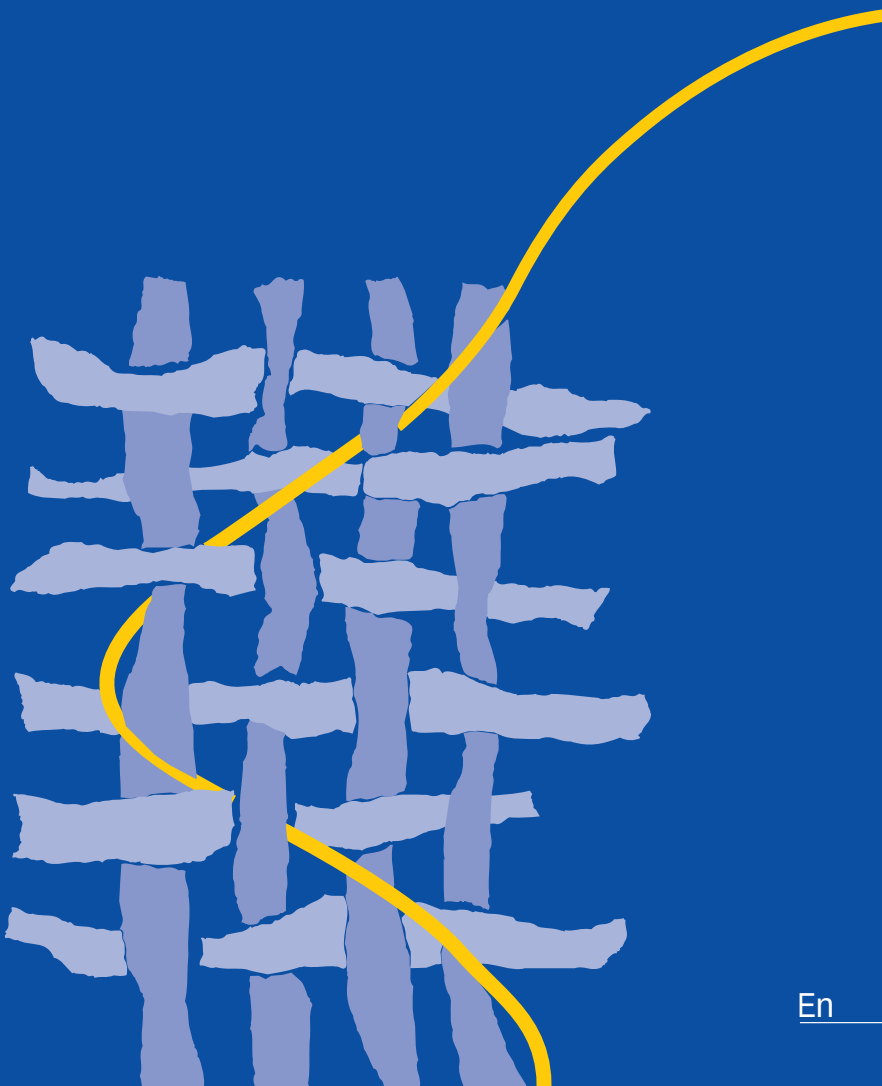
The European Ombudsman

ANNUAL REPORT FOR 1996



En

1999

EUROPEAN UNION

The European Ombudsman

ANNUAL REPORT

STRASBOURG, 21 APRIL 1997

MR JOSÉ MARÍA GIL-ROBLES GIL-DELGADO
PRESIDENT
EUROPEAN PARLIAMENT
97-113, RUE BELLIARD
B - 1047 BRUSSELS

Mr President,

In accordance with Article 138e (1) of the Treaty establishing the European Community and Article 3 (8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my report for the year 1996.

JACOB SÖDERMAN,
OMBUDSMAN OF THE EUROPEAN UNION

CONTENTS

1 Foreword by the European Ombudsman

The Annual Report for 1996 is the first to cover a full year of activity by the European Ombudsman. In the Annual Report for 1995, I carefully explained the functions and the working procedures of the Office, as well as the administrative tasks involved in establishing it. I also explained how important it is for the Ombudsman's work to be carried out in public and the kind of rules that would be followed in this respect. This Annual Report concentrates more on reporting the work of the Ombudsman's office in dealing with cases.

Dealing with complaints and initiatives

Considerable administrative work was necessary to complete the process of establishing the office, especially recruitment of new staff and building up working procedures and technical information services. At the same time, it was possible to start to deal more intensively with complaints. During 1996, the Ombudsman's office handled 1041 cases.

Of these, 842 were new complaints received in 1996. Most were sent by private citizens. Only 86 originated from companies and associations. There were 29 complaints transmitted by Members of the European Parliament and 10 petitions were transferred from the Committee on Petitions, with the consent of the petitioner, to be dealt with as complaints· Three own initiative inquiries were launched during the year.

Inquiries were initiated in 210 cases, including the three own initiatives. Inquiries were completed in 102 cases. The completed inquiries resulted in 82 findings of "no maladministration". Two complainants withdrew their complaints. In 12 cases, the matter was settled by the institution in a way satisfactory to the complainant. This was usually done by the European Commission and shows a positive attitude towards citizens and the work of the Ombudsman. Partly as a result, there were no cases in which a friendly solution was reached as a result of the Ombudsman's activity.

There were 34 findings of maladministration during the year. In relation to 32 of them, the cases concerned were closed with a critical remark to the institution or body concerned. This means that draft recommendations were not considered necessary in the circumstances of the case. One complaint and one of the own initiatives resulted in draft recommendations to the institutions or bodies in question.

The outcome of the complaints during 1996 reflects the fact that the European Ombudsman's office was still in its initial period. As a result of the procedures established in the Statute of the Ombudsman and explained in last year's Annual Report, nearly six months have to be allowed for formal hearings, gathering of information and translation. The first full year's report therefore reflects results achieved primarily in the second half of the year. This was when it first really became possible to solve cases. Clearly the outcome of the complaints will be much more favourable to the complainants in the future.

Opportunities to look for friendly solutions with Community institutions involved in complaints and to follow the work of the European Parliament and its Committee on Petitions will be much greater in 1997. This is because the Parliament, in dealing with the Ombudsman's budget for 1997, made it possible to open a small antenna in Brussels for these purposes.

INFORMING EUROPEAN CITIZENS

During the year, the examination of admissibility was completed in 921 cases. In 323 of these (35%), the complaint came within the mandate of the European Ombudsman. In 598 cases (65%) the complaint was outside the mandate.

All Ombudsmen receive complaints that are outside their mandate. In the case of the European Ombudsman, the number of such complaints appears to be slowly declining, although it remains relatively high.

I have tackled this problem by informing the European citizens more clearly about the existence and mandate of the European Ombudsman. I have also visited the Member States for this purpose. These efforts are presented in the Annual Report.

As well as regular provision of information to the media, there has been close cooperation with the European Parliament's information offices, the European Commission's representations and the offices of National Ombudsmen and similar bodies in the Member States. This cooperation has aimed to distribute accurate information and target it to citizens, companies and associations that really need to know of the possibility to complain about instances of maladministration in the activities of Community institutions and bodies. This information campaign will continue during 1997, concentrating particularly on the regional Ombudsmen and similar bodies, which have a great significance in many Member States.

Furthermore, in 243 of the inadmissible cases the complainants were advised to address a competent body. Most frequently, this was a national Ombudsman or similar body (130 cases). In 47 cases, either the complainant was advised to petition

the Parliament or the complaint was directly transferred, with the consent of the complainant, to be treated as a petition.

Many of the inadmissible complaints raised issues of Community law. I have therefore initiated a flexible cooperation, that may develop into an active network in the future, with bodies at the European and national level that deal with complaints related to Community law. A seminar was arranged in Strasbourg on 12 and 13 September 1996. The European Parliament, the Council and the Commission took part, as well as the national Ombudsmen and similar bodies (usually committees on petitions). A special invitation was sent to the Committee on Petitions of the European Parliament, which was represented at the meeting.

It was generally agreed at the meeting that the cooperation among the bodies involved should be established on an informal and flexible basis and on equal terms. The cooperation would consist of exchanging information, views and advice on Community law matters with the purpose of dealing with citizens' requests and complaints in a more effective way.

It was also decided to set up a network of liaison officers and this was completed in 1996. For the following year, the creation of a liaison officers' newsletter and the organisation of a seminar primarily for the liaison officers to deepen their knowledge of Community law matters have been planned. This cooperation could be of great importance in the task of making Community law a living reality at all levels of the European Union.

I would like to thank all the Community institutions and bodies for the constructive and helpful attitude they have shown during the year in their dealings with the European Ombudsman's office. I would also like to thank the national Ombudsmen and national committees on petitions for the spirit of cooperation they have shown in our common activities. Finally, I would like to express my gratitude to the Members and officials of the European Parliament for the guidance and assistance I have been given in the establishment of this new institution.

The cooperative and positive atmosphere in which I have been working during the year shows, in my view, that there is a genuine commitment among the parties involved towards a more human and social Europe for its citizens.

JACOB SÖDERMAN

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. 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.

If the complainant so requests, his or her complaint is treated confidentially. As noted in the Ombudsman's annual report for 1995 and the report of the Committee on Petitions concerning the Ombudsman's report, 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 and transparent a way as possible, both so that European citizens can follow and understand his work and to set a good example to others.

During 1996, the Ombudsman dealt with 1041 cases. 842 of these were new complaints received in 1996. 717 of these were sent directly by individual citizens, 46 came from associations and 40 from companies. 29 complaints were transmitted by Members of the European Parliament and 10 petitions to the European Parliament were transferred to the Ombudsman by the Parliament's Committee on Petitions to be dealt with as complaints. 196 cases were brought forward from the year 1995. The Ombudsman also began three own-initiative inquiries. (See Annex A, Statistics, p. 103)

2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is carried out in accordance with Article 138e of the Treaty establishing the European Community and the Statute of the Ombudsman[1]. Article 14 of the Statute provides for the Ombudsman to adopt implementing provisions. In view of the limited experience available in the operation of the European

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

Ombudsman's office, implementing provisions were adopted during 1996 on an indicative and provisional basis.

The provisions, adopted on 4 September 1996, 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.

The Ombudsman informed the European Parliament's Committee on Petitions and Committee on the Rules of Procedure of his adoption of implementing provisions on an indicative and provisional basis. He will adopt formal and durable implementing provisions during the course of 1997.

As noted in the Ombudsman's Annual Report for 1995 and in the corresponding Report of the Committee on Petitions, there is an agreement between the Committee and the Ombudsman concerning the mutual transfer of complaints and petitions in appropriate cases. During 1996, 10 petitions were transferred to the Ombudsman, with the consent of the petitioner, to be dealt with as complaints. Five complaints were transferred to the Committee on Petitions, with the consent of the complainant, to be dealt with as petitions. Additionally, there were 42 cases in which the Ombudsman advised a complainant to petition the European Parliament.

In view of the agreement and its satisfactory operation in practice, the Ombudsman has not considered it necessary to draw up a proposal as foreseen by Rule 161 §1 of the Rules of Procedure of the European Parliament. If it is felt, however, that there is a need for the Parliament to adopt provisions for its own procedures in relation to Article 3 §7 and §8 of the Statute of the Ombudsman, the Ombudsman is willing to consider making a proposal for this purpose.

2.2 HOW COMPLAINTS ARE DEALT WITH

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.

2.2.1 THE MANDATE OF THE EUROPEAN OMBUDSMAN

The mandate of the Ombudsman, established by Article 138e of the EC Treaty, empowers him to receive complaints from any citizen of the Union or any natural or legal person residing or having his 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) it 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.

Who is entitled to complain?

A citizen of Colombia complained to the Ombudsman against the German authorities, whom he alleged were infringing his human rights by keeping him in prison rather than expelling him to Colombia. The Ombudsman considered that the complainant was a person authorized by the Treaty to make a complaint because he was physically present in the territory of the Union. However, the complaint was outside the mandate because it was not against a Community institution or body. The Ombudsman did not, therefore, open an inquiry into the complaint.

(Complaint 972/24.10.96/FMO/DE/DT)

Examples of complaints that did not concern possible maladministration

A Member of the European Parliament complained to the Ombudsman alleging poor administration by the Committee on Petitions. He claimed that there were considerable delays by the Committee in the treatment of the petitions, discrimination against Dutch speaking citizens and scheduling of the meetings of the Committee to clash with meetings of other committees of the Parliament.

In his decision, the Ombudsman recalled that the right of every citizen of the Union to address a petition to the European Parliament has its legal basis in Articles 8d and 138d of the Treaty and has therefore a "constitutional" value. As a consequence, the method of treatment of petitions is of utmost importance. Grave and persistent difficulties in dealing with petitions could infringe citizens' rights to have them examined in a reasonably efficient manner. It is the responsibility of the European Parliament itself, however, to organize its services in a way that enables it to carry out its institutional functions. The allegations raised political issues rather than a question of maladministration that could fall within the mandate of the Ombudsman. The Ombudsman did not, therefore, open an inquiry on the matter.

(Complaint 420/9.2.96/PL/MP/B)

In another case, a Spanish complainant criticized a decision allegedly made by the European Commission, to prohibit Mrs Ritt BJERREGAARD, the Commissioner with responsibility for the environment, from publishing a book in the form of a diary about her experiences during her first six months at the Commission.

According to a press release issued by Mrs BJERREGAARD, the withdrawal of the book from publication was the result of her personal decision. There was therefore no administrative act that could be the subject of complaint to the Ombudsman. The Ombudsman could not, therefore, investigate the case.

(Complaint 266/29.11.95/MJA/ES)

2.2.2 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 in 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 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)

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

4) 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)

5) the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Art. 1.3).

An example of inadmissibility

An Austrian complained to the Ombudsman that a competition organized by the European Commission for administrators of Austrian nationality had not been properly conducted. He alleged, amongst other things, that the written examinations had not been assessed by members of the selection board but by external assessors coming from the Austrian Foreign Ministry and that the anonymity of the applicants had not been respected.

The complainant had already brought his case before the Court of First Instance. Since the legal proceedings involved the same parties and the same facts as the

complaint to the Ombudsman, Article 1 §3 of the Statute applied and the Ombudsman could not deal with the allegations.
(Complaint 216/8.11.95/MH/A)

2.2.3 GROUNDS FOR INQUIRIES

The Ombudsman can deal with complaints that are within his mandate and which meet the criteria of admissibility. Article 138e 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 technically admissible. Where 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.

