".

1.4 The Ombudsman notes that the distance by rail between Luxembourg and Perl (via Karthaus in Germany) appears to be 86 km. He further notes that the complainant does not query the Court's view that the distance by road is only between 32 and 34 km.

1.5 The Court argues that particularly with a view towards the proper use of public funds, provisions of Community law which create a right to financial benefits had to be given a strict interpretation[75]. On this basis, it takes the view that the distance to be considered should be the (shorter) distance by road and that, having regard to the purpose of the resettlement allowance, there was no reason whatsoever to determine this distance by taking into account the detour that resulted from the layout of the railway network.

1.6 The Ombudsman considers that this approach appears to be reasonable. The complainant's argument that another provision (Article 8 (1)) of Annex VII refers to distance by rail does not appear to be decisive in this context. On the contrary, the fact that Article 6 does not refer to distance by rail lends further weight to the Court's view that this provision can and ought to be interpreted strictly and in the light of the purpose of the resettlement allowance.

---

75 Case T-41/89 *Schwedler v.* Parliament [1990] ECR II-79 paragraph 23.

1.7 In these circumstances, and without there being any need to consider the other arguments submitted by the Court, there appears to be no maladministration in so far as the Court's refusal to grant the resettlement allowance is concerned.

2 Failure to reply to letters and Article 90 complaint

2.1 The complainant alleges that the Court failed to reply to his letters of 12 April 2000 and 18 February 2001 and to his complaint of 19 July 2001 brought under Article 90 (2) of the Staff Regulations.

2.2 The Court accepts that no replies were sent to the complainant's letters and to the Article 90 complaint. It admits that it would have been preferable if the service concerned had replied to the complainant's letters for the sake of administrative courtesy. The Court points out that instructions have now been given to the Court's services that, in the future, letters should be answered even where the application was manifestly abusive and where the reply could not add any elucidation or any new element. In so far as the Article 90 complaint is concerned, however, the Court takes the view that the complainant could not criticise the fact that he had not been informed about the position of the administration concerning his complaint, given that Article 90 (2) specified that the absence of a response was deemed to constitute an implied decision to reject the complaint.

2.3 It is good administrative practice that letters and applications from citizens are replied to within a reasonable period of time[76]. The Court's failure to reply to the complainant's letters of 12 April 2000 and 18 February 2001 thus constitutes maladministration. The Court has however admitted that it would have been preferable if the service concerned had replied to the complainant for the sake of administrative courtesy. It has also informed the Ombudsman that measures have been taken to ensure that letters such as the complainant's would be answered in the future. In these circumstances, the Ombudsman considers that there is no need to pursue his inquiry into this aspect of the complaint.

2.4 According to Article 90 (2) of the Staff Regulations, the authority shall notify the person who has lodged an internal complaint of its reasoned decision within four months. This is in line with the principles of good administration. It is true that Article 90 (2) of the Staff Regulations provides that the lack of reply within the period of four months laid down in this provision is deemed to constitute a negative decision. This rule is meant to protect the citizen where an administration does not comply with its legal obligations. It does not in any way give the administration the right to depart from the obligations resulting from the principles of good administration. In these circumstances, the Ombudsman concludes that the Court's failure to reply to the complainant's Article 90 (2) complaint constitutes an instance of maladministration.

2.5 The Court has not offered any apology to the complainant for its failure to reply to his complaint. Nor has it indicated that it was committed to answering Article 90 (2) complaints within the time limit laid down in this provision. A critical remark will therefore be made.

3 The case of Mr Pescatore

3.1 In his complaint, the complainant mentioned that Mr Pescatore, a former judge at the Court of Justice, obtained the resettlement allowance although he continued to live in the same house in Luxembourg. The complainant reverted to this issue in his observations on the Court's opinion.

---

76 Cf. Article 14 and 17 of the European Code of Good Administrative Behaviour that has been submitted by the Ombudsman and approved by the European Parliament. The Code is available on the Ombudsman's website (http://www.euro-ombudsman.eu.int).

3.2 It seems that the complainant did not intend to ask the Ombudsman to inquire into this issue[77]. Regard needs to be had in any event to the fact that according to Article 2 (4) of the Statute of the Ombudsman[78], a complaint needs to be made within two years of the date on which the relevant facts came to the knowledge of the complainant and must be preceded by the appropriate administrative approaches to the institution concerned. This condition does not seem to be fulfilled in the present case.

4 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark:

According to Article 90 (2) of the Staff Regulations, the authority shall notify the person who has lodged an internal complaint of its reasoned decision within four months. This is in line with the principles of good administration. It is true that Article 90 (2) of the Staff Regulations provides that the lack of reply within the period of four months laid down in this provision is deemed to constitute a negative decision. This rule is meant to protect the citizen where an administration does not comply with its legal obligations. It does not in any way give the administration the right to depart from the obligations resulting from the principles of good administration. In these circumstances, the Ombudsman concludes that the Court's failure to reply to the complainant's Article 90 (2) complaint constitutes an instance of maladministration.

Given that this aspect of the case concerns specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

---

77 The Ombudsman informed the complainant on 31 December 2001 that he had asked the Court to provide an opinion on the two allegations discussed above. The complainant did not ask the Ombudsman to extend his inquiry to the case of Mr Pescatore.

78 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, p. 15.

3.5 DRAFT RECOMMENDATIONS ACCEPTED BY THE INSTITUTION

3.5.1 The European Parliament

THE EUROPEAN PARLIAMENT ACCEPTS TO RECONSIDER THE RECRUITMENT CONDITIONS OF SOME OFFICIALS[79]

Decision on complaint 1371/99/IP against the European Parliament

THE COMPLAINT

The complainants participated in competition EUR/C/22 jointly organised by the European Parliament and the Court of Justice of the European Communities. Having succeeded in the competition, their names were included in the reserve list of successful candidates.

From 1 December 1996 to 1 November 1998, the Parliament has progressively recruited the complainants, all of them at grade C5 step 3 of the career.

In their complaint to the Ombudsman, the complainants alleged to have been discriminated against compared to other candidates who had participated in the same competition, and who were recruited at grade C4 step 3.

THE INQUIRY

The European Parliament's opinion

The complaint was sent to the Parliament for its comments.

In its opinion on the complaint, the Parliament pointed out that the complainants could have appealed against the institution's decision in relation to their recruitment, by lodging a complaint under Article 90 of the Staff Regulation. In May 1998, three of the complainants complained under Article 90 (1) asking to be reclassified at grade C 4 with effect from their nomination as officials. The complaints were rejected.

Moreover, the Parliament pointed out that, even if the complainants had complained under Article 90 (2), their complaints would have been considered inadmissible because they would not have been lodged within the time limit foreseen by the Staff Regulation, i.e. within three months from the start of the officials' probationary period.

The institution stressed that, as Community Courts have consistently held, only the presence of new substantial elements could justify the introduction of a complaint under Article 90 (2) for the re-examination of a previous decision concerning recruitment that was not appealed within the time limit. However, if a Court's judgement annulling an administrative act could constitute a new element, this is only vis à vis those people who are directly affected by the annulled act. The *Monaco*[80] case law, invoked by the complainants, cannot therefore apply since they have not participated in the same open competition as Mr Monaco.

Moreover, the institution stated that, according to the policy followed by the Parliament in recruitment matters after the entry into force of the new Internal Directives in May 1995, the Appointing authority can nominate an official at a higher grade than the starting grade of his/her category only in exceptional cases, and to attract qualified candidates when extremely complex tasks have to be carried out.

The complainants' observations

In their observations on the Parliament's opinion, the complainants basically maintained their original complaint.

---

79 The same draft recommendation was made to the Parliament also in joint cases 545 and 547/2000/IP and was accepted by the institution.

80 Judgment of the Court of First Instance (Fourth Chamber) of 9 July 1997, *Roberto Monaco v European Parliament*. Case T-92/96. ECR - SC [1997] page IA-0195; II-0573.

THE DRAFT RECOMMENDATION

By decision dated 18 May 2001, the Ombudsman addressed a draft recommendation to the Parliament in accordance with Article 3(6) of the Statute of the European Ombudsman[81]. The basis of the draft recommendation was the following:

1 The complainants succeeded in competition EUR/C/22 jointly organised by the European Parliament and the Court of Justice of the European Communities, and were recruited at grade C 5 step 3. In their complaint to the Ombudsman, they alleged to have been discriminated against compared to other candidates who had participated in the same competition, and who were recruited at grade C 4 step 3.

2 In its opinion, the Parliament stressed that the complainants would have had the possibility to appeal the institution's decision by lodging a complaint under Article 90 of the Staff Regulations. However, those who had complained, did so when the deadline had already expired.

3 Only the presence of new substantial elements could justify the introduction of a complaint under Article 90 (2) for the re-examination of a previous decision concerning recruitment that was not appealed within the time limit. However, if a Court's judgement annulling an administrative act could constitute a new element, this is only *vis à vis* those people who are directly affected by the annulled act. The Parliament pointed out that the judgement of the Court of First Instance in the *Monaco* case, invoked by the complainants, did not apply to their case, since they were not directly affected by the annulled act.

4 The Ombudsman noted that the main issue in this case was to determine whether the complainants had been discriminated against by the European Parliament when recruited and if there had been maladministration by the Parliament.

5 The principle of non discrimination and of equal treatment is one of the fundamental principles of Community law. As consistently held by Community Courts, it requires that comparable situations should not be treated in a different manner and different situations should not be treated alike unless such treatment is objectively justified[82].

6 In its judgement in case T-92/96 (*Monaco* case), the Court of First instance considered that candidates in the same competition are, in principle, to be considered to be in a similar situation. Furthermore, the Court has stated that an institution breaches the principle of equal treatment and non discrimination if it applies to an official recruited from a competition the provisions of the new Internal Directives which provide for a stricter application of Article 31(2) of the Staff Regulation, whereas other officials recruited from the same competition by the institution before the entry into force of the new Internal Directives were classified according to the previous Internal directives.

The Court considered that the only reference to new rules adopted by the Parliament in the meantime was not an adequate justification to recruit candidates from a same competition with different contractual conditions.

7 The Ombudsman considered that it was important to recall that the competition to which the complainants had participated, was organised jointly by the Parliament and the Court of Justice.

---

81 Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performances of the Ombudsman's Duties, OJ 1994 L 113, page 15.

82 - Case 203/86 Spain v Council [1988] ECR 4563, paragraph 25, and Case C-15/95 EARL de Kerlast [1997] ECR I-1961, paragraph 35

- Case C-150/94 United Kingdom v Council [1998] ECR I - 7235, paragraph 97.

However, after the judgement of the Court of First Instance in the above mentioned case, the Court of Justice reclassified, at its own initiative, those civil servants who, after the entry into force of the new Internal Directives, were recruited under less favourable conditions than those applied to candidates recruited on the basis of the previous Internal directives.

8 The Ombudsman considered that, even if the *Monaco* judgement did not apply to the complainants as a new element, the appointing authority had the possibility to modify the recruitment conditions of the complainants, as the Court of Justice did.

9 On the basis of these considerations, the Ombudsman concluded that the Parliament's decision to recruit the complainants applying to them the new Internal Directives, when other candidates recruited from the same reserve list were classified according to the previous Internal Directives, resulted in a discriminatory treatment for the complainants. The fact that the institution did not act in light of the principle stated by the Court of First Instance in case T - 92/96, and its refusal to reconsider its decision constituted therefore an instance of maladministration.

In view of the position adopted by Parliament it did not appear possible to achieve a friendly solution. The Ombudsman therefore considered it appropriate to make the following draft recommendation, in accordance with Article 3 (6) of his Statute.

The draft recommendation read as follows:

The Parliament should follow the example of the Court of Justice and reclassify the complainants at grade C 4 step 3 with effect from the date of their appointment as civil servants.

The Ombudsman informed the European Parliament that, according to Article 3 (6) of the Statute, it should send a detailed opinion by 30 September 2001 and that the detailed opinion could consist of the acceptance of the Ombudsman's draft recommendation and a description of how it had been implemented.

The Parliament's detailed opinion

The Parliament's detailed opinion, received by the Ombudsman on 7 November 2001, reads as follows:

The institution is unable to accept your draft recommendation, on the following grounds.

In the first place, this institution continues to hold the view that the complaints must be barred on the grounds of inadmissibility. The complaints were introduced long after the decisions complained of. Even if one were to admit that the decision in Monaco constituted a new fact (a point not conceded by this institution with respect to the instant case, on the grounds that it could do so only for persons directly affected by the annulled act), it would remain the case that the complaints were introduced outside the time limit laid down in Article 90 of the Staff Regulations. This aspect of the case - that is, the admissibility of the complaint - appears to be completely ignored in your draft recommendation (...).

In the second place, it is clear that decisions of one institution's appointing authority do not bind the appointing authority of another institution. The Court of Justice and the Parliament are two distinct institutions of the European Union. Nonetheless, you state in your draft recommendation that "(...) that, even if the Monaco judgement does not apply to the complainants as a new element, the appointing authority has the possibility to modify the recruitment conditions of the complainant, by following the example of the Court of Justice." The fact that the Court of Justice has reclassified certain complainants in no way creates an obligation on the part of the European Parliament's appointing authority

to do likewise. The wide discretion of the appointing authority has been recognised time and again in numerous cases (...) where the right of a Community institution to establish internal rules on grading in this context was recognised.

For these reasons, this institution is unable to accept the above mentioned draft recommendation.

The Ombudsman's further letter of 23 January 2002

After careful examination of the Parliament's detailed opinion, the Ombudsman considered it necessary to express his view on it and to focus on some points which were at the origin of his draft recommendation. On 23 January 2002, he therefore addressed a further letter to the President of the Parliament, Mr Pat COX.

In his letter, the Ombudsman recalled that the Court of Justice of the European Communities, which is the highest authority on the meaning and interpretation of Community law, has consistently stated that the general principle of equality is one of the fundamental principles of the law of the Community civil service. The Court has recognised that Community recruitment must respect the principle of equality. That principle requires that comparable situations shall not be treated differently and different situations should not be treated alike unless such differentiation is objectively justified.

Furthermore, the Court of First instance considered that candidates in the same competition are, in principle, to be considered to be in a similar situation. According to the Court, an institution breaches the principle of equal treatment and non discrimination if it applies to an official recruited from a competition the provisions of the new Internal Directives which provide for a stricter application of Article 31(2) of the Staff Regulation, whereas other officials recruited from the same competition by the institution before the entry into force of the new Internal Directives were classified according to the previous Internal directives. The Court considered that the only reference to new rules adopted by the Parliament in the meantime was not an adequate justification to recruit candidates from a same competition with different contractual conditions.

The Ombudsman pointed out that it appeared that this was what had happened to the complainants in the present case.

The Ombudsman considered that the Parliament still had, however, the possibility to remedy this case of apparent discrimination and to take measures to set right an injustice. He therefore asked the institution to reconsider its position in the light of the principle of equality and non discrimination and address the draft recommendation made by the Ombudsman.

The Parliament's further reply

On 5 April 2002, the Ombudsman received the Parliament's further reply. The Parliament stressed that its secretariat had reconsidered the cases concerned by the draft recommendation in detail and had decided, despite some reservation of legal and administrative character, to comply with the Ombudsman's request.

The Parliament committed itself to reviewing the situation of the complainants on the basis of the rules in force prior to the changes introduced in 1995.

THE DECISION

On 18 May 2001, the Ombudsman addressed the following draft recommendation to the European Parliament:

"The Parliament should follow the example of the Court of Justice and reclassify the complainants at grade C 4 step 3 with effect from the date of their appointment as civil servants".

On 5 April 2002, the Parliament informed the Ombudsman that it accepted to comply with the draft recommendation and explained that the complainants' situation would be revised.

The Ombudsman considers that the Parliament has accepted his draft recommendation and therefore closes the case.

3.5.2 The European Commission

FINANCIAL SETTLEMENT FOLLOWING THE TERMINATION OF A PROJECT IN NIGERIA

Decision on complaint 444/2000/ME against the European Commission

THE COMPLAINT

In March 2000, the complainant wrote to the Ombudsman on behalf of his client, Hunting Technical Service (HTS), to complain against the European Commission. According to the complainant, HTS was engaged in 1993 to work on a technical assistance project in Nigeria, the Oban Hills Project, financed by the 7th European Development Fund (EDF). Contracting parties were the government of Nigeria and a consortium led and represented by HTS. In 1996, the Commission unilaterally suspended all aid for projects in Nigeria leaving the Nigerian government no option but to terminate the contract. The Commission implicitly accepted responsibility and HTS was asked to submit a claim for indemnification of losses. A statement setting out the losses was originally submitted to the Commission in August 1996. The complainant alleged that, after more than three and a half years, still no proposal for a settlement or any estimated time frame for such a proposal had been made by the Commission despite numerous requests. The complainant pointed out that an amicable resolution of the matter would be in the best interest of all parties.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission for an opinion. In its opinion, the Commission stated that in August 1996, HTS submitted a claim for damages. The Commission requested further clarification from HTS who submitted a revised claim in November 1996. HTS claimed compensation for outstanding invoices related to contractual performance, direct costs for winding-up the project and losses following termination of the contract. As a result of the particularly complex circumstances of the contracts affected and the workload of the units concerned, an external consulting firm was entrusted with the evaluation of five submitted claims, including that of the complainant, between November 1997 and May 1998. Further, due to the creation of the Joint External Relations' Service and the transfer of files from the former External Relations DG, a significant backlog had to be taken care of before reopening the claims concerning the Nigeria suspension. The Commission stated that it had shown willingness to solve the matter amicably and kept the complainant informed of the progress and met with the complainant. In February and April 2000, the Commission received complementary clarifications from the Commission Delegation in Nigeria. The Commission concluded that there was no maladministration on its part. It also stated it was in the final stages of preparing a proposal for financial settlement and it was looking forward to settle the dispute amicably.

The complainant's observations

In its observations, the complainant maintained the allegation that still no proposal for a settlement had been made and the Commission had not even suggested a date when such a proposal may be forthcoming.

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 the complainant's claim. The Ombudsman's provisional conclusion was that the fact that the Commission, for a period of approximately four and a half years, had not been able to propose a settlement could be an instance of maladministration.

In May 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should propose a settlement of the claim for financial losses put forward by HTS, by 30 June 2001 at the latest.

In its reply from September 2001, the Commission initially pointed out that contracts financed by the EDF remain national contracts. The Commission considered itself therefore not responsible for the financial repercussions on HTS's contract with Nigeria. The Commission pointed out that its activities and correspondence with the complainant regarding the claim for damages was based on the brief given to it by Nigeria to examine the claim on its behalf. The Commission had always considered it obvious that when assessing HTS's claims, it was not acting on its own but on behalf of Nigeria. Moreover, in April 2000, the Commission made it clear to the complainant that the claim should have been addressed to the contractual partner in Nigeria. The Commission stated that it was in favour of the dispute being settled amicably in accordance with Article 45 of the General Conditions. In May 2001, it sent its views regarding HTS's claims and its proposal for a possible amicable settlement to the national authorising officer of the EDF in Nigeria. The Commission finally regretted the length of time, which elapsed between the initial claim and the proposal for a final settlement to Nigeria. According to the Commission it was now up to the Nigerian authorities to propose a settlement to the complainant.

In its observations from November 2001, the complainant underlined that it was advised by the Commission itself to submit the claim for damages in 1996 to the Commission and not to the Nigerian authorities. There were positive discussions between HTS and the Commission on an early settlement and there was no mention at that stage that the Commission did not have competence to settle the matter or that it was not the appropriate addressee of the claim. The Commission's statement that it acted on a brief from the Nigerian authorities was completely new to the complainant. Regarding the fact that the Commission was not a contracting party, the complainant pointed out that the Commission was indeed involved in the contract as it endorsed the contract, intervened in negotiations between the contracting parties, in the present case the Commission had overturned an agreed payment schedule and further, payments were only made after the detailed review of the Commission. The complainant also put forward that the Commission had power to act in this matter. He stated that the chief authorising officer had power to "take all appropriate measures to resolve difficulties" and that he can use his powers to "remedy, where necessary, the financial consequences of the resultant situation and, more generally, to enable the project, projects or programmes to be completed under the best economic conditions". Moreover the chief authorising officer has power to get the Commission to make payments directly to the service provider, and where such payments are made directly by the Commission to the beneficiary of the contract, the Community automatically acquires that beneficiary's right as creditor vis-à-vis the national authorities.

In these circumstances, the Ombudsman considered that a friendly solution had not been achieved.

THE DRAFT RECOMMENDATION

By decision dated 7 February 2002, the Ombudsman addressed a draft recommendation to the Commission in accordance with Article 3(6) of the Statute of the Ombudsman[83]. The basis for the draft recommendation was the following.

1 Alleged undue delay and failure to propose a settlement

1.1 The complainant alleged that, after more than three and a half years, still no proposal for a settlement or any estimated time frame for such a proposal had been made by the Commission despite numerous requests. The complainant pointed out that an amicable resolution of the matter would be in the best interest of all parties.

1.2 In its first opinion, the Commission explained the different stages of the procedure in this matter and concluded that in its view there was no maladministration on its part. It also stated it was in the final stages of preparing a proposal for financial settlement and it was looking forward to settle the dispute amicably. In its reply to the proposal for a friendly solution, the Commission in summary pointed out the following: EDF contracts remain national contracts; its activities and correspondence with the complainant regarding the claim was based on the brief given to it by Nigeria to examine the claim on its behalf; the Commission had no contractual liability in this case and had informed the complainant thereof in May 1999; the claim should have been addressed to the Nigerian authorities and that was made clear to HTS in April 2000; and further, its views regarding the claim and its proposal for a possible amicable settlement had been sent to the national authorising officer of the EDF in Nigeria and it was now up to the Nigerian authorities to propose a settlement to the complainant.

1.3 The complainant pointed out that the Commission was hiding behind the legal doctrine of privity of contract in order to attempt to justify its failure to deal adequately with HTS's claim. HTS had been told to submit the claim to the Commission and it was led to believe that the Commission was the appropriate authority to which to make the claim. It was not informed that the Commission was acting on a brief from the Nigerian authorities. The complainant stated that the Commission was indeed involved in the contract and further that it had power to act in this matter. The complainant concluded that the Commission's reply failed to respond adequately to the proposal for a friendly solution.

1.4 The Ombudsman noted that there was common ground between the complainant and the Commission as to the time-span of the events surrounding the complaint, meaning in summary the following. In 1996, the complainant's contract was terminated due to the suspension by the Commission of its co-operation with Nigeria. In August and November 1996, HTS submitted a claim for financial losses to the Commission. An external consulting firm performed an evaluation of this and four other claims between November 1997 and May 1998. In May 1999, the file was reopened. When the Commission submitted its reply on the proposal for a friendly solution in September 2001, no proposal for a settlement had yet been made to HTS.

1.5 The following explanations were given for the time-span. From November 1996 to April 1997, the Commission explained that because of the particular complex circumstances of the matter and the overload of work of the units concerned, it was decided in April 1997 that an external auditor should evaluate the claim. That evaluation took place between November 1997 and May 1998. No specific explanation was given for the period from April to November 1997. Between May 1998 and May 1999, the Commission explained that because of internal restructuring and backlog, it could not work on the file. From May 1999 the Commission was dealing with the file thus requesting further clarifi-

83 Decision no. 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 1994 L 113/15.

cations from its Delegation in Nigeria. It is not clear when such a request was made but the Commission received the requested information in February and April 2000. In April 2000, the Commission met with HTS. From April 2000 to May 2001, the Ombudsman has no information regarding reasons for the delay. On 14 May 2001, the Commission sent its views and proposal for a possible amicable settlement to the national authorising officer of the EDF in Nigeria. It appears that the Commission had the intention at the end of 2001 to address the national authorising officer about lack of response to the May communication.

1.6 It is good administrative behaviour to take decisions and act upon requests within a reasonable period of time. In the present case, HTS's revised claim for financial losses was submitted to the Commission in November 1996. The complainant claimed that the Commission should propose a settlement. In February 2002, more than five years later, still no such proposal has been made. The Ombudsman accepts that the matter is of a complex nature and therefore requires some time to deal with. Further, the Ombudsman notes that during six months an external consulting firm was evaluating the claim. However, for most of the delay, the Commission has no valid justification.

1.7 As regards the Commission's statement that it was acting on a brief from the Nigerian authorities and that the Commission was not the correct addressee for the claim, the Ombudsman is not convinced by the arguments put forward by the Commission. First in a meeting in April 2000, did the Commission mention that any claim should be made to the government of Nigeria. The statement that it acted on a brief from Nigeria was referred to for the first time in the Commission's reply of September 2001 to the Ombudsman's proposal for a friendly solution. The correspondence between the Commission and the complainant does not support the Commission's view. On the contrary, the Commission's letters gives the impression that it is the correct addressee and that the proposal will be made directly to HTS.

1.8 The Commission further put forward that it was not a contracting party and that it is therefore not liable. The Commission first mentions this in its letter of 27 May 1999. Even if the Commission formally was not a contracting party, it does not prevent the Commission from proposing a settlement with the complainant. In addition, in the present case, the Commission already in 1996 undertook to deal with the claim and the correspondence shows that its intention was indeed to make such a proposal. Moreover, the Commission seems to have advised the complainant on how to structure the claim to be submitted to the Commission[84]. Naturally, such a proposal has to be in line with the Commission's legal and financial obligations, which has never been disputed by the complainant[85].

2 Conclusion

2.1 On the basis of the inquiries into this complaint, the Ombudsman considered that the Commission has not put forward any proof to convince him that it is not capable of proposing a settlement to HTS which it constantly promised to do since 1996, until it changed its standpoint in September 2001. The Ombudsman's conclusion, therefore, was that the fact that the Commission had not proposed such a settlement constituted an instance of maladministration.

2.2 The Ombudsman therefore made the following draft recommendation to the Commission, in accordance with Article 3(6) of the Statute of the Ombudsman:

The Commission should propose a settlement of the claim for financial losses put forward by HTS, by 31 May 2002 at the latest.

84 See letter of 15 August 1996 from HTS to the Commission referring to the meeting of 17 July 1996.

85 See letter of 17 April 2000 from HTS to the Commission.

The Commission's detailed opinion

The Ombudsman informed the Commission that, according to Article 3(6) of the Statute, it should send a detailed opinion before 31 May 2002 and that the detailed opinion could consist of the acceptance of the Ombudsman's draft recommendation and a description of how it has been implemented.