An example of a complaint that provided no grounds for an inquiry

A complaint was made to the European Ombudsman concerning the co-operative development Unit of FAS, funded by the European Social Fund. The complainant alleged that an application for a grant from FAS had not received fair consideration. However, the complainant did not provide any evidence to support the allegation. The Ombudsman therefore decided that there were not sufficient grounds to open an inquiry.
(Complaint 582/12.5.96/MG/IRL)

2.3 ANALYSIS OF THE COMPLAINTS

Of the 842 new complaints registered in 1996, 17% originated from the UK, 14% from Germany, 11% from Spain, 11% from France and 10% from Italy. A full analysis of the geographical origin of complaints is provided in Annex A, Statistics, p. 103.

During 1996, 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 921 cases. 35% of the complaints'examined appeared to be within the mandate of the Ombudsman. Of these, 254 met the criteria of admissibility, but 47 did not appear to provide grounds for an inquiry. Inquiries were therefore begun in 207 cases.

Most of the complaints that led to an inquiry were against the European Commission (81%). As noted in the Annual Report for 1995, the Commission is the

main Community organ that makes decisions having a direct impact on citizens. It is normal, therefore, that it should be the principal object of citizens' complaints. There were 19 complaints against the European Parliament and four complaints against the Council of the European Union.

The main types of maladministration alleged were 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 (83 cases), unsatisfactory procedures or failure to respect rights of defence (30 cases), lack of transparency (30 cases), unfairness or abuse of power (16 cases), malfunction or incompetence (18 cases), avoidable delay and discrimination (both 15 cases).

2.4 ADVICE TO CONTACT OTHER AGENCIES

If a complaint is outside the mandate or inadmissible, the Ombudsman tries to advise the complainant to go to another agency which could deal with the complaint. During 1996 such advice was given in 243 cases, most of which involved a Community law issue. In 130 cases the complainant was advised to take the complaint to a national or regional Ombudsmen or similar body. 42 complainants were advised to petition the European Parliament and, additionally, five complaints were transferred to the Committee on Petitions, with the consent of the complainant, to be dealt with as petitions. In 43 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.

2.5 DECISIONS FOLLOWING AN INQUIRY BY THE OMBUDSMAN

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 a first opinion. When the first 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 first 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 malad-

ministration, 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, 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 a formal finding of maladministration with 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.

In 1996 the Ombudsman began 210 inquiries, 207 in relation to complaints and three own-initiatives.

Twelve cases were settled by the institution or body itself. Two further cases were dropped by the complainant. In 82 cases, the Ombudsman's inquiries revealed no instance of maladministration.

A critical remark was addressed to the institution in 32 cases. Recommendations to the institutions and bodies concerned were made in two cases, for both of which the three-month time-limit for a detailed opinion from the institution or body concerned expires in 1997.(See Annex A, Statistics, p. 103)

3 DECISIONS FOLLOWING AN INQUIRY

3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND

3.1.1 THE EUROPEAN PARLIAMENT

TERMINATION OF A CONTRACT

Decision on complaint 11/3.1.95/DK/UK-EF-en against the European Parliament

THE COMPLAINT

Mrs K. addressed a letter to the European Ombudsman on 5 December 1994 to complain that the European Parliament in Luxembourg had terminated her contract without notice because she had refused to sign inaccurate minutes of a meeting.

THE INQUIRY

Once the first European Ombudsman had been elected, inquiries began. On 22 February 1996, the Ombudsman received comments on the complaint from the European Parliament. These were copied to the complainant on 8 March 1996 and she replied with observations on 12 March.

THE DECISION

1) Findings on matters of law and possible scope of maladministration

1.1 The European Ombudsman did not accept the claim that there was a contract of employment between the complainant and the European Parliament. It is uncontested that the complainant had a contract with a company called T.C.S. Ltd., which in turn had a contract with the European Parliament. This contract appears to have been the legal basis of the work relationship between the complainant and the European Parliament.

1.2 The absence of a contract of employment is not decisive of the question of maladministration. The treatment received by an individual working in the Parliament in the circumstances of the complainant could amount to maladministration.

2) Findings of fact

2.1 It was clear from the complaint and supporting documents, and from the inqui-

ries that were conducted, that the working relationship between the complainant and the person who was the principal subject of her complaint, Mr B., had deteriorated before the events that eventually gave rise to the complaint. There was no evidence that this deterioration of the working relationship was the result of, or was accompanied by, maladministration.

2.2 The facts of the incident relating to the minutes were contested. There was no doubt about when and where various meetings took place and who was present, but there were differences of fact and interpretation between the various accounts, concerning what took place at those meetings and its significance. The Ombudsman found no evidence to suggest that this incident was caused by, or was in itself, an act of maladministration. It seemed unlikely that further inquiries could allow the Ombudsman to resolve the disputed issues in favour of the complainant.

In view of the above findings on matters of law and fact, the Ombudsman decided that no further inquiries were justified and closed the case.

3.1.2 The European Commission

NUCLEAR TESTS IN FRENCH POLYNESIA

Decision on complaints 34/21.7.95/PMK/EN, 148/28.9.95/BL/ES-DE, 215/07.11.95/FJRC/ES, 242/20.11.95/DS/UK-EN, 243/20.11.95/JF/UK-EN, 244/20.11.95/RSS/UK-EN, 246/22.11.95/JML/UK-EN, 247/22.11.95/HW/UK-EN, 248/22.11.95/DT/UK-EN, 250/22.11.95/GMA/UK-EN, 251/22.11.95/MG/UK-EN, 285/14.12.HNDG/PO-PO, 294/3.1.96/AB/UK-EN, 296/3.1.96/PS/UK-EN, 297/3.1.96/FDN/UK-EN, 299/12.1.96/APW/UK-EN, 301/13.12.95/PB/UK-EN, 323/4.1.96/JM/UK-EN, 326/8.1.96/WMC/UK-EN, 329/8.1.96/CG/UK-EN, 341/8.1.96/JB/UK-EN, 342/8.1.96/RN/UK-EN, 343/8.1.96/CRJ/UK-EN, 344/8.1.96/MD/UK-EN, 345/13.12.95/PM/UK-EN, 351/11.1.96/PLT/UK-EN, 352/10.1.96/DP/UK-EN, 353/10.1.96/RW/UK-EN, 368/16.1.96/MO/UK-EN, 369/16.1.96/DH/UJ-EN, 370/16.1.96/RB/UK-EN, 375/18.1.96/LF/UK-EN, 379/26.1.96/PE/UK-EN, 380/25.1.96/AS/UK-EN, 386/22.1.96/AH/UK-EN, 399/31.1.96/J&J/UK-EN, 410/7.2.96/EHW/UK-EN, 440/20.2.96/AW/UK-EN against the European Commission

The complaints

During the autumn of 1995 and the first months of 1996, the Ombudsman received a relatively large amount of complaints related to the nuclear tests that the French government announced in June 1995 it would start in French Polynesia. The complaints in substance put forward that the Commission had been passive in this respect.

THE INQUIRY

In its first opinion on this matter the Commission drew the Ombudsman's attention to the fact that a number of individuals had brought a case before the Court of First Instance concerning the same subject-matter. It therefore gave no opinion on the merits of the complaints.

In order to be able to assess properly whether the Ombudsman under Articles 1.3 and 2.7 of the Statute should terminate his consideration of the complaints because of identity between the Court proceedings and the complaints, the Ombudsman requested the Commission to transmit to him a copy of the proceedings before the Court. The Commission did not forward the requested documentation and in the meantime, the applicants before the Court withdrew their action. Subsequently, the Commission presented comments on the merits of the complaints. The Commission stated in substance:

"All the complaints but one consider that the Commission has not correctly enforced Community law as to the nuclear testing in French Polynesia. Although most complaints do not specify which legal provisions have been breached, it may be considered that they all denounce the failure, from their point of view, of the European Commission to apply Article 34 of the Euratom Treaty to the current series of nuclear tests carried out by France.

It should firstly be made clear that, in spite of what is stated in some complaints, the opinion which the Commission is called upon to give at the request of a Member State under Article 34 of the Euratom Treaty bears not upon the advisability of carrying out a particularly dangerous experiment but upon the additional health and safety measures that the Member State concerned must take.

Although France had not made any submission under Article 34 of the Euratom Treaty concerning the new series of tests started in 1995, the Commission has, since their announcement in June 1995, sought to ensure that the provisions of the Treaty were fully respected.

With this aim it gathered information on the issue from different sources and assessed the information received as well as that already at hand. A list of the main documents is appended to this communication. The Commission would like to draw the attention to the report produced by the Institute for Transuranium Elements in Karlsruhe on 19 October 1995 on the consequences of the partial or complete release of the radioactivity in the water of the explosion cavities from the underground nuclear tests in Mururoa and Fangataufa. The report concluded that, under the assumption of a complete release of the radioactivity contained in the water of the cavities formed by the underground explosions, the annual limits of ingestion for drinking water would still be respected.

To confirm that data made available to the Commission by France on environment

radioactivity levels were reliable, a verification mission under Article 35 of the EuratomTreaty was carried out from 18 to 29 September 1995 in French Polynesia in order to verify the operation and efficiency of the facilities monitoring the level of radioactivity in the air, water and soil within the region. The verification activities outwith military establishments were generally satisfactory and gave rise to no major observations with regard to the reliable operation and the efficiency of the facilities and the adequacy of the monitoring programmes.

The Commission debated this matter on several occasions in September and October 1995 and at its meeting of 23 October 1995 it concluded that the specific conditions under which the last tests in French Polynesia were taking place led to the conclusion that these tests did not give rise to a perceptible risk of significant exposure of workers or of the population to ionising radiation and that, consequently, the provisions of Article 34 did not apply."

Annexed to the comments of the Commission there was a list of the 25 main documents on which the Commission based its conclusions.

The comments were transmitted to the complainants who mostly chose not to comment on the Commission's position.

THE DECISION

The Ombudsman found that there was no justification for the allegation that the Commission had been passive in the matter. Furthermore, he stated that he did not find on the basis of the elements put forward by the complainants that the Commission had exercised its powers wrongly or incompletely. Thus, as he had not found any instance of maladministration in the action of the Commission, the Ombudsman decided to close the cases.

METHOD OF ASSESSMENT OF LIEN PHARE-TACIS APPLICATIONS

Decision on complaint 52/27.7.95/JL/B against the European Commission

THE COMPLAINT

Mr L. wrote to the Ombudsman concerning the rejection by the European Commission of projects he had submitted for funding through the LIEN Phare-Tacis 1994 programme of assistance to states of Central and Eastern Europe and the former USSR. The letter informing him of the rejection stated that the Commission is not obliged to justify its decisions. Mr L. said that, in fact, he received brief commentaries on the rejections on a standard form information sheet. He considered that this information was insufficient to enable weaknesses in the application to be addres-

sed with a view to resubmission.

The complainant asked whether the administration possesses a standard assessment method for use in evaluating LIEN project applications and, if so why the results of the application of that method are not communicated to applicants.

THE INQUIRY

Inquiries revealed that the process of selecting projects under the LIEN Phare-Tacis 1994 programme involved three stages:

1) screening and evaluation of proposals by a team of experts provided by the European Volunteer Centre/East European Partnership (CEV/EEP), a specialized company established in Brussels;

2) consideration of the recommendations by an Advisory Group of specialists drawn from various Directorates General of the Commission;

3) final selection by the Commission, acting upon the proposals from the Advisory Group.

In 1994, 53 projects were accepted out of a total of 590 applications.

In its reply to the Ombudsman's requests for comments, the Commission said that an evaluation grid with detailed criteria and weightings is published in the documentation folder about LIEN. The reply also stated that the Advisory Group "also takes considerations such as a fair geographical spread into account".

The Commission claimed that it was impossible in practice to write a detailed individual analysis for each rejected proposal. The letter informing unsuccessful applicants therefore uses a standard format summarily stating the reasons in general and expressly inviting unsuccessful applicants to contact CEV/EEP for further explanations. According to the Commission, CEV/EEP does not transmit the evaluators' reports to the applicants, but habitually makes these accessible to the applicants concerned and discusses the findings with them. The Commission claimed that Mr L. had not availed himself of the opportunity to receive from CEV/EEP further details about the rejection of his project.

Following analysis of the Commission's comments and the complainant's observations, the Ombudsman made further inquiries of the Commission. In response, the Commission stated that the qualitative evaluation provided by the group of experts applies only to stage 1 of the selection process. The evaluation divides the proposals into two main categories: those with a score higher than 50% and those with a score below 50%. This percentage is the outcome of the weighting breakdown published in the documentation folder. According to the Commission, however, when the unsuccessful applicant meets with representatives of CEV/EEP to discuss the shortcomings of the project, the comments made during the Advisory Group mee-

ting, as well as any additional considerations by the Commission are shared, in addition to relevant points from the evaluators' reports. The objective of these meetings is to assist the applicant in finding the strengths and weaknesses of the project, so that a future application may be more successful: the further explanations thus refer to the whole selection process.

THE DECISION

1) The giving of reasons to unsuccessful applicants

1.1 In its replies to the Ombudsman, the Commission did not argue that it has no obligation to give reasons to unsuccessful applicants under the LIEN Phare-Tacis programme. On the contrary, the Commission emphasised that it seeks to

- ensure the transparency of the selection procedure; *and*
- assist applicants in finding the strengths and weaknesses of an unsuccessful project so that a future application may be more successful.

1.2 The questions at issue therefore concerned whether the reasons given were adequate to achieve these purposes. These questions had to be addressed in the context of the decision-making process to which they relate.

2) Summary reasons with further information available on request

2.1 It appeared that the Commission explained the rejection of proposals submitted under the LIEN Phare-Tacis programme by giving summary reasons in a standard form information sheet and made further information available on request.

2.2 It appeared from the Commission's replies that, for budgetary reasons, only 10% of the projects submitted were financed and that projects with a high evaluation might not be financed. The process of selecting projects therefore appeared to have characteristics of a tendering procedure for a contract.

2.3 In this context, it is appropriate to refer by analogy to the provisions of the public services directive concerning the giving of reasons to unsuccessful tenderers. Article 12 of the directive[1] does not require reasons to be given automatically, but the contracting authority must inform any eliminated candidate or tenderer who so requests of the reasons for rejection of his application or tender.

2.4 The procedure adopted for the LIEN Phare-Tacis programme of giving summary reasons on a standard form information sheet, followed by more detailed information on request did not therefore appear inappropriate.

3) The transparency of the selection procedure

3.1 According to the Commission's replies, the further information made available on request covered all three stages of the selection procedure.

[1] Council Directive 92/50/EEC OJ L 209/1

3.2 The published documentation folder about the LIEN programme contained a section headed "who takes the decision to subvention the projects and who evaluates them?" This section of the documentation folder said that "a group of experts receives, examines and evaluates applications and makes recommendations to the Commission which makes the final selection of projects." This appears to be a fair, although abbreviated, description of the process.

3.3 The immediately following section of the documentation folder was headed "what criteria are used for the evaluation of applications?" and explains the percentage weightings. According to the Commission's replies these were applied only at the first stage of the selection procedure.

3.4 Considered as a whole, the documentation folder contained useful information to assist applicants to formulate proposals and to enable them and others to understand how the Commission is putting the relevant Community policies into effect. However, the information given would have been more complete and potential confusion avoided if it had been made clear that the criteria and percentage weightings applied to the evaluation by experts and that the Commission's decision could include additional factors. The transparency of the procedure would also have been improved if the Commission had specified the additional factors it would take into account.

CONCLUSION

The Ombudsman's inquiries into this complaint did not reveal any instance of maladministration by the Commission. The transparency of the selection procedure could be improved by making clear that the Commission's decision may include factors other than the criteria and percentage weightings. It would be further improved if the Commission were to specify what those factors are. The Ombudsman closed the case.

ACCESS TO INFORMATION HELD BY THE COMMISSION

Decision on complaints 69/16.08.95/WDR/PD/D-de and 70/16.08.95/SF/PD-D-de against the European Commission

THE COMPLAINTS

Mr M. and Mr W., German nationals, lodged complaints about a Commission official. They put forward that the official, whom they had approached in order to get a statement on a topic on which they were making a TV-report, had refused to give information and had not answered subsequent faxes.

As the two complaints concerned the same facts and they were lodged together, the Ombudsman decided to treat them jointly.

THE INQUIRY

In its comments on the complaints, the Commission stated that the official concerned had not been in a position to give an interview to journalists, as Commission policy "is to channel all contacts with journalists through the Spokesman's Service. It is, thus, the responsibility of this service to give interviews to journalists or, if appropriate, to decide that a competent official from another service should give such an interview. It would appear in this case that there may have been a misunderstanding in this respect and the Commission will take the necessary steps to avoid such misunderstandings in the future." The Commission further stated that the public may have access to Commission documents in accordance with the Commission Decision of 8 February 1994 on public access to Commission documents.

THE DECISION

As it appeared from the Commission's comments that it recognized that there had been a misunderstanding in this case and that it had taken measures in order to avoid such misunderstandings in the future, the Ombudsman considered that there were no grounds to proceed further with the complaints. Thus, he closed the case.

RIGHTS OF PERSONS ON RESERVE LIST

Decision on complaint 71/16.08.95/JD/B against the European Commission

THE COMPLAINT

On 1 August 1995, Mr D. lodged a complaint with the European Ombudsman, concerning the reserve list of competition COM/A/730 in which he had participated successfully in 1991. He complained that the reserve list of competition COM/A/730 had not been extended beyond 31 December 1994, that the Commission had hired national experts while the reserve list was still full and that he had received no reply to his letter when he had brought this matter to the attention of the Commission.

THE INQUIRY

On 13 December 1995, the Ombudsman forwarded the complaint to the European Commission asking the Commission to comment on it. The Commission gave its first

opinion on 27 March 1996. It was forwarded to the complainant on 30 April 1996.

According to the Commission, the decision not to extend the reserve list beyond 31 December 1994 was based on the number of recruitments from the list (only 2 candidates had remained) and the type of profile which was considered necessary in the future.

Concerning the secondment of national experts, the Commission found that this serves a specific purpose. It is not solely to allow the Commission to take advantage of the expertise and knowledge of such national civil servants but also to reach a better mutual understanding between the European and national administrations. Therefore it is completely understandable that national experts are not chosen from the successful candidates in a competition. Finally, the Commission apologized for the failure to reply to the letter of 30 January 1995, and stated that it will make sure that such mistakes in comparable cases are not made in the future.

The complainant gave his observations on the findings of the Commission on 13 September 1996. He considered that when assessing the policy of the Commission with regard to the secondment of national experts, it should be taken into consideration that the national expert in question had been recruited as temporary staff following this contract as a national expert.

THE DECISION

The rules regarding the secondment of national experts have been laid down - by the Commission - in a Decision of 26 July 1988. The procedure for the secondment of national experts is of another nature than the procedure for the filling of posts reserved for the successful candidates of a competition. The same is applicable to the temporary staff posts. The policy of the Commission not to give preference to candidates on the reserve list when seeking to fill such posts does therefore not appear questionable.

Article 5 of Annex III of the Staff Regulations, contains the obligation to include more candidates on the reserve list than the number of recruitments expected. The Commission can thus be understood in its reasoning that a successful candidate of a competition does not have the right to be recruited.

The Commission has the right to extend the validity of a specific reserve list. When the profile of the posts expected to be available in the future is different from the profile for which the competition was held, a renewal of the validity of the list can seem unjustified. In the case of the reserve list for competition COM/A/730, the Commission's service particularly concerned by the reserve list had been consulted before the decision on the extension of the validity of the list was taken.

From this point of view, the decision not to extend the validity of the reserve list for competition COM/A/730 beyond 31 December 1994, even though it still contained two successful candidates, does not seem to go contrary to the general principles of good administrative behaviour.

In view of these findings and taking into account that the Commission had apologized for the failure to reply to the letter of 30 January 1995, the Ombudsman reached the conclusion that there was no instance of maladministration and closed the case.

ACCESS TO INFORMATION ON COMMISSION PROGRAMMES

Decision on complaint 104/1.9.95/IDS/B/PD against the European Commission

Mr B., of French nationality, lodged a complaint with the European Ombudsman against the European Commission. He stated that for almost one year he had been trying to obtain a list by country of the institutions and associations which had received support from the European Social Fund under the training programmes for the disabled between 1981 and 1994.

In its comments on the complaint the Commission said that for the period 1989-1994 the information requested by the complainant was not directly available at the Commission and that meeting his request would be an expensive operation, involving searches by the Member States. As regards the earlier period, the Commission said it did have details which could serve as a basis for a search which might provide the information requested; it was prepared to carry out the search if the complainant confirmed his interest in that period.

The Ombudsman considered that the reasons given by the Commission regarding the period 1989-1994 were justified and noted the demonstration of its good will as regards the earlier period. On this basis he decided further inquiries were unnecessary and closed the case.

ACCESS TO A COMMISSION DOCUMENT

Decision on complaint 180/13.10.95/JPB/PD/B-dk against the European Commission

THE COMPLAINT

Mr B., a Danish national, lodged a complaint about a Commission refusal to allow him access to documents. It appeared that in May 1995 he had asked to see a report on the promotion of growth which the Commission had drawn up. In September 1995, he was informed that the Commission refused his request on the

grounds that it did not want to make the report public shortly before a conference on the subject it had scheduled for November 1995. On 11 September 1995, the complainant asked the Commission to reverse on its decision. As he did not receive any reply from the Commission, he lodged a complaint alleging that the Commission's attitude conflicted with the rules on access to documents laid down in its decision of 8 February 1994 on public access to Commission documents. This decision lays down the grounds for refusing access and a procedure for processing applications for access. The complainant alleged that the non-compliance with the deadline for processing such requests, provided for in the decision, should automatically entail the disclosure of the document.

THE INQUIRY

In its first comments on the complaint, the Commission stated that it considered the complaint to be unfounded since it had, in the meantime, sent the report to the complainant. However, the complainant maintained his complaint.

In its second comments, the Commission acknowledged that it had not adhered to the deadlines for processing applications laid down in its decision of 8 February 1994 and stated that in the future it would make every effort to meet the deadlines. As regards the reason given for the original refusal of the application, the Commission acknowledged that it was invalid in pursuance of the decision.

THE DECISION

The Ombudsman remarked that Article 1 of the Commission decision of 8 February 1994 on public access to Commission documents lays down that the joint Commission and Council code of conduct of 31 December 1993 on public access to documents is applicable to the Commission. Consequently, access to documents may be refused in order to protect the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations), the individual and privacy, commercial and industrial secrecy, the Community's financial interests, classified information and the confidentiality of Commission proceedings.

Article 2 of the decision lays down the procedure for obtaining access to documents: the Commission must inform the applicant within one month whether the application is granted or not. Where access cannot be granted, the applicant must be informed that he has one month in which to complain about the refusal. Failure to reply to an application for access within one month constitutes refusal of access and failure to reply within one month to an application for review also constitutes refusal. Against this background, the Ombudsman concluded that there were no grounds for regarding a failure to reply as acceptance of an application for access.

As to the grounds given for refusing the application for access, the Ombudsman remarked that they were not included in the list of considerations which in the Commission's decision of 8 February 1994 can justify refusing an application. He therefore regarded the refusal as unwarranted and incorrect.

However, the Ombudsman noted that the complainant had received the report he had applied for access to, as the Secretary-General of the Commission had rectified the mistake made. In view of this and the fact that the Secretary-General, when replying to the Ombudsman's requests for information, had openly acknowledged the mistake on the Commission's behalf and that the Commission would in the future make every effort to prevent any recurrence of such mistakes, the Ombudsman found no grounds for further consideration of the complaint. He therefore closed the case.

CONFIDENTIALITY OF INFORMATION ABOUT NUCLEAR MATERIALS

Decision on complaint 186/16.10.95/DL/UK/KT against the European Commission

THE COMPLAINT

In October 1995 Mr L. wrote to the European Ombudsman to complain about the answers given by the European Commission to two written parliamentary questions relating to nuclear materials.

The complainant could see no justification for the Commission to invoke the secrecy clause of Article 194 of the Euratom Treaty in its answers to the questions as a reason for not divulging information on depleted uranium stocks or on supply contracts for nuclear installations. He asked the Ombudsman to press the Commission to act in a spirit of openness and to release the information requested.

THE INQUIRY

The Ombudsman asked for the Commission's comments on the complaint.

The comments of the Commission

As to the first question, the Commission quoted Article 194 of the Euratom Treaty as a reason not to disclose information on stocks of depleted uranium at certain sites in the United Kingdom. Once a Member State had classified certain information as subject to a security system, the Commission considered itself to be bound by that classification and to be required to keep such information secret.

As to the second question relating to commercial information about a supply contract for a nuclear installation in the Community, the Commission also referred to Article 194 of the Euratom Treaty and Regulations made thereunder as the reason for not divulging such commercial information. This information had been

communicated to the Commission by the operators in accordance with Chapter VI of the Euratom Treaty at the time of negotiation, but remained the property of those operators.

The complainant's observations on the Commission's comments

According to the observations of the complainant, the Commission should reconsider its insistence on secrecy because both Article 194 of the Euratom Treaty and the Regulations made thereunder were decided upon in two completely different political contexts. The Cold War and nuclear espionage were real threats and self-evidently the situation had changed since.

THE DECISION

Since the Commission referred in both cases to Article 194, the issue of the secrecy clause was dealt with at the same time for both parliamentary questions.

Article 194 provides that:

The members of the institutions of the Community (...) who (...) are called upon to acquire (...) information (...) which are subject to a security system in accordance with provisions laid down by a Member State (...) shall be required (...) to keep them secret from any unauthorized person and from the general public.

It seems clear from the letter and the spirit of Article 194 that its provisions are binding for the institutions of the European Community, which are required to keep secret any information which is subject to a security system in accordance with provisions laid down by a Member State. In the present case, the Commission confirmed its replies to Question E-1805/95 asked by Mr Alex Smith and Question E-1518/95 asked by Mrs Ahern that the Member State concerned had classified the information requested as 'subject to a security system' and that it was therefore not at liberty to release it.

As far as Mrs Ahern's question (E-1518/95) is concerned, it follows two other questions by Mrs Breyer on a supply contract for the Garchin nuclear reactor. The Commission invoked a second argument relating to the confidentiality of commercial information. It quoted a number of provisions, all of which emphasize the protection of commercial information considering that, as the information requested was the property of two economic operators acting in their commercial capacity, the Commission was not able to divulge such commercial information. It suggested that the Honourable Member request the information directly from the operators concerned.

In its comments to the Ombudsman of 21 May 1996, the Commission explained that:

'In accordance to Chapter VI of the Euratom Treaty (...) the operators would commu-

nicate to the Agency commercial information, including the contract itself for conclusion. This information is and remains the property of those operators. The services of the Commission are not able to divulge such commercial information which is the property of the operators concerned.'

In order to determine the lawfulness of this argument, one has to examine the conditions under which the public has access to documents held by the Commission. The issue is settled by Commission Decision of 8 February 1994 on public access to Commission documents.

This decision establishes the principle of wide access of the public to Commission documents, while taking into account certain derogations relating to the protection of public interest or privacy.

It provides in the annexed Code of Conduct concerning public access to Commission and Council documents that:
'The institutions will refuse access to any document where disclosure could undermine:
- *…*
- *the protection of commercial and industrial secrecy*
- *…'*

It appears therefore that the Commission's attitude, by answering that the information requested cannot be divulged because of the protection of commercial secrecy and by advising the Honourable Members to request such information directly from the operator concerned, is in accordance with its Decision of 8 February 1994.

In view of these findings, the European Ombudsman found no instance of maladministration in the Commission's attitude in this case. He therefore decided that no further inquiries were justified and closed the case.

MEASURES TAKEN AFTER ABOLITION OF CUSTOMS OPERATIONS AT BORDERS

Decision on complaint 189/18.10.95/SP/GR/KT against the European Commission

THE COMPLAINT

In October 1995 Mr P. lodged a complaint against the European Commission with the European Ombudsman. After the abolition of borders in the European Union in January 1993, he had been obliged to close his customs clearing office and had suffered big financial losses. He considered that he should receive financial compensation. Moreover, the European Commission had not answered his letter of 5 November 1993.

THE INQUIRY

The Ombudsman asked for the Commission's comments on the complaint.

In its reply, the European Commission considered that it was not for the Community to meet the responsibilities of the Member States and of the profession concerned, owing to the principle of subsidiarity.

However, given the exceptional nature of the situation resulting from the type of activities in question, the Commission considered it justified to propose Community accompanying measures.

Under these measures, with regard to Greece, the country of origin of the complainant, an amount of over three million ECUs had been allocated to 39 projects selected by the Greek authorities after a call for tender. The deadline for submission of dossiers had been 31 March 1993 and, according to the information available to the Commission, Mr P. had not submitted a project to these authorities (Ministry of the National Economy).

The comments of the European Commission were sent to Mr P. for observations. In his reply, the complainant repeated his view that he should receive financial compensation. He also claimed that he had submitted a dossier to the Greek authorities.