In March 2002, the Commission sent to the Ombudsman a detailed opinion regretting that it could not comply with the draft recommendation.

In August 2002, the Commission sent the Ombudsman a supplementary opinion on the draft recommendation. The Commission informed the Ombudsman that it had presented an amicable settlement to the complainant at a meeting in Brussels on 29 May 2002. The Commission stated that the complainant had informed the Commission on 21 June 2002 of its acceptance of the proposed settlement. The Commission concluded that it had complied with the approach suggested by the Ombudsman and hoped that the matter could now be closed.

The Commission's detailed opinion and supplementary opinion were forwarded to the complainant. The complainant informed the Ombudsman on 3 September 2002 that a settlement had been reached and had been fully executed by the Commission as of 30 August 2002. The complainant expressed its gratitude to the Ombudsman for his attention to the matter.

THE DECISION

1 On 7 February 2002, the Ombudsman addressed the following draft recommendation to the Commission in accordance with Article 3(6) of the Statute of the Ombudsman:

The Commission should propose a settlement of the claim for financial losses put forward by HTS, by 31 May 2002 at the latest.

2 On 2 August 2002, the Commission informed the Ombudsman of its acceptance of the Ombudsman's draft recommendation and of the measures which it has taken to implement it. The measures described by the Commission appear to be satisfactory and the Ombudsman therefore closes the case.

COMMISSION CARRIED OUT A NEW ON-THE-SPOT INSPECTION WITH A VIEW TO REVIEW ITS DECISIONS TO PERMIT THE IMPORT OF REINDEER MEAT FROM RUSSIA

Decision on complaint 751/2000/(BB)IJH against the European Commission

THE COMPLAINT

On 1 June 2000, the Executive Director of the Finnish Reindeer Herders' Association made a complaint to the European Ombudsman on behalf of the Association. According to the complainant, the relevant facts are, in summary, as follows:

On 12 January 2000, the EU Standing Veterinary Committee made a decision to permit the import of reindeer meat from the Kola Peninsula area of Russia. The initiative behind this decision was taken by a Swedish company, which has a commercial interest in importing Russian reindeer meat. The Swedish company participated in the on-the-spot inspection carried out in the Kola Peninsula by making the travel arrangements and providing for the interpretation services during the inspection.

The import of meat from Russia has been prevented until now because the country is defined as a foot-and-mouth disease region and due to sub-standard abattoir and meat handling conditions.

The complainant alleges lack of impartiality by the Commission due to the participation of the Swedish company in the on-the-spot inspection.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission. In its opinion, the Commission made the following comments:

On 11-21 October 1998, Commission experts of the Food and Veterinary Office carried out a mission, at the invitation of the Russian authorities, to assess whether imports of reindeer meat from the Kola Peninsula could be permitted.

On 26 February 1996, the Swedish Minister of Agriculture wrote to Commissioner Fischler, asking that a mission be undertaken without further delay in view of its impact upon certain parts of the farming sector in Northern Sweden. In 1997, the Commission received a formal request from the Swedish authorities to allow imports of reindeer meat from certain regions in Russia, and to carry out a mission to Russia as quickly as possible to examine the possibility to allow for imports of reindeer meat.

In 1997, the Head of the Veterinary Department of the Ministry of Agriculture and Food of the Russian Federation requested that an urgent mission be undertaken by the Commission's veterinary services to the Northern regions of Russia, with a view to allowing imports from the Murmansk region.

In January to May 1998, an exchange of correspondence took place between the Commission and Norrfrys Ab, which is a Swedish-based company with branches and production units in Finland, Poland and Russia. Norrfrys AB indicated its desire to see a rapid lifting of the prohibition on the importation of reindeer meat from Russia.

A proposed itinerary for the mission was received from the regional authorities via Norrfrys AB on 16 September 1998. Considerable difficulties were experienced in making direct contact with the regional authorities, due to inadequate communication links. The inspection team made some use of the fax facilities available from Norrfrys AB in arranging the itinerary. Norrfrys AB offered to make the necessary ticket reservations and to assist in obtaining visas for the inspection team.

The Commission's travel agent was unable to make the necessary hotel and internal flight reservations in the Murmansk region. In view of the very short time available between the formal confirmation and the final mission, the inspection team had no alternative other than to request Norrfrys AB to make the necessary hotel and flight reservations in the Murmansk region through its local agents. Costs of flights to and from Russia were paid directly by the Commission in the normal manner.

Norrfrys AB was asked also to arrange for an interpreter as no Commission interpreters were available to accompany the inspection team.

The inspection team accepted a courtesy invitation to lunch from the Managing Director Norrfrys AB during time spent in Moscow. This meal was declared in the mission expenses claim forms.

In a number of instances, cars provided by Norrfrys AB were used for transport between hotels and offices or sites being inspected. There was no alternative to using the cars provided by Norrfrys AB if the objectives of the mission were to be achieved.

The Managing Director of Norrfrys AB did not take part in any of the meetings with the Russian authorities, nor in the inspection team's internal meetings. He was present during

visits to the two production facilities in which Norrfrys AB had a commercial interest. No other production facilities were visited during this mission.

A report of the mission's findings, conclusions and recommendations to the national authorities and the Commission's own services was prepared following the end of the mission. The final report was presented to the Standing Veterinary Committee for information and discussion on 11 February 1999.

On 14-15 December 1999, a draft Commission Decision on the provisional approval of residue plans of third countries according to Council Directive 96/23/EC received a favourable opinion from the Member States.

The Standing Veterinary Committee of 12 January 2000 gave a favourable opinion to a draft Commission Decision amending Commission Decision 97/212/EC whereby Russia was included in the list of third countries from which the meat of "cloven-hoofed game, excluding wild swine" could be imported. On 9 February 2000, the Standing Veterinary Committee gave a favourable opinion to a draft Commission Decision establishing a list of approved farmed game meat processing premises in Russia. At present only a single establishment, Norrfrys AB Production, Lovozero, Murmansk, has received approval.

For each of the above Decisions, the procedures laid down in the Commission's internal rules were fully respected. No outside influence was brought to bear. In all cases the unanimous approval of the Member States in the Standing Veterinary Committee was received.

The Commission recognised that the action necessary to allow the mission to be undertaken fell outside the normal practice. However, without the assistance of the exporting company, it would not have been possible for the mission to take place.

The complainant's observations

In his observations, the complainant maintained his complaint and made several additional questions about the checks to supervise operations, the inadequate communication links and the origin of reindeer meat.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations it appeared that there were still some questions which required answers. Accordingly, the Ombudsman asked the Commission to submit a complementary opinion on the issues raised by the complainant.

The Commission's complementary opinion

In its complementary opinion the Commission made, in summary, the following remarks:

The Commission received satisfactory written assurances from the Russian authorities that the outstanding technological and hygiene deficiencies in the reindeer processing premises "Lovozero" had been corrected. A further, routine, mission by the Commission's services to the Murmansk region, which included an inspection of the "Lovozero" establishment, took place from 12 to 16 February 2001.

The Commission is satisfied that the Russian authorities are capable of notifying the Commission of an outbreak of disease within 24 hours of its confirmation. In addition, the rules governing imports of reindeer meat from Russia are laid down in Commission Decision 2000/585/EC .

The Commission is fully satisfied that the correct procedures were observed at all stages of the procedures which led to the authorisation of imports of reindeer meat from establishment Norrfrys AB Lovozero, Murmansk.

The complainant's complementary observations

The complainant made in summary the following remarks:

According to the complainant, the inspection report from 12-16 February 2001 only confirms previous doubts about the import procedures.

The Finnish Reindeer Herders' Association is of the view that import from the Kola Peninsula should be banned until it can be ascertained with certainty that the meat abattoirs are respecting the EU standards.

THE DRAFT RECOMMENDATION

By decision dated 7 December 2001, the Ombudsman addressed a draft recommendation to the Commission in accordance with Article 3 (6) of the Statute of the European Ombudsman.

The basis of the draft recommendation was the following:

1 The complainant alleged that the initiative behind the decision of principle to import reindeer meat from the Kola Peninsula area of Russia was taken by a Swedish company, which has a commercial interest in importing Russian reindeer meat. According to the complainant the Swedish company participated in the on-the-spot inspection carried out in the Kola Peninsula area by making the travel arrangements and providing for the interpretation services during the inspection. The complainant alleged lack of impartiality by the Commission due to the participation of the Swedish company in the on-the-spot inspection.

2 In its opinion, the Commission explained that the mission was carried out at the request of the Swedish and Russian Governments. An exchange of correspondence relating to the mission took place in January to May 1998 between Norrfrys AB and the Commission. Norrfrys AB indicated to the Commission its desire to see a rapid lifting of the prohibition on the importation of reindeer meat from Russia.

A proposed itinerary from the regional authorities was received via Norrfrys AB on 16 September 1998. Due to inadequate communication links the inspection team experienced considerable difficulties in making direct contact with the regional authorities. Therefore, they made some use of the fax facilities available from Norrfrys AB in arranging the itinerary of the mission. Norrfrys AB had no input into decision taken by the inspection team as to the itinerary for the mission.

The Commission's travel agent was unable to make the necessary hotel and internal flight reservations in the Murmansk region. Norrfrys AB offered to make the necessary ticket reservations and to assist in obtaining visas for the inspection team. In view of the very short time available between the formal confirmation and the start of the mission, the inspection team had no alternative other than to request Norrfrys AB to make the necessary hotel and flight reservations in the Murmansk region through its local agents. Norrfrys AB was also asked to arrange for an interpreter to be available.

The inspection team accepted a courtesy invitation to lunch from the Managing Director Norrfrys AB during time spent in Moscow. This meal was declared in the mission expenses. In a number of instances, cars were used for transport between hotels and offices

or sites being inspected. These cars were provided by Norrfrys Ab, and were used amongst others by the inspection team and the Managing Director of Norrfrys AB to visit the processing facilities in which Norrfrys AB had a commercial interest, and which had been proposed by the veterinary services for approval. The regional veterinary services were unable to provide transport and no hire vehicles were available. There was therefore no alternative to using the cars provided by Norrfrys AB if the objectives of the mission were to be achieved. According to the Commission, the Managing Director of Norrfrys AB did not take part in any of the meetings with the Russian authorities, nor in the inspection team's internal meetings. He was present during visits to the two production facilities in which Norrfrys AB had a commercial interest. No other production facilities were visited during this mission.

3 Also according to the Commission, for Commission Decision 2000/161/EC and 2000/212/EC, the procedures laid down in the Commission's internal rules were fully respected. No outside influence was brought to bear. In all cases the unanimous approval of the Member States in the Standing Veterinary Committee was received. The Commission was fully satisfied that the correct procedures were observed at all stages of the procedures, which led to the authorisation of imports of reindeer meat from establishment Norrfrys AB Production. No evidence of any impropriety on the part of the Commission personnel involved in the planning, performance and follow-up of this mission has been found.

4 The Ombudsman noted that according to the case law of the Court of Justice of the European Communities, respect of the rights guaranteed by the Community legal order in administrative procedures include, in particular, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case. The European Ombudsman considered that principles of good administration require that the Community institutions and staff must not only act impartially, but also demonstrate their impartiality by avoiding any action, which could lead to their impartiality being reasonably called into question.

5 Based on the Ombudsman's inquiries, it appeared that although both the Swedish and Russian governments made initiatives to organise an on-the-spot inspection, Norrfrys AB also made an initiative by contacting the Commission and indicating its desire to see a rapid lifting of the prohibition on the importation of reindeer meat from Russia. Furthermore, Norrfrys AB and its Managing Director participated in the on-the-spot inspection by organising:

- hotel and flight reservations;
- visas;
- temporary fax facilities;
- interpretation services;
- inspection cars, and
- participating in the visits to the two production facilities.

The Ombudsman observed that the Commission has acknowledged that the participation of Norrfrys AB in the travel arrangements fell outside the normal practice of the Food and Veterinary Office to deal exclusively through the Commission's own Delegation and the national authorities of the country concerned. Moreover, the Commission confirmed that without the assistance of Norrfrys AB in organising the mission and facilitating its realisation, it would not have been possible for it to take place. The Commission also underlined that the only establishment which at present has received approval to import reindeer meat from the Murmansk region is Norrfrys Ab.

6 The Ombudsman also observed that Commission Decision 98/140/EC, which lays down the procedure for on-the-spot checks in the veterinary field in third countries, provides only for Commission experts to be accompanied by Member States experts.

7 For the above mentioned reasons, regardless of whether the presence of Norrfrys AB affected the substance of the Commission Decisions it was inconsistent with the duty of the Commission and its staff to demonstrate their impartiality. The Ombudsman therefore considered that the fact that the Commission allowed Norrfrys AB to participate in the on-the-spot inspection constitutes an instance of maladministration, which furthermore brings into question Commission Decision 2000/161/EC and Commission Decision 2000/212/EC.

8 In view of the position adopted by the Commission it did not appear possible to achieve a friendly solution.

The Ombudsman's draft recommendation to the Commission, was as follows:

The European Commission should carry out a new on-the-spot inspection and should consider reviewing Commission Decisions 2000/161/EC and 2000/212/EC in the light of its results.

The Ombudsman informed the Commission that in accordance with Article 3 (6) of the Statute of the Ombudsman, it should send a detailed opinion before 31 March 2002.

The Commission's detailed opinion

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

On 12-16 February 2001, the Food and Veterinary Office carried out a follow-up mission to the Murmansk region during which procedures under the Commission rules for the performance of inspection and control missions were respected.

On 30 October 2001, subsequent to an exchange of correspondence between the Russian authorities and the Commission, a letter was sent to the Deputy Head of Mission of the Mission of the Russian Federation to the European Communities in Brussels, stating that "in the absence of necessary assurances from the Russian authorities, the Commission will have to review the approval of the import of reindeer meat from the Murmansk region."

By letter dated 5 November 2001 the Russian authorities provided the Food and Veterinary Office with additional information concerning the mission report and the results of their veterinary residue and microbiological monitoring programmes during October 2001. On the basis of this information, the relevant Commission services concluded that no further action was needed.

The Commission considered that the main recommendation of the Ombudsman has been satisfied as a follow-up mission had already been carried out. In the light of the findings of the follow-up mission and assurances subsequently received from the Russian authorities, the Commission also considered that Commission Decisions 2000/161/EC and 2000/212/EC do not require amendment.

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

The Secretariat of the Ombudsman contacted the complainant by telephone and was informed that the complainant was satisfied with the Commission's detailed opinion.

THE DECISION

On 7 December 2001, the Ombudsman addressed the following draft recommendation to the Commission:

The European Commission should carry out a new on-the-spot inspection and should consider reviewing Commission Decisions 2000/161/EC and 2000/212/EC in the light of its results.

The Commission's detailed opinion informed the Ombudsman that the Food and Veterinary Office had already carried out a follow-up mission to the Murmansk region during which procedures under the Commission rules for the performance of inspection and control missions were respected. In the light of the findings of the follow-up mission and additional information subsequently provided by the Russian authorities in a letter dated 5 November 2001, the Commission considers that Commission Decisions 2000/161/EC and 2000/212/EC do not require amendment.

The Ombudsman considers that the measures described by the Commission in its detailed opinion satisfy the requirements of the Ombudsman's draft recommendation. The Ombudsman therefore closes the case.

NO PUBLIC ACCESS TO COMMISSION BRIEFING NOTES FOR MEETINGS OF THE TRANSATLANTIC BUSINESS DIALOGUE

Decision on complaint 1128/2001/IJH against the European Commission

In view of the length of the decision on this case, only the main points are mentioned in this summary. The full decision can be found in English on the Ombudsman's Website (www.euro-ombudsman.eu.int).

THE COMPLAINT

In July 2001, Mr H complained to the Ombudsman on behalf of a non-governmental organisation, Corporate Observatory Europe, against the Commission's refusal of public access to certain documents under Commission Decision 94/90.[86] The documents concern the Commission's participation in meetings of the Transatlantic Business Dialogue (TABD). The complainant alleged that the Commission had failed to give sufficient weight to the public interest in disclosure, since TABD is a forum where EU policies that later have a far-reaching impact on all European citizens are proposed and discussed.

THE INQUIRY

The Commission explained that the documents concerned were steering notes, briefings for meetings with US government representatives, other comments by Commission staff and recommendations to the Commissioner.

The Commission argued that refusal of access was justified under the exception for protection of the confidentiality of its proceedings and that there is no public interest in disclosure, because the documents shed no additional light on the positions taken by the Commission *vis-à-vis* TABD proposals.

The Commission also argued that refusal of access was justified under the exception concerning international relations, because personal views from members of staff could mistakenly be considered as reflecting the views of the Commission.

86 Commission Decision 94/90 of 8 February 1994 on public access to Commission documents OJ 1994 L 46/58.

THE DRAFT RECOMMENDATION

The Ombudsman considered that the complainant was entitled to invoke a public interest in disclosure of documents concerning the Commission's relationship with TABD.

The Ombudsman also considered the Commission's reasoning inadequate as regards international relations, because it seems unlikely that the US authorities would mistake personal views of members of staff for the official position of the Commission.

The Ombudsman therefore made a draft recommendation that the Commission should reconsider the complainant's application for public access, applying Regulation 1049/2001[87], which had meanwhile replaced Decision 94/90.

The Commission's detailed opinion

The Commission's detailed opinion argued that disclosing its internal reasoning would expose the Commission *vis-à-vis* its partners and weaken its negotiating position. It would give negotiating partners an insight into possible compromises that the Commission would be willing to make at a later stage in the negotiations. There would be a serious risk of adding contentious issues to EU-US relations and making it more difficult to reach an agreement.

The Commission also argued that refusal of access was justified to protect its decision-making process. In this context, it argued that the risk of selected parts of disclosed documents being disseminated out of their context must be taken into account when assessing the harm that would be caused by releasing a document.

THE DECISION

The Ombudsman considered that the Commission had clearly explained how disclosure of the documents concerned could undermine the protection of the public interest as regards international relations.

The Ombudsman took the view that it was therefore unnecessary to consider whether access to the documents could also be refused in order to protect the Commission's decision-making process.

The Ombudsman pointed out, however, that he could not accept the Commission's view that the risk of selected parts of documents being disseminated out of their context must be taken into account when assessing the possible harm to its decision-making process that would be caused by releasing a document. In the Ombudsman's view, the Commission's reasoning on this point is inconsistent with the freedom of expression under the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority.

In view of the above, the Ombudsman considered that the Commission had taken adequate steps to satisfy the draft recommendation and therefore closed the case.

87 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.

3.5.3 The European Commission and the European Parliament

EUROPEAN PARLIAMENT AND COMMISSION TO ESTABLISH A NEW INTER-INSTITUTIONAL PAYMENT SYSTEM

Decision on complaint 1182/2001/IP against the European Commission and the European Parliament

THE COMPLAINT

The son of the complainant, who is a Parliament official, attends the Garderie of Luxembourg, managed by the European Commission. All charges are deducted from the complainant's salary on a monthly basis. In her complaint, the complainant alleged lack of transparency of the sum deducted, because since it is a lump sum which constantly changes, it is impossible to check its accuracy. She claims that the sum deducted should be more detailed and the parents should be informed of any changes.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission refers to the relevant rules concerning admission to and operation of the establishment comprised in the Early Childhood Centre (ECC). According to Article 5, the parental contribution shall be made by means of deduction from the salary of the parent who registered the child. The parental contribution shall be based on the scale laid down by the Social Activities Committee and shall be reviewed periodically.

The Commission states that the children's meal voucher consisting of 20 tickets are signed and authorised in advance by the parents. Furthermore, the institution points out that on 12 September 2000, all the parents concerned were informed that the price of a carnet would change from 69,41 to 74,34 €.

The Commission regrets that the current inter-institutional system of payment does not allow for more detailed information concerning the codes "retenus" and "divers". However, the new inter-institutional system of payment which is currently being set up will avoid such inconvenience. At present, each institution has to provide to the parents concerned the detailed invoice forwarded by its administrative service on a monthly basis.

The Parliament's opinion

In its opinion on the complaint, the Parliament recognises that its Pay and Allowances Division is aware of the situation described by the complainant, who contacted them on several occasions.

According to the Parliament, the problem stems from the fact that the European Commission, as manager of the Garderie, asks the various institutions to deduct the monthly charges for the attendance fee and the children's meal vouchers from their parents' pay without giving detailed information on the amounts charged to the parents.

The Parliament stresses that the Pay and Allowances Division, considers this situation to be unsatisfactory and has contacted the relevant Commission department several times, but without effect. The complainant was therefore informed that only the Commission has the relevant information which she is entitled to have.

Furthermore, the Secretary General of the European Parliament has recently written to the Secretary General of the European Commission requesting that a solution to the problem in the interest of the officials concerned be found.

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

The complainant stressed that the procedural information concerning the functioning of the Garderie was not relevant in the context of her complaint. She underlined, moreover, that the Commission recognised the inadequacy of the informatic system and referred to a

new one which will avoid these inconveniences without, however, giving any concrete information on the time of its entry into force.

The complainant also pointed out that she did not want to blame the Commission's activity, but only denounce a problem of which the Commission itself admits the existence. In her view, it is irrelevant which of the two institutions concerned the Commission or the Parliament would provide the relevant information on a regular basis.

The complainant's observations on the European Parliament's opinion

The complainant pointed out that, in view of the contents of the Parliament's opinion, she would not add any comment.

THE DRAFT RECOMMENDATION

On 19 June 2002, the Ombudsman addressed a draft recommendation to the Commission and to the Parliament in accordance with Article 3 (6) of the Statute of the European Ombudsman.

The basis of the draft recommendation was the following:

The son of the complainant, who is a Parliament official, attends the Garderie of Luxembourg, managed by the European Commission. All charges are deducted from the complainant's salary on a monthly basis. In her complaint, the complainant alleged lack of transparency of the sum deducted, because since it is a lump sum which constantly changes, it is impossible to check its accuracy. She claims that the sum deducted should be more detailed and the parents should be informed of any changes.

In its opinion, the Commission regrets that the current inter-institutional system of payment does not allow for more detailed information concerning the code "retenus" and "divers". It also states that the new inter-institutional system of payment which is currently being set up will avoid such inconvenience.

In its opinion, the Parliament points out that its services consider this situation to be unsatisfactory and have therefore contacted the relevant Commission department several times, but without effect. Furthermore, it stresses that the Secretary General of the European Parliament has recently written to the Secretary General of the European Commission requesting that a solution to the problem in the interest of the officials concerned be found.

It is good administrative behaviour for a public administration to provide the most accurate information about its own decisions. Such information should enable the decision's recipients to judge its accuracy easily.

The Ombudsman took note that both the institutions concerned have agreed that the inter-institutional system of payment is not satisfactory and that the complainant is entitled to receive the requested information. The Ombudsman also noted that the Parliament's Secretary General wrote to the Secretary General of the European Commission requesting that a solution to the problem in the interest of the officials concerned be found.

The Ombudsman concluded that the failure to provide the complainant and all the parents concerned with detailed information on the amount charged for the attendance fee of their children to the Garderie constitutes an instance of maladministration. He therefore made the following draft recommendation to the Commission and to the Parliament:

Parents concerned are entitled to receive detailed information concerning the amount charged for the attendance fee of their children to the Garderie. The European Commission and the European Parliament should therefore find a solution so as to provide this information regularly.

The Ombudsman informed both institutions that in accordance with Article 3(6) of the Statute of the Ombudsman, they should send a detailed opinion before 31 October 2002.

The Commission's detailed opinion

On 11 September 2002, the Commission sent its detailed opinion to the Ombudsman.

The Commission stated that the Ombudsman's recommendation has been the object of an in-depth examination by the Commission's competent services. Furthermore, the institution pointed out that technical arrangements necessary to set up the new inter-institutional system of payment to provide parents with detailed information on a regular basis, are in the course of development. On this basis, the Ombudsman's draft recommendation will be implemented shortly.

In the meantime, parents who so wish, could address their requests to the secretariat of the "Garderie" and of the "Centre d'étude".

The Parliament's detailed opinion

On 21 October 2002, the Parliament sent its detailed opinion to the Ombudsman.

The Parliament referred to the detailed opinion provided by the European Commission which informed the Ombudsman that the computer programme needed to provide detailed invoicing is currently being developed. The Parliament fully supported this initiative and pointed out that, according to its understanding, that this improvement will be implemented by the end of the current year.

The complainant's observations on Commission and Parliament's detailed opinions

On 28 October 2002, the services of the Ombudsman contacted the complainant by telephone and were informed that the complainant was satisfied with the outcome of the inquiry.

THE DECISION

1 On 19 June 2002, the Ombudsman addressed the following draft recommendation to the European Commission and to the European Parliament:

Parents concerned are entitled to receive detailed information concerning the amount charged for the attendance fee of their children to the Garderie. The European Commission and the European Parliament should therefore find a solution so as to provide this information regularly.

2 In its detailed opinion, the Commission informed the Ombudsman that technical arrangements necessary to set up the new inter-institutional system of payment to provide parents with detailed information on a regular basis, are in course of development and that the Ombudsman's draft recommendation will therefore be implemented shortly.

In its detailed opinion, the Parliament supported the Commission's initiative and stressed that, according to its understanding, this improvement will be implemented by the end of the current year.

3 The Ombudsman considers that the measures described by the Commission and by the Parliament in their detailed opinions satisfy the requirements of the Ombudsman's draft recommendation. The Ombudsman therefore closes the case.

3.6 CASES CLOSED AFTER A SPECIAL REPORT

PROPOSAL FOR THE ADOPTION OF A EUROPEAN CODE OF GOOD ADMINISTRATIVE BEHAVIOUR

Decision in own initiative inquiry OI/1/98/OV concerning all the institutions and bodies

On 11 November 1998, the European Ombudsman started an own initiative inquiry into the existence and public accessibility, in the different Community institutions and bodies, of a Code of good administrative behaviour for the officials in their relations with the public.

The Ombudsman made draft recommendations, respectively on 28 July 1999 to the Commission, on 29 July 1999 to the Parliament and the Council, and on 13 September 1999 to the other institutions, bodies and decentralised agencies. The Ombudsman annexed to his draft recommendations a draft Code of good administrative behaviour established by his office and containing, in a list of 28 Articles, provisions on both substantive and procedural principles, as well as on the good functioning of the administration. The Ombudsman stated that the institutions and bodies could take guidance from this draft Code in drafting their own Codes.

In April 2000, following an in-depth analysis of the opinions received from the various institutions and bodies on the draft recommendations, the Ombudsman submitted a Special Report to the European Parliament, in conformity with Article 3 (7) of the Statute of the European Ombudsman. In this Special Report, the Ombudsman made the following recommendation to the Parliament: *"In order to achieve rules of good administrative behaviour which apply equally to all Community institutions and bodies in their relations with the public, the Ombudsman recommends the enactment of a European administrative law, applicable to all the Community institutions and bodies. This law could take the form of a Regulation"*. The Ombudsman annexed his draft Code to the Special Report.

On 27 June 2001, the European Parliament's Committee on Petitions adopted a report (reference A5-0245/2001) in which it endorsed the Ombudsman's Special Report. The report was drafted by Roy Perry MEP.

On 6 September 2001, the European Parliament adopted a resolution approving, with some modifications, the Code of Good Administrative Behaviour as proposed by the Ombudsman in his draft recommendations and Special Report. The Resolution 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.

Given that the European Parliament has now completed its examination of the Special Report and has endorsed its conclusions, the Ombudsman closes the file.

COMMISSION PUTS AN END TO DISCRIMINATION ON THE GROUNDS OF SEX AGAINST SECONDED NATIONAL EXPERTS

Decision on complaint 242/2000/GG against the European Commission

On 18 February 2000, the complainant, a British civil servant, made a complaint to the European Ombudsman against the European Commission concerning the latter's rules on national experts on detachment to the Commission. The complainant alleged that the rule established by the Commission according to which national experts seconded to the Commission had to work full-time was discriminatory on the grounds of sex.

On 15 November 2001, and following an in-depth inquiry into the complaint, the Ombudsman submitted a special report to the European Parliament, in conformity with Article 3 (7) of the Statute of the European Ombudsman. A copy of this special report was sent to the Commission. In this special report, the Ombudsman recommended that the Commission should abolish its rule prohibiting national experts on secondment to the Commission from working part-time as quickly as possible.

On 30 April 2002, the Commission adopted a decision on Rules applicable to National Experts on Secondment to the Commission. Article 12 of these Rules provides that national experts may be authorised to work part-time.

On 8 October 2002, the European Parliament's Committee on Petitions adopted a report (reference A5-0355/2002) in which it endorsed the European Ombudsman's special report and submitted a draft resolution to that effect. The report was drafted by Jean Lambert MEP.

On 17 December 2002, the European Parliament voted to approve the resolution on the Ombudsman's Special Report. In its resolution, the European Parliament welcomed the fact that the Commission had finally abolished the rule concerned and affirmed that European institutions could not make respect for fundamental rights the object of negotiations, nor postpone compliance with legal obligations in respect to freedom from discrimination at their convenience.

Given that the European Parliament has now completed its examination of the Ombudsman's special report and endorsed its conclusions, the Ombudsman closes the file.

PARLIAMENT ENDORSES OMBUDSMAN'S VIEWS ON ACCESS TO DOCUMENTS

Decision on complaint 917/2000/GG against the Council of the European Union

On 11 July 2000, the complainant, a British organisation, submitted a complaint to the European Ombudsman against the Council of the European Union concerning the Council's refusal to provide certain documents that the complainant believed had been put before various meetings held in January 1999 and September 1998.

On 30 November 2001, and following an in-depth inquiry into the complaint, the Ombudsman submitted a special report to the European Parliament, in conformity with Article 3 (7) of the Statute of the European Ombudsman. A copy of this special report was sent to the Council. In this special report the Ombudsman recommended that the Council should reconsider the complainant's application and give access to the documents requested, unless one or more of the exceptions contained in Article 4 of Decision 93/731 of 20 December 1993 on public access to documents applied. The Ombudsman further noted that he welcomed the European Parliament's views regarding the draft recommendation he had previously made and according to which the Council should maintain a list or register of all the documents put before the Council and make this list or register available to citizens.

On 8 October 2002, the European Parliament's Committee on Petitions adopted a report (reference A5-0363/2002) in which it endorsed the Ombudsman's special report and submitted a draft resolution to that effect. The report was drafted by Astrid Thors MEP.

On 17 December 2002, the European Parliament voted to approve the resolution on the Ombudsman's Special Report. In its resolution, the European Parliament supported the recommendation the Ombudsman had made. Parliament also welcomed the published intentions by the Secretary-General of the Council to implement the Ombudsman's recommendation and requested the Council to report to the competent committee in six months on the further concrete measures taken to implement the Secretary-General's decision and Regulation (EC) no. 1049/2001.

Given that the European Parliament has now completed its examination of his special report and supported his recommendation, the Ombudsman closes the file.

3.7 OWN INITIATIVE INQUIRIES BY THE OMBUDSMAN

3.7.1 The European Commission

FREEDOM OF EXPRESSION OF COMMISSION OFFICIALS

Decision in own-initiative inquiry OI/1/2001/GG concerning the European Commission

THE REASONS FOR THE INQUIRY

The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union was adopted at the summit of Nice on 7 December 2000[88].

The European Parliament, the Council of the European Union and the European Commission solemnly proclaimed the text as the Charter of Fundamental Rights of the European Union. It follows therefrom that the said institutions have pledged to apply the principles laid down in this Charter.

Article 11 of this Charter recognises the right to freedom of expression.

Freedom of expression

Freedom of expression is one of the fundaments of a democratic society. This is confirmed by Article 10 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is worded as follows:

"*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*"

The original Treaties establishing the European Communities did not contain any express provisions regarding human rights. However, the Court of Justice has held in 1969 that human rights are protected in Community law[89]. It is now the settled case law of the Court of Justice that fundamental rights form an integral part of the general principles of law whose observance the Court ensures, and that freedom of expression, as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is one of those general principles[90]. Article 6 (2) of the Treaty on European Union expressly endorses this case law.

Freedom of expression and civil servants

The European Court of Human Rights has ruled in *Vogt v Germany* that officials are individuals and as such qualify for the protection of the freedom of expression as laid down in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[91].

Likewise, the European Court of Justice has held that freedom of expression is a fundamental right that is also enjoyed by Community officials[92].

However, it is also clear that Community officials owe a special duty of allegiance to the Communities. The question thus arises as to the relationship between this duty and the officials' freedom of expression.

---

88 OJ 2000 C 364, page 1.

89 Case 29/69 *Stauder v City of Ulm* [1969] ECR 419.

90 Case C-150/98 P *Economic and Social Committee v. E* [1999] ECR I-8877.

91 Judgement of 26 September 1995, Series A, No 323.

92 Case C-100/88 *Oyowe and Traore v Commission* [1989] ECR 4285, paragraph 16.

The Staff Regulations

Freedom of expression is not expressly guaranteed to the officials of the Communities in the Staff Regulations.

There are however certain provisions that are relevant in this context.

The first paragraph of Article 12 of the Staff Regulations provides as follows:

"*An official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position.*"

Article 17 of the Staff Regulations contains the following provisions:

"*An official shall exercise the greatest discretion with regard to facts and information coming to his knowledge in the course of or in connection with the performance of his duties; he shall not in any manner whatsoever disclose to any unauthorised person any document or information not already made public. He shall continue to be bound by this obligation after leaving the service.*

An official shall not, whether alone or together with others, publish or cause to be published without the permission of the appointing authority, any matter dealing with the work of the Communities. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Communities."

The relevant case law of the Community courts

The Court of Justice has ruled that

"*the duty of allegiance to the Communities imposed on officials in the Staff Regulations cannot be interpreted in such a way as to conflict with freedom of expression, a fundamental right which the Court must ensure is respected in Community law*".[93]

It further follows from the case law of the Community courts that Articles 12 and 17 of the Staff Regulations do not constitute a bar on the freedom of expression of officials but rather place "reasonable limits on the exercise of that fundamental right, in the interests of the service"[94].

Several details have been clarified by the case law of the Community courts. In the *Cwik* case for instance, the Court of First Instance has held that whilst according to Article 17 of the Staff Regulations a publication by a Community official that deals with the work of the Communities is subject to the requirement of a prior permission, such permission may only be refused if the publication "is liable to prejudice the interests of the Communities". The permission may thus only be refused where this is necessary in the specific circumstances of the case[95]. The Court of First Instance has also underlined that the mere fact that the official expresses an opinion that differs from that of the institution for which he works is not sufficient to establish that the publication is liable to prejudice the interests of the Communities[96].

93 Case C-100/88 loc. cit., paragraph 16.

94 Case C-150/98 P loc. cit., paragraph 41; Joined cases T-34/96 and T-163/96 *Connolly v Commission* [1999] ECR-SC I-A-87 and II-463, paragraphs 129 and 149.

95 Judgement of 14 July 2000 in Case T-82/99, [2000] ECR-SC II-713, paragraph 52. In its judgement of 13 December 2001 on Case C-340/00 P, the Court of Justice rejected the Commission's appeal against this judgement.

96 Case T-82/99 loc. cit, paragraph 57.

Remaining problems

There was no denying the fact, however, that important problems remained unsolved.

If taken at face value, Articles 12 and 17 (1) of the Staff Regulations could be construed as preventing any useful communication between an official of the Communities and members of the public who turn to this official for information. Officials did not seem to dispose of any clear guidance as to where the line was to be drawn between an open and helpful approach towards citizens (which the Ombudsman considers to be imposed on the Communities by the duty of transparency) and communications by an official that "may reflect on his position" within the meaning of Article 12 of the Staff Regulations. It was to be feared that such a state of affairs would prevent the Communities from achieving the measure of openness and transparency that was both desirable and necessary.

In so far as Article 17 (2) of the Staff Regulations was concerned, the case law of the Community courts could be interpreted in the sense that any publication "dealing with the work of the Communities" by an official required prior permission. The Court of First Instance has indicated that an official may lodge an internal complaint pursuant to Article 90 of the Staff Regulations where the permission is refused and, if the decision still is negative, bring an action before the Court[97]. However, these possibilities to obtain redress inevitably took time[98]. By the time the permission is finally granted, the proposed publication may thus well have become obsolete.

It was concerns like these that led the Ombudsman, when dealing with the first complaint concerning the freedom of expression of Community officials (complaint 794/5.8.1996/EAW/SW/VK) back in 1997, to make the following remark:

"*The Commission may wish to consider whether it could provide guidance to its officials on what it considers to be a fair balance between their individual right to freedom of expression, which includes the freedom to impart information and ideas, and their duties and responsibilities as officials, in particular under Articles 12 and 17 of the Staff Regulations.*"

This concern was reiterated in the Ombudsman's recent decision on complaint 1219/99/ME[99].

The Ombudsman was aware of certain measures or communications that the Commission was preparing in the context of the proposed overhaul of the Staff Regulations. Some of them (like the Consultative Document SEC (2000) 2078 'Raising Concerns about Serious Wrongdoing' of 29 November 2000) were to some extent related to the problem described above. However, as far as the Ombudsman could see no general set of rules or guide had yet been proposed with respect to the specific issue of the freedom of expression of Community officials.

The Ombudsman therefore requested the Commission in February 2001 to inform him whether it had taken or intended to take any steps in order clarify the scope of its officials' right to freedom of expression.

---

97 See the *Connolly* case loc. cit., paragraph 152.

98 Cf. the facts of the *Cwik* case, where the Article 90 complaint was lodged in August 1998 but where the judgement was given in July 2000.

99 Decision of 18 December 2000.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission recalled the legal provisions that were applicable in the field. It also gave a short overview of the rules governing civil servants' freedom of expression in the member states of the EU and summarised the relevant case law of both the European Court of Human Rights and the Court of Justice of the European Communities and the Court of First Instance.

Against this background, the Commission made the following comments:

Given that the application of the Staff Regulations and the rules implementing its provisions had come to be seen as complex and lacking transparency, the Commission had fixed the aim, in its White Book on administrative reform, of improving the transparency of its staff policy and of simplifying and consolidating the relevant legal instruments. A simplified and updated version of the Staff Regulations was therefore planned, on the basis of which guidelines on the rights and obligations of civil servants were to be established. There was a need to modify certain provisions, to clarify them and to abolish those that had become outdated. This also applied to the provisions concerning freedom of expression.

A certain number of consultative documents had already been adopted with a view to carrying out the reform. Two of these documents concerned specifically the rights and obligations of civil servants and tried to clarify their scope of application, including the issues relating to freedom of opinion.

One of these documents was the consultative document "The Reform of Disciplinary Proceedings"[100] which provided, inter alia, for a handbook of rules and guidelines on the rights and obligations of civil servants ('Guide des règles et des lignes directrices sur les droits et obligations des fonctionnaires') to be drawn up. A further consultative document on "Raising Concerns about Serious Wrongdoing"[101] foresaw provisions that would not exonerate officials from their general obligation of secrecy but which would define the conditions under which disclosure would be justified.

Besides, a further document was being prepared with a view to assuring the transparency of civil servants' rights and obligations.

FURTHER INQUIRIES

The Ombudsman's request for further information

On the basis of the above, the Ombudsman considered that he needed further information to be able to complete his inquiries. He therefore asked the Commission (1) to specify which changes in the Staff Regulations it considered necessary and when the proposals for these changes would be made and (2) to inform the Ombudsman of the contents of the 'Guide des règles et des lignes directrices sur les droits et obligations des fonctionnaires' and submit a copy thereof or, if the document should not yet exist, to indicate when it intended to adopt such a guide.

100 SEC(2000)2079/5.

101 SEC(2000)2078/6.

The Commission's reply

In its reply sent on 29 November 2001, the Commission pointed out that the following two modifications were proposed in the document "General Review of the Staff Regulations" of 14 September 2001 that was actually under discussion between the Commission and the staff representatives:

- The limits of the general obligation of professional secrecy and its relation with the new rules on transparency had been better defined. The obligation of professional secrecy would thus only apply if the relevant information had not yet been published or did not figure in a document available to the public (new Article 17).

- Article 17 (2) required civil servants to obtain prior authorisation for publications dealing with the work of the Communities. The criteria for a negative decision by the appointing authority had been clearly defined in the light of recent decisions of the Community courts. It was proposed furthermore that the appointing authority would be deemed to have accepted an application if it failed to react to it within a certain period of time. This would represent an element of legal security for civil servants and simplify the administrative procedures.

The Commission should be able to present draft changes to the Staff Regulations to the Staff Regulations Committee before the end of the year. After having obtained the opinion of that committee, the draft would be submitted to Council.

A new action plan on "Transparence dans la politique du personnel" had been approved by the Commission on 6 August 2001[102]. This document explicitly provides for an administrative guide to be prepared and published that would explain the application and interpretation of the rules in the Staff Regulations. This guide will enable civil servants to dispose of clear and understandable information on all issues relating to their status, and particularly on the main questions in relation to their rights and obligations. The drafting of this guide had been commenced and its completion was foreseen for April 2003. The guide would however be established in steps, and its first part should become available on the intranet website of the Commission towards the beginning of 2002.

THE DECISION

1 In February 2001, the Ombudsman started an own-initiative inquiry into the subject of the freedom of expression of the staff of the European Commission. This inquiry was based on the consideration that the rights and obligations of civil servants in this field were insufficiently clear in several respects. The Ombudsman also recalled that he had already previously invited the Commission to contemplate providing guidance to its officials on what it considered to be a fair balance between their individual right to freedom of expression, which includes the freedom to impart information and ideas, and their duties and responsibilities as officials.

2 In its opinion and in its reply to a request for further information made by the Ombudsman, the Commission informed the Ombudsman that it intended to prepare an administrative guide that would explain the application and interpretation of the rules in the Staff Regulations. According to the Commission, this guide will enable civil servants to dispose of clear and understandable information on all issues relating to their status, and particularly on the main questions in relation to their rights and obligations. The guide is to be established in steps, and its first part should become available on the intranet website of the Commission towards the beginning of 2002.

---

[102] PE(2001) 1609 C(2001)2466.

3 The Commission also indicated that it intended to propose concrete modifications to Article 17 (2) of the Staff Regulations that requires civil servants to obtain prior authorisation for publications dealing with the work of the Communities. According to the Commission, its proposal better defined the criteria for a negative decision by the appointing authority in the light of recent decisions of the Community courts. It was proposed furthermore that the appointing authority would be deemed to have accepted an application if it failed to react to it within a certain period of time.

4 In the light of the above, the Ombudsman considers that the Commission has reacted in a positive way to his inquiry and has taken or is considering taking steps that are likely to remedy or at least substantially reduce the problems that currently exist. The Ombudsman therefore takes the view that his own-initiative inquiry has achieved its purpose and that there is no need to pursue the inquiry at present. The Ombudsman will however continue to follow this issue closely and if necessary consider further actions in the future.

5 The Ombudsman therefore closes the file.

PARENTAL LEAVE FOR EU OFFICIALS

Decision in own-initiative inquiry OI/4/2001/ME concerning the European Commission

THE REASONS FOR THE INQUIRY

Council Directive 96/34/EC[103]

On 3 June 1996, the Council of the European Union adopted a Directive with minimum requirements for parental leave. The Directive foresees an individual right for men and women workers to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months. The Directive was addressed to the Member States and should have been implemented in 1999 at the latest. It appears that all Member States have implemented the Directive.

The Charter of Fundamental Rights of the European Union[104]

Article 33(2) of the Charter recognises the right to parental leave. It states:

To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

The Commission undertook to comply with the Charter in its memorandum from the President and Mr Vitorino (SEC(2001)380/3) of 13 March 2001.

The Staff Regulations and present situation

As regards maternity leave, the Staff Regulations provide for 16 weeks of leave (Article 58). In addition, by decision of the Heads of Administration of the European Institutions, an additional four-week special leave has been introduced for breast-feeding. The Staff Regulations do not foresee any maternity leave for adoption. By decision of the Heads of Administration of the European Institutions, special leave has been introduced for adoptive mothers, varying from two to ten weeks. Statutory maternity leave, leave for breast-feeding and adoption leave are fully paid.

As regards paternity leave, Annex V of the Staff Regulations provides for two days of special leave (fully paid) in case of birth of a child.

---

103 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ 1996 L 145/4.

104 OJ 2000 C 364/1.

In addition, according to the Staff Regulations, unpaid leave on personal grounds (Article 40) can be granted for the upbringing of children. A maximum five-year leave for bringing up a child under the age of five may be granted.

The Staff Regulations further provide for the possibility to work half-time (Article 55a and Annex IVa). According to the internal rules of the different European Institutions, caring for children is a valid reason for being granted half-time work.

Actions taken by the Commission

On 31 October 2000, Mr Kinnock sent a Communication to the Commission, a Consultative Document entitled "Family-related leave and flexible working arrangements". The Communication presented substantial changes to the right for officials and other servants of the European Communities to maternity leave, paternity leave and parental leave. It also contained proposals relating to for example adoption and family leave.

In summary, the proposal foresaw 20 weeks of maternity leave (transferable to the father in the case both are officials, except for two weeks), with a four-week extension in case of multiple or premature birth. Two weeks of paternal leave was suggested. Both the maternity and paternity leave would be fully paid. As regards parental leave, each official was proposed to be entitled to six months of leave (the duration is doubled for single parents). During the parental leave the official shall be entitled to an allowance of € 750 per month. The allowance shall be € 1,000 per month in respect of the first three months if taken during or immediately after maternity leave.

Conclusion

The Ombudsman welcomed the actions taken by the Commission in the Communication as regards the question of parental leave. The Ombudsman however noted that two years after the Council Directive 96/34/EC on parental leave had been implemented by the Member States, ten months after the Charter of Fundamental Rights of the European Union had been proclaimed, six months after the Commission undertook to comply with the Charter and almost one year after the Communication on Family-related leave and flexible working arrangements, there were still no rules to guarantee the right to parental leave of officials and servants of the European Communities.

In order to respect the rules and principles of Community law and the rights of men, women and children, and to further adapt the institutions to modern society, the Ombudsman considered the adoption of rules on parental leave for the officials and servants of the Communities as an essential element.

The Ombudsman therefore requested the Commission to do its utmost to ascertain that, without delay, the respect for Community law as far as parental leave is concerned is achieved for the officials and other servants of the European Communities.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission referred to the Reform package of its human resources policy and the subsequent changes of the Staff Regulations, thereby pointing out that the question of parental leave was included in that reform.

The Commission referred to Article 283[105] of the EC-Treaty and related procedural provisions in the Staff Regulations to be respected by the Commission. It also stated that it had

[105] Article 283 reads: "The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of those Communities."

to respect the rules concerning the negotiations with staff representatives on modifications to the Staff Regulations, according to which it has to consult the OSP's (Organisations syndicales et professionnelles) and the Inter-Institutional Staff Regulations Committee. After these consultations, the Commission can transmit the proposal for the new Staff Regulations via the Council to the other institutions. The Commission thought that the Ombudsman would understand that this was a time-consuming process, in particular in view of the fact that the Reform package covers all aspects of the human resources policy. The Commission acknowledged that the Staff Regulations had not been significantly amended since their adoption in 1967 and did thus not reflect changes in the European social legislation or the general evolution.

The Commission went on to refer to the document "A Global Package for the Reform of Personnel Policy" that had been adopted on 30 October 2001. This document confirmed the Commission's intention to discuss and adopt the integrated proposal for a revised set of Staff Regulations in December 2001 with a view to presenting it to the Inter-Institutional Staff Regulations Committee. Once this Committee has expressed its opinion, the proposal will be formally transmitted to the European Parliament and the Council in the spring 2002.

The Commission stressed that its proposal for revised Staff Regulations is fully in line with Article 33(2) of the Charter of Fundamental Rights and will fully respect the Council Directive on parental leave and will in fact go considerably beyond the minimum standards set by the Directive. The Commission assured that it would do its utmost to ensure that the reform measures in general and the parental leave provisions in particular come into effect at the earliest possible opportunity.

Attached to its opinion was a summary of the Commission's proposal as regards new provisions on parental leave.

THE DECISION

1 Parental leave for officials and other servants of the European Communities

1.1 In October 2001, the Ombudsman initiated an own-initiative inquiry into the subject of parental leave for officials and other servants of the European Communities. The inquiry was directed against the Commission. The Ombudsman referred in particular to Council Directive 96/34/EC on parental leave and the Charter of Fundamental Rights of the European Union and stressed that there were still no rules to guarantee the right to parental leave. The Ombudsman requested the Commission to do its utmost to ascertain that, without delay, the respect for Community law as far as parental leave is concerned is achieved for the officials and other servants of the European Communities.

1.2 In January 2002, the Commission sent its opinion. The Commission stated that it would do its utmost to ensure that the reform measures for parental leave come into effect at the earliest possible opportunity. It thereby referred to Article 283 of the EC-Treaty and related procedural provisions in the Staff Regulations that had to be respected, and to the rules concerning the negotiations with staff representatives on modifications to the Staff Regulations, according to which it has to consult the OSP's (Organisations syndicales et professionnelles) and the Inter-Institutional Staff Regulations Committee. The Commission confirmed that its proposal would respect Council Directive 96/34/EC on parental leave and the Charter of Fundamental Rights of the European Union. At present, the Inter-Institutional Staff Regulations Committee was about to express its opinion on the proposal, which will then be formally transmitted to the European Parliament and the Council in the spring 2002.

1.3 The Ombudsman welcomes the Commission's intention to ensure that rules on parental leave for officials and other servants of the European Communities are put in place without delay. The Ombudsman has noted that the Commission's proposal respects Council Directive 96/34/EC on parental leave and the Charter of Fundamental Rights of the European Union.

1.4 Nevertheless, it must be pointed out that Council Directive 96/34/EC on parental leave was adopted on 3 June 1996 by the Council following a proposal by the Commission, submitted already in 1983[106]. The Directive should have been implemented by the Member States in June 1998, and under any circumstances not later than June 1999. It must therefore be considered as unfortunate that the Commission waited until the so called Reform package of its human resources policy, launched several years after its own proposal for reform in the Member States, before proposing new rules on parental leave for its own staff.

1.5 The Ombudsman considers that the Commission is at present taking steps that are likely to remedy the lack of adequate rules on parental leave for officials and other servants of the European Communities in the near future. The Ombudsman therefore takes the view that his own-initiative inquiry has achieved its purpose and that there is no need to pursue it further. The Ombudsman will continue to follow the development of this matter.

2 Conclusion

On the basis of the Ombudsman's inquiries, there appears to be no need to pursue the inquiry further. The Ombudsman therefore closes the file.

FOLLOW UP

On 24 April 2002, the Commission sent the Council its proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities. The European Parliament was also notified.

3.7.2 The European Centre for the Development of Vocational Training

OWN INITIATIVE INQUIRY INTO THE LANGUAGE USED BY CEDEFOP IN ITS OPINIONS ON COMPLAINTS

Decision in own initiative inquiry OI/1/2002/OV concerning CEDEFOP

On 7 January 2002, the European Ombudsman started an own initiative inquiry into the language CEDEFOP uses in dealing with the complaints from European citizens.

THE REASONS FOR THE INQUIRY

Part of the Ombudsman's mission is to enhance relations between European citizens and the Community institutions and bodies. The creation of the Ombudsman's office was meant to underline the commitment of the Union to democratic, transparent and accountable forms of administration. The Ombudsman should help secure the position of citizens by promoting good administrative practices and improving the quality of administration.

The right for European citizens to complain about maladministration is a fundamental right which is explicitly foreseen in Articles 21.2 and 195 of the EC Treaty and in Article 43 of the Charter of Fundamental Rights. The Ombudsman would like to underline that complaints should be a positive element for the management of the administration, as they can draw the attention of the administration to the weaknesses and failures in its functioning and thus, for example, to the necessity of reorganising certain of its procedures, giving new advice to staff or allocating more resources. They therefore constitute an element in the work to improve the daily activities of the administration.

106 COM/83/686FINAL.

When a Community institution or body considers that it acted correctly and that it cannot be blamed for maladministration, then it is useful that the institution or body explains its actions and gives reasons for them. This usually promotes understanding of the actions of the administration. Improper wordings only provoke and support a negative impression of the institution concerned and of the Community administration at large.