THE DECISION

It appeared from the complaint, the supporting documents, and the inquiries that had been conducted that the Commission proposed Community accompanying measures to facilitate the redeployment of the undertakings concerned after the abolition of customs operations at intra-Community borders on 1 January 1993. Among them, specific measures are contained in Regulation (EEC) N 3904/92 on measures to adapt the profession of customs agent to the internal market.

As far as Greece is concerned, an amount of over three million ECUs intended to assist the undertakings most affected by the abolition of customs borders was allocated to the Greek authorities (Ministry of the National Economy). This amount was allocated by the Greek authorities to 39 projects involving 1 874 people selected following a call for projects published in the national press. The deadline for submission of dossiers was 31 March 1993, pursuant to Article 6 of the above-mentioned Regulation.

Mr P. denied that he had not submitted a project and produced a document showing that he had applied to the Ministry of the National Economy. However, this document was dated 11 March 1994, that is to say about one year after the deadline for application. He was therefore not likely to have his project approved by the Ministry of the National Economy.

As to the Commission's failure to answer his letter of November 1993, it was of course regrettable, and the Commission's attention has been drawn to the fact that such failures should not happen again.

In view of these findings, the European Ombudsman decided that no further inquiries were justified and closed the case.

OVERCROWDING AT THE BRUSSELS II EUROPEAN SCHOOL

Decision on complaint 199/23.10.95/EP/B/KT against the European Commission

THE COMPLAINT

Mr P. lodged a complaint in October 1995 regarding the problem of overcrowding at the Brussels II European School.

He drew attention to the fact that the classrooms were located in premises originally designed for another purpose, that the number of children per class was too high, that the sanitary facilities were inadequate, and that safety standards were not being met.

THE INQUIRY

The European Ombudsman notified the European Commission of the complaint.

In the comments which it forwarded to the Ombudsman, the Commission described the legal and historical background to the establishment of the European schools and outlined its own powers and duties in respect of the running of the schools.

The Commission's comments were forwarded to the complainant, who had no observations to make.

THE DECISION

The Convention defining the Statute of the European School, signed by the six founding Member States of the Community on 12 April 1957, forms the legal basis for the establishment of the European schools. The system laid down by the convention was based exclusively on intergovernmental cooperation. The European School was therefore a creation of the Member States, and the Member States alone, who were the only contracting parties to the convention and the only parties entitled to a seat on the School's Board of Governors, which had exclusive responsibility for all administrative, educational and financial matters.

Since then, without becoming a contracting party to the convention, the Community has become a member of the Board of Governors with the same rights as the

Member States, and the system of intergovernmental cooperation has been subtly altered as a result of the Community's involvement.

The Board of Governors now comprises the Community Member States and the Commission, which has one vote. Budgetary and educational decisions are taken unanimously, while administrative decisions are taken by a two-thirds majority.

The Belgian Government is responsible for providing premises for the Brussels II school, and for the upkeep of those premises.

In its capacity as a Community institution and a member of the Board of Governors, the Commission has taken various steps to encourage the Belgian authorities to resolve the problems caused by overcrowding at the Brussels II school.

Given, therefore, its limited powers with regard to the running of the European schools and the approaches it had made to those responsible for such matters (the Belgian authorities) with a view to tackling the problem of overcrowding at the Brussels II European school, the European Ombudsman decided that the Commission could not be held responsible for any act of maladministration in this case, and closed the case.

RECRUITMENT FROM A RESERVE LIST AFTER A COMPETITION

Decision on complaint 225/13.11.95/JV/B/KT against the European Commission

Mr V., who had been placed on a reserve list following a European Commission competition, complained to the European Ombudsman that he had not been contacted by the Commission with a view to his recruitment. The Commission had launched a new competition in the same domain without first exhausting the reserve list of the previous competition.

The Ombudsman wrote to ask for the Commission's comments on the complaint.

In its reply, the Commission explained that being on a reserve list did not automatically oblige the institution to recruit the candidate. Inclusion on the list merely gave rise to the possibility of recruitment in accordance with staffing requirements. Furthermore, when new staffing requirements arose, the Commission was not obliged to wait for a reserve list to be exhausted before launching a new competition.

The Commission's comments were sent to the complainant, with an invitation to submit observations if he so wished. It was indicated to the complainant that, on the basis of the complaint and the comments, the Ombudsman would have to close the case if no observations were submitted.

The complainant did not submit any observations and the Ombudsman therefore decided to close the case.

NATIONALITY AS A CONDITION FOR A GRANT

Decision on complaint 258/27.11.95/HNDC/PO/PD-en against the European Commission

THE COMPLAINT

Mrs N.d C., a Portuguese national, lodged a complaint to the European Ombudsman about the European Commission. She put forward that the Commission, Directorate General XII, had wrongly denied her a research grant.

The complainant had submitted in May 1995 an application for a grant under the Community Programme for Training and Mobility of Researchers, in answer to a Call for Proposals which had been published in the Official Journal on 17 January 1995. This Programme was adopted by the Council on 15 December 1994 and its aim was to enhance mobility of researchers. The Commission was responsible for the implementation of the Programme.

A condition for receiving a grant under the programme is that the researcher does not hold the nationality of the country where he intends to undertake the research for which the grant is given.

The complainant had both Portuguese and French nationalities and applied for a grant in order to undertake research at the "Instituto de Biologia Experimental e Tecnologica" in Portugal. The complainant stated that before applying, she addressed the Commission by letter of 17 January 1995 in order to know how the Commission would apply the nationality condition to holders of more than one nationality in a situation like hers. She did not receive any answer to this request for information. By letter of 12 July 1995, the Commission replied to her application. It informed her that she was not eligible for the grant as she held the nationality of the country of the research institution.

The complainant addressed the Commission in August and September 1995 in order to make the Commission change the decision taken. She put forward that the Commission's application of the nationality condition to plurinationals was wrong. In its answers, the Commission apologized that it had not earlier provided more precise information about the application of the nationality condition to plurinationals; it stated that the application made was in conformity with the practice developed under previous programmes and that the Commission subsequently had adopted an explicit rule addressing the situation of plurinationals which endorsed the practice developed. The Commission thus maintained its decision.

In the complaint, the complainant said that she was never properly informed about the way the Commission would apply the nationality condition to plurinationals, as the Commission had never replied to her request for information and that there was no legal basis for the Commission's application. In any case, she considered the Commission's application to be unfair.

THE INQUIRY

In its comments on the complaint, the Commission stated that it had no record in its files of any request for information previous to the lodging of the complainant's application in May 1995. The Commission recognized that it had not adopted a formal provision dealing with the problem of plurinationals until after the rejection of the complainant's application; anyhow, it stressed that this formal provision only stated what was already the practice and that it was lawful to apply the nationality condition to plurinationals to the effect that grants could not be given for research projects in any of the countries of which the plurinational holds the nationality. As to the fairness of this rule, the Commission stated that *"with regard to the possibility of access to the programme, plurinationality gives the person an additional opportunity to belong to the eligible countries. Contrarily, it limits the choice of host countries. However, it should be stressed that this limitation due to the nationality criterion does not affect only plurinational candidates. It could also be considered as 'unfair' by a candidate, possessing only one nationality, who has never lived in his country of nationality and who will nevertheless not be supported to receive training in this country."*

THE DECISION

The Ombudsman stated that principles of good administrative conduct demand that requests for information shall be replied to without undue delay. Anyhow, in the concrete case it had not been established that the Commission received the request as the complainant, according to her own statement, was no longer in possession of the postal receipt.

As to the allegation that the Commission's interpretation of the nationality condition as regards plurinationals was unlawful, the Ombudsman considered it established that at the moment the complainant's application was rejected, there was no written rule concerning the situation of plurinationals. However, the Ombudsman found that this did not imply that the Commission had to accept that plurinationals qualified under the nationality condition in the case where they held both the nationality of the research country and another nationality. The Commission had to take a stand on the question of plurinationals and the Ombudsman did not find that the stand taken infringed principles of law.

As to the allegation that the Commission's application of the nationality condition to plurinationals was unfair, the Ombudsman found that, in the present case, the allegation was unjustified. Actually, it appeared from the file that the complainant was born in Portugal, performed all her studies (1976-1987) in Portugal, that she specialized in Canada and France (1988-1994) and that she took up professional activities in Portugal thereafter.

Thus, the Ombudsman did not find an instance of maladministration in this case and therefore closed the case.

3.2 CASES DROPPED BY THE COMPLAINANT

3.2.1 The European Commission and the European Parliament

INCORRECT INFORMATION FROM THE COMMISSION AND PARLIAMENT

Decision on complaint 23/03.06.95/SL/PD/UK-en against the European Commission and the European Parliament

Mrs L., an Italian national, lodged a complaint against the European Commission and the European Parliament. She put forward that the two institutions' offices in Rome had provided incorrect information to her about Community competitions.

In their comments on the complaint, the two institutions stated in substance that the staff in the two offices did not have any recollection of the complainant's visit to the offices; that the institutions were surprised that wrongful information had been supplied to her, as the contents of the information allegedly given ran contrary to the institutions' established recruitment policy, and that information offices had been reminded of their duties in this field.

The comments were forwarded to the complainant who informed the Ombudsman that she dropped the case.

Against this background the Ombudsman closed the case.

3.3 CASES SETTLED BY THE INSTITUTION

3.3.1 THE EUROPEAN PARLIAMENT

ACCESS TO RECORDS OF ATTENDANCE OF MEPS

Decision on complaint 26/13.07.1995/MAJQCS/FR/FR against the European Parliament

THE COMPLAINT

Three journalists of French nationality submitted a complaint against the European Parliament. They stated that on 13 July 1995 they wished to consult the record of attendance of Members of the European Parliament, which is located outside the Chamber in which Parliament holds its part-sessions in Strasbourg (Members of Parliament are supposed to sign the list when they enter the Chamber), and the parliamentary ushers stopped them.

The complainants claim that the lists were in an area totally open to the public, with no physical barrier, and there was no notice banning the public from consulting the lists. They also maintained that the public had no idea within 'how many metres, decimetres or centimetres' they could approach the lists without infringing such a ban on public access to the lists.

THE INQUIRY

The European Parliament's comments concerning the complaint were forwarded to the complainants, who then gave their observations.

The Ombudsman asked Parliament for further information. In the light of these elements, two officials from the Ombudsman's Office met with a representative of the European Parliament. Following this meeting the Ombudsman put forward a proposal to Parliament.

The comments by Parliament can be summarized as follows: the records of attendance are internal documents used among other things by Parliament's administration to determine the various allowances to which Members are entitled. The public has never had access to these lists but has always had access to the definitive lists which appear in the minutes of a sitting and are available the next day. The public has also always had access to the names of Members who have taken part in a roll-call vote, very often about half an hour after the vote. Finally, Parliament pointed out that the records of attendance concerned were formerly located within the Chamber. The only reason the lists are now outside the Chamber is that following the latest accessions of Member States to the Union there is no room for them inside

the Chamber. Given these considerations, Parliament maintained the ban on access to the lists.

THE DECISION

The Ombudsman first pointed out that, in the absence of general rules adopted by the Community legislator on public access to documents of the Community institutions, it was a matter for each Community institution to lay down rules in this connection by virtue of its power of internal organization.

Secondly, the Ombudsman noted that the information provided by the lists as regards the presence of a Member in the Chamber at any given moment was very limited, since Members are free to enter and leave the Chamber as they wish without having to sign the lists again.

On these grounds the Ombudsman found that, by virtue of its power of internal organization Parliament may refuse to allow public access to these lists, and that the lists were intended above all for administrative purposes.

However, if Parliament did not wish the public to consult these lists, the Ombudsman thought it inappropriate to place them in an area open to the public where it was virtually impossible to ensure such a ban was observed. For that reason the Ombudsman finally suggested that as long as the lists were outside the Chamber, public access should not be prevented and that, by means of a note drawn up for the purpose, the parliamentary ushers might provide information about the official lists and the roll-call votes to people who were particularly interested.

In response to this suggestion, Parliament stated that the Secretary-General had been asked to put the lists back inside the Chamber and, if that was impossible, a written note about means of obtaining information about the presence of Members would be offered to persons interested.

Given Parliament's above-mentioned power of internal organization and the measures taken, the Ombudsman decided to close the case.

3.3.2 THE COUNCIL

ACCESS TO DOCUMENTS HELD BY THE COUNCIL

Decision on complaint 45/26.7.95/JPB/PD/B-dk against the Council of the European Union

THE COMPLAINT

Mr B., a Danish national, lodged a complaint against the Council. He requested that all information necessary to understand existing legislation should be made public and that, as a Member of the European Parliament, he needed to have knowledge of all legislation, including minutes. Enclosed with the complaint was a copy of a note from the Council's legal service criticizing the Council's practice as regards statements for inclusion in the minutes of Council meetings.

THE INQUIRY

In its comment on the complaint, the Council put forward three elements:

Firstly, it argued that the complaint did not come within the Ombudsman's remit. The Council's argument was that the complaint did not show that the Council's actions constituted maladministration and that the note from its legal service did not constitute proof of maladministration. The Council also stated that the complainant had referred the matter to the Ombudsman in his capacity as a Member of the European Parliament and that the complaint's desire for knowledge of all existing legislation was the expression of a political wish.

Secondly, the Council argued that the complainant had not made the necessary administrative approaches to the Council before he lodged his complaint with the European Ombudsman.

Thirdly, the Council argued that on 2 October 1995 it had adopted a *"Code of Conduct on the publication of Council minutes and statements for inclusion in the minutes when the Council acts as a legislative authority, which shows that the Council has considerably changed its practice in this area. Since the adoption of the Code of Conduct, all statements for inclusion in the minutes of Council meetings in connection with the final adoption of legal acts within the meaning of the annex to the Council's rules of procedure have been made available to the public."*

THE DECISION

As regards the Council's first argument, the Ombudsman pointed out that it is for the Ombudsman to decide whether a complaint is admissible. Community institu-

tions and bodies are naturally welcome to make their views on the subject known to the Ombudsman.

When examining the admissibility of a complaint, it cannot be required that the complainant shall provide conclusive evidence of the maladministration complained of. In this context it has to be borne in mind that the Ombudsman's task is also to improve relations between Community institutions and European citizens; the office of Ombudsman was created in support of the Union's commitment to open, democratic and responsible administration. Requiring a citizen to provide evidence of maladministration when lodging a complaint would put an unreasonable burden on him and make it more difficult for him to have access to the Ombudsman. Nor does such a requirement seem to have any legal basis. It appears from the second paragraph of Article 138e (1) of the EC Treaty that the Ombudsman conducts enquiries into 'alleged facts' ('faits allégués' in French), not proven facts. Article 3 (1) of the Statute of the Ombudsman states that the Ombudsman may conduct enquiries into 'suspected maladministration' (cas éventuel de mauvaise administration' in French).