The Ombudsman noticed that in three opinions in cases 466/2000/OV, 705/2000/OV and 1206/2000/BB, CEDEFOP has responded in language different from that normally used by Community institutions and bodies in their opinions to the Ombudsman. Some of the phrases, which have particularly drawn the Ombudsman's attention, were:

Opinion of 31 August 2000 in case 466/2000/OV:

- *"(…) is also tangible proof of the bad faith of X which has been, for reasons unknown to Cedefop, unable to stomach its self-considered "defeat" at the hands of a (Greek-based), competitor". (page 17);*

- *"We feel that X have resorted to unworthy tactics which have no place in a healthy and competitive business environment. In view of the well-nigh slanderous allegations made against Cedefop in the X correspondence, we would ask you to note that the Centre reserves the right to institute legal proceedings against the company (…)". (page 18);*

Opinion of 27 July 2000 in case 705/2000/OV:

- *"Although your response (i.e. from the European Ombudsman), following examination of the file, was one not giving her satisfaction, since you considered that the Centre had not at any moment misbehaved in her regard, we did not adopt thereafter a negative, hostile or revenge-seeking attitude (although we could justifiably have done so)". (page 3);*

- *"The behaviour of X can best be described as voluble and agitated". (page 5);*

Opinion of 14 February 2001 in case 1206/2000/BB:

- *"X has however throughout this process (…) displayed an inability to act in a dispassionate manner" (page 10);*

- *"It is our conviction that reason should prevail over heated emotions that professional matters should be approached "sine ira et studio" and that any ulterior motives should bow to legal process (…)". (page 10).*

In this context, the Ombudsman recalled the definition of maladministration which he gave in his Annual Report 1997: "Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it".

One of these principles is the principle of courtesy, which is also included in Article 12 of the Code of Good Administrative Behaviour, which CEDEFOP adopted on 15 December 1999. This principle gives every citizen the right to be dealt with correctly, courteously and in a service-minded manner. That institutions should reply properly is also evidenced, for instance, in the Commission's Code of Good Administrative Behaviour[107], which provides that the Commission undertakes to answer enquiries in the most appropriate manner.

[107] OJ L 308/32 of 8 December 2000.

THE INQUIRY

On the basis of the above, the Ombudsman requested CEDEFOP to inform him whether it had given, or planned to give, instructions to its staff as to the appropriate way of replying to complaints from European citizens, in accordance with CEDEFOP's Code of Good Administrative Behaviour of 15 December 1999. The Ombudsman asked CEDEFOP to reply to his request by 30 April 2002. CEDEFOP replied on 6 March 2002.

CEDEFOP's opinion

In his opinion, the Chairman of CEDEFOP's Management Board observed that the Ombudsman's letter of 7 January 2002 had been discussed at the CEDEFOP Bureau meeting of 1 February 2002. The Bureau decided to inform the Management Board, which will hold its next meeting on 21, and 22 March 2002.

The Bureau invited the Director, who is responsible for personnel matters, to take necessary action in order to ensure the respect to the letter of the provisions of the Code of Good Administrative Behaviour adopted on 15 December 1999. The implementation of the Code will be assessed, pursuant to Article 27, at the November 2002 Management Board meeting.

The Director has also been invited to prepare that assessment and to diffuse copies of the Ombudsman's Annual Report 2000 to staff members in order to reinforce awareness in this regard.

CEDEFOP reported that it had encouraged its staff to be candid in their dealings with the Ombudsman's office, and not to adopt a legalistic and bureaucratic approach. The language used is regretted, but in mitigation CEDEFOP stated that the language was used in internal correspondence with the Ombudsman's office. It was not anticipated that this correspondence would be published. The tone of the correspondence represents the candid views of the Centre, and not the way CEDEFOP communicates with citizens.

CEDEFOP also informed the bureau that in both decisions dated 24 August 2001, the Ombudsman made no reference to any inappropriate language.

CEDEFOP underlined that its services have always been very careful to be courteous and accessible in their dealings with the general public and complainants. This was also the case with all the plaintiffs involved in the three cases in question.

However, particularly in cases 466/2000/OV and 705/2000/OV, CEDEFOP found itself faced with accusations, which were misleading. CEDEFOP accordingly felt it necessary to reply to the Ombudsman giving a very full and detailed argumentation. It was unaware that extracts from its written opinions would be brought to the direct attention of the complainants and to the general public. CEDEFOP's misunderstanding until recently, as to the actual usage or end-diffusion by the Ombudsman's services of written opinions certainly constituted a main factor in this instance.

The Bureau has invited the Director to take appropriate measures and give instructions to his staff so as to avoid any repetition of inappropriate wording when replying to complaints in the future. CEDEFOP will closely monitor the language used in its opinions in order to ensure strict respect of its Code of Good Administrative Behaviour. Also, in the event of any future complaints, it will publicise summaries of its answers on its web-site.

THE DECISION

1 Language used by CEDEFOP in its opinions on complaints

1.1 The Ombudsman requested CEDEFOP to inform him whether it had given, or planned to give, instructions to its staff as to the appropriate way of replying to complaints from European citizens, in accordance with CEDEFOP's Code of Good Administrative Behaviour of 15 December 1999. This was based on the fact that the Ombudsman noted that several of CEDEFOP's opinions (in cases 466/2000/OV, 705/2000/OV and 1206/2000/BB) seemed not to be in accordance with the principle of courtesy contained in Article 12 of the Code of Good Administrative Behaviour of CEDEFOP.

1.2 In its opinion, CEDEFOP regretted the language it had used in those opinions, stating that it was used in internal correspondence with the Ombudsman's office and that it had not anticipated that this correspondence would be published.

1.3 The Bureau of CEDEFOP however invited the Director to take appropriate measures and give instructions to his staff so as to avoid any repetition of inappropriate wording when replying to complaints in the future. CEDEFOP will also closely monitor the language used in its opinions in order to ensure strict respect of its Code of Good Administrative Behaviour. Also, in the event of any future complaints, it will publicise summaries of its answers on its web-site.

1.4 The Ombudsman is glad that CEDEFOP encourages its staff to be candid in their dealings with the Ombudsman's office, and not to adopt a legalistic and bureaucratic approach. The Ombudsman understands that CEDEFOP will continue to do so, whilst ensuring that proper language is used.

1.5 From its opinion on the Ombudsman's inquiry, it appears that CEDEFOP will take the necessary measures, including instructions to its staff, in order to reply in an appropriate way to complaints from citizens. The Ombudsman therefore considers that no further inquiries into this matter appear to be necessary.

2 Conclusion

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

3.7.3 All Community institutions and bodies and decentralised agencies

OWN INITIATIVE INQUIRY ON AGE LIMITS

Decision in own initiative inquiry OI/2/2001/(BB)OV

On 30 April 2001, the Ombudsman started an own initiative inquiry into the limitation of the citizen's right to work, through the imposition of age limits for recruitment to the Community institutions and bodies. This own initiative inquiry concerned all Community institutions, bodies and decentralised agencies.

THE INQUIRY

The reasons for the inquiry

On 7 December 2000, in Nice, the Presidents of the European Parliament, the Council and the Commission jointly proclaimed the Charter of Fundamental Rights of the European Union[108]. The European Council welcomed the joint proclamation, noting that the Charter combines in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources[109].

108 OJ 2000 C 364/1.

109 Presidency Conclusions, Nice European Council meeting, 7 , 8 and 9 December 2000, paragraph 2.

It follows from the above that the European Council, the European Parliament, the Council and the Commission have acknowledged, on behalf of the Community, the rights contained in the Charter. Failure by a Community institution or body to respect the rights contained in the Charter would therefore be an instance of maladministration.

Article 15 (1) of the Charter of Fundamental Rights recognises the right to engage in work by providing that *"Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation"*.

Article 21 (1) of the Charter contains the principle of non-discrimination by providing that *"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability,* ***age*** *or sexual orientation* ***shall be prohibited****"* (bold added).

The Convention which drafted the Charter refers in its explanation of this provision to, amongst others, Article 14 of the European Convention on Human Rights. According to the established case law of the European Court of Human Rights, a difference in treatment is discriminatory if it has no objective and reasonable justification: that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

According to the Court of Justice of the European Communities, a breach of the prohibition of discrimination occurs in cases of unequal treatment where the discrimination is not objectively justified[110].

For the reasons given above, the Ombudsman considered that, unless there is an objective justification for age limits in the recruitment to the Community institutions and bodies, their use would constitute a discriminatory limitation of the citizen's right to work.

The Ombudsman therefore requested all Community institutions, bodies and decentralised agencies to inform him, by 31 July 2001, whether they use age limits in their recruitment. In case of a positive answer, the Ombudsman also requested to be informed of the age limit of limits prescribed and of their objective justification and legal basis.

The opinions from the Community institutions, bodies and decentralised agencies

From the opinions received it appears that none of the eleven decentralised agencies[111] apply age limits in their recruitment procedures. Age limits are neither applied by the Committee of the Regions, the European Investment Bank, the European Central Bank and Europol.

On the other hand, the Commission, the Parliament, the Council, the Court of Justice (and Court of First Instance), the Court of Auditors and the Economic and Social Committee all apply age limits for the recruitment at basic grades. The age limit that is generally applied for competitions is 45 years.

---

110 Joined cases 198 to 202/81, *Fernando Micheli and others v. Commission*, 1982, ECR 4145 - 4160.

111 1) The European Centre for the Development of Vocational Training (CEDEFOP), 2) The European Foundation for the Improvement of Living and Working Conditions, 3) the European Environment Agency (EEA), 4) The European Agency for the Evaluation of Medicinal Products (EMEA), 5) The Office for the Harmonisation in the Internal Market (OHIM), 6) The European Training Foundation, 7) The European Monitoring Centre for Drugs and Drug Addiction, 8) the Translation Centre for Bodies of the European Union, 9) The European Agency for Safety and Health at Work, 10) The Community Plant Variety Office, 11) the European Monitoring Centre on Racism and Xenophobia.

As regards the objective justification for applying age limits in their recruitment, the Commission, the Parliament and the Council provided the following explanation to the Ombudsman:

The Commission observed that the 45 years age limit is intended to allow career perspectives for its officials and to guarantee that the officials exercise their activity a minimum period of time, this in relation with the rights of the Staff Regulations concerning pensions. The Commission is of the opinion that these justifications constitute a reasonable and objective ground for the application of age limits: they have a legitimate aim and the measures applied are proportional to the aim pursued, and therefore compatible with Articles 21 and 15 of the Charter.

Part II of the Commission's White Book on Reform and the Consultation Document for competitions and recruitment of 28 February 2001 (SEC(2001)294/4) have reiterated the Commission's intention to abandon age limits in the future. On basis of the latter document, consultations were organised with the Commission's services and the other European institutions as well as with staff representatives. As these negotiations were not concluded by 1 July 2001, the competitions published since then still retain the age limit of 45 years for competitions at the basic grades.

The Commission also referred to the progress on the creation of an Interinstitutional Recruitment Office. In this context, the Commission observed that it will be for the Future Management Board of this Office to take a decision concerning age limits applicable to competitions. On basis of the recommendation of the working group, the Office should be operational by 1 January 2003.

The Parliament stated that since the Bureau's decision of 20 October 1997, it applies an age limit of 45 years for open competitions. This decision is to be reviewed by the Bureau in the near future, in the light of a report on the matter prepared by DG Personnel. A copy of this report was enclosed with the opinion. The Parliament equally observed that the question of age limits would be referred to the future Management Board of the Interinstitutional Recruitment Office.

The report prepared by DG Personnel stated that a new increase in the age-limit or its abolition would have as a result an increase in the number of candidates to competitions (with the corresponding management problems), an increase in both older and the average age of competition laureates and in the average age of recruitment of officials.

This would mainly have three consequences, namely 1) difficulties in terms of dissatisfaction or frustration of the newly recruited officials as regards their classification at the moment of their engagement (normally at the basic grade), 2) on the long term, an ageing of the personnel of the General Secretariat of the European Parliament and 3) financial consequences on the social security regime of officials of the European Communities, at the level of the pensions and the illness insurance.

The Council stated that the fixing of an age limit of 45 years for recruitment at basic grades is necessary and objectively justified for the following reasons:

Firstly, career perspectives imply that the personnel should be recruited at a young age. Also, the costs linked to recruitment at the basic grade can not be profitable if the officials do not work for a long period.

Secondly, the necessity of an efficient management of human resources (classification, integration, career and pensions) requires a minimum of coherence between the grade, function and age. Every derogation in this field is source of difficulties. The Staff Regulations and the management of human resources in principle prohibit recruiting officials who, by their age, would not be able to benefit from career perspectives.

The Council observed that these justifications are objective. They are based on principles linked to the nature itself of the public function and to the necessity of an efficient functioning of the services of the General Secretariat of the Council. The Council concluded that the application of age limits for the recruitment is good administration and is not a restriction to the "right to work".

Like the Commission and the Parliament, the Council also referred to the creation of an Interinstitutional Recruitment Office. The Council also stated that the question of age limits could also be raised in the framework of the proposals for amending the Staff Regulations on which the Council will have to decide as legislator. Before the results of these works are known, it does not seem appropriate to change the current practice applied at the Council.

The Ombudsman's evaluation of the reasons given for the use of age limits

As justification for maintaining an age-limit of 45 years in the recruitment procedures, the Commission, Parliament and Council gave together mainly 6 reasons, which can be summarised as follows:

(1) career perspectives imply that officials should be recruited at a young age; an efficient management of human resources (classification, integration, career and pensions) requires a minimum of coherence between grade, function and age;

(2) costs for recruitment at the basic grade are not profitable is the officials do not work for a minimum period of time;

(3) abolishing age limits would lead to an increase in the number of candidates;

(4) abolishing age limits would lead to an ageing of the personnel of the institutions;

(5) abolishing age limits would lead to dissatisfaction or frustration of the newly recruited officials as regards their classification at the moment of engagement;

(6) abolishing age limits would create financial problems for the social security regime of the European Communities (pensions and illness insurance).

Evaluation

As regards argument (1), the Ombudsman notes that it is not substantiated as no explanation is provided why an efficient management of human resources would need the setting of age limits. As regards the career perspectives, the Ombudsman considers that it is up to the candidate to decide whether, and at what age, he or she wants to become a Community official.

As regards arguments (2) and (6) relating to costs and financial problems, the Ombudsman recalls that according to the case law of the Court of Justice budgetary considerations as such cannot justify discrimination[112].

As regards argument (3) concerning the number of candidates, the Ombudsman considers that considerations related to administrative workload are not substantial enough to justify the non-application of a right as fundamental as that of non- discrimination.

The Ombudsman notes that argument (4) it is not an argument, but an admission that older people would be less valuable.

---

112 Case C-226/98, *Jørgensen*, ECR [2000] I-2447, paragraph 39. This case concerned sex discrimination, but there is no reason why the same argument should not apply to discrimination on basis of age.

Argument (5) appears not to be substantiated, as candidates always know on beforehand the conditions of their possible recruitment. There is no proof that older candidates would be dissatisfied or frustrated by the posts they have consciously applied for.

On basis of the above the Ombudsman considers that the 6 reasons invoked by the Commission, the Parliament and the Council do not appear to be acceptable or are unsubstantiated.

Also, the Committee of the Regions, the European Central Bank, the European Investment Bank, Europol, as well as the 11 decentralised agencies which do not apply age limits do not appear to encounter the kind of problems which would, according to the Commission, the Parliament and the Council, require the setting of an age limit.

As other reasons for still applying age limits, all three institutions refer to the fact that the matter will have to be decided by the Management Board of the future Interinstitutional Recruitment Office. Further reasons invoked by the Commission, respectively the Council, for still applying age limits were that negotiations were not concluded by 1 July 2001 or that it is not appropriate to change the current practice as long as the results of the ongoing works are not known. Again, these kind of reasons linked to administrative delays do not appear to be substantial enough to set aside the application of a right as fundamental as the non-discrimination on basis of age.

On basis of the above analysis, the Ombudsman concludes that none of the three institutions presented objective justifications for the use of age limits.

FURTHER INQUIRY

In parallel with the present inquiry, the Ombudsman wrote on 7 March 2002 to the Presidents of the European Parliament and of the European Commission with regard to the draft Decision setting up the European Recruitment Office[113], text which should be co-signed by the Ombudsman. The reason for this letter was that the draft Decision contained a provision that would allow the Management Board of the Office to decide to impose age limits.

In his letter to the Presidents[114], the Ombudsman drew the attention to the prohibition of age discrimination contained in Article 21 of the Charter of Fundamental Rights of the European Union which was proclaimed on 7 December 2000 by the Presidents of the European Parliament, Council and Commission.

The Ombudsman then quoted from several statements made on the occasion of the proclamation of the Charter by the then President of the European Parliament, Mrs Nicole Fontaine, and by the President of the Commission and from a communication concerning the proclamation of the Charter made by President Prodi and the responsible Commissioner Mr Vitorino. Referring to these statements, the Ombudsman observed that they gave citizens reason to feel confident that the Charter will be properly followed by the institutions whose Presidents signed it.

The Ombudsman therefore concluded that he could not agree to sign any decision that does not make clear that the European Recruitment Office must not discriminate on the grounds, including age, that are prohibited by the Charter of Fundamental Rights of the European Union.

---

113 SG D(2002) D/8487 27 February 2002.

114 The letter to President Pat Cox can be found on the Ombudsman's website : http://www.euro-ombudsman.eu.int.

He therefore requested the Presidents to take the following measures:

- deletion of the provision concerning age limits in competitions, foreseen in point 2.6.2 of the "Draft agreement between the Secretary Generals on the common principles for a shared selection and recruitment policy"

- inclusion in the "draft decision of the Secretary Generals on the organisation and operation of the European Communities Recruitment Office" of a reference to Article 21 of the Charter of Fundamental Rights.

The Commission's and Parliament's opinions

On 10 April 2002, the President of *the Commission* replied that Vice-President Kinnock had taken the decision to abolish age limits for all competitions run by the Commission with immediate effect, and that no Commission competitions published after 10 April 2002 will apply an upper age limit for applicants. The Commission also stated that it would amend its detailed proposals for changes to the Staff Regulations to ensure that they more clearly reflect this position.

The Commission further observed that within the framework of the European Recruitment Office, it will strongly advocate the abolition of age limits and that it is confident that the abolition of age limits will be confirmed on an inter-institutional basis, given the strong support also of the European Parliament.

The Commission further stated that its decision to discontinue the use of age limits with immediate effect would resolve the problem for the few competitions that it will be running before the European Recruitment Office will take over the organisation.

On 29 April 2002, the President of the *European Parliament* replied that the Bureau had decided, at its meeting of 8 April 2002, that the Parliament will no longer apply age limits to any selection procedure it launches nor agree to the use of age limits in any selection procedure organised by the European Recruitment Office once it is established.

THE DECISION

1 The use of age limits in recruitment procedures

1.1 On 7 December 2000, the Presidents of the European Parliament, the Council and the Commission jointly proclaimed the Charter of Fundamental Rights of the European Union. The European Council welcomed the joint proclamation, noting that the Charter combines in a single text the civil, political, economic social and societal rights hitherto laid down in a variety of international, European or national sources.

1.2 The Presidents of the Parliament and the Commission made the following significant statements on 7 December 2000. Mrs Nicole Fontaine, the then President of the Parliament stated that *"A signature represents a commitment (…). I trust that all the citizens of the Union will understand that from now on (…) the Charter will be the law guiding the actions of the Assembly (…). From now on it will be the point of reference for all the Parliament acts which have a direct or indirect bearing on the lives of citizens throughout the Union"*.

1.3 Mr Romano Prodi, President of the European Commission, stated that *"In the eyes of the European Commission, by proclaiming the Charter of Fundamental Rights, the European Union institutions have committed themselves to respecting the Charter in everything they do and in every policy the promote (…). The citizens of Europe can rely on the Commission to ensure that the Charter will be respected"*.

1.4 In the Communication from the President of the Commission and Commissioner Vitorino of 13 March 2001, it is stated about the Charter that *"There can be no doubt as to its fundamental nature. (…) The Commission, like the other institutions, must look to the practical implications of this historic event and make compliance with the rights contained in the Charter the touchstone for its action. This must be an overriding requirement in the Commission's day-to-day business, both in relations with the general public and with those to whom our decisions are addressed and in our internal rules and procedures. But it must also be reflected in the way the Commission exercises its right to initiate legislation and its power to lay down rules. Any proposal for legislation and any draft instrument to be adopted by the Commission will therefore, as part of the normal decision-making procedures, first be scrutinised for compatibility with the Charter"*.

1.5 Article 6 (2) of the Treaty on European Union provides that "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law". The Ombudsman is of the opinion that, since the proclamation of the Charter of Fundamental Rights, the European citizens are entitled to believe that the fundamental rights that the Union promises to respect, in the above mentioned Article 6 (2), are those set forth in the Charter.

1.6 Article 21(1) of the Charter contains the fundamental right of non-discrimination by stating that "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, **age** or sexual orientation **shall be prohibited**" (bold added).

1.7 The Ombudsman notes that, further to his letter of 7 March 2002 to the Presidents of the Parliament and the Commission concerning the draft Decision setting up the European Recruitment Office in which he underlined the above commitments, both institutions decided in April 2002 i) to abolish age limits with immediate effect for all competitions organised henceforth and ii) not to agree to the use of age limits in any selection procedure organised by the European Recruitment Office once it is established.

1.8 From the present inquiry it appears that, in the actual situation, the European Commission and the European Parliament do not apply age limits anymore. Age limits are neither applied by the Committee of the Regions, the European Investment Bank, the European Central Bank, Europol and the eleven decentralised agencies[115]. With regard to these institutions and bodies, no further inquiries appear to be necessary.

1.9 The only institutions and bodies which today continue to apply age limits are the Council, the Court of Justice (and Court of First Instance), the Court of Auditors and the Economic and Social Committee. It appears however that the question of age limits applied by these institutions and bodies will be the subject of a decision by the Management Board of the European Recruitment Office, which is to be set up by the end of 2002.

1.10 Considering that two of the main institutions, namely the European Commission and the European Parliament, have declared that they will strongly advocate the abolition of age limits in that context and will not agree to vote in the opposite sense, the Ombudsman

[115] 1) The European Centre for the Development of Vocational Training (CEDEFOP), 2) The European Foundation for the Improvement of Living and Working Conditions, 3) the European Environment Agency (EEA), 4) The European Agency for the Evaluation of Medicinal Products (EMEA), 5) The Office for the Harmonisation in the Internal Market (OHIM), 6) The European Training Foundation, 7) The European Monitoring Centre for Drugs and Drug Addiction, 8) the Translation Centre for Bodies of the European Union, 9) The European Agency for Safety and Health at Work, 10) The Community Plant Variety Office, 11) the European Monitoring Centre on Racism and Xenophobia.

is confident that the abolition of age limits will be decided on an inter-institutional basis by the Management Board of the European Recruitment Office.

1.11 In view of the above, the Ombudsman considers that no further inquiries are justified. However, until the definitive abolition of age limits by the Management Board of the European Recruitment Office, the Ombudsman will continue to investigate complaints on an individual basis which allege age discrimination by those institutions and bodies which have not yet abolished them.

2 Conclusion

On the basis of the Ombudsman's inquiries into this own initiative inquiry, there appeared to have been no maladministration by the institutions and bodies mentioned in paragraph 1.8 of the decision. As regards the other institutions and bodies, no further inquiries appeared to be justified. The Ombudsman therefore closes the case.

3.8 SPECIAL REPORTS PRESENTED TO THE EUROPEAN PARLIAMENT

ACCESS TO COUNCIL DOCUMENTS

Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the Council of the European Union in complaint 1542/2000/(PB)SM

The complainant, a student, requested access to four Council documents. The Council granted access to two documents and refused access to the two others which contained legal opinions from the Council's Legal Service. In the complainant's view, the Council had not given adequate reasons for its refusal to grant access to these two documents. In its first opinion, the Council argued that it had provided adequate reasons and that both opinions in question could not be disclosed in order to avoid undermining the Council's ability to obtain independent legal advice. The Ombudsman considered that the Council had provided adequate reasons for its refusal to disclose the first document containing an opinion on a matter of law in the context of possible future court proceedings. The Ombudsman however took the view that the Council had not given sufficient reasons for refusing to release the second document, an opinion concerning the proposal for Regulation 1049/2001. The Ombudsman therefore made a draft recommendation to the Council asking it to reconsider the complainant's application.

In its detailed opinion, the Council maintained its view that it had to refuse access to the document in question under Article 4(2), second indent of Regulation 1049/2001, because disclosure of it would undermine the Council's ability to obtain independent legal advice.

The Ombudsman however is not convinced that the Council's position is correct. In the light of Article 255 of the EC Treaty, access to documents under Regulation 1049/2001 is the main rule and any exception to this rule should be construed narrowly. The Ombudsman does not accept the Council's argument that all opinions from its Legal Service should automatically be exempt from disclosure. In the Ombudsman's view, a distinction should be made between different kinds of legal opinion. This does not mean that some legal opinions would not be protected at all. The logic of the distinction made by the Ombudsman is that, when the legislative process has finished, a legislative opinion should be exempt only if Article 4(3) of Regulation 1049/2001 applies. This requires the institution to show that disclosure of the document would seriously undermine the institution's decision-making process. The Ombudsman considers in this regard that the latter requirement seems difficult to fulfil merely by reference to a category of document to which the document in question belongs.

The Ombudsman therefore addressed a Special Report to the European Parliament to allow it to express a view on this issue of principle.

The Special Report is available in all languages on the Ombudsman's Website or by writing to the Ombudsman's office.

PUBLICATION OF THE NAMES OF SUCCESSFUL CANDIDATES IN RECRUITMENT COMPETITIONS

Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the European Parliament in complaint 341/2001/(BB)IJH

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.

By decision dated 7 March 2002, the Ombudsman found no maladministration in the refusal to disclose to the complainant the marks of the successful candidates.

As regards the names of the successful candidates, the Ombudsman found that Parliament appeared to have acted within the notice of competition and pointed out that the complainant could apply for access to the reserve list under Regulation 1049/2001. The Ombudsman expressed no view as to whether such an application would be successful and no application appears to have been made.

The Ombudsman considered that Parliament's opinion on the complaint raised issues of general importance. According to Parliament, the notice of competition stated that the reserve list would be communicated to successful candidates and displayed on the notice boards of the institution. However, Parliament considered that to inform unsuccessful candidates about the reserve list would violate the Constitutions of Member States and the Charter of Fundamental Rights.

The Ombudsman did not find Parliament's position clear or convincing. He therefore 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 does not clearly accept the draft recommendation. Nor does the detailed opinion indicate that Parliament's future actions will treat candidates fairly and ensure consistency with its commitment to openness in the recruitment process. The Ombudsman therefore considers it his duty to make a Special Report on the matter.

The Special Report is available in all languages on the Ombudsman's Website or by writing to the Ombudsman's office.

3.9 QUERY FROM REGIONAL OMBUDSMAN

MANAGEMENT OF COMMUNITY FUNDS BY THE LOMBARDIA REGION, ITALY

Decision on query Q1/2002/IP

The regional Ombudsman of the Italian Region of Lombardia, 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 case submitted to him by the councillor for labour and professional training of the Province of Varese. The case concerned the management of Community funds in the framework of the European Social Fund, objective 2, for the year 1998, by the Lombardia Region.

The province of Varese, represented by advocate M. lodged a complaint with the Commission on the same subject matter. The institution was asked to take a position on this issue. In a letter of 21 October 1999, the Commission's Directorate General Employment and Social Affairs stated that it would deal with the matter and would contact all the parties involved in order to get clarifications. However, the regional Ombudsman of Lombardia pointed out that it appeared that the Commission had still not taken a decision on the matter and that it had not contacted the responsible regional authorities. He therefore asked the Ombudsman to inquire whether the Commission had finally concluded the examination of the case and if so, what conclusion had been reached.

The query was forwarded to the European Commission for an opinion. In its opinion, the Commission gave a detailed explanation of the actions it had carried out and stated that on 8 July 2002, it closed the case since there had been no infringement of Community law by the Region of Lombardia. Furthermore, the Commission sent a copy of the letter closing the case which had been sent to Mr M., to the Province of Varese and to the Region of Lombardia.

The Commission's opinion was sent for information to the regional Ombudsman of Lombardia, who informed the European Ombudsman's office on 13 November 2002 by telephone that he considered the Commission's answer to be satisfactory. The European Ombudsman therefore closed the case.

4 RELATIONS WITH OTHER INSTITUTIONS OF THE EUROPEAN UNION

4 RELATIONS WITH OTHER INSTITUTIONS OF THE EUROPEAN UNION

4.1 THE EUROPEAN PARLIAMENT

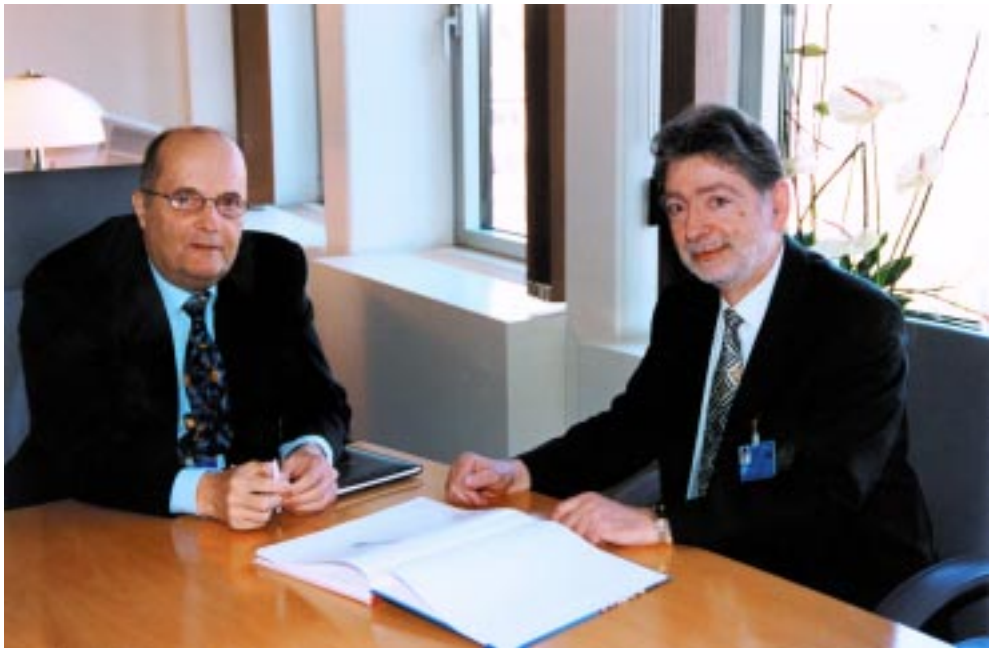
On 17 January, Mr Enrico BOARETTO and Mr David LOWE of the Committee on Petitions paid a visit to the Ombudsman. They discussed various aspects of the citizens' right to complain to the Ombudsman and to petition the Parliament.

On 6 February, Mr SÖDERMAN had a meeting with Mr Joan COLOM I NAVAL, Vice-President of the European Parliament. The meeting, which dealt with the Ombudsman's premises and locations and other related issues, took place during the February plenary session of the European Parliament in Strasbourg.

On 20 February, Mr SÖDERMAN appeared before the Committee on Petitions of the European Parliament, presided by Mr Nino GEMELLI, to present his special reports in cases 242/2000/GG and 917/2000/GG (see also section 3.6 above).

On 12 March, MEP Eurig WYN, rapporteur on the European Ombudsman's Annual Report for 2001 paid a visit to the Ombudsman. They spoke about various aspects of the cooperation work between their respective institutions, including some pending matters. Mr WYN was accompanied by Mr Kjell SEVÓN.

On 12 March, Mr SÖDERMAN and Mr SANT'ANNA had a meeting with Mr Barry WILSON, the newly appointed Director General for Personnel of the European Parliament. He was accompanied by Mrs Brigitte NOUAILLE DEGORCE, Head of the Personnel Division. They exchanged views about the administrative co-operation agreements between the Ombudsman and Parliament and stressed the importance of good working relations between both institutions.



Mr Söderman meeting with Mr Joseph Amiel in Strasbourg on 9 April.

On 8 April, Mr SÖDERMAN presented his Annual Report for 2001 to the Committee on Petitions. In his speech to the Committee, the Ombudsman mentioned the essential work of translators and interpreters who make it possible to communicate and have documents available in many languages. He paid a special tribute to the translator responsible for the French version of the Annual Report, Mr Joseph AMIEL, whom the Ombudsman had invited to be present at the meeting.

On 2 July, Mr SÖDERMAN presented his work to representatives of the European Parliament's information offices in the Member States. The meeting took place in Strasbourg. It was aimed at informing these offices about the Ombudsman's work and

calling on them to promote awareness of the service he provides. Ben HAGARD, the Ombudsman's Internet and Communications Officer presented the Ombudsman's website and cited examples of offices that have been active in raising awareness of the Ombudsman. Ms Juana LAHOUSSE, Director in the Information and Public Relations DG in the Parliament, chaired the meeting that gave rise to interesting questions about the Ombudsman's work. Rosita AGNEW, the Ombudsman's Press Officer also attended the meeting.

On 9 July, Mr SÖDERMAN had a meeting with MEP Herbert BÖSCH at the premises of the European Parliament in Brussels. The meeting dealt with the European Ombudsman institution's needs and plans for the future as well as other related issues.

On 10 July, Mr SÖDERMAN spoke at a meeting of the Committee on Petitions of the European Parliament, chaired by the President of the Committee Mr Nino GEMELLI. Mr SÖDERMAN informed the Committee of his response to the Commission's opinion on the European Parliament's decision to amend Article 3 of the Statute of the Ombudsman. There was also an exchange of views with the Committee concerning the Commission's Communication to the European Parliament and the European Ombudsman on relations with complainants about infringements of Community law by Member States and the Ombudsman's proposals to the European Convention made on 24 and 25 June (see section 4.5 below).

On 4 September, Mr SÖDERMAN held a meeting with MEPs Freddy BLAK, Pernille FRAHM, Ole KRARUP, Jens Dyhr OKKING and Christian Foldberg ROVSING. Mr SÖDERMAN informed the MEPs about the proposals for amendments to the Ombudsman's Statute.

On 26 September, the Ombudsman held a working breakfast for Nordic MEP assistants. 27 assistants from Denmark, Sweden and Finland attended the breakfast where the Ombudsman explained his work. This was followed by a multi-media presentation by Ben HAGARD, the Ombudsman's Internet Communications officer, outlining the public relations work carried out by the Ombudsman. Rosita AGNEW, the Ombudsman's Press officer then explained the various measures that could be taken by assistants to help promote the Ombudsman's work. Mr SÖDERMAN then responded to questions from the floor.

Meeting with the assistants of MEPs from the Netherlands and Flanders on 21 November.

On 14 November, Mr Olivier VERHEECKE and Mr Ben HAGARD paid a visit to the European Parliament Information Office in Paris. They had a meeting with Mr Jean-Guy GIRAUD, Director of the Office, during which they discussed several collaboration issues,

the information campaign about the Ombudsman and possible ways to increase the number of admissible complaints originating from France.

On 21 November, the European Ombudsman held a working breakfast for the assistants of MEPs from the Netherlands and Flanders. 17 assistants were present to hear about the Ombudsman. The event included an explanation of the Ombudsman's work, a multi-media presentation on the Ombudsman's communication policy and a request to assistants to promote awareness of the Ombudsman. Olivier VERHEECKE, Ben HAGARD, Rosita AGNEW and Maria ENGLESON accompanied Mr SÖDERMAN and answered questions from assistants during the breakfast. Each assistant received an information pack that included a CD-Rom containing material on the Ombudsman.

On 23 and 24 November, the Ombudsman's office participated in the "Enlargement" Open Days organised by the European Parliament in Strasbourg. The Ombudsman's stand was focused on his preparations for enlargement and information was made available in the 13 candidate country languages. A video-clip explaining the role of the Ombudsman in English, French and German was played throughout the day and staff members were present to answer questions. 22 000 people passed through the Parliament over the course of the two Open Days.

The Ombudsman's stand during the "Enlargement" Open days in Strasbourg on 23 and 24 November.

On 17 December, Mr SÖDERMAN met the President of the European Parliament, Mr Pat COX. Amongst the subjects discussed were the European Convention, the reform of the Statute of the Ombudsman and the relationship between data protection and openness. Mr SÖDERMAN was accompanied by Mr HARDEN.

On 18 December, Mr SÖDERMAN spoke at a Nordic breakfast meeting arranged by MEP Karl-Erik OLSSON in Strasbourg on the theme of the European Convention and the Ombudsman's role as an observer in the Convention.

4.2 THE COUNCIL OF THE EUROPEAN UNION

On 4 October, Mr HARDEN and Mr SANT'ANNA attended an informal meeting of the Council working group dealing with the proposed amendment of Article 3 (2) of the Ombudsman's Statute. Mr HARDEN explained the Ombudsman's views on the need for amendment of the Statute and answered questions from members of the group.

4.3 THE EUROPEAN COMMISSION

On 14 January, Mr SÖDERMAN met with Mr Giuseppe MASSANGIOLI, the newly appointed Director of Directorate E of the Secretariat General of the Commission, in charge of Relations with the European Ombudsman, following the retirement of Mr Jean-Claude EECKHOUT. The meeting, which dealt with the cooperation between the two institutions, took place during the plenary session of the European Parliament in Strasbourg.

On 5 February, Mr Horst REICHENBACH, Director General of Personnel and Administration and Mr Matthias OEL paid a visit to the Ombudsman. The meeting, during which Mr REICHENBACH presented the plan to reform the staff regulations for officials and other agents of the EU, took place at the European Ombudsman's office in Strasbourg.

On 6 February, Mr Giuseppe MASSANGIOLI, Director in charge of Relations with the European Ombudsman at the Commission's General Secretariat, accompanied by Mr Philippe GODTS met with Mr SÖDERMAN.

On 21 February, Mr SÖDERMAN met Mr CALLEJA CRESPO, head of cabinet of Commissioner Loyola DE PALACIO, to discuss relations between the European Ombudsman and the European Commission. Mr SÖDERMAN was assisted by Mr HARDEN and Mr CRESPO was assisted by Mr Diego CANGA FANO.

On 11 March, Mr SÖDERMAN had a meeting with Mr Giuseppe MASSANGIOLI, who was accompanied by Mr Philippe GODTS. They spoke about various aspects of the cooperation work between the two institutions including pending matters.

4.4 THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

On 9 September, Mr SÖDERMAN, accompanied by Mr HARDEN, attended a lecture given at the Court of Justice by Commissioner António VITORINO entitled "Orientations for the Future of the Union - the protection of fundamental rights and the development of an area of freedom, security and justice."

On 4 December, Mr SÖDERMAN attended a Solemn Ceremony to mark the 50th anniversary of the European Court of Justice in Luxembourg. Speeches were given by the President of the European Commission, Mr Romano PRODI, by the President of the European Parliament, Mr Pat COX, and by the Court's President Mr Gil Carlos RODRIGUEZ IGLESIAS. All the Presidents of the Supreme Courts and Constitutional Courts of the Member States were invited to the ceremony.

4.5 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. According to the Laeken Declaration, the Convention's task is to consider the key issues arising for the European Union's future development and to try to identify the various possible responses.

The Convention brings together representatives of the governments and national parliaments of Member States and Candidate States, of the European Parliament and of the European Commission. As was also the case for the earlier Convention that drafted the Charter of Fundamental Rights of the European Union, the European Ombudsman has the status of an Observer.

In this capacity, Mr SÖDERMAN addressed the Convention on 24 and 25 June 2002 and proposed (i) that the Charter of Fundamental Rights should be legally binding on the Union's institutions and bodies, including when they legislate; (ii) the inclusion in the Treaty of a chapter on remedies, which should clearly set out the possibilities for judicial and non-judicial redress when Community law rights, including fundamental rights, are

not respected; (iii) provision for a European administrative law binding on all Union institutions and bodies; (iv) further development of the role of ombudsmen and similar bodies in dealing with complaints about infringements of Community law by Member States, including fundamental rights cases.

A draft of new or amended Treaty provisions to implement the Ombudsman's proposals was forwarded to the Convention (CONV 221/02, 26 July 2002).

On 4 October, Mr SÖDERMAN addressed Working Group II of the European Convention ("Incorporation of the Charter/Accession to the European Convention on Human Rights"), chaired by Commissioner António VITORINO. Mr SÖDERMAN explained in detail his proposals for development of the network of ombudsmen and similar bodies in the Member States and the useful role that the network could play in supervising the correct application of the Charter of Fundamental Rights. Mr SÖDERMAN also explained the proposal for the European Ombudsman to refer a case involving fundamental rights to the Court of Justice, if it could not be solved through a normal ombudsman inquiry.

On 8 November, after a preliminary draft Constitutional Treaty had been published, the Ombudsman spoke to the Convention again and proposed that the next draft should include a provision clearly referring to the right to complain to the Ombudsman. He presented a possible wording to that effect to include in the proposed Article 5 of the Constitutional Treaty.

The European Ombudsman's speeches and proposals are available on his Website as well as on that of the Convention.

4.6 THE EUROPEAN ANTI-FRAUD OFFICE (OLAF)

On 28 November, Mr SÖDERMAN, assisted by Mr HARDEN, met the Director General of the European Anti-Fraud Office (OLAF), Mr Franz-Hermann BRÜNER. Mr BRÜNER informed the Ombudsman of the point of view of OLAF concerning its procedures and of the preparation of a revised manual of procedures. There was also discussion of closer cooperation and exchange of information between OLAF and the European Ombudsman, including the possibility of OLAF assisting the Ombudsman on request in certain inquiries.

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

5 RELATIONS WITH OMBUDSMEN AND SIMILAR BODIES

5.1 RELATIONS WITH NATIONAL AND REGIONAL OMBUDSMEN

On 23 January, Mr Anton CAÑELLAS, Sindic de Greuges (Regional Ombudsman) of Catalunya and President of the European Ombudsman Institute paid a visit to Mr SÖDERMAN. The meeting dealt with the cooperation between the two institutions, the Spanish presidency activities as well as EOI related issues.

On 30 May, Mr SÖDERMAN visited the British Parliamentary Ombudsman, Sir Michael BUCKLEY in London. He presented the European Code of Good Administrative Behaviour to Sir Buckley's staff. Questions raised concerned the powers of the European Ombudsman, dealing with dissatisfied complainants, the interference of courts in the work of ombudsmen and the implementation of the Code.

On 30 May, Mr SÖDERMAN attended the Annual General Meeting of the British and Irish Ombudsman Association (BIOA) in London. This was followed by a presentation by the European Ombudsman on the European Code of Good Administrative Behaviour. Participants questioned the Ombudsman about his work, asking about the resources available to his office, the instruments at his disposal to remedy cases of maladministration and how he has used the Code to date.

On 14 November, Mr Olivier VERHEECKE and Mr Ben HAGARD had a meeting with Mr Philippe BARDIAUX and Mrs Valérie FONTAINE from the office of the French Médiateur de la République. They discussed several issues concerning the reciprocal experiences of the offices of the European and French Ombudsman.

5.2 THE LIAISON NETWORK

The liaison network was created in 1996 to promote a free flow of information about Community law and its implementation and to make possible the transfer of complaints to the body best able to deal with them.

Through seminars, newsletters and day-to-day contact, the liaison network has steadily developed itself into an effective collaboration tool for the national ombudsmen and their staff throughout the European Union. Experiences and best practice have been shared by the members of the network to enable a better service for the citizens. In particular, matters relating to the implementation of Community law at the Member State level have been discussed.

Towards the end of 2000, the online version of the liaison network, entitled EUOMB, was set up to further facilitate communication between members of the liaison network. EUOMB consists of a website and an Internet Summit where interactive discussions and sharing of documents can take place. In April 2002, membership of the EUOMB Summit was extended to the national ombudsmen in the applicant countries for EU membership.

In November 2001, a new section of the Summit was created entitled 'Ombudsman Daily News'. This virtual newspaper has proved a very big success with the members of the liaison network and has made it possible for each to be kept informed of the activities of ombudsmen and similar bodies throughout the EU and beyond. Most of the liaison network members now consult the Daily News on a regular basis and are thus kept informed about the ways that other bodies have dealt with matters that they too may be dealing with.

5.3 RELATIONS WITH LOCAL OMBUDSMEN

On 28 May, during his visit to Cardiff, Mr SÖDERMAN discussed his work with the Commissioner for Local Administration in Wales, Elwyn MOSELEY. Mr MOSELEY announced his readiness to help raise awareness of the work of the European Ombudsman. The two ombudsmen then discussed the future of the public sector ombudsmen in Wales.

Mr Söderman exchanging views with Mr Elwyn Moseley on 28 May.

5.4 RELATIONS WITH NATIONAL OMBUDSMEN IN THE ACCESSION STATES

Following the invitation of the Polish Ombudsman Professor Andrzej ZOLL, Mr SÖDERMAN visited Warsaw and Cracow on 27-30 January, accompanied by Maria ENGLESON.

During his visit to Warsaw, the Ombudsman met with the Polish Ombudsman and the Polish Deputy Ombudsman Dr Jerzy SWIATKIEWICZ. At a working meeting, the 14 Heads of Units of the Office of the Polish Ombudsman outlined their different working areas and Mr SÖDERMAN explained his role as European Ombudsman. He also met with Professor Marek SAFJAN, President of the Polish Constitutional Court and Professor Lech GARDOCKI, President of the Polish Supreme Court as well as Mr Bruno DETHOMAS, Head of the European Commission's Delegation in Poland.

Professor Franciszek Ziejka presenting the medal of the 600th Anniversary of the refounding of the Cracow Academy to Mr Söderman.

In Cracow, Mr SÖDERMAN met with Professor Franciszek ZIEJKA, President of the Jagiellonian University who awarded him the medal of the 600th Anniversary of the

refounding of the Cracow Academy. Mr SÖDERMAN gave a lecture to students and professors on the theme “Good Administration is a Fundamental Right”. The lecture was followed by a press conference and the European Ombudsman was further interviewed by the Polish TV and radio.

Mrs Eliana Nicolaou and Mr Aristos Tsiartas visiting Mr Söderman on 8 March.

On 8 March, the Commissioner for Public Administration in Cyprus, Mrs Eliana NICOLAOU paid a visit to Mr SÖDERMAN in Strasbourg. The meeting dealt with the role and activities of the European Ombudsman and of the Cyprus Commissioner and with matters of common interest. Mrs NICOLAOU was accompanied by Mr Aristos TSIARTAS, Senior Legal Adviser.

6 PUBLIC RELATIONS

6 PUBLIC RELATIONS

6.1 HIGHLIGHTS OF THE YEAR

EUROPEAN OMBUDSMAN RECEIVES KNIGHTHOOD IN FRANCE

In a decree issued by the President of France, Mr Jacques CHIRAC on December 31, 2001 and published in the French Journal Officiel on 1 January 2002, the European Ombudsman was nominated to the rank of Chevalier in the Legion of Honour. The Legion of Honour is the most prestigious civil or military award in France. Mr SÖDERMAN was proposed for the award by the then Minister for European Affairs, Mr Pierre MOSCOVICI.

Mrs Noëlle LENOIR, the French Minister for European Affairs presented the award to the Ombudsman in a ceremony which took place in Strasbourg on 3 September 2002.

Mrs Noëlle Lenoir presenting the Legion d'Honneur *to Mr Söderman on 3 September.*

In her address, the Minister outlined the many responsibilities with which Mr SÖDERMAN has been entrusted during his career, as well as the numerous awards that he has received for his work. Mrs LENOIR paid a particular tribute to the Ombudsman's achievements as the first European Ombudsman, mentioning amongst other concrete results for the citizens, the adoption of a code of good administrative behaviour for the institutions and bodies of the European Union following the Ombudsman's initiative.

In his expression of thanks, Mr SÖDERMAN praised France as a nation where respect and tolerance are put in practice in daily life and recalled a visit to Paris 45 years ago which

"might have crystallised his basic view on human life and its purpose". He concluded his address by ensuring the Minister that "accepting the values of the Republic would not be a burden for him".

Mr Michel Barnier, Member of the Commission and Mrs Anna-Marie Nyroos, Finnish Ambassador to the Council of Europe congratulating Mr Söderman.

Prominent guests at the ceremony included, amongst others, Mr Renzo IMBENI, Vice-President of the European Parliament, Mrs Anna-Marie NYROOS, Finnish Ambassador to the Council of Europe, Mr Michel BARNIER, Member of the European Commission, Mr Nino GEMELLI and Mr Roy PERRY, respectively chairman and vice-chairman of the Committee on Petitions of the European Parliament and Mr Julian PRIESTLEY, Secretary General of the European Parliament.

OPEN DAYS

On 4 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 contained information about the Ombudsman's work, including his Annual

The Ombudsman's stand at the Open Days in Brussels on 4 May.

Report 2000, brochures and information about the website. A video-clip explaining the role of the Ombudsman in English, French and German was played throughout the day and staff members were present to answer questions. 16 000 people passed through the Parliament over the course of the day.

Citizens visiting the Ombudsman's stand at the Open Days in Strasbourg on 9 May.

On 9 May, the Ombudsman's office participated in the Open Day organised by the European Parliament in Strasbourg. Material covering the Ombudsman's work was distributed to visitors. A video-clip explaining the role of the Ombudsman in French and German was played throughout the day and staff members were present to answer questions. 21 000 people visited the Parliament during the Open Day.

THE ANNUAL REPORT 2001

The Annual Report of the European Ombudsman for the year 2001 was presented to the European Parliament at its plenary session on 26 September 2002.

Mr Erkki Liikanen, Member of the European Commission and Mr Söderman on the Ombudsman's presentation of his Annual Report 2001 to the European Parliament on 26 September.

In his speech to the plenary, Mr SÖDERMAN outlined the results which have been achieved for citizens since the beginning of his first mandate in September 1995. He emphasised the importance of strengthening the network of ombudsmen and similar bodies in the Member States and the necessity to integrate the Charter of Fundamental Rights in Community Law. The Ombudsman thanked all the institutions and bodies for their effective co-operation. He also thanked his own staff for their skill and motivation.

Mr Eurig WYN, the rapporteur for the Committee on Petitions' report on the Ombudsman's Annual Report congratulated the Ombudsman and his staff for the work performed during the year 2001. Other speakers included Mr Nino GEMELLI, Chairman of the Committee on Petitions, Mr Roy PERRY, Vice-Chairman of the Committee on Petitions, Mr Herbert BÖSCH, Mrs Heidi HAUTALA, Mrs Laura GONZÁLEZ ÁLVAREZ, Mrs Jean LAMBERT and Mrs Astrid THORS, who all congratulated the Ombudsman for his work and achievements. Speaking on behalf of the Commission Mr Erkki LIIKANEN, also paid tribute to Mr SÖDERMAN's work.

GUIDE FOR CITIZENS

In December 2002, the European Ombudsman published a Guide for citizens entitled "What can the European Ombudsman do for you?" The purpose of the 38-page brochure was to explain the Ombudsman's work and provide examples of complaints he has dealt with. Published in the 11 official EU languages, the guide was sent to ombudsmen and similar bodies, MEPs, EU information offices, trade and professional associations, NGOs and interest groups.

6.2 CONFERENCES AND MEETINGS

BELGIUM

Flanders (Brussels and Ghent)

On 18 February, Mr Jacob SÖDERMAN, accompanied by Mr Olivier VERHEECKE, paid a visit to the office of the Flemish Ombudsman, Mr Bernard HUBEAU. Mr HUBEAU explained the setting up of an internal complaint system within the Flemish administration and discussed with Mr SÖDERMAN the organisation of the next seminar for regional Ombudsmen and similar bodies in the EU. They were later received by the Flemish Parliament. Two members of the Flemish Parliament, Mrs Mieke VAN HECKE and Mr Dirk HOLEMANS explained the complaint possibilities at the various levels of the Flemish administration. Mr SÖDERMAN explained the work of the European Ombudsman.

In the afternoon, Mr SÖDERMAN and Mr HUBEAU paid a visit to the office of the Ombudswoman of Ghent, Mrs Rita PASSEMIERS. At this occasion they also met with the Flemish municipal Ombudsmen, namely Mr Mark VANDENBRAEMBUSSCHE, Ombudsman of Brugge, Mr Wim VANDENBROECK, Ombudsman of Antwerpen, Mr Tjeu VANDIESEN, Ombudsman of St-Niklaas, Mrs Fran WAUTERS, Ombudswoman of Puurs, and Mr Luc VAN DER PLAS, Ombudsman of Bonheiden. They discussed two themes, namely the setting up of a liaison network between the municipal Ombudsmen of the EU (and the European Ombudsman), and the latest progress on the European Code of Good Administrative Behaviour. As regards the latter point, it appeared from the debate that some municipal Ombudsmen use this Code as a guideline in their work and had even proposed it for adoption by the municipal council. Later in the day, Mr SÖDERMAN was received in the Province House by the Governor of the Province of East-Flanders, Mr Herman BALTHAZAR.