In the complaint, it was alleged that not all existing legislation was accessible. A note was attached as an integral part of the complaint. The note was extremely critical of the Council's practice as regards statements annexed to the minutes of Council meetings. The complaint thus clearly alleged that there had been maladministration.

The complainant's status as a Member of the European Parliament had no bearing on the matter. Article 8d of the EC Treaty states that 'every' citizen of the Union may apply to the Ombudsman. There is therefore nothing to exclude Members of the European Parliament from complaining to the Ombudsman. As regards the Council's argument that the request was 'political', the Ombudsman remarked that in his view, the public accessibility of the legislation in force is a basic requirement of a democratic legal system. A complaint alleging that this was not the case should obviously be taken seriously irrespective of the political motives that according to the Council lay behind the complaint.

Therefore the Ombudsman did not consider the Council's first argument to be any reason for changing his original decision to consider the complaint.

As regards the Council's statement that before submitting the complaint the complainant did not make the 'appropriate administrative approaches' to the Council in accordance with Article 2 (4) of the Statute, the Ombudsman remarked that there seems to be a slight discrepancy between the different language versions of this provision. The Danish version quite rightly uses the term 'fornødne' and gives the impression that such administrative approaches are necessary. On the other hand, for instance the English, French, German, Spanish and Swedish versions use the terms 'appropriate', 'appropriées', 'geeigneten', 'adecuadas' and 'lämpliga' res-

pectively which seems to imply that suitable administrative approaches must be made. In view of the purpose of the provision, the correct interpretation seems to be that suitable administrative approaches must have been made. It is up to the Ombudsman to decide what in a specific case is suitable.

In this case, it appeared that statements for inclusion in the minutes of Council meetings had been regarded as obstacles to the publication of the minutes. This seemed moreover to be entirely confirmed by the fact that the Council subsequently considered it necessary to adopt a Code of Conduct on the publication of Council minutes and statements for inclusion in the minutes. Therefore, it had to be assumed that a prior administrative approach would have been rejected.

In these circumstances, the Ombudsman found no grounds for changing his original decision to consider the complaint admissible in view of the Council's second argument.

As regards the merits of the case, the Ombudsman noted that access to documents as a measure to promote transparency in the Union is highly valued by the institutions (see for instance Declaration No 17 annexed to the Maastricht Treaty on the right of access to information and the Council's Declaration of 22 January 1996 in connection with the Commission's legislative programme for 1996).

As mentioned above, the purpose of creating the office of Ombudsman was to emphasize the Union's commitment to transparency. It is therefore clear that transparency and the right of access to documents are matters of great concern to the Ombudsman. He found that by adopting the Code of 2 October 1995, the Council had taken the steps that must be deemed necessary to give access in future to the type of document requested in the complaint. The Ombudsman therefore found that there were no grounds for further consideration of the complaint and therefore closed the case.

3.3.3 The European Commission

FINANCIAL COMPENSATION FOR PREPARATORY WORK

Decision on complaint 5/09.11.94/FE/EF-en against the European Commission

The complaint

A legal office lodged a complaint against the European Commission in November 1994 on behalf of its client, an enterprise specialized in organizing conferences.

The Commission had asked in 1992 the enterprise to organize a conference.

Shortly before the conference was to take place, the Commission cancelled it. The cancellation was apparently due to the failure of the competent officer within the Commission to obtain budget clearance for the conference, and it resulted in injury to the enterprise, including financial losses in the form of money and time already spent on the organization of the conference.

Subsequent correspondence and contacts with the Commission had not led to any reparation of the injury caused to the enterprise.

THE INQUIRY

As the European Ombudsman did not take up his office until 27 September 1995, he was not able to give the complaint immediate attention. On 31 October 1995, he asked the Commission to submit to him its comments on the complaint.

By fax of 15 January 1996 and by letter of 17 January 1996, the Commission informed the Ombudsman that it had made in November 1995 an offer to the enterprise to pay financial compensation as a final settlement for all costs occurred. The offer had been accepted and thus the firm's claim had finally been settled.

THE DECISION

As the subject-matter of the complaint had been solved in a mutually satisfactory way, the European Ombudsman closed the case. The firm thanked the Ombudsman for his investigation "which spurred the Commission into negotiating seriously".

Jacob SÖDERMAN,
European Ombudsman.

The complaints are discussed at Legal Officers' meetings

Mr Ian HARDEN, Principal Officer, introducing a case to the meeting

DELAY IN ANSWERING REQUESTS FOR INFORMATION

Decision on complaint 22/03.05.1995/AP/DE against the European Commission

On 28 April 1995, Mr P. lodged a complaint with the European Ombudsman against the European Commission alleging that the Commission had not answered his letters of 12 October 1994 and 15 February 1995.

As the Ombudsman did not take up his duties until 27 September 1995, he was not able to give immediate attention to the complaint. He asked the European Commission to comment on the matter on 27 October 1995.

By letter of 26 January 1996, the Commission forwarded its comments on the complaint to the Ombudsman, admitting that the delay in replying to the complainant had been unusually long. The request for information the complainant had addressed to the Commission in Luxembourg in October 1994 and February 1995 had not been answered until 31 May 1995. The Commission informed the Ombudsman that Directorate General V of the Commission had since revised its procedure for replying to correspondence of this nature, with a view to avoiding such delays in future. A further letter of the complainant of 12 June 1995, addressed directly to the Commission in Brussels had received a reply by letter of 7 July 1995.

As the complainant had received an answer to his request and as the Ombudsman found satisfactory the revision the Commission had made to its procedure for correspondence, the Ombudsman decided that no further inquiries were justified and closed the case.

FAILURE TO PAY A PROMISED SUBSIDY

Decision on complaint 95/30.8.95/IMI/EF/NL-en against the European Commission

Mr Z. from a Dutch institute lodged a complaint with the Ombudsman on 23 August 1994 about alleged maladministration by the European Commission. According to the complaint, the Directorate General V had agreed by letter of 18 May 1994 to contribute a sum of 5.000 ECUs to a seminar "European elections 1994" arranged by the institute but never paid this subsidy.

As the Ombudsman did not take up his duties until 27 September 1995, he was not able to give immediate attention to the complaint. On 20 November 1995, he sent the complaint to the European Commission for comments.

By letter of 12 January 1996, the complainant informed the Ombudsman that the dispute between the institute and the Commission had been settled and that the complaint was withdrawn.

The Ombudsman took note that the case had been solved in a mutually satisfactory way and closed the case.

AWARD OF A BLUE FLAG, A MARK OF CLEANLINESS, TO A BEACH

Decision on complaint 235/16.11.95/JMC-fr against the European Commission

THE COMPLAINT

In November 1995 Mr C. lodged a complaint concerning the award of a blue flag, which is a mark of a beach's quality and cleanliness, to the beach at Armaçao de Pêra in the Algarve, Portugal, and the use of ERDF funds for the beach.

The complainant considered that the blue flag had been unjustly awarded, given the harmful effects which the beach had on the environment and health. He attached several photographs to his complaint, illustrating the deplorable condition of the approaches to the beach and the quantity of refuse which had built up there. He also questioned the use made by the Portuguese authorities of the Community funds allocated for the protection of the beach.

THE INQUIRY

The European Ombudsman informed the European Commission that a blue flag had been awarded to the beach at Armaçao de Pêra and asked it to comment on the matter.

In its reply, the Commission pointed out that it was not directly responsible for the award of blue flags, which was coordinated by a non-governmental organization based in Denmark. Its only role was to provide information on one of the criteria used in the selection process. It had, nonetheless, asked the non-governmental organization to provide further information, and undertook to forward a report on its inquiry to the complainant.

The Commission stated that it had found no evidence of fraud in connection with the Community funds.

The Ombudsman forwarded these comments to Mr C., who expressed satisfaction with the action taken by the Ombudsman, given that a blue flag had not been awarded to the beach at Armaçao de Pêra for 1996, and withdrew his complaint. He also asked to be sent the inquiry report referred to above.

The Ombudsman also attached a copy of a letter from the Commissioner, Mrs Ritt BJERREGAARD, stating that, pursuant to Article 169 of the Treaty, the Commission had initiated proceedings against the Portuguese authorities for breach of the rele-

vant Community legislation, in particular Directive 76/160/EEC (bathing waters).

THE DECISION

The blue flag system is organized by a non-governmental organization based in Denmark, the Foundation for Environmental Education in Europe, which is also responsible for making awards. The Commission therefore has no say in the award of blue flags. It does, however, play a part in the process, since it provides information on one of the basic criteria for the award of a blue flag, namely the quality of bathing waters.

The Commission forwarded the complaint to the Foundation and asked the Foundation's national operator to provide information on the circumstances under which a blue flag had been awarded to the beach in question.

At the same time, the Commission initiated infringement proceedings against Portugal, pursuant to Article 169 of the Treaty, for alleged manipulation of the results of tests on water samples (breach of Directive 76/160/EEC on bathing waters).

No evidence of fraudulent use of Community funds by the Portuguese authorities emerged from the inquiries conducted by the Commission.

Therefore, in view of the fact that a blue flag had not been awarded to the beach at Armaçao de Pêra for 1996, and of the action which, within the limits of its powers, the Commission had taken vis-à-vis the authorities and organizations responsible, it was felt that a satisfactory response had been given to the legitimate questions raised by Mr C. in his complaint.

Following Mr C.'s decision to withdraw his complaint, the European Ombudsman decided not to conduct further enquiries and closed the case.

LATE SETTLEMENT OF AN INVOICE

Decision on complaint 236/17.11.1995/AKH/KT-en against the European Commission

A company which had entered a contract with the European Commission lodged a complaint in November 1995 concerning the late settlement of an invoice within the framework of the Tacis Danube Environmental Programme. The invoice had been sent to the Commission in February 1994 but was not settled until several months later, despite a contractual payment period of 30 days.

The European Ombudsman asked the Commission for its comments. In its reply, the Commission considered that the payment to the company had been made later than was reasonable and that interest should be paid.

The Commission's reply was sent to the complainant. The company was willing to accept an apology from the Commission, together with an offer to pay interest on the overdue amount.

The case was thus solved in a satisfactory manner for the complainant and the European Ombudsman decided to close the case.

THE DIRECTIVE ON NON-LIFE INSURANCE

Decision on complaints 256/23.11.95/EA//B-FR, 291/21.12.95/SA/B-FR and 311/4.1.96/CN/B-FR against the European Commission

THE COMPLAINTS

The complaints focus on the interpretation by the European Commission of Directive 92/49/EEC on non-life insurance.

In October 1995 an insurance company based in France notified its clients in Belgium (the complainants) of its decision to cease to provide insurance cover for persons resident abroad 'owing to the Community provisions on freedom to provide services'. This action had been prompted by the entry into force on 1 July 1994 of the third insurance directives and the legal requirements deriving therefrom. The complainants therefore wrote to the European Ombudsman about the Commission's interpretation of these Community directives, which they deemed to be the cause of the termination of their insurance policies.

THE INQUIRY

The Ombudsman notified the Commission, which forwarded its comments on the matter.

The Commission first outlined the legal provisions governing the taking up and pursuit of the business of insurance which were laid down in the directives. It then explained the situation in some Member States prior to the entry into force of the directives and, lastly, set out the Commission's position on the complaints lodged.

The complainants had no observations to make on the Commission's comments, and simply thanked the Ombudsman for his efforts on their behalf.

THE DECISION

Prior to the entry into force of the insurance directives some Member States, including Belgium, prohibited insurance companies based in another Member State from providing cover for risks on their territories if they were not established there.

Companies failing to comply with this requirement could be penalized, inter alia by means of the invalidation of policies.

Under this system, the contract between the complainants and their company had no legal certainty if the insurer failed to meet this requirement.

The third insurance directives seek to put an end to this situation, which conflicts with the principle of freedom to provide services in the insurance field, by enabling any insurer based in a Member State to provide cover for risks in another Member State, without having to be established there.

This supposes, however, that the 'host' Member State is able to exert control over the activities of such insurers. Under the new system, therefore, insurers must meet various requirements. An insurer based in one Member State must, for example, comply with certain rules applying in the Member State in which it provides cover for risks, inter alia those governing taxation.

In the case in point, the complainants' insurer may have considered these requirements to be too much of a burden and decided to restrict their activities to France, thereby terminating policies covering risks in Belgium. This, however, would have been a commercial decision taken for strategic reasons, and cannot be seen as having any connection with the Community insurance directives, given that other insurers have chosen to operate within the new system.

Given the above, the European Ombudsman decided that no further inquiries were justified and closed the case.

REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES

Decision on complaint 450/20.2.96/JF/A/KT-en against the European Commission

THE COMPLAINT

In July 1995, Mr F. travelled to Brussels to take the oral examination for a competition. The European Commission advised him to contact its travel agency, which made a special hotel rate arrangement for him. Moreover, his travel expenses from Brussels airport into town were reimbursed, as was the return fare.

In September 1995, he was invited to Brussels by the Commission for a medical examination and for interviews. As he had done in July, he contacted the Commission's travel agent, but was informed that the Commission had not authorized him to obtain special hotel rates. The cheapest hotel he could book was more expensive than the one in July.

As a result, the hotel expenses for the medical examination and for the interviews exceeded the final reimbursement made by the Commission. In addition, the candi-

date's travel expenses from Brussels airport into town and the metro expenses in Brussels were not reimbursed this time. When the complainant contacted the Commission to clarify the matter, its answer did not satisfy him.

THE INQUIRY

The European Ombudsman wrote to ask for the Commission's comments on the complaint.

In its reply, the Commission explained that, as laid down in Article 8 of the 'Rules for the reimbursement of travel and subsistence expenses for persons outside the Community invited to attend a competition, interview or medical examination' (hereinafter referred to as 'the Rules'), subsistence expenses were reimbursed by means of a daily allowance meant as a flat-rate contribution towards (and not as full reimbursement of) the candidate's expenses.

As to the train ticket from the airport to Brussels, the Rules make no provision for reimbursement; in practice, however, this fare was reimbursed at the candidate's request.

The special hotel rate arranged for the complainant in July 1995 was not a standard procedure and was only granted because of the shortness of the interval between the written and oral tests.

The comments of the Commission were sent to the complainant for his observations.

He informed the Ombudsman that he was not aware of the Rules and that he had not been informed that the special arrangement of July 1995 was an exceptional measure.

THE DECISION

When the Commission invited Mr F. to Brussels for the medical examination and for interviews in September 1995, it stated in its letter that

'where appropriate, your travel expenses will be reimbursed according to the conditions set out on the attached form'.

The attached form contained the above-mentioned Rules. It appeared therefore that the Rules had been communicated to the complainant in September 1995. These Rules set out all the relevant conditions under which candidates are reimbursed. Mr F. was reimbursed pursuant to Article 8 (3) of the Rules, which provides for a flat-rate allowance of ECU 50 per day.

The candidate's expenses covered by this flat-rate allowance were accommodation, meals, and local transport, including the Brussels metro.

As to the train expenses from the airport to Brussels, the Commission confirmed to the Ombudsman that they had not been reimbursed due to an inadvertent error and that their reimbursement was currently under way.

In view of these findings, the European Ombudsman decided that no further inquiries were justified and closed the case.

ACCESS TO INFORMATION ON THE OUTCOME OF A COMPETITION

Decision on complaint 485/13.03.96/LV/B/KT-fr against the European Commission

Several months after having been placed on a reserve list following a European Commission competition, Mr V. had yet to be contacted by the Commission with a view to his recruitment. He wrote to the Commission asking for information on the number of persons on the reserve list and his own position on the list, as well as the number and position on the list of the successful candidates already recruited.

The Commission replied to the first question only, stating that the other two matters were confidential. Mr V. lodged a complaint with the European Ombudsman in March 1996.

The Ombudsman forwarded notification of the complaint to the Commission. In its comments, the Commission supplemented the information already sent to the complainant by replying to the two other questions.

These comments were forwarded to the complainant for his observations. He informed the Ombudsman that he was satisfied with the further reply given by the Commission.

The European Ombudsman therefore closed the case.

DELAYED REPLY FROM THE COMMISSION

Decision on complaint 493/15.3.96/HMT/DE against the European Commission

Mr T, a German national, lodged a complaint against the European Commission. He put forward that he had addressed the Commission on a problem concerning his right to free movement and that he had not received any reply.

The office of the European Ombudsman contacted the relevant services in the Commission which apologized for not having replied before and undertook to reply to the complainant.

The Ombudsman therefore decided not to pursue the matter further and closed the case.

3.3.4 The Euratom Institute

FAILURE TO FULFILL A CONTRACTUAL OBLIGATION

Decision on complaint 30/19.7.1995/AC/IT/KH against the Euratom Institute

The complaint

Mr C., an Italian national, lodged a complaint against the Euratom Institute for Remote Sensing Application in Ispra (Italy) on 13 July 1995. He alleged that the Institute, which is one of the Joint Research Centres and falls under DG XII (Science, Research and Development) of the European Commission had failed to pay him for the work he performed for them in the period from January 1994 to November 1994.

The inquiry

On 13 December 1995, the complaint was sent to the Commission for comments, and the Commission gave its first opinion on 15 March 1996. On 3 July 1996, the Commission contacted the Ombudsman again, and put forward a proposal on how the dispute could be settled.

According to the Commission, the complainant had not executed the contract properly within the prescribed time frame. Therefore, he had not been paid. The Commission however felt that it could reach a settlement with the complainant and proposed to pay half of the payment due in execution of the contract. This, under the condition that the source code of the software developed by the complainant would not be used or developed further at any time and condition by him.

The Ombudsman sent the proposal made by the Commission to the complainant on several occasions, but did not receive any reply.

The Ombudsman then contacted the Commission requesting information on whether the Commission had paid the amount it had offered. He was informed that the payment had not yet taken place since the Commission had not received the approval of the conditions to which it was subject.

The decision

Considering the suggestion for settlement offered to the complainant by the Commission and taking into consideration that the complainant had not given any reply thereto, even after repeated inquiries, the Ombudsman decided to stop any further consideration of the complaint and closed the case.

3.4 CASES CLOSED WITH A CRITICAL REMARK

3.4.1 THE EUROPEAN PARLIAMENT

OPEN COMPETITION: LOSS OF CANDIDATE'S LETTER

Decision on complaint 145/27.9.95/ABMG/B-de against the European Parliament

Mrs M.G. asked the European Ombudsman to inform her about her rights to obtain a review of the marks which she had received in a general competition organised by the European Parliament. Mrs. M.G. did not succeed in the written tests and sent a letter to the selection board asking that it should reconsider its evaluation of her exam papers. The complainant stated that a second evaluation never took place.

In its comments, the European Parliament informed the European Ombudsman that the letter of the complainant had been wrongly addressed - to the Chairman of the selection board, and not to the Service 'Competition' - and that therefore, it could not be located. When the complainant had addressed the Parliament again, the selection board had already finished its work and handed in its report, and therefore her marks were not reviewed.

The European Ombudsman stated that, as the first letter of the complainant effectively arrived at the Parliament it should have been answered. Principles of good administration require that wrongly addressed mail should be transferred to the relevant service within the Parliament.

As to the demand to review the exam papers, there is no formal provision which confers a right on the applicant to have his exam papers reviewed a second time. The selection board is independent in its work and thus there is no possibility to address an appeal body for review of the marks given. However, the European Ombudsman was informed that some selection boards review the test results of an applicant if he so requests without undue delay. Parliament has not contested that the complainant's papers would have been reviewed by the selection board if the request had been submitted in time. The European Ombudsman therefore criticised the fact that, because the complainant's first request for the review could not be located within the Parliament, the complainant's marks were not reviewed.

However, as the selection board had finished its work and as there was therefore no possibility to achieve a friendly solution in this matter, the European Ombudsman decided to close the case.

EXCLUSION FROM A COMPETITION

Decision on complaint 129/19.9.95/TK/B against the Council of the European Union

THE COMPLAINT

Mrs K., a Finnish national, complained about her exclusion from a competition for recruitment of translators by the Council. The competition was announced in February 1995. The notice of competition required candidates to:

have completed University level studies, recognised by a diploma or certificate confirming a completed course of study at a University [….] Candidates must prove, by means of documentary evidence, that they meet this condition of entry to the competition (copy of diplomas or certificates,..)

Mrs. K. said that she took steps to comply with this condition. She obtained a certificate from her University (the University of Helsinki), dated 24 March 1995. This confirmed that she had completed all the requirements for the degree of Master of Arts. The certificate was on the headed paper of the Faculty of Arts, bore its official stamp and was signed by the Secretary of the Faculty. It was accompanied by an official stamped transcript of the courses she had taken and the credits and marks received. She submitted this certificate before 6 April 1995, which was the time limit fixed by the notice of competition.

Her degree was formally conferred in a solemn ceremony held at the University on May 30 1995.

The Selection Board wrote to Mrs. K. in July 1995. They excluded her from the competition, on the grounds that she had not provided a diploma or certificate to show that she had completed her University studies. The Selection Board took the view that only a document conferred at a solemn ceremony met the condition in the notice of competition.

Mrs. K. made three administrative approaches to the Council in an unsuccessful attempt to get the Selection Board to change its decision. She wrote to the Ombudsman on 11 September 1995 to complain that she should not have been excluded from the competition. She claimed that the certificate she had submitted met the requirements of the notice of competition.

THE INQUIRY

The Ombudsman wrote to the Secretary General of the Council to ask for comments on the complaint. The reply from the Council made the following points:

- it is established by case-law that the terms of a notice of competition are strictly binding on the Selection Board;
- the Selection Board is only required to take into account documentary evidence that the candidates must submit before the deadline fixed in the notice of competition. The Selection Board is not required to ask candidates for documentary evidence which they have failed to transmit nor to take account of documents supplied after the deadline;
- in the case of Mrs. K., the 'provisional certificate' dated 24 March 1995 could not be treated as a diploma or certificate confirming a completed course of study at a University;
- documents attached to subsequent correspondence from Mrs. K. to the Selection Board could not be taken into account because they were sent outside the deadline;
- Mrs. K. was therefore rightly eliminated from the competition.

The Council's comments were sent to Mrs. K. Her observations on the reply repeated her view that the certificate dated 24 March 1995 met the requirements of the notice of competition and should therefore have been accepted by the Selection Board.

THE DECISION

The Ombudsman accepted that the Selection Board was strictly bound by the terms of the notice of competition. It was therefore obliged to examine whether candidates had submitted a diploma or certificate confirming a completed course of study at a University and to reject those who had not done so. Furthermore, the Selection Board was not required to allow those who failed to meet the condition by the required deadline further time in which to do so.

However, Mrs. K. had submitted, before the required deadline, documentary evidence that she had completed her University level studies. It was not obvious that the document she submitted failed to meet the description in the notice of competition. The Selection Board was therefore required to exercise judgement in deciding whether Mrs. K. had complied with the condition.

In exercising its judgement, the Selection Board took a narrow and rigid view of the meaning of the term 'certificate confirming a completed course of study at a University.' The Council put forward no evidence that it was necessary for practical administrative reasons to adopt this interpretation, rather than an interpretation that would have accepted the certificate provided by Mrs. K. Mrs. K. had a reasonable expectation that her certificate met the conditions in the notice of competition. In these circumstances, the Ombudsman noted that adoption of the narrow interpretation appeared arbitrary.

The Ombudsman also expressed the view that, as a matter of good administration, the Selection Board should have been prepared to consider evidence from the candidate *that what had been submitted by the deadline met the stipulated conditions.*

The Ombudsman could not pursue a friendly settlement because the competition from which Mrs. K. was excluded was closed and the list of translators established by the competition was likely to remain valid for a number of years.

The Ombudsman noted that Mrs. K. could have taken her case to the Court of First Instance within three months of the Selection Board's decision. Since she did not do so, its decision to exclude her from the competition remained valid.

The Ombudsman therefore took the view that it was unnecessary to make further inquiries. Accordingly, he decided to close the case. However, the Ombudsman considered that the Council should ensure that his criticisms of the Selection Board in his decision were brought to the attention of Selection Boards.

3.4.3 THE EUROPEAN COMMISSION

EUROPEAN COMMISSION'S HANDLING OF A COMPLAINT ABOUT LACK OF AN ENVIRONMENTAL ASSESSMENT: NEWBURY BYPASS

Decision on complaints 206/27.10.95/HS/UK, 211/03.11.95/JC/UK, 226/13.11.95/J./UK, 229/14.11.95/PAD/UK, 303/03.01.96/COW/UK, 327/08.01.96/RW/UK, 335/08.01.96/AK/UK, 358/15.01.96/EC/UK, 359/16.01.96/J./UK, 360/09.01.96/SJ/UK, 361/09.01.96/JB/UK, 362/15.01.96/JB/UK, 363/15.01.96/MN/UK, 364/03.11.95/J./UK, 377/31.1.96/ME/UK, 378/25.1.96/JB/UK, 382/24.1.96/CW/UK, 383/24.1.96/J./UK, 403./01.02.96/TA/UK, 71/4.3.96/PC/UK, 487/14.3.96/BARF/UK, 488/14.3.96/PB/UK, 514/25.3.96/DB/UK, 515/25.3.96/PJW/UK, 526/27.3.96/DAW/UK, 562/18.4.96/DD/UK, 607/24.5.96/BB/UK against the European Commission

The complainants alleged maladministration by the European Commission in deciding not to open infringement proceedings against the United Kingdom under Article 169 of the EC Treaty. They took the view that the UK government had breached Community law by failing to carry out an environmental impact assessment of the Newbury Bypass road in Berkshire, England.

In order to deal with them as effectively and promptly as possible, the complaints were treated jointly.

The background to the complaints

Council Directive 85/337/EEC[1] requires that, in certain cases, development

[1] OJ, 1985 L175/40

consent for public or private projects should be given only after an environmental impact assessment. The latest date for transposition of the Directive into national law was 3 July 1988.

The Directive contains no transitional provisions. That is to say, it does not expressly state whether it applies in cases where the procedures leading to development consent began before the Directive came into force, but the consent itself was given after it came into force (so-called 'pipeline' cases).

In 1994, complaints were made to the European Commission alleging that the UK authorities had failed to observe the requirements of the Directive in relation to the Newbury Bypass. The Commission registered the complaints and opened a file in relation to the matter.

On 20 October 1995, the Commission issued a press release saying that, in the light of the decision of the European Court of Justice in the Großkrotzenburg case[1] , it had decided to interpret the Directive as requiring an environmental impact assessment only for projects where the procedure for consent was started after 3 July 1988. The press release further stated that this meant that the Directive did not apply to the Newbury Bypass.

The Commission subsequently wrote to the people whose complaints it had registered, stating that it had completed its investigation and had decided to close the file, since no breaches of Community law had been found. The complainants were referred to the press release for a more detailed explanation.

THE COMPLAINTS

Taking the complaints sent to the Ombudsman as a whole, four main claims were made concerning the Commission's decision to close the file:

1) The Commission had deprived citizens of the benefit of an authoritative ruling from the Court of Justice on the disputed issues of Community law involved and risked subverting the role of the Court

2) According to some complainants, the Commission's interpretation of the Directive was disingenuous, in that it was motivated by political considerations, or was the result of political pressure

3) The correct interpretation of the Großkrotzenburg case supported the view that the Directive applies to the Newbury Bypass

4) The Commission should have informed the registered complainants of its decision to close the file before announcing it through a press release

[1] Case C-431/92, *Commission v Germany*, judgement of 11 August 1995

THE INQUIRY

The First Opinion of the Commission

In its First Opinion, the Commission argued as follows:

1) The subject matter of the complaints involves the exercise by the Commission of its discretion with regard to proceedings under Article 169. In deciding not to open infringement proceedings, the Commission exercised its discretion as fully recognised by the Court.

2) The Commission proceeded vis-à-vis the complainants in accordance with the principles of good administrative behaviour by duly registering the complaints and keeping the complainants informed of the treatment of the case. Complainants in an Article 169 procedure do not possess any specific procedural rights as could be the case in other sectors like competition or anti-dumping. The Commission therefore sees no grounds for any complaint of maladministration in such a case.

3) Newbury Bypass was a pipeline case, in as much as the date of application for development consent preceded 3 July 1988, while the date of grant of development consent came later.

The Directive contains no transitional provisions, and there is a point of interpretation as to whether its requirements apply to 'pipeline' cases.

The point of interpretation was touched upon in connection with two decisions of the Court of Justice.[1] In both cases the Advocate-General argued that Member States may omit an environmental impact assessment for projects in respect of which the development consent procedure was initiated before 3 July 1988.

The Court itself did not explicitly state that the date of application/commencement of the development consent procedure was the decisive factor. However in the Großkrotzenburg case, the Court assessed the factual circumstances as to when a formal application was submitted. The latter would have been of no importance if the date of consent was the relevant factorAs a consequence of this jurisprudence, Directive 85/337/EEC is to be interpreted so as to exclude from its scope pipeline cases.