Mr Söderman and Mr Verheecke with local and regional ombudsmen from Belgium on 18 February.

Seminar on Data Protection

On 18 April, Mr Ian HARDEN was a speaker at a seminar on data protection in the Union, organised in Brussels by the Academy of European Law for the legal services of the European Union institutions. He spoke on the subject of "The European Ombudsman and the role of the European Data Protection Supervisor." The session was chaired by Mr GARZÓN CLARIANA, jurisconsult of the European Parliament. Other speakers at the seminar included Mr Peter HUSTINX, Chairman of the Dutch Data Protection Authority; Mr César ALONSO IRIARTE, DG Internal Market, European Commission; Ms Marta REQUENA, Head of the Data Protection Unit in the Council of Europe and Mr Graham SMITH, Deputy Information Commissioner (UK).

Meeting on Transparency and Openness

On 21 May, Mr Ian HARDEN represented the European Ombudsman at a meeting in Brussels on transparency and openness in the EU institutions, organised by the EU Committee of the British Chamber of Commerce and the Society of European Professionals. Other speakers were Mr Poul CHRISTOFFERSEN, Permanent Representative of Denmark to the EU, Mr David O'SULLIVAN, Secretary General of the Commission, Mrs Charlotte CEDERSCHIÖLD MEP, Vice-President of the European Parliament and Mr Hans BRUNMAYR, Deputy Director General in the Council.

Symposium on the History and Future of the European Union

On 23 July, Mr Ian HARDEN attended a symposium on the History and Future of the European Union organised by the Economic and Social Committee to mark the expiry of the ECSC Treaty after 50 years. Speakers at the symposium included the President of the European Commission, Mr Romano PRODI; Spanish Foreign Minister and Member of the Praesidium of the European Convention, Ms Ana DE PALACIO; Mr Göke FRERICHS; President of the Economic and Social Committee; Mr Enrico GIBELLIERI; President of the ECSC Consultative Committee; Mr Max KOHNSTAMM; former ECSC Secretary General; Mr Fritz HELLWIG, former Member of the ECSC High Authority and former Vice-President of the Commission; and Mr René Jacques RABIER, former Director General at the European Commission.

Conference on Food Safety Policy

On 10 September, Mrs Vicky KLOPPENBURG participated in a conference on "Food Safety Policy". The conference was organised by Hogan & Hartson, an international law office, in Brussels. The conference focused on issues relating to the EU Food Safety Legislation, EU and US Food Safety Policy and the challenges in global food trade.

SOLVIT Conference

On 30 October, Mr Olivier VERHEECKE participated in the SOLVIT Conference for European Business and Citizens Organisations, which took place in the premises of the European Economic and Social Committee in Brussels. The Conference was organised by the Internal Market DG of the European Commission in collaboration with the Economic and Social Committee. It was attended by 150 representatives from citizens and business organisations, as well as from regional offices.

The opening speech was given by Mr Bruno VEVER, Member of the European Economic and Social Committee. Mr Alexander SCHAUB, Director General of the Internal Market DG presented the SOLVIT network. The concrete functioning of the network was explained by officials of the Commission and of the Swedish and Portuguese SOLVIT Centres.

At the Panel discussion which followed, Mr VERHEECKE gave a speech about the European Ombudsman's liaison network. Other contributions were given by Mrs Karla PEIJS MEP, Mrs Ulrike RODUST, Alternate Member at the Committee of the Regions, Mr Sören HAAR from ECAS and Mr Luc HENDRICKX from UEAPME. The closing remarks were given by Mr Gerard DE GRAAF, Head of Unit in the Internal Market DG of the Commission.

ECAS Seminar "3A's to Connect Citizens to the EU"

On 5 December, Mr SÖDERMAN gave a keynote speech in Brussels at the Seminar on "3 A's to Connect Citizens to the EU", organized by the European Forum of the Citizens Advisory Services. Speaking to an audience of about 100 people, including representatives of applicant countries, Mr SÖDERMAN stated that "citizens want European law to be correctly applied and fundamental rights to be respected at all levels of the Union and that the remedies available should make it as easy as possible for citizens to obtain justice".

Basque Studies Society Seminar on the European Convention

On 12 December, Mr Olivier VERHEECKE participated in a seminar on the "Convention on the Future of Europe" organised by the Europa Group of the Basque Studies Society (Eusko Ikaskuntza/Sociedad de Estudios Vascos). The seminar took place in the Delegation of the Basque Country in Brussels.

Among the speakers were Sir Neil MacCORMICK, MEP and alternate delegate to the Convention, Mr José Mari MUÑOA, Basque representative at the Committee of the Regions, Mr Iñaki RICA, Director of European Affairs at the Basque Government, and Mr Kurt RIECHENBERG, Head of Cabinet of the President of the European Court of Justice of the EC. Mr VERHEECKE gave a lecture about the main achievements of the European Ombudsman since 1995 and about the Ombudsman's contribution to the European Convention and the debate on the future of Europe.

FRANCE

Council of Europe, Strasbourg

On 7 March, Mr Ian HARDEN represented the European Ombudsman at an exchange of views with the Group of Specialists on Access to Official Information of the Council of Europe, during their 9th meeting. Topics discussed included the relationship between data protection rules and the public right of access to documents in the European Union and in the framework of Recommendation (2002) 2 of the Council of Europe's Committee of Ministers to Member States on access to official documents, adopted on 21 February 2002.

From 27 to 29 November, Ms Maria ENGLESON participated in the Seminar "What access to official documents" organised by the Council of Europe in Strasbourg in order to discuss the implementation of Recommendation Rec (2002) 2 on Access to official documents, adopted on 21 February 2002 by the Committee of Ministers of the Council of Europe. The seminar was chaired by Ms Tonje MEINICH, Legal Adviser at the Ministry of Justice in Norway and was opened by Mr Pierre-Henri IMBERT, Director General of Human Rights at the Council of Europe. Mr Mathieu HERONDART, Member of the French Supreme Administrative Court and Rapporteur at the Commission on access to administrative documents in France presented Recommendation (2002) 2. Mr Michel De SALVIA, Jurisconsult at the European Court of Human Rights presented the case law of the European Court of Human Rights on access to information and Ms Helena JÄDERBLOM, Director at the Ministry of Justice in Sweden made a presentation of the "Harm test" - Balance to be found between access to official documents and protection of public interest by limitations to access.

During the seminar, different topics on access to documents were discussed in eight workshops. The seminar ended with a plenary session in which the Chairs presented the conclusions of the workshops and the General Rapporteur Ms Helen DARBISHIRE, Programme Director at the Open Society Justice Initiative in Hungary presented the general report. The seminar was closed with a follow-up by the Chair and a general debate.

Paris

On 15 November, Mr Olivier VERHEECKE and Mr Ben HAGARD presented the Ombudsman's work a the seminar *"Cycle international spécialisé d'administration publique : La Médiation Institutionnelle"*. This seminar, which took place from 4 to 29 November 2002, was organised jointly by the École Nationale d'Administration (ENA) and the office of the French *Médiateur de la République*. It was attended by 20 officials from Ombudsman's offices and ministries from Albania, Belgium, Burundi, Colombia, Ivory Coast, Djibouti, Madagascar, Mali, Malta, Morocco, the Democratic Republic of Congo, Romania, Senegal and Tchad.

Mr Olivier VERHEECKE gave a speech about the achievements of the European Ombudsman since 1995, the Charter of Fundamental Rights and the European Code of Good Administrative Behaviour. Mr Ben HAGARD presented the communication policy of the European Ombudsman's office and the liaison network with the national Ombudsmen (on-line and off-line). He also explained the various sections of the European Ombudsman's website.

Martinique

On 30 November, Mr MARTÍNEZ ARAGÓN participated in a European Seminar entitled "Your place and your rights, in which Europe?" held in Martinique. The event was organised by the *Réseau France Outre-Mer*, with a view to informing the local residents of their rights as European citizens.

Mr MARTÍNEZ ARAGÓN's speech was devoted to the role of the European Ombudsman and the work of the institution for the defence of the rights of European citizens.

The seminar was open to the general public and many representatives from the organised civil society (NGOs) attended the sessions. The political representatives of the island in the French Assembly were present at the event. Other speakers included Mr Jean-Luc SAURON, from the French *Conseil d'Etat*, Mr Olivier AUDÉOUD, Jean-Monet chair at the University of Paris X and Mr Marc-Etienne PINAULDT, acting on behalf of the regional *Préfet*.

SPAIN

Vitoria

On 8 March, Mr MARTÍNEZ ARAGÓN delivered a speech on "Transparency and access to information in the UE" at a seminar organised jointly by the European Institute of Public Administration (EIPA) and the Basque government on "New Actors in the European integration process". The event took place on 7-8 March 2002 in Vitoria. It was attended by a large audience from various Spanish administrations and regional parliaments.

Other participants in the seminar included Messrs CARBAJO (Head of the EP Office in Madrid), JIMÉNEZ FRAILE (Head of Unit Information, Transparency and Public Relations in the Council), Professor ALDECOA (Jean Monnet Chair at the Complutense University of Madrid), José CANDELA (Adviser to the Commission), and Paolo CECCHINI (former Director-General at the Commission). The President of the Basque government, Mr IBARRETXE, delivered the closing remarks.

Madrid

On 24 April, Mr SÖDERMAN attended the EU/Iberoamerican-Caribbean Intercontinental Meeting on the Protection of Human Rights, which took place in Casa America, Madrid. The European Ombudsman spoke at the solemn opening in the presence of H.M. the King Don Juan Carlos and H.M. the Queen Doña Sofia. The main intervention by Mr SÖDERMAN was entitled "The European Ombudsman and the Defence of Human Rights". Other Spanish personalities included the Speaker of the Chamber of Deputies, Mrs Luisa Fernanda RUDI ÚBEDA, the Speaker of the Senate, Mrs Esperanza Aguirre GIL DE BIEDMA; the Foreign Affairs Minister, Mr Josep PIQUÉ I CAMPS; the Council of Europe's High Commissioner for Human Rights, Mr Alvaro GIL-ROBLES; the President of the Iberoamerican Ombudsmen Federation, Mr Eduardo MONDINO and the Spanish Ombudsman, Mr Enrique MÚGICA HERZOG. The event was well covered by mass media.

In the framework of his visit to Madrid, the European Ombudsman also met with the Committee on Petitions of the Asturias Regional Parliament. The meeting was headed by the Committee's President, Mrs Inmaculada Concepción GONZÁLEZ GÓMEZ, MP and dealt with areas of possible cooperation, including the establishment of internet links. Other participants included Mr Ignacio ARÍAS and Mrs Ana PARRONDO, members of the Committee's secretariat.

Barcelona

At the invitation of Mr CAÑELLAS, Regional Ombudsman (Síndic de Greuges) of Catalunya, Mr SÖDERMAN participated in several events in the framework of the "Europe Day" celebration, which took place in Barcelona on 7 May. He was accompanied by Mr MARTÍNEZ ARAGÓN and Mrs PALUMBO from his secretariat.

Mr SÖDERMAN made an official visit to the Parliament of Catalunya and met its President, Mr Joan RIGOL. He then went to see the premises of the Catalonian Ombudsman where he signed in the institution's honour book.

Mr SÖDERMAN also visited the Generalitat of Catalunya where he was received by Mr MAS, on behalf of President PUJOL.

Conference on the rights of European Citizens in Barcelona on 7 May. Speakers included Mr Anton Cañellas, Mr Söderman and Mr Josep Coll.

The European Ombudsman also had the opportunity to visit the new premises of both the European Parliament and the European Commission's representations in Barcelona, where he delivered an address on the protection of the rights of European citizens. The conference was introduced by Mr Josep COLL, Director of the Commission representation, and by Mr CAÑELLAS. The Ombudsman underscored the importance of citizens in the future of Europe to the audience which comprised more than 100 participants. At the end of the speech, Mr SÖDERMAN replied to questions from the public.

VENEZUELA

From 11 to 13 March, Mr MARTÍNEZ ARAGÓN participated in the International Seminar "Romulo Gallegos". The event was held in Caracas (Venezuela) under the sponsorship of the Venezuelan Ombudsman and the UNDP, with a view to providing a global perspective on the mechanisms set out in different international fora for the protection of human rights.

Mr MARTÍNEZ ARAGÓN's speech was devoted to the political and civil rights enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to good administration and the role of the European Ombudsman in monitoring its application by the European Union's administration.

Several national and regional ombudsmen were present at the event, namely Mr MÚGICA, Spanish Ombudsman; Mr ARANGO, Ombudsman of Guatemala; Mr MARTÍNEZ BULLÉ, First Deputy of the National Commission for Human Rights in Mexico; Mr Cinco SOTO, Human Rights Commissioner for the State of Sinaloa (Mexico); and Mrs Valérie FONTAINE, on behalf of the French Médiateur de la République.

GERMANY

Third European Forum - Speyer

On 17 April, Mr Gerhard GRILL gave a lecture on transparency and access to information in the EU at the Third European Forum (3. Europa-Forum) in Speyer, Germany. The forum was organised by Professor Dr. Siegfried MAGIERA and Professor Dr. Karl-Peter SOMMERMANN of the *Deutsche Hochschule für Verwaltungswissenschaften* in Speyer and was attended by more than 60 civil servants from all over Germany. Among the other speakers were Professor Dr. Constance GREWE from the University of Strasbourg, Dr. Alexander DIX, the person in charge of data protection and access to documents in Brandenburg and Professor Dr. Jörg MONAR from the Sussex European Institute in Brighton.

Academy of European Law, Trier

On 24 and 25 June, Maria MADRID took part in the congress of the Academy of European Law in Trier entitled "European Public Prosecutor". The conference dealt with the structure, the scope of competence, working methods and relations with other EU-organs, as well as review procedures concerning the future European Public Prosecutor. Speakers included Mr Jorge ALBINO ALVES COSTA, Secretary General of the General Prosecutor's Office of Portugal, Mr Franz-Hermann BRÜNER, Director-General of OLAF, Mrs Michaele SCHREYER, Member of the European Commission and Mr John R. SPENCER, Professor at the University of Cambridge.

On 5 July, Mr SÖDERMAN gave a speech on his work and future prospects of his office at a seminar on "Extending the Area of Freedom, Justice and Security through enlargement: Challenges for the European Union" organised by the Academy of European Law in Trier (in co-operation with the Centre for European Policy Studies, Brussels, Sitra, Brussels and Transcrime-University, Trento). Mr Gerhard GRILL of the Ombudsman's Office also attended this conference.

European Information Centre, Darmstadt

On 15 October, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman at the *Europäisches Informationszentrum* in Darmstadt. On this occasion, he also gave interviews to two radio channels, the *Hessischer Rundfunk* and *Radio Darmstadt*.

Munich

On 4 and 5 November, the European Ombudsman visited Munich. He was accompanied by Mr Gerhard Grill.

On 4 November, the Ombudsman was received by Professor Werner WEIDENFELD, the head of the C.A.P. (Centrum für angewandte Politikforschung) at the University of

Munich. The Ombudsman subsequently gave a talk on his work to students and researchers at the University of Munich. On 5 November, the European Ombudsman presented his work to a gathering of experts and interested persons from institutions,

Mr Söderman and Mr Grill with the speaker of the Landtag of Bavaria, Mr Johann Böhm and Ms Anja Richter of the European Parliament's information office in Munich.

groups and associations at the European Patent Office. Mr SÖDERMAN then went to the Bavarian Landtag where he presented his work to the members of the Landtag's committee on petitions at their regular meeting and answered questions from members of the committee. A discussion with the speaker of the Landtag, Mr Johann BÖHM, marked the end of the European Ombudsman's visit to Munich.

AUSTRIA

Vienna

On 18 April, Mr Gerhard GRILL gave a lecture on the Charter of Fundamental Rights of the EU at the 'Enquête Erweitertes Grundrechtsverständnis' organised by the Austrian Institute for Human Rights and the Volksanwaltschaft in Vienna. Among the other speakers were Professor Dr. Franz MATSCHER, Director of the Austrian Institute of Human Rights, Professor Dr. Rudolf STREINZ from the University of Bayreuth, Professor Dr. Mark VILLIGER from the University of Zurich and Professor Dr. Thilo MARAUHN from the University of Giessen.

FINLAND

Helsinki

On 14 May, Mr SÖDERMAN presented a paper on "Good administration as a fundamental right" to the Finnish fractions of the Nordic Administrative Associations in the framework of their 80th anniversary, in Helsinki. Among the large audience was a delegation of guests from the other nordic countries as well as the Presidents of the Supreme Court Mr Leif SEVÓN and the Supreme Administrative Court Mr Pekka HALLBERG as well as the Chancellor of Justice Mr Paavo NIKULA.

On 10 June, Mr SÖDERMAN attended a seminar to commemorate the 130th Anniversary of the Finnish Parliamentary Library. The European Ombudsman's intervention was centered on openness and information principles in the European Union. The audience

also heard presentations from Mr Timo KONSTARI, Mrs Tuula LAAKSOVIRTA, Mrs Hannele KOIVUNEN and Mrs Kirsi MANNINEN.

UNITED KINGDOM

Wales

On 27 May, Mr SÖDERMAN travelled to Cardiff where he met the Right Honourable Rhodri MORGAN AM, First Minister of the Welsh Assembly Government. Mr SÖDERMAN was accompanied by his Internet and Communications Officer, Ben HAGARD and his Press Officer, Rosita AGNEW. Matters discussed during the meeting included the raising of public awareness of the work of the European Ombudsman and the present situation and future plans for public sector ombudsmen in Wales.

Mr SÖDERMAN then held a number of meetings with staff of the National Assembly for Wales, including members of the European and External Affairs unit, the Public Information and Education Services unit and representatives of the Permanent Secretary's Office. He also had an exchange of views with members of the Welsh Assembly, including Mike GERMAN (South Wales East), John GRIFFITHS (Newport East), Rhodri Glyn THOMAS (Carmarthen East and Dinefwr) and Rosemary BUTLER (Newport West). Mr SÖDERMAN underlined the importance of informing Welsh citizens about their right to complain to the Ombudsman.

The First Minister of the Welsh Assembly Government, Mr Rhodri Morgan greeting Mr Söderman in Cardiff on 27 May.

On 28 May, Mr SÖDERMAN continued his series of meetings in the Welsh Assembly, where he spoke to representatives of the Welsh European Funding Office (WEFO), the Head of the European and External Affairs unit of the Assembly and the Office of the Council General.

On 28 May, Mr SÖDERMAN presented his work at an event organised by the Commission Representation in Wales. His first meeting was with the staff of the Commission representation, where he gave an overview of the types of complaints he

receives. He then explained his work to an audience of 18 people, including MEPs, members of voluntary organisations and non-governmental organisations and representatives of the Confederation of British Industry and the Citizens Advice Bureau.

London

On 29 May, Mr SÖDERMAN held a series of meetings in London, starting with a brief discussion with the Head of the Commission Representation, Geoffrey MARTIN. He was accompanied by his Internet and Communications Officer, Ben HAGARD and his Press Officer, Rosita AGNEW.

He then met with representatives of the National Association of Citizens Advice Bureaux, including Fernando RUZ, Policy Officer in the Chief Executive's Office, Ruth BAMFORD, Head of Consumer Rights and Ruth Hancock and Valerie WADSWORTH, Information officers. Nicoletta FLESSATI, Head of the Information Support Unit at the Commission's representation also attended the meeting. The meeting offered a useful opportunity to exchange views on how best to inform citizens about their rights under EU law.

On 30 May, the Ombudsman's Internet and Communications Officer, Ben HAGARD and Press Officer, Rosita AGNEW visited the office of the European Parliament in London where they met with Asad BEG from the Public Affairs unit. Mr BEG outlined the activities undertaken by the Parliament office to inform UK citizens about the EU and proposed ways to increase awareness of the work of the Ombudsman in the UK.

Mr Söderman and Ms Rosita Agnew exchanging views with Valerie Wadsworth and Fernando Ruz of the National Association of Citizens Advice Bureaux on 29 May.

BIOA Managers' Group Training Seminar

On 8 November, Rosita AGNEW attended a training seminar organised by the British and Irish Ombudsman Association. Around 60 people from ombudsman offices in the UK and Ireland attended the seminar, including deputy ombudsmen, communication officers and case handlers. The seminar was divided into two sessions, the first entitled *Dealing with the Media and the second entitled Alternative (Appropriate) Dispute Resolution (ADR).*

NETHERLANDS

Maastricht

EIPA Seminar "Who's afraid of European information"

From 19 to 21 June, Juan MALLEA and Murielle RICHARDSON attended a seminar entitled *Who's afraid of European information*, organised by the European Institute for Public Administration.

The working sessions were dedicated to three themes: the overall evolution of the European Union, the European Community at work and Information from the major European Union institutions.

Lectures were given by several EIPA staff members and from information specialists from the various EU institutions. The possibility to resort to the European Ombudsman when access to documents is denied was underlined in several interventions.

EIPA Course "Institutions, Policies and Public Administration in the European Union"

On 18 October, José MARTÍNEZ ARAGÓN, gave a lecture on the control of the EU Administration and the protection of citizens' rights in the framework of a two-week seminar organised by the European Institute of Public Administration in Maastricht. The course, entitled Institutions, Policies and Public Administration in the European Union, was addressed to a group of 30 recently recruited Spanish civil servants.

EIPA Seminar "Keep Ahead with European Information"

On 28 and 29 November, Rosita AGNEW, Murielle RICHARDSON and Isabelle BOUR attended a seminar entitled Keep ahead with European information, organised jointly by the European Institute for Public Administration and the European Information Association.

The working sessions dealt with recent developments and future initiatives in the Communication and Information Strategies of the European Union. The seminar was attended by information and documentation specialists from Member States and candidate countries as well as EU officials.

Speakers included Mr Ian THOMSON, President of the European Information Association as well as various communication and press specialists from the European Commission, OLAF and the Office for Official Publications of the European Communities.

LUXEMBOURG

Mr SÖDERMAN assisted by Mr Alessandro DEL BON visited Luxembourg on 27 November. Mr SÖDERMAN met with Mr SPAUTZ, Chairman of the Parliament of the Grand Duchy of Luxembourg who informed him that Luxembourg was currently considering the possibility to create a national Ombudsman. Mr SÖDERMAN also met with

Visit to the Parliament of the Grand Duchy of Luxembourg on 27 November.

Mrs ERR, Chairman of the Committee on Petitions, Mr Xavier BETTEL and Mr Patrick SANTER, Vice-Chairmen of the Committee on Petitions and Ms Agny DURDU, Mr Jean HUSS, Mr Robert MEHLEN and Mr Théo STENDEBACH, Members of the Committee on Petitions. Mr SÖDERMAN welcomed Luxembourg's initiative to create an Ombudsman institution and reported about his participation in the Convention on the future of Europe and about the Treaty changes he proposed. Mr SÖDERMAN's presentation was followed by an extensive and fruitful discussion.

ITALY

Rome

On 21 October, Mr SÖDERMAN participated in a seminar on the *"Civil service reform in Europe"*. The seminar was organised by the Italian Parliamentary Assembly of the Council of Europe and was held in the premises of the Chamber of Deputies of the Italian Parliament. Introductory remarks were made by Mr Claudio AZZOLINI, former MEP and current Chairman of the Italian delegation to the Parliamentary Assembly of the Council of Europe. Statements were made by Mr Franco FRATTINI, Italian Minister for Civil Service and by Mr Rado BOHINC, Minister of Interior of Slovenia. Keynote speakers included Mr SÖDERMAN, who presented a paper on *"The evolution of the European civil services…from the citizens point of view"*, and Mr Michel SENIMON, Regional Director, Secretary General of "Europa".

In the morning of 22 October, the European Ombudsman visited the premises of the representation of the European Commission in Rome. He had an exchange of views with Mr GRILLENZONI, acting director of the Commission's representation in Rome. Mr Paolo MEUCCI, administrator at the European Parliament's office in Rome was also present at the meeting.

Messina

In the afternoon of 22 October, Mr SÖDERMAN travelled to Messina, in Sicily, to take part in several activities on civic defence. The European Ombudsman and Mr Romano FANTAPPIÈ, regional Ombudsman of Tuscany and coordinator for the regional ombudsmen in Italy, were welcomed by the President of the Lions club of Messina, Prof. Guglielmo CAVALLARO, and by the governor of Sicily, Mr Silvio CAVALLARO. Before

a group of about 100 members of the Lions club, Mr SÖDERMAN made a brief presentation of his work and answered questions from the audience.

The Ombudsman presenting his work in the Great Hall of the University of Messina on 23 October.

(Photo: Labor foto-video di Sturniolo V.)

On 23 October in the morning, Mr SÖDERMAN met the mayor of the city of Messina, Mr Salvatore LEONARDI. Afterwards, he participated in a conference *"From the Courts to civic defence - a comparison between two different systems of litigation resolution"*. The conference, organised by the Bar Association of Messina and the University of Messina, was held at the Great Hall of the University. The meeting was chaired by Prof. MARTINO who welcomed the participants. Mr Antonio DE MATTEIS made some introductory remarks before giving the floor to the speakers. Mr SÖDERMAN presented his role and activities as European Ombudsman. Other presentations were made by Mr FANTAPPIÈ, Mr Nazareno SAITTA, Professor of administrative law at the University of Messina and Mr Francesco MARULLO DI CONDOJANNI, President of the Council of the Bar Association of Messina. An open panel discussion followed the presentations.

In the afternoon, Mr SÖDERMAN visited the premises of the Council of the Bar Association. Later on, he gave a detailed presentation of his activities and the procedure followed when dealing with complaints to a group of lawyers. As a conclusion of the event, Mr SÖDERMAN was invited to present their diplomas to students who had attended the 2001-2002 Robert Schuman course on Community law.

DENMARK

Mr SÖDERMAN visited Copenhagen on 11 and 12 November 2002, accompanied by Mr Peter BONNOR. Mr SÖDERMAN met with the Danish Parliament's European Affairs Committee and the Legal Affairs Committee, and staff from their committees' secretariats. Mr SÖDERMAN also met with the Danish Ombudsman, Hans GAMMELTOFT-HANSEN, and gave a presentation to the Ombudsman's staff.

Mr SÖDERMAN furthermore spoke at a seminar on "Openness - a Citizen Right", at which the Danish Minister for European Affairs, Bertel HAARDER was also a speaker.