The factual circumstances in respect of Newbury Bypass are that the consent procedure was initiated before 3 July 1988. Therefore, the Commission considers that Directive 85/337/EEC did not apply to the Newbury Bypass project.

The complainants' observations on the First Opinion

Taking the observations sent to the Ombudsman as a whole, the following claims

[1] Case 396/92 *Bund Naturschutz in Bayern Ev v Freistaat Bayern* (1994) ECR I-3717 and the *Großkrotzenburg* case.

were made in relation to the First Opinion:

1) The Commission's remarks about its discretion amount to an assertion that it can act arbitrarily.

2) The Commission failed to answer the allegation that it had acted disingenuously.

3) The Commission continued to misinterpret the Großkrotzenburg case and failed to apply it correctly to the UK development procedures used in the Newbury Bypass case.

4) The Commission claimed that it had kept the complainants informed. However, it had informed the media of the decision to close the Newbury file in a press release dated 20th October 1995, while complainants were finally informed by letters dated 6th December 1995.

THE DECISION

1) The Commission's decision

1.1 The Commission explained the decision to close the file in the Newbury Bypass case solely in terms of a legal conclusion that Directive 85/337/EEC does not apply to the Newbury Bypass project.

1.2 Article 169 of the EC Treaty provides for the Commission to issue a reasoned opinion if it *considers that a Member State has failed to fulfil an obligation under this Treaty*. If the Commission reaches the conclusion that there is no breach of Community law, then the essential condition for the issuing of a reasoned opinion is not met. In such circumstances, no issue of discretion arises because the Commission has no power to open infringement proceedings.

1.3 The Ombudsman therefore considers that it was misleading to the complainants for the question of discretion to be raised in the Commission's First Opinion.

1.4 The Ombudsman found that the complaints provided insufficient grounds to raise doubts as to whether the Commission's legal conclusion was reached in good faith, after due inquiry and on the basis of objective and expert consideration of the legal issues.

1.5 The arguments presented by the complainants did, however, provide grounds for the Ombudsman to examine the Commission's legal conclusion that Directive 85/337/EEC does not apply to the Newbury Bypass, in order to ascertain whether there is maladministration in the interpretation of Community law, or in its application to the facts and to the national legal context of the case. The results of the examination are set out in section 2 of the decision.

2) The applicability of Directive 85/337/EEC to the Newbury Bypass case

2.1 The Commission's conclusion that Directive 85/337/EEC does not apply to the Newbury Bypass depends on a process of legal reasoning that has two stages.

2.2 The first stage is the argument that the Directive does not apply to projects for which development consent was granted after 3 July 1988, provided that the formal application for development consent (or its equivalent, in procedures where no formal application takes place) occurred before that date. This is the argument that 'pipeline' cases are excluded. The second stage of the argument is that the Newbury Bypass project is a 'pipeline' case.

2.3 As regards the first stage of the argument, the Commission relies in its First Opinion on the judgements of the Court of Justice and the opinions of the Advocates-General in Großkrotzenburg and Bund Naturschutz[1] to argue that the Directive is to be interpreted so as to exclude pipeline cases from its scope.

2.4 The Ombudsman notes that in other contexts, including its reply to the Committee on Petitions concerning petitions 865/95 and 972/95, the Commission also referred to the general unwritten principle of legal certainty and the principles of legitimate expectations and proportionality in support of its interpretation.

2.5 The Commission's interpretation of the Directive has been criticized by the complainants and by some commentators.[2] The criticisms point out that, in Großkrotzenburg, the Court of Justice expressly left open the question of the application of the Directive to 'pipeline' cases (paragraph 28 of the judgement) and that the principles of legal certainty and legitimate expectations also provide arguments against the Commission's interpretation.

2.6 The Ombudsman considers it regrettable that the First Opinion contains only a very brief, and possibly incomplete, outline of the Commission's legal reasoning in support of its conclusion that the Directive does not apply to 'pipeline' cases.

2.7 The Ombudsman does not consider, however, that the conclusion itself is wrong as a matter of law. In view of the opinions of the Advocates-General in Bund Naturschutz and Großkrotzenburg and the fact that the Court of Justice in Großkrotzenburg evaluated the factual circumstances as to when a formal application was submitted, the conclusion that Directive 85/337/EEC does not apply to 'pipeline' cases is probably correct. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

2.8 As regards the second stage of the argument, and subject to the qualification in the last sentence of paragraph 2.7, the Ombudsman considers that, prima facie,

[1] Case C-431/92, judgement of 11 August 1995 and C-396/92 [1994] ECR I-3717

[2] See e.g. P. Kunzlik, 'Environnemental Impact Assesment: *Bund Naturschutz, Großkrotzenburg* and the Commission's retreat on the 'Pipe-line' point, european *Environnemental Law Review*, 1 March 1996, 87-93.

the appropriate criterion to identify 'pipeline' cases is that used in Großkrotzenburg: i.e. the date when the application for consent was formally lodged.

2.9 The legal procedures in England for development consent in the case of highway projects do not involve an application for development consent by one body to another. The procedure is an administrative one, in which both the developer and the authority which grants development consent are parts of the central government administration.

2.10 The question therefore arises as to which stage of the administrative procedure under English law is to be regarded as the equivalent of 'the date when the application for consent was formally lodged.' In identifying such an equivalent it is important to recall that the Court of Justice in Großkrotzenburg expressly rejected a claim that a preliminary stage of the consent procedure, involving informal contacts and meetings between the competent authority and the developer, could be treated as a definite indication of the date on which the consent procedure was initiated.

2.11 Draft orders for the Newbury Bypass were published between 1986 and 1988; the public inquiry began on 14 June 1988 and closed on 9 November 1988; the final Statutory Instrument was made on 18 June 1991 and became effective on 16 August 1991.

2.12 The complainants argued that the publication of draft orders and the public inquiry were preliminary procedures for consultation and discussion of the Department of Transport's preferred route and alternative schemes. In their view, such procedures cannot be described as a formal application and are the equivalent of 'informal contacts and meetings between the competent authority and the developer'. According to the complainants, the equivalent of a formal application is the making of the final Statutory Instrument, which is followed by a six-week period within which it is subject to challenge in the High Court.

2.13 The Commission's position on this point is not entirely clear from the First Opinion, which states only that:

'Newbury Bypass was a pipeline case, in as much as the date of application for development consent preceded 3 July 1988, while the date of grant of development consent came later'; and

'The factual circumstances in respect of Newbury Bypass are that the consent procedure was initiated before 3 July 1988.'

The Commission does not, therefore, specify which point of the national procedures it regards as the equivalent of a formal application in the Newbury Bypass case. Logically, however, it must be either the publication of the draft orders or the opening of the public inquiry, since these are the only stages of the procedure that occurred before 3 July 1988.

2.14 In the Ombudsman's view, the publication of the draft orders can reasonably be regarded as the equivalent of a formal planning application, in that the developer makes a public statement containing definite proposals for development, which may then be the subject of a public inquiry. The fact that there may be differences between the draft order and the final project does not affect this conclusion, since there may also be changes made to an application during the course of the procedure for granting development consent. The possibility of such changes in both cases is inherent in the fact that the procedures involved are more than a mere formality.

2.15 Although it is regrettable that the First Opinion does not contain all the legal reasoning necessary to support the Commission's view that Newbury Bypass is a 'pipeline' case, the Ombudsman does not consider, therefore, that the conclusion itself contains an error in the application of Community law to the facts and the national legal context of the Newbury Bypass case.

2.16 The Ombudsman's inquiries into the complaints concerning the Newbury Bypass have not, therefore, revealed any instance of maladministration by the Commission in the interpretation of Community law, or in the application of Community law to the facts and to the national legal context of the case.

3) The failure to inform the registered complainants before issuing the press release

3.1 The Commission has invited individuals to submit to it complaints about breaches of Community law by Member States and has published a standard form for this purpose.[1] In its First Opinion, the Commission acknowledges procedural obligations duly to register complaints and to keep the complainants informed of the treatment of the case.

3.2 An administrative process of this kind normally concludes with a reasoned decision communicated to those who have participated in the process. The Ombudsman considers that, as a matter of good administrative behaviour, the Commission should have informed the registered complainants of its decision before, or at least at the same time as, announcing the decision publicly through a press release. There may have been practical reasons why this was not possible in this particular case (although no such reasons have been advanced by the Commission in its First Opinion). If so, the Commission should at least have explained those reasons to the complainants.

3.3 Given that this aspect of the case concerns procedures relating to specific events in the past, it is not necessary to make further inquiries or to pursue a friendly settlement of the matter.

[1] OJ 1989, C26/6

In view of the above findings, the Ombudsman considered that it was unnecessary to conduct further inquiries into the case whilst trusting that the Commission would take note of the critical remark in paragraph 3.2. The Ombudsman therefore closed the case.

FURTHER REMARKS BY THE OMBUDSMAN

As noted in the Annual Report for 1995, an important part of the Ombudsman's mission is to enhance relations between the Community institutions and European citizens. The creation of the office of Ombudsman by the Treaty on European Union was meant to underline the commitment of the Union to open, democratic and accountable forms of administration.

The inquiries of the Ombudsman into the Newbury Bypass, and into several other complaints against the Commission, have led him to conclude that it is appropriate for there to be a more general examination of the procedural position of individual complainants in the Article 169 procedure.

On the basis of the complaints that the Ombudsman has received, it appears that the procedure currently used by the Commission causes considerable dissatisfaction amongst European citizens, some of whom regard the Commission's approach to the discharge of its responsibilities under Article 169 as arrogant and high-handed. Furthermore, the procedure appears not to promote the degree of transparency which European citizens increasingly expect in the functioning of Community institutions and bodies.

Without prejudice to the question of whether the principles of Community law might require more developed procedural rights for private complainants under Article 169, the Commission could itself decide to create such rights as a matter of good administrative behaviour, consistent with the case-law of the Court of Justice and Court of First Instance that individuals cannot challenge the Commission's decision not to open infringement proceedings.

In particular, before making its final decision, the Commission might communicate to registered complainants a provisional conclusion that there is no breach of Community law and its findings in support of that conclusion, with an invitation to submit observations within a defined period.

Such a procedure could have two advantages over the present position. First, it might contribute towards more effective administration, by creating an opportunity for the Commission to receive criticisms of its views in time for it to evaluate and respond to those criticisms before committing itself to a final conclusion. Second, it could enhance relations between European citizens and the Commission, by allowing citizens to participate more fully in the administrative procedure under Article

169 and by improving the transparency of the Commission's activities.

The Ombudsman therefore decided to begin an own-initiative inquiry into this matter.

EUROPEAN COMMISSION'S HANDLING OF A COMPLAINT ABOUT AN ENVIRONMENTAL ASSESSMENT: M40 MOTORWAY

Decision on complaint 132/21.9.95/AH/EN against the European Commission

On 18 September 1995 Mr A. and Mr H. made a joint complaint against the European Commission. The complaint concerned the way in which the Commission had dealt with a complaint that it had received from Mr A. and Mr H. in relation to the widening of the M40 motorway in the United Kingdom.

The complaint to the European Commission

On 29 November 1990 Mr A. and Mr H. made a complaint to the European Commission alleging that the United Kingdom authorities had failed to comply with Directive 85/337/EEC[1] in relation to the widening of the M40 motorway. They alleged that a full and accurate environmental assessment of the proposed development was not carried out in accordance with the requirements of the Directive. The complaint made the following specific claims concerning the environmental assessment:

1) the noise level assessment was not carried out in accordance with the United Kingdom Department of Transport Manual of Environmental Appraisal;

2) the noise level assessment was not produced at the public consultation meetings;

3) a charge was made for a copy of the document containing the noise level assessment;

4) no air quality checks were made.

On 26 August 1991, the Commission acknowledged receipt of the complaint.

By letter dated 10 September 1992, the Commission informed the complainants that it had concluded that there was no infringement of Directive 85/337/EEC and that this conclusion had been reached after enquiries had been made of the United Kingdom authorities and after examination of the information provided by them. The letter also stated that the Commission was unable to let the complainants see a copy of the United Kingdom's response to its enquiries as such enquiries are made, and the replies are given, on a confidential basis.

[1] OJ 1985, L175, p.40

The complaint to the UK Parliamentary Commissioner for Administration

Mr A. and Mr H. asked the UK authorities for access to the information put forward to the Commission. They were dissatisfied with the response they received and complained to the UK Parliamentary Commissioner for Administration.

In June 1995, the Parliamentary Commissioner, whilst critical of certain aspects of the way in which the request for access to information had been dealt with by the UK authorities, concluded that the complainants were mistaken in thinking that the information given to them by the UK authorities represented a less than full and frank picture of the exchanges between the Commission and the UK government.

THE COMPLAINT

Following the report from the Parliamentary Commissioner, Mr A. and Mr H. complained to the European Ombudsman that:

1) they had submitted substantial evidence to the European Commission which proved beyond doubt that Directive 85/337/EEC had not been followed and correctly applied by the United Kingdom authorities;

2) the Commission had failed to make a full diligent and searching inquiry into the circumstances surrounding their complaint that the UK authorities' environmental assessment of the M40 widening project had been faulty but had accepted at face value and without demur the United Kingdom government's submission made in response to the complaint.

THE INQUIRY

The Commission's initial response

In March 1996, the Commission sent the Ombudsman the following comments:

"The subject matter of the complaint involves a decision of the Commission with regard to proceedings under Article 169. The Court of Justice has consistently held that:

"...it is clear from the scheme of Article 169 of the EEC Treaty that the Commission has no obligation to commence proceedings under that article; it has a discretionary power precluding the right of individuals to require it to adopt a particular position and to bring an action for annulment against its refusal to take action."

In deciding not to open infringement proceedings in the present case, the Commission exercised its discretion as fully recognised by the Court. Moreover, it has proceeded vis-à-vis the complainants in accordance with the principles of good administrative behaviour by duly registering the complaints and keeping the complainants informed on the treatment of the case. It should be added that complai-

nants in a 169 EC procedure do not possess any specific procedural rights as could be the case in other sectors like competition or anti-dumping. The Commission therefore sees no grounds for any complaint of maladministration in such a case."

The Commission also asked the Ombudsman to take a position on the admissibility of the complaint, in view of the requirement of Article 2 (4) of the Statute of the Ombudsman 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 person lodging the complaint.

The further inquiries

After careful examination of the Commission's comments, it appeared that the main questions raised by the complaint to the Ombudsman remained unanswered.

To avoid fruitless debate on the two-year time limit, the Ombudsman decided to conduct further inquiries on his own initiative, in accordance with Article 138e of the Treaty and Article 3 (1) of the Statute of the Ombudsman. He asked the Commission:

1) what steps it took to deal with the complaint from Mr A. and Mr H.;

2) what material formed the basis of the Commission's conclusion that there had been no infringement of Directive 85/337/EEC;

3) what correspondence was exchanged between the Commission and the UK authorities regarding the case?

The Commission's reply

The reply from the Commission included information about

1) its interpretation of Directive 85/337/EEC;

2) its view of the principles on which it should act in cases of this kind;

3) an account of how it dealt with the complaint.

As regards the interpretation of the Directive, the Commission referred to provisions of Article 5 that require information to be supplied only where the Member State considers certain conditions to be fulfilled.

As regards the principles on which it should act, the Commission set out the criteria that it considers appropriate to use, in the context of Article 169, in cases concerning a Member State's exercise of discretion based on a complex appraisal such as environmental assessment under Directive 85/337/EEC. The Commission stated that it would "*limit its review to three main categories:*

- *failure of procedural rules*
- *facts on which the decision was taken were inaccurately stated,*
- *manifest error of appraisal or misuse of powers.*"

As regards the way in which it had dealt with the complaint, the Commission stated that it had written to the UK authorities, notifying them that a complaint had been received concerning the M40 project and asking for a copy of the environmental statement and the non-technical summary produced in relation to the project together with the assessment made of that information. The UK supplied a copy of the environmental statement for the project, the non-technical summary, and the seven-page reasoned decision granting development consent for the project.

The Commission further stated that it had considered the information supplied to it by the complainants and by the UK authorities and had formed the view that this information:

*" **a)** disclosed no failure on the part of the United Kingdom to follow the procedural rules of Directive 85/337/EEC,*

b) disclosed no evidence that the facts on which the decision of the United Kingdom to grant development consent for the M40 project was taken were inaccurately stated,

c) disclosed no evidence that the United Kingdom had committed a manifest error of appraisal or had misused its powers.

The Commission therefore considered that the information before it contained no grounds on which to conclude that the United Kingdom exercised its discretion under Directive 85/337/EEC in a manner contrary to the requirements of that Directive. There was therefore no basis on which the Commission could have correctly decided to bring a formal action against the United Kingdom under Article 169 of the Treaty."

The examination of the file

After careful consideration of the information supplied by the Commission and the complainant, the Ombudsman decided that it was necessary to examine the documents held by the Commission relating to the complaint in order to satisfy himself that the decision to close the file had been made in conformity with general principles of good administrative behaviour. The examination was carried out on 5 November 1996.

THE DECISION

1) The Commission's interpretation of the Directive

1.1 Article 3 of Directive 85/337/EEC provides that an environmental impact assessment will identify, describe and assess the effects of a project on various listed factors, including human beings and the air.

1.2 Article 5 requires Member States to adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III. Annex III requires, amongst other things, estimates of air pollution and noise.

1.3 The obligation imposed on Member States by Article 5 of the Directive is qualified. Information only has to be provided inasmuch as a Member State considers:

a) that it is relevant to:

a given stage of the consent procedure *and*

the specific characteristics of a particular project and of the environmental features likely to be affected; *and*

b) that the developer may reasonably be required to compile the information

having regard, inter alia, to current knowledge and methods of assessment.

1.4 Article 5 therefore requires an exercise of judgement by the Member State as to what information is to be provided and, in that sense, leaves the extent of the information required to be supplied to the discretion of the Member State.

1.5 The requirements of Article 3 of the Directive are expressed to be "in accordance with the Articles 4 to 11." Given that Annex III (referred to by Article 5) is more detailed than Article 3, it does not appear that the latter was intended to impose obligations on Member States independent of those under Article 5. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

1.6 The Ombudsman's inquiries have not, therefore, revealed any instance of maladministration by the Commission in its interpretation of the information requirements of the Directive.

2) The Commission's analysis of its own role

2.1 Article 169 of the Treaty does not lay down procedures or criteria to be used by the Commission in the period preceding the issuing of a reasoned opinion to a Member State. Furthermore, the jurisprudence of the Court of Justice provides only limited guidance. The Commission itself therefore must decide what procedures and criteria to adopt in order to discharge its responsibilities under Article 169 in the process that may lead to the issuing of a reasoned opinion.

2.2 From its reply to the Ombudsman in July 1996 it appears that, in examining complaints of the kind made by Messrs A. and H. against the United Kingdom, the Commission has decided to limit its review to verifying whether procedural rules have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of appraisal or a misuse of powers. In explaining its decision thus to limit its review, the Commission has drawn by ana-

logy on the principles used by the Court of Justice in Remia v Commission[1], to review Commission decisions based on complex economic appraisal.

2.3 The Commission's analysis of its role appears reasonable given, in particular, the evidential burden that the Commission must discharge if it brings a Member State before the Court of Justice. The Ombudsman's inquiries have not, therefore, revealed any instance of maladministration by the Commission in its approach to the discharge of its responsibilities under Articles 155 and 169 in cases involving the exercise of judgement by a Member State as regards the information to be supplied under Directive 85/337/EEC.

3) The Commission's investigation of the complaint by Mr A. and Mr. H.

3.1 In their complaint to the Commission, Mr A. and Mr. H. made four specific claims. Two of these claims, concerning air quality and noise level assessments, contest the adequacy of the information contained in the environmental statement. As noted in paragraph 1.4 above, the extent of the information to be supplied is a matter within the judgement of the Member State.

3.2 The other two claims concern the availability of information to the public. The Directive's requirements in this respect are contained in Article 6, which also leaves to the judgement of Member States the detailed arrangements for public information and consultation.

3.3 It therefore appears that all four claims made by the complainants raised issues within the area of judgement left by the Directive to Member States. On the basis of the Commission's analysis of its own role, it therefore appears that there would have been no basis for further action under Article 169, even assuming that the complainants were right in all four claims that they made. Therefore a detailed investigation of the claims was unnecessary and the Commission was entitled to limit its inquiry to the documents which it requested from the UK authorities and to base its decision to close the file on those documents.

3.4 The Ombudsman's inquiries have not, therefore, revealed any instance of maladministration by the Commission in the application of Community law to the facts of the case.

4) Undue delay

4.1 The original complaint to the Commission was made on 29 November 1990. Receipt of the complaint was acknowledged on 26 August 1991. The Commission has already apologised for this delay, which was clearly too long, and no further remark by the Ombudsman seems necessary.

[1] Case 42/84, [1985] ECR 2545, para.34

4.2 From the examination of the documents, it is clear that there was delay of over nine months between the date when the Commission decided to close the file and the communication of this decision to the complainants. Since the date of the decision was not specified in the letter to the complainants, they were unaware of the delay.

4.3 As a matter of good administrative practice, the Commission should always communicate a decision to close a file to the complainant reasonably promptly. There appears to have been no justification for the delay in this case. However, there is no evidence that the delay was the result of anything other than an administrative failure.

FURTHER REMARKS BY THE OMBUDSMAN

The complaints to the European Commission, to the UK Parliamentary Commissioner for Administration and to the European Ombudsman were all based on the assumption that, if the four specific claims concerning the environmental assessment of the M40 project were correct, then the UK authorities had necessarily failed to comply with the requirements of Directive 85/337/EEC. The complainants therefore also assumed that the Commission had a duty to investigate their four claims in detail.

These assumptions - though understandable - were mistaken, for the reasons given above.

The Commission's letter informing the complainants of its decision, as well as being unduly delayed, gave no reasons for the conclusion that there was no infringement of the Directive. The Ombudsman has already noted in his decision of 29 October 1996 on the complaints against the European Commission concerning the Newbury Bypass (206/27.10.95/HS/UK and others) that an administrative process of this kind normally concludes with a reasoned decision communicated to those who have participated in the process.

Had reasons been given, the complainants would have learnt that their assumptions were mistaken in 1992, or earlier, rather than in 1996. Because they did not know the reason why their complaint had been rejected, the complainants directed their energies in the matter - understandably and reasonably - first to finding out what the United Kingdom authorities had said to the Commission and then, following the investigation by the UK Parliamentary Commissioner for Administration, to the way their complaint had been dealt with by the Commission. In the event, both these lines of enquiry were bound to be fruitless. It would not be surprising if the complainants were left with a sense of grievance as a result of their participation in the Article 169 procedure.

The further remarks of the Ombudsman in the present case will be taken into account in an own-initiative inquiry into the procedural position of complainants to the Commission in the Article 169 procedure.

The Ombudsman closed the case with the critical remark in paragraph 4.3 of the decision.

FAILURE TO ANSWER A REQUEST FOR EXTENSION OF A TIME LIMIT

Decision on complaint 154/02.10.95/SF/IT against the European Commission

THE COMPLAINT

The President of an Italian foundation complained about the European Commission's rejection of an urban renovation project which the Italian authorities had submitted for funding from the European Regional Development Fund (ERDF).

It appeared from the complaint that, by letter dated 4 October 1994, the Commission informed the Italian authorities of its intention to co-finance a limited number of pilot projects under Article 10 ERDF. The letter was addressed to Dr Ugo de Dominicis, head of the central service for cohesion policies of the Italian Ministry of Budget and Economic planning and was signed by Mr Landáburu, Director-General of DG XVI of the Commission. The letter invited the Italian authorities to submit two projects by no later than 31 October 1994. It stated that the Commission intended to proceed to the selection of projects with the assistance of a small committee of independent experts with the intention of selecting, in principle, on the basis of their quality, one project for each member state.

This letter was received by the Italian authorities on 25 October 1994. On 2 November 1994, Dr. de Dominicis wrote to Mr Landáburu giving the names of three projects. The project proposed by the foundation was listed first. The letter from Dr. de Dominicis requested more time in which to finalise the projects and indicated that details of cost and other details would be received by DG XVI by no later than 20 November.

By letter dated 2 March 1995, Dr de Dominicis was informed by DG XVI that the project of the foundation had not been selected because it did not meet the announced criteria.

By letter dated 6 June 1995, DG XVI wrote again to Dr de Dominicis stating that the project of the foundation had arrived two months after the deadline and after the meeting of experts to consider the projects had already taken place.

On the basis of the above events, the President of the foundation complained that:

1) the Commission had sent two contradictory letters of refusal concerning the project;

2) the Commission's letter of 4 October 1994 had arrived in Rome only six days before the deadline for submission of projects. The Commission should have been aware that postal delays in Italy were greater than in other member states and should have acted to ensure equality of treatment by faxing the letter. That it had not done so suggested discrimination and bad faith;

3) the Commission's letter of 4 October 1994 spoke of financing one project from each Member State. By not doing so the Commission had violated principles of transparency, accuracy of information and equality of treatment.

THE INQUIRY

The Commission's comments to the Ombudsman stated that the Commission had received 29 projects from Member States which were examined in a meeting of experts in December 1994. The foundation project arrived at the Commission at the end of January.

The Commission also stated that it had decided that only seven projects and not one per member state should be examined further with a view to receiving Community funding, and this dependent on detailed examination following remarks by the experts.

In relation to the specific complaint, the Commission commented that Member States were informed of the results of the evaluation by a standard letter, the relevant paragraph of which said that the projects that were not selected did not meet the announced criteria. The Commission recognised that in the letter concerning the project of the foundation, this paragraph should have been replaced by a paragraph indicating that the project had arrived after the deadline and that its letter created the misleading impression that the project had been evaluated when in fact it had not.

The Commission further stated that, after complaint, it had corrected this error in its letter of 6 June 1995, which explained that all the Italian projects submitted including that of the foundation had arrived after the deadline and after the meeting of experts had taken place.

The Commission denied responsibility for the three week delay in the arrival in Italy of the letter of 4 October 1994 and stated that it considered that it had respected the published procedures and equality of treatment. The Commission stated, however, that in the light of this experience the Commission should in future envisage longer deadlines for submission of projects or, if the timetable does not permit this, to send letters by fax as well as by post.

In observations on the Commission's comments, the complainant specified that the foundation project was dispatched from Italy to the Commission on 28 November 1994. The complainant also argued that the Commission's comments indicated that even the seven successful projects were incomplete and that the principle of impartiality should therefore have led the Commission to reject these projects.

Following consideration of the Commission's comments and the complainant's observations, the Ombudsman asked the Commission for further information on a number of questions. The replies indicated that the meeting between the Commission and the experts took place on 15 December 1994 and that the foundation project was received by DG XVI on 20 December 1994, but because of the end of year holidays it was not transmitted to the relevant service until January 1995. The Commission also stated that it had received on 16 November 1994 the letter from the Italian Ministry of the Budget and Economic Planning dated 2 November 1994.

THE DECISION

1) The short deadline and postal delays

1.1 In an administrative procedure involving the submission and consideration of applications, it is for the Commission to determine if a deadline is necessary and if so what it should be.

1.2 The deadline of 31 October established in the Commission's letter dated 4 October was not manifestly unreasonable. There do not appear to be any grounds for the accusation that DG XVI foresaw postal delays and made use of them in order to discriminate between member states.

1.3 Where a very short deadline is established, it is good administrative practice to consider whether post alone is an adequate means of communication to those who are invited to submit applications.

1.4 If fax had also been used as means of communication in this case, the administrative process would have been more effective in that many subsequent problems and suspicions could have been avoided.

1.5 The Commission has acknowledged that, in future, deadlines should be longer and, if this is not possible, fax should be used as a complementary mode of communication. In view of this acknowledgement no further remark by the Ombudsman is necessary.

2) The Commission's failure to respond to the letter of 2 November 1994

2.1 According to the Commission, the letter of 2 November 1994 from Dr De Dominicis to Mr Landáburu requesting more time arrived on 16 November 1994. It

appears from the Commission's replies to the Ombudsman that this letter received neither acknowledgement nor an answer.

2.2 It is normal that letters addressed to the administration should receive a reply. The failure to answer the request for more time was, therefore, maladministration.

2.3 The Commission could properly have refused the request for more time. Moreover, according to the complainants, the foundation project was posted on 28 November 1994. Even if the Commission had granted Dr De Dominicis' request for an extended deadline of 20 November 1994, therefore, it seems likely that the foundation project would have been submitted too late.

3) The contradictory letters

3.1 It appears from the Commission's replies to the Ombudsman that the Italian projects, including that of the foundation, were not taken into consideration by the committee of experts. According to the Commission, the foundation project arrived at the Commission on 20 December 1994 whereas the committee of experts met with the Commission on 15 December. It was therefore maladministration for DG XVI to send a standard letter on 2 March 1995, signed by Mr Leygues, which said that the projects