PORTUGAL

From 18 to 20 November, Mr SÖDERMAN visited Lisbon. He was assisted by Ms Ida PALUMBO and Mr Joao SANT'ANNA. In the morning of 18 November, they visited the European Parliament's information office and met with Mr MARTINS, acting director of the office. Mr SÖDERMAN participated in a press conference and replied to questions from journalists. In the afternoon, the Ombudsman participated in a round table on "The Future of Europe", organised by the Jacques Delors European Information Centre of Lisbon. Mrs Almeida GARRETT, MEP, was also present at the event.

Later that day, Mr SÖDERMAN took part in the opening session of the 7th Congress of the Iberoamerican Federation of Ombudsmen (FIO). Statements were made by Mr Henrique NASCIMENTO RODRIGUES, Ombudsman of Portugal and Mr Mario SOARES, MEP and former President of the Republic of Portugal. Mr SÖDERMAN presented his work as European Ombudsman. A delegation from Taiwan was invited to participate in the Congress.

6.3 OTHER EVENTS

On 21 January, Prof. Dr. Christian PFEIFFER, Minister of Justice of Lower Saxony, Germany visited the Office of the Ombudsman in Brussels and was received by Mr Ian HARDEN, Head of the Legal Department. Other officials present were Dr Ralf BUSCH and Mr Gerhard GIZLER from the Brussels representation of Lower Saxony and Mrs Vicky KLOPPENBURG from the office of the Ombudsman. Mr HARDEN presented the mandate and the work of the Ombudsman and answered questions. Subjects discussed included the type of complaints received by the Ombudsman, procedures for handling complaints as well as the co-operation with similar bodies in the Member States.

On 6 February, Mr MARTÍNEZ ARAGÓN gave a lecture on the role of the European Ombudsman to a group of students from the *Institut des Hautes Etudes Européennes* of the Robert Schuman University, in Strasbourg.

On 11 February, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of some fourty students from the *Verwaltungsschule der Sozialverwaltung Wasserburg am Inn* (Bavaria) under the guidance of Mrs Manuela DRESP.

On 19 February, Mr SÖDERMAN spoke at a lunch organised by Swedish lawyers in Brussels. Twenty-five participants, from law firms, public affairs consultants, private companies and the EU institutions, attended the event at which Mr SÖDERMAN explained his work and experience as European Ombudsman. A lively questions and answers session followed the presentation.

On 19 February, Mr MARTÍNEZ ARAGÓN gave a lecture on the role and the work of the European Ombudsman to a group of fifty civil servants from different departments of the French Ministry of Interior.

On 27 February, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of 25 civil servants from Germany who came to Brussels within the framework of a programme organised by the *Bundesakademie für Öffentliche Verwaltung* (Federal Academy for Public Administration). The group was led by Mrs Elvira STÄHLIN-GIESE and Dr. Henning HILLMANN.

On 7 March, Mr SÖDERMAN received the visit of the General Director of the Palestine Independent Commission for Citizens' Rights, Mr Said ZEEDANI. The meeting dealt with the role and activities of the European Ombudsman and other matters of interest to the parties. Mr ZEEDANI travelled from Ramallah, West Bank, to Brussels and

Strasbourg on mission to get acquainted with European Community institutions and procedures.

Mr Söderman and Mr Said Zeedani in Strasbourg on 7 March.

On 11 March, Mr SÖDERMAN and Ms Maria ENGLESON met with Mr Lars ÖRNULF from the Swedish Government's programme "Sverige Direkt", an official portal for information about Sweden's public sector, for a meeting where the role of the European Ombudsman and his work for European citizens was explained.

On 12 April, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman at the Volkshochschule in Freiburg. This event had been prepared by Mrs Heike MENSCH from the Info Point Europe in Freiburg.

On 12 April, Mr Ian HARDEN presented the work of the European Ombudsman at a study day for the European Fast Stream of the UK civil service, London.

On 25 April, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to the 60 participants of the 24th European Study Seminar of the International Kolping Society. The seminar was headed by Mr Anton SALESNY.

On 29 April, Mr Olivier VERHEECKE spoke about the work of the European Ombudsman to a group of 9 delegates from the national Ombudsmen offices of Panama, Guatemala, El Salvador, Nicaragua, Costa Rica, Honduras, the Ombudsman Commission of Indonesia and the Commission of Human Rights and Good Governance of Tanzania. The group was led by Professor H. ADDINK from the University of Utrecht.

On 13 May, Ms Maria ENGLESON spoke to a group of librarians from Sweden who came to Strasbourg in the framework of a study visit. Later that day, Ms ENGLESON also explained the Ombudsman's work to a group of trainees from various European institutions and bodies during their study visit to Strasbourg.

On 14 May, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 30 students from Saxony (Germany) and East and Central European countries studying at the Technical University of Dresden. The group was accomanied by Dr Rüdiger FREY of the *Bildungswerk Sachsen of the Deutsche Gesellschaft e.V.*

On 15 May, Mr SÖDERMAN spoke to a group of visitors from the Swedish Region of Värmland who were taking part in a study visit to Strasbourg. Mr SÖDERMAN presented his work as Ombudsman and answered questions raised by the participants.

Later that day, Mr SÖDERMAN met a high level delegation of the Nordic Council, headed by its President Mrs Outi OJALA. Hosted by the Finnish Ambassador to the Council of Europe, Mr Erkki KOURULA, the meeting also included the following members of Nordic Parliaments: MP Mrs Riitta PRUSTI, Finland; Mrs Rannveig GUDMUNDSDOTTIR, Mrs Sigridur A. THORDARDOTTIR, Mr Steingrimur J. SIGFUSSON, Iceland; Mr Ole STAVAD, Danemark; Mrs Anita JOHANSSON, Sweden; and Mrs Frida NOKKEN, the Nordic Council's Secretary General.

Also on 15 May, Ms Maria MADRID gave a talk in Brussels on the role and functions of the European Ombudsman to a group of 14 students of the *Technische Universität Berlin* who participate in the project "*fit für Europa*", which is destined to train future EU-lecturers and is supported by the European Social Fund.

On 10 June, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 40 local councillors from Ebersberg (Bavaria) who had come at the invitation of MEP Dr. Angelika NIEBLER.

On the same day, Mr Gerhard GRILL also lectured to a group of 28 pupils of the Staatliche *Berufsschule Landsberg am Lech* (Bavaria) guided by Mr Franz GRAF as well as to 16 participants of a study tour organised by the BDÖ – *Bildungswerk für Demokratie, soziale Politik und Öffentlichkeit* (Düsseldorf). The latter group was led by Mrs Wiltraud TERLINDEN from the BDÖ.

On 12 June, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 30 citizens from Germany. The group was accompanied by Dr. Rüdiger FREY of the *Bildungswerk Sachsen* of the *Deutsche Gesellschaft e.V.*

On 13 June, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 30 *Lehramtsanwärter* (trainee teachers) from Bavaria. The group was accompanied by Mrs Alke BÜTTNER from the *Europäische Akademie Bayern*.

On 14 June, Mr SÖDERMAN received the visit of a group of chartered accountants belonging to the KHT institution in Finland. Mr SÖDERMAN gave a lecture on the role and activities of the European Ombudsman and responded to questions from the audience. Headed by its chairman, Mr Joukko ILOLA, the group requested this meeting in the framework of a visit during the June Plenary Session of the European Parliament. The meeting took place at the European Ombudsman's office in Strasbourg.

On 2 July, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to the 20 participants of a seminar on European issues organised by the *Arbeitnehmer-Zentrum Königswinter* (AZK). The participants were accompanied by Mrs Angelika HECKER of Fit for *Europe - Kommunikation – Moderation*.

On 10 July, Mr SÖDERMAN had a meeting with Mr Michael EFLER, member of the National Board of the German citizens movement *Mehr Demokratie e.V.* (More Democracy). Mr EFLER explained his organisation's work for direct democracy (Initiative & Referendum), representative democracy, and their proposals for national referenda regarding the European Integration Process. He also presented a paper entitled "More democracy in Europe". The meeting was held at the Ombudsman's office in Brussels.

On 11 July, Mr SÖDERMAN gave a lecture to a group of Polish students who were paying a visit to the European institutions in Brussels within the framework of a programme entitled "Be a Negotiator! - Simulation of Poland-EU Negotiations on Accession". The group was headed by Mrs Katarzyna MORAWSKA, European Programme Coordinator. The conference took place at the premises of the European Ombudsman in Brussels.

On 18 July, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 30 *Abiturienten* from Munich (Bavaria). The group was accompanied by their teachers.

On 5 September, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of 47 persons from the *Bezirksverband Unterfranken* of the *Europa-Union* in Germany. The group was led by Mr Hubert KLEBING, head of the *Bezirksverband*.

On 12 September, Mr SÖDERMAN and Ms ENGLESON received a group of visitors from the University of Karlstad, Sweden. Mr SÖDERMAN presented his work and replied to questions put forward by the participants.

On 18 September, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to some 20 civil servants from Germany within the framework of a seminar organised by the *Bundesakademie für öffentliche Verwaltung*. The group was led by Dr. Henning HILLMANN from the Federal Ministry of Finance in Berlin.

On 19 September, Mr Alessandro DEL BON gave a lecture on the role and the work of the European Ombudsman to a group of 12 Austrian pupils from the *BRG Reutte*. The Group was accompanied by Mrs Margarete BEISKAMMER and Mr Erich SCHREDER.

On 24 September, Mr Olivier VERHEECKE gave a lecture about the role and activities of the European Ombudsman at the Yorkshire and Humber European Office in Brussels, for a group of ten "European liaison officers" who are working for local UK authorities. The event was organised by the Yorkshire and Humber European Office in collaboration with the University of Bradford.

On the same day, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to 36 members of the *Europa-Union* from Altötting (Bavaria). The group was led by Mr Herbert KAHNERT, the chairman of the *Kreisverband Altötting* of the Europa-Union.

On 26 September, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of 26 students from Germany. The group was led by their teacher, Mr Matthias WIEBEN.

On 3 October, Mr HARDEN gave a presentation of the work of the European Ombudsman to a group of visitors from the Parliament of Uzbekistan.

On 8 October, Mrs Vicky KLOPPENBURG gave a lecture in Brussels on the role and the work of the European Ombudsman to a group of students from the *Politischer Jugendring Dresden*, Germany.

Also on 8 October, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of civil servants from Germany within the framework of a seminar on *"Gemeinschaftsrecht in der Praxis des Verwaltungsrechtlers"* organised by the Academy of European Law (ERA) in Trier. The seminar was guided by Mrs Christine FROSCH from ERA.

On 11 October, Ms Maria ENGLESON gave a lecture on the role of the European Ombudsman to a group from the Association of Finnish Local and Regional Authorities. The lecture was held at the Ombudsman's premises in Strasbourg.

On 16 October, Ms Vicky Kloppenburg gave a speech on the role and the work of the European Ombudsman at a meeting with a group of students and professors from the University of Magdeburg, Sachsen-Anhalt, Germany.

On 18 October, Mr Ian HARDEN assisted by Ms Tea SEVÓN presented the work of the European Ombudsman to a group of law students from Aarhus University, Denmark. The meeting took place in Brussels and the presentation was followed by a question and answer session.

On 21 October, Ms Maria ENGLESON spoke to a group of judges from the Swedish National Courts Administration who were visiting the European Parliament in Strasbourg. The lecture was followed by questions from the participants.

Ms Maria Engleson speaking to a group of Swedish Judges in Strasbourg on 21 October.

On 23 October, Mr Gerhard GRILL gave a lecture in Brussels on the role and the work of the European Ombudsman to some 20 civil servants from Germany within the framework of a seminar organised by the *Bundesakademie für öffentliche Verwaltung*.

On 12 November, Mr Olivier VERHEECKE gave a speech about the role and activities of the European Ombudsman to a group of 30 students from Bulgaria, Germany, Greece, Hungary, Romania, Slovenia and Turkey, in the framework of the multilateral exchange programme "The Role of Youth Participation and Democracy for the Future of Europe" organised by the *Bosporus Gesellschaft* NGO.

On 18 November, Mr Gerhard GRILL gave a lecture on the role and the work of the European Ombudsman to a group of 15 students from Northrhine-Westfalia. The visit was organised by Dr. Jürgen ZIMMERLING, MEP.

On 19 November, Mr Ian HARDEN gave a lecture in Strasbourg on the role of the European Ombudsman to a group of 15 young diplomats from candidate countries, participating in a training session on European Affairs. The group was lead by Mr MASSET from the "ENA" (French National School of Administration).

On 22 November, Mr Ian HARDEN delivered a lecture on "openness and data protection in the European Union" at the Institute of European Studies, Queen's University Belfast.

On 11 December, Mr MARTÍNEZ ARAGÓN gave a lecture on the role and work of the European Ombudsman to a group of 15 diplomats from Latin American countries, participating in a training session on European Affairs organised by the "ENA".

On 18 December, Mr SÖDERMAN took part in a Nordic working lunch in Brussels. Attended also by Commissioners Erkki LIIKANEN and Margot WALLSTRÖM, as well as Ambassador Henning CHRISTOFFERSEN from Denmark, the meeting dealt with important issues related to the Convention on the future of Europe.

6.4 MEDIA RELATIONS

On 16 January, Mr SÖDERMAN gave a telephone interview to Mr Brandon MITCHENER of *The Wall Street Journal* Europe. The interview covered recent developments in the field of transparency and in particular the implementation of the regulation on access to documents by the institutions.

On the same day, Mr SÖDERMAN was interviewed by the Bulgarian journalist, Mr Ognian BOYADJIEV for an article in *Europ Magazine*, the publication of *Fondation Journalistes en Europe*. They discussed the work carried out by the Ombudsman in 2001 to further transparency.

On 24 January, Mr SÖDERMAN was interviewed by Mr Karl-Otto SATTLER from the German paper *Das Parlament*.

On 12 February, Mr Ian HARDEN and Mr Olivier VERHEECKE met with the Ukrainian journalist Mrs Olena PRYTULA, Chief Editor of the *Ukrainska Pravda*, an on-line news website. The topics discussed included the human rights situation in Ukraine and the role of the European Ombudsman in the institutional framework for protection of human rights in Europe.

On 7 February, Mr SÖDERMAN was interviewed by Anje RAHIMPOUR for a programme on the TV news network, *Euronews*. The interview covered the role and responsibilities of the European Ombudsman. The programme was included in the Euronews broadcast schedule for one week.

On 19 February, Mr SÖDERMAN gave a number of interviews to journalists based in Brussels, including:

- Mr Ralph ATKINS from the *Financial Times*. The discussion covered the Ombudsman's efforts to implement the EU Charter of Fundamental Rights, as well as his general work in 2001.

- Ms Nicci SMITH from *Rapporteur* magazine. The interview focused on two special reports of the Ombudsman to be presented before the Committee on Petitions in Brussels - one on sex discrimination and one on access to documents.

- Mr Hans-Martin TILLACK from *Stern* Magazine. The purpose of the interview was to gather information for a book Mr TILLACK is writing about the European institutions. The interview covered the Ombudsman's experience in dealing with the institutions since taking up his position in 1995.

- Mr Martin BANKS from *European Voice*. Mr SÖDERMAN explained his work and discussed a complaint he had received from a Dutch citizen alleging racism in recruitment to the EU institutions.

On 26 February, Dr. Alexander SHEGEDIN, Correspondent of *Estonija* (daily Russian language newspaper in Estonia) visited the Brussels Antenna of the European Ombudsman in the context of the European Union Visitors Programme. Mr Ian HARDEN and Mrs Benita BROMS explained the role of the European Ombudsman and the liaison activities involving national ombudsmen of Member States and the accession States. There was also an exchange of views on the protection of linguistic minorities and stateless persons and Dr. SHEGEDIN explained the position of the Russian speaking minority in Estonia.

Also on 26 February, Mr SÖDERMAN was interviewed by Mr Nicolas BOURCIER from the French national daily, *Le Monde*. The interview took place by telephone and covered the participation of the Ombudsman in the Convention on the future of Europe. Mr SÖDERMAN outlined to the journalist his contribution to the Convention on behalf of European citizens and civil society.

On 7 March, Mr SÖDERMAN met with a group of Nordic journalists in Strasbourg. The meeting was arranged by Mr Geo STENIUS from *YLE*, Helsinki, and journalists from Denmark, Finland, Iceland, Norway and Sweden participated. Mr SÖDERMAN gave a presentation on his work which was followed by questions from the journalists.

On 9 April, Mr SÖDERMAN held a press lunch in Strasbourg to present his Annual Report 2001. Fifteen journalists attended the event, including: Marko RUONOLA (Finnish press agency, STT), Peter WALLBERG (Swedish press agency, TT), Ton Van LIEROP (Dutch press agency, ANP), Gérard GAUDIN (Belgian press agency, Belga), Daniela SPINANT (EU Observer), Martin BANKS (European Voice), Nicola SMITH (Rapporteur), Thomas GACK (Stuttgarter Zeitung), Christian WERNICKE (Süddeutsche Zeitung), Horst BACIA (Frankfurter Allgemeine Zeitung), Petteri TUOHINEN (Helsingen Sanomat), Véronique LEBLANC (La Libre Belgique), Klaas BROEKHUIZEN (Het Financieele Dagblad), Arthur ROGERS and Graciela ROGERS (La Nacion). Mr SÖDERMAN outlined his concerns about the delay in implementing the EU Charter of Fundamental Rights and spoke about openness in the institutions.

On 17 April, Mr Matthias SCHMELZER interviewed Mr SÖDERMAN for Austrian Television, *ORF*. The interview covered the work of the European Ombudsman and the results achieved since 1995.

On 20 April, Mr SÖDERMAN was interviewed by Mr Gianni GIAMPIETRO, for the Italian Radio *Rai*. Mr SÖDERMAN participated in the weekly radio programme on citizens civic rights. He explained his role as European ombudsman and participated in a debate together with two regional and two municipal ombudsmen from Italy.

On 29 April, Mr SÖDERMAN responded to a written set of questions from a Danish journalist, Mr Anders BRUUN. Writing for the Newsletter of the Commission's representation in Denmark, Mr BRUUN asked Mr SÖDERMAN about his views on openness, democracy and citizens' rights in the EU.

On 7 May, in the framework of his visit to Barcelona, Mr SÖDERMAN was the special guest in the TV3 daily programme *Bon día Catalunya*. He was interviewed by Mr Jaume BARBERÁ. The Ombudsman also intervened in the COM Radio daily show entitled *La República*, conducted by Mr Joan BARRIL. TVE's journalist Mrs Georgina PUJOL interviewed Mr SÖDERMAN for the programme *Catalunya Avui*. Mrs Esther HERRANZ also carried out an interview for BTV Television. Mr SÖDERMAN further gave interviews to Mrs Núria NAVARRO for the newspaper *El Periódico* and to Mr David CAMINATA, for *Avu*.

On 15 May, Mr SÖDERMAN gave an interview to Daniela SPINANT for PROTV, the largest private TV station in Romania. The journalist asked questions about the Ombudsman's work, his relations with the institutions and his thoughts on the Ombudsman's institution in Romania.

On 17 June, Mr Olivier VERHEECKE was interviewed by Mrs Anne-Françoise DE BEAUDRAP for *Radio Chrétienne Francophone* (RCF) in Brussels on the activities of the European Ombudsman and the European Code of Good Administrative Behaviour.

On 18 July, Ms HANN from German regional radio interviewed Mr SÖDERMAN about his work. The interviewer asked the Ombudsman's about his views on the performance of the EU institutions in the area of transparency. She also asked about German cases that the Ombudsman had dealt with.

On 25 July, Mr SÖDERMAN gave a telephone interview to Mr Daniel DOMBEY of the *Financial Times*. The interview covered the service the Ombudsman provides for businesses within the EU, most notably regarding tender procedures, contractual problems and late payment.

On 2 September, Mr SVENSSON of the Danish press agency Ritzau interviewed Mr SÖDERMAN about his intention to retire in April 2003.

On 4 September, Ms Nicci SMITH of *Rapporteur* magazine interviewed Mr SÖDERMAN about the decision of the European Ombudsman to appeal a recent Court of First Instance Ruling.

On 24 September, Mr SÖDERMAN gave an interview to Jacob LANGVAD from the Danish daily *Information*. Mr LANGVAD asked questions about the development of the institution of European Ombudsman and the response of the EU institutions to the Ombudsman's work.

Also on 24 September, Honor MAHONY from *EUObserver* interviewed Mr SÖDERMAN about his Annual Report 2001 and about his thoughts for the future development of the office of European Ombudsman.

Later that day, Åsa NYLUND from the Swedish television channel in Finland *YLE TV-SV* interviewed Mr SÖDERMAN about his Annual Report 2001. This coincided with the Ombudsman's presentation of the report to Parliament in Strasbourg.

On 25 September, Mr SÖDERMAN held a press lunch in Strasbourg to coincide with the presentation of his Annual Report 2001 to Parliament. Twelve journalists attended the event, including: Anne HYVÖNEN (Finnish press agency, STT), Peter WALLBERG (Swedish press agency, TT), Fernando BRITO (Portugese press agency, LUSA), Damian CASTANO (Spanish press agency, EFE), David Jens ADLER (Berlingske Tidende), Honor MAHONY (EU Observer), Nicola SMITH (EU Reporter), Anssi MIETTINEN (Helsingen Sanomat), Maija LAPOLA (Turun Sanomat), Åsa NYLUND (Finnish Television) and Arthur ROGERS. Mr SÖDERMAN outlined his concerns about the threat to openness caused by EU rules on data protection.

On 30 September, Ms Véronique LEBLANC interviewed Mr SÖDERMAN for *La Libre Belgique*. The interview centred around the Ombudsman's 2001 Annual Report, including his presentation of the report to Parliament.

On 10 October, Mr Olivier VERHEECKE explained the role and activities of the European Ombudsman to a group of six Mongolian journalists working for the Mongolian National News Agency, the National Television, the Mongolian Radio and the daily newspapers *Odriin Sonin*, *Zuuny Medee* and *Unen*.

On 22 October, Mr SÖDERMAN was interviewed by Mr Luca GIURATO, journalist and anchor-man of the show *"Uno mattina"* broadcast live on Italian's first national channel, RAI 1. The same day, the European Ombudsman gave interviews to Ms Tiziana DI SIMONE, for the Rai Radio 1 weekly programme *"Giorni d'Europa"* and for the daily programme *"Europa risponde"*, and to Mr Gianni GIAMPIETRO for Radio Rai *GR Parlamento.*

Later in the afternoon, Mr SÖDERMAN met Mr Nino CALARCO, the director of *La Gazzetta del Sud*, one of the major daily newspapers of southern Italy. Mr SÖDERMAN then gave an interview to the local Television Telcineforum.

On 23 October, Mr SÖDERMAN was interviewed by Mr Salvatore BARRES for RAI 3 Sicilia, and by Mrs Rosaria BRANCATO, journalist of the local TV Televip.

On 12 November, in the framework of his visit to Denmark, Mr SÖDERMAN was interviewed by Mr Jens Jørgen MADSEN for the Berlingske Tidende, one of the main Danish newspapers. It resulted in a whole-page article in the foreign affairs' section of that paper.

On 27 November, in the framework of his visit to Luxembourg, Mr SÖDERMAN participated in a press conference organised by the European Parliament Information Office. He

explained his work as Ombudsman, supported the idea to create an Ombudsman in Luxembourg and reported about the complaints he receives from Luxembourg. The following media were present and reported about the European Ombudsman's visit to Luxembourg : *Luxemburger Wort*, *La Voix du Luxembourg*, *Tageblatt*, *Lëtzebuerger Journal*, *Le quotidien*, RTL Radio and RTL TV.

On 4 December, Mr SÖDERMAN had an interview with Birgit AUGUSTIN from *ARD*, German television. The interview focused on Mr SÖDERMAN's experience as the first European Ombudsman, covering the wide variety of complaints he has dealt with since 1995. The television crew filmed a meeting of the Ombudsman with his staff and the Ombudsman dealing with complaints, in order to illustrate his work.

On 5 December, Mr SÖDERMAN gave a telephone interview to Peter FORD from *Christian Science Monitor*, an international daily newspaper. Mr FORD questioned the Ombudsman about his views on the future of Europe and his experience in dealing with complaints from European citizens.

Also on 5 December, Mr SÖDERMAN had a working lunch with Anne RIEFENBERG, the Bureau Chief of the *Wall Street Journal Europe* and Brandon MITCHENER, the *Wall Street Journal Europe* correspondent who covers the Ombudsman. Mr SÖDERMAN spoke about his experience in dealing with the EU institutions over the past seven years and explained his proposals to the European Convention.

On 10 December, Mr SÖDERMAN had a radio interview with William HORSLEY, the European Affairs Correspondent for *BBC World Service*. The journalist asked the Ombudsman about his role in the debate on the future of Europe and his concerns about citizens' rights in an enlarged Europe. The interview formed part of a radio feature about Europe on the eve of enlargement.

On 18 December, Mr SÖDERMAN was interviewed by Marjaana KYTÖ TIDESTRÖM from the Finnish Section of the Swedish Radio.

On the same day, the Ombudsman also had a telephone interview with Katti BJÖRKLUND from Swedish radio. The journalist asked about openness in the institutions and in particular about access to documents related to the Transatlantic Business Dialogue. The Ombudsman had dealt with a complaint from a Netherlands-based non-governmental organisation about this issue.

6.5 ONLINE COMMUNICATION

The year 2002 has seen another significant growth in the European Ombudsman's Internet presence. Further new sections have been added to the Ombudsman's website and existing 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. Complaints submitted over the Internet now make up almost half of all complaints received by the Ombudsman. This compares to a third in 2001, a little under a quarter in 2000 and just a sixth in 1999.

The number of requests for information received by E-mail in 2002 has also grown significantly. In total, over 3717 such requests were received in the main E-mail account of the European Ombudsman in 2002, compared to 2335 in 2001 and 1260 in 2000.

In December 2002, the European Ombudsman received over 1600 E-mails from EU citizens regarding the sinking of the 'Prestige' oil tanker. This was one of the largest ever

mass-mailing campaigns submitted to the Ombudsman. 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

In October 2002, the euro-ombudsman website became one of the first EU websites to make information available in the 12 languages of the applicant countries for EU membership. Information about the European Ombudsman is now available in 24 languages on the website.

Major new sections have been added to the euro-ombudsman website in 2002. In December 2002, a new guide for citizens entitled "What can the European Ombudsman do for you?" was added to the website in 11 languages. A letters and notes section was created to make publicly available correspondence between the European Ombudsman and the other EU institutions and bodies. This has enabled the Ombudsman to publish on the website not only his letters to the European Parliament and the European Commission on certain items of public interest, but also the replies that he has received from the Presidents of those institutions. Other documents, such as the Ombudsman's proposals for Treaty changes, have also been added to this section of the website.

In March 2002, a section concerning age discrimination in recruitment was created. This section principally contained the documents relating to the Ombudsman's successful efforts to ensure that the European Recruitment Office would not discriminate on the basis of age in its recruitment procedures. In October 2002, two new sections were added to the Ombudsman's website. One concerned the misuse of data protection rules while the other concerned the protection of data in the Ombudsman's Office.

In order to ensure that the euro-ombudsman website stays at the forefront of EU websites, the Office of the European Ombudsman has participated throughout 2002 in the work of the Inter-Institutional Internet Editorial Committee (CEiii). In November 2002, the meeting of the CEiii was hosted by the Office of the European Ombudsman in Strasbourg. The Office of the European Ombudsman has also participated throughout the year in the Internet Editorial Committee of the European Parliament.

7 ANNEXES

A STATISTICS CONCERNING THE WORK OF THE EUROPEAN OMBUDSMAN FROM 01.01.2002 TO 31.12.2002

1 CASES DEALT WITH DURING 2002

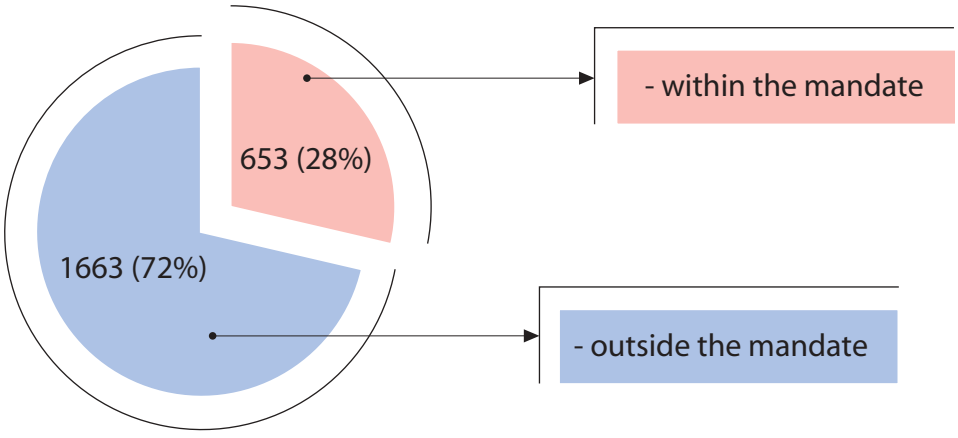
1.1 TOTAL CASELOAD IN 2002 2511

- complaints and inquiries not closed on 31.12.2001	298[1]
- complaints received in 2002	2211
- own initiatives of the European Ombudsman	2

1.2 EXAMINATION OF ADMISSIBILITY/INADMISSIBILITY COMPLETED 97%

1.3 CLASSIFICATION OF THE COMPLAINTS

1.3.1 According to the mandate of the European Ombudsman

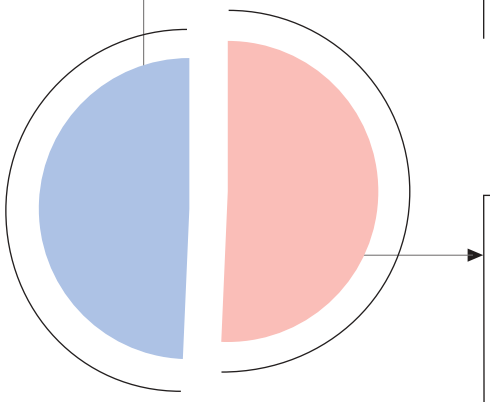


[1] Of which 3 own initiatives of the European Ombudman and 130 inquiries.

1.3.2 Reasons for being outside the mandate

- not an authorised complainant	47
- not against a Community institution or body	1480
- does not concern maladministration	130
- Court of Justice and Court of First Instance in their judicial role	6

1.3.3 Analysis of complaints within the mandate



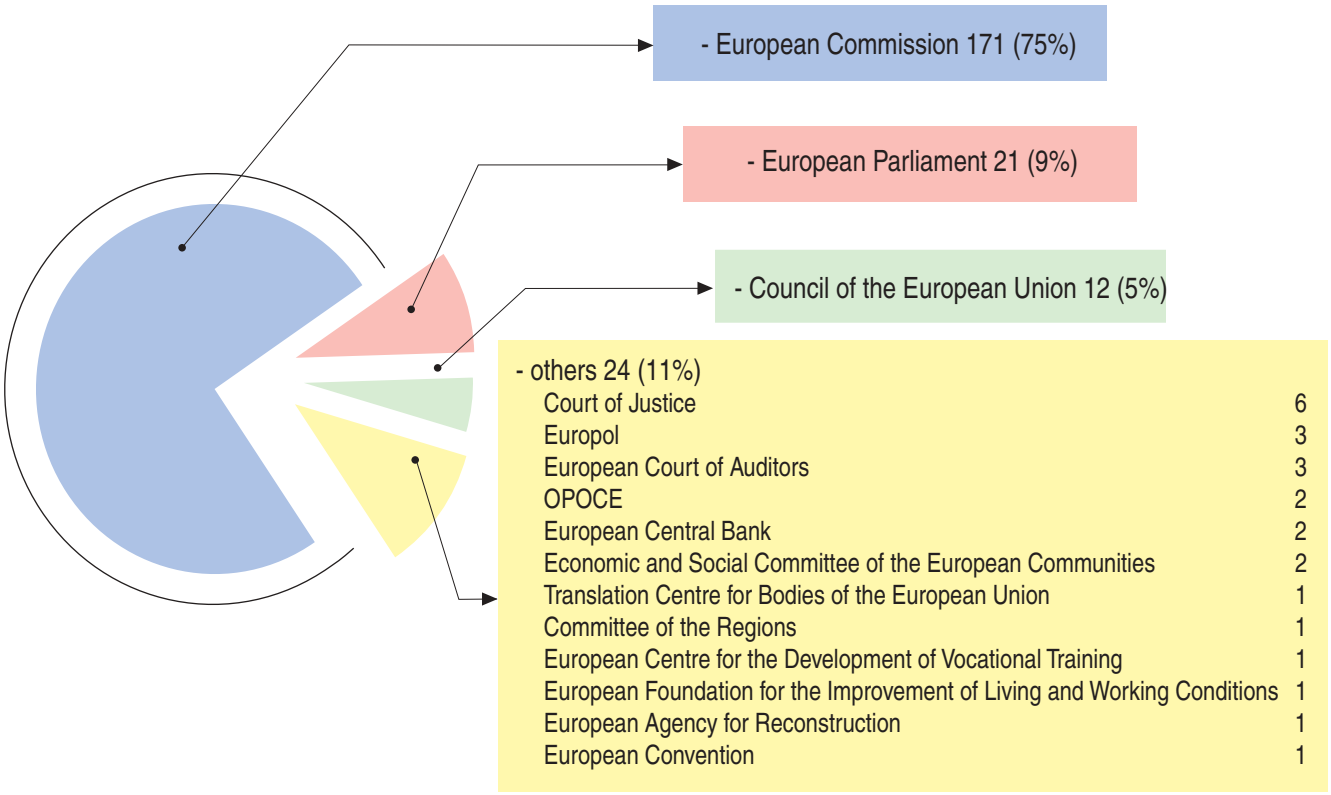
Admissible complaints	331
- inquiries initiated	222
- no grounds for inquiry	73
dealt with or considered by Committee on Petitions:	11
others:	62
- no sufficient grounds for inquiry	36
aims too general in nature:	8
not enough supporting evidence supplied:	28

Inadmissible complaints	322
Inadmissible because	
- author/object not identified	87
- time limit exceeded	10
- prior administrative approaches not made	190
- internal remedies not exhausted in staff cases	28
- alleged facts are or have been the subject of legal proceedings	7

2 INQUIRIES INITIATED IN 2002 224

(222 admissible complaints and 2 own initiatives of the Ombudsman)

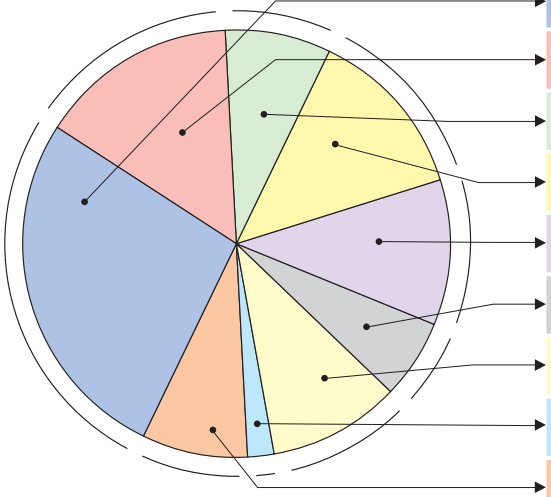
2.1 INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES[2]



- others 24 (11%)

Court of Justice	6
Europol	3
European Court of Auditors	3
OPOCE	2
European Central Bank	2
Economic and Social Committee of the European Communities	2
Translation Centre for Bodies of the European Union	1
Committee of the Regions	1
European Centre for the Development of Vocational Training	1
European Foundation for the Improvement of Living and Working Conditions	1
European Agency for Reconstruction	1
European Convention	1

2.2 TYPE OF MALADMINISTRATION ALLEGED

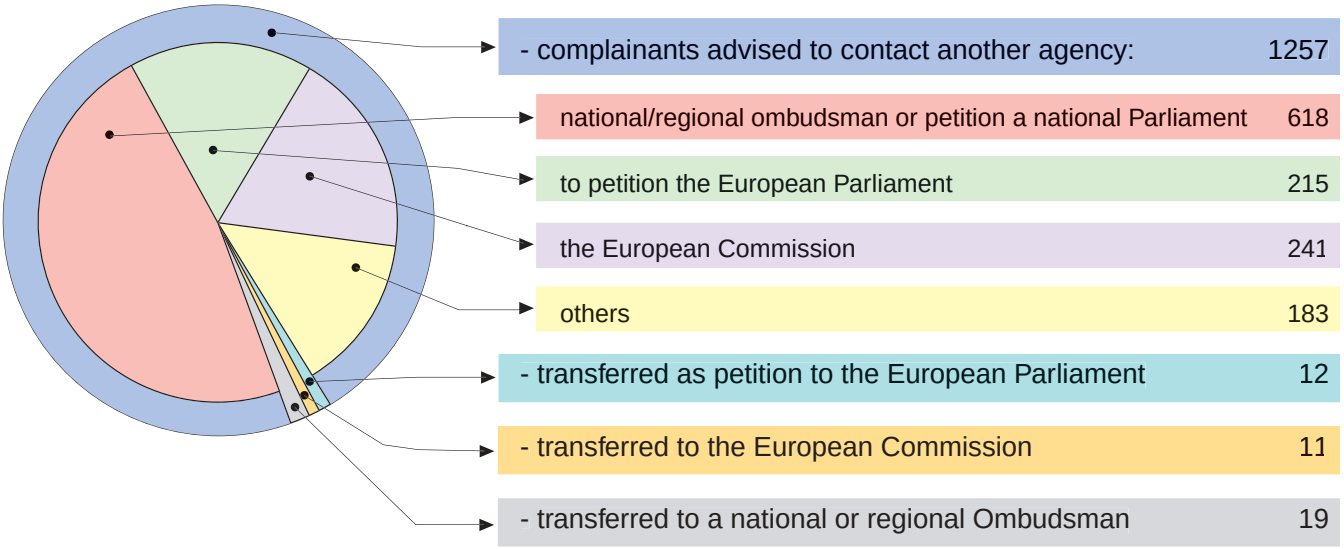


- lack or refusal of information, transparency	92	(27%)
- avoidable delay	53	(15%)
- discrimination	26	(8%)
- unfairness, abuse of power	45	(13%)
- procedural errors, infringements of rights of defence	40	(11%)
- legal error	21	(6%)
- negligence	37	(10%)
- failure to ensure fulfilment of obligations (Art. 226)	6	(2%)
- other maladministration	26	(8%)

[2] Some cases concern 2 or more institutions or bodies.

3 DECISIONS CLOSING THE FILE ON A COMPLAINT OR CONCLUDING AN INQUIRY 2342

3.1 COMPLAINTS OUTSIDE THE MANDATE 1663

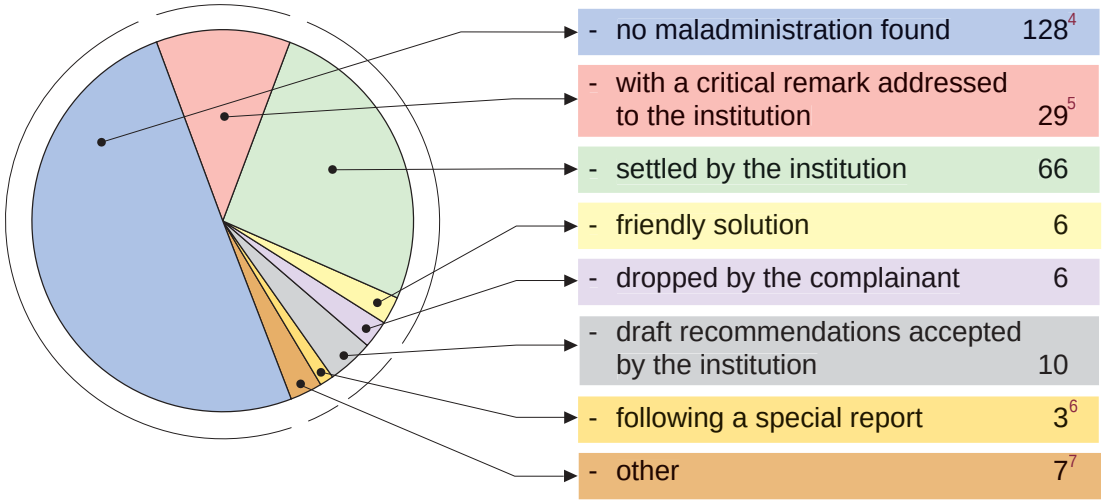


3.2 COMPLAINTS WITHIN THE MANDATE, BUT INADMISSIBLE 322

3.3 COMPLAINTS WITHIN THE MANDATE AND ADMISSIBLE, BUT NO GROUNDS FOR INQUIRY 109

3.4 INQUIRIES CLOSED WITH REASONED DECISION 248[3]

(An inquiry can be closed for 1 or more of the following reasons)



3 Of which 5 own initiatives of the Ombudsman.

4 Of which 3 own initiatives of the Ombudsman and 1 draft recommendations.

5 Of which 2 draft recommendations.

6 Of which 1 own initiative of the Ombudsman.

7 Of which 1 own initiative of the Ombudsman.

4 DRAFT RECOMMENDATIONS MADE IN 2002 AND SPECIAL REPORTS TO THE EUROPEAN PARLIAMENT

- inquiries resulting in finding of maladministration with draft recommendations	10
- presentation of a special report to the European Parliament	2

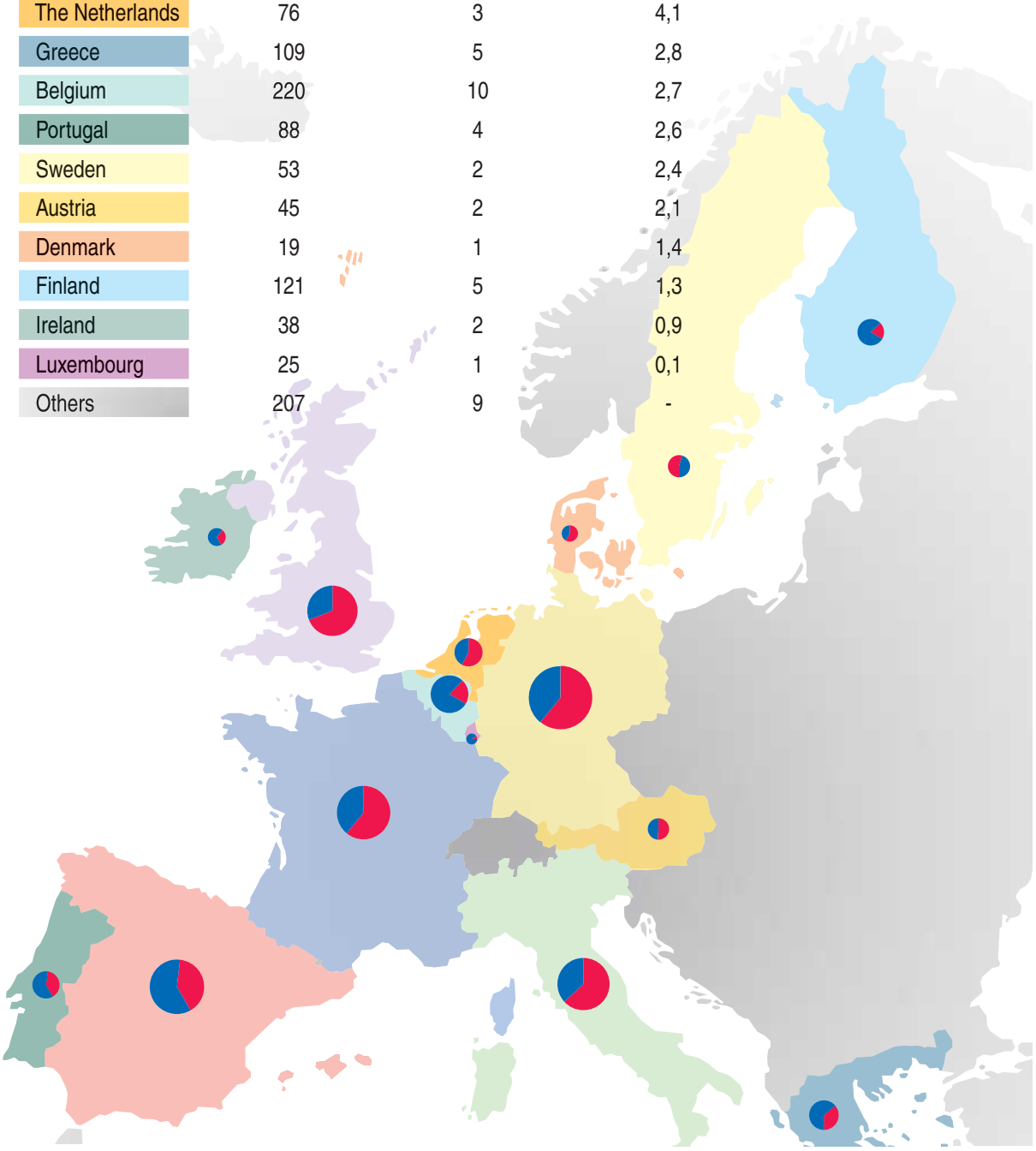
5 ORIGIN OF COMPLAINTS REGISTERED IN 2002

5.1 SOURCE OF COMPLAINTS

- sent directly to the European Ombudsman			2198
by:	individual citizens	2041	
	companies	70	
	associations	87	
- transmitted by a Member of the European Parliament			7
- transmitted by a national or regional ombudsman			6

5.2 GEOGRAPHICAL ORIGIN OF THE COMPLAINTS

Country	Number of Complaints	% of Complaints	% of the EU Population
Germany	308	14	21,9
United Kingdom	144	7	15,7
France	213	10	15,6
Italy	191	9	15,4
Spain	354	16	10,6
The Netherlands	76	3	4,1
Greece	109	5	2,8
Belgium	220	10	2,7
Portugal	88	4	2,6
Sweden	53	2	2,4
Austria	45	2	2,1
Denmark	19	1	1,4
Finland	121	5	1,3
Ireland	38	2	0,9
Luxembourg	25	1	0,1
Others	207	9	-



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[8], 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 Ombudsman 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 control and accounting;
- preparation and 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 2002 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.

8 Council Regulation 2673/1999 of 13 December 1999 OJ L 326/1.

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.

The 2002 Budget

The establishment plan of the Ombudsman showed in 2002 a total of 27 posts .

The total amount of initial appropriations available in the Ombudsman's 2002 budget was 3.912.326 €. Title 1 (Expenditure relating to persons working with the Institution) amounted to 3.197.181 €. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounted to 712.145 €. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounted to 3.000 €.

An amount of 50.000 € was later made available from the Ombudsman's budget in the interinstitutional operation of an amending budget adopted in order to anticipate expenses related to the future enlargement of the Union.

The following table indicates expenditure in 2002 in terms of committed appropriations.

Title 1	€	3.100.895,25
Title 2	€	633.266,66
Title 3	€	1.584,87
Total	€	3.735.746,78

Revenue consists primarily of deductions from the remuneration of the Ombudsman and his staff. In terms of payments received, total revenue in 2002 was 395.678,43 €.

The 2003 Budget

The 2003 budget, prepared during 2002, provides for an establishment plan of 31, representing an increase of 4 from the establishment plan for 2002.

Total appropriations for 2003 are 4.438.653 €. Title 1 (Expenditure relating to persons working with the Institution) amounts to 3.719.727 €. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounts to 715.926 €. Title 3 (Expenditure resulting from special functions carried out by the Institution) amounts to 3.000 €.

The 2003 budget provides for total revenue of 434.832 €.

C PERSONNEL

EUROPEAN OMBUDSMAN

JACOB SÖDERMAN

SECRETARIAT OF THE EUROPEAN OMBUDSMAN

STRASBOURG

LEGAL DEPARTMENT

José MARTÍNEZ ARAGÓN
Principal Legal Advisor
Tel. +33 3 88 17 2401

Gerhard GRILL
Principal Legal Advisor
Tel. +33 3 88 17 2423

Ida PALUMBO
Legal Officer
Tel. +33 3 88 17 2385

Alessandro DEL BON
Legal Officer
Tel. +33 3 88 17 2382

Maria ENGLESON
Legal Officer
Tel. +33 3 88 17 2402

Peter BONNOR
Legal Officer
Tel. +33 3 88 17 2399

Sigyn MONKE
Legal Officer
Tel. +33 3 88 17 2429

Marjorie FUCHS
Auxiliary agent (from 01.02.2002 to 11.10.2002)
Tel. +33 3 88 17 4078

Murielle RICHARDSON
Assistant to the Head of the Legal Department
Tel. +33 3 88 17 2388

Berni FERRER JEFFREY
Trainee (until 30.06.2002)

David MILNER
Trainee (from 01.02.2002 to 07.04.2002)

Jacqueline JUVENAL
Trainee (from 01.06.2002)

ADMINISTRATION AND FINANCE DEPARTMENT

João SANT'ANNA
Head of the Administration and Finance Department
Tel. +33 3 88 17 5346

Ben HAGARD
Internet Communications Officer
Tel. +33 3 88 17 2424

Rosita AGNEW
Press Officer
Tel. +33 3 88 17 2408

Nathalie CHRISTMANN
Administrative Assistant (until 31.07.2002)

Alexandros KAMANIS
Finance Officer
Tel. +33 3 88 17 2403

Juan Manuel MALLEA
Assistant to the Ombudsman
Tel. +33 3 88 17 2301

Véronique VANDAELE
Finance Assistant (from 16.07.2002)
Tel. +33 3 88 17 2542

Isabelle FOUCAUD-BOUR
Secretary
Tel. +33 3 88 17 2391

Isabelle LECESTRE
Secretary
Tel. +33 3 88 17 2393

Félicia VOLTZENLOGEL
Secretary
Tel. +33 3 88 17 4080

Isgouhi KRIKORIAN
Secretary
Tel. +33 3 88 17 2540

Evelyne BOUTTEFROY
Secretary
(Temporary agent from 01.01.02 to 31.05.2002)
(Official from 01.06.2002)
Tel. +33 3 88 17 2413

Rachel DOELL
Secretary
(Auxiliary agent until 31.05.2002)
(Temporary agent from 01.06.2002)
Tel. +33 3 88 17 2398

Séverine BEYER
Secretary
(Auxiliary agent from 18.02.2002 to 31.05.2002)
(Temporary agent from 01.06.2002)
Tel. +33 3 88 17 2394

Dace PICOT-STIEBRINA
Secretary (from 01.07.2002 to 31.12.2002)

Charles MEBS
Usher
Tel. +33 3 88 17 7093

The Ombudsman and his Strasbourg-based staff.

BRUSSELS

Ian HARDEN
Head of the Legal Department
Tel. +32 2 284 3849

Benita BROMS
Head of Brussels Antenna
Principal Legal Advisor
Tel. +32 2 284 2543

Olivier VERHEECKE
Principal Legal Advisor
Tel. +32 2 284 2003

Vicky KLOPPENBURG
Legal Officer
Tel. +32 2 284 2542

Maria MADRID
Assistant (until 30.09.2002)

Anna RUSCITTI
Secretary (until 04.05.2002)

Elizabeth MOORE
Secretary
auxiliary agent (from 02.05.2002)
Tel. +32 2 284 6393

Alexandros TSADIRAS
Trainee (until 30.06.2002)

Petra HAGELSTAM
Trainee (from 01.02.2002 to 30.06.2002)

Tea SEVÓN
Trainee (from 01.07.2002)
Tel. +32 2 284 2300

Fotini AVARKIOTI
Trainee (from 23.09.2002)
Tel. + 32 2 284 3897

The Ombudsman's Brussels-based staff.

D INDICES OF DECISIONS

1 BY CASE NUMBER

2 BY SUBJECT MATTER

3 BY TYPE OF MALADMINISTRATION ALLEGED

Other maladministration

HOW TO CONTACT THE EUROPEAN OMBUDSMAN

STRASBOURG

• By mail
The European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403

F - 67001 Strasbourg Cedex

STRASBOURG

• By telephone
+33 3 88 17 2313

• By fax
+33 3 88 17 9062

BRUSSELS

• By telephone
+32 2 284 2180

• By fax
+32 2 284 4914

• By e-mail
euro-ombudsman@europarl.eu.int

• Website
http://www.euro-ombudsman.eu.int

QK-AA-03-001-EN-C

Publications Office
Publications.eu.int

ISBN 92-95010-52-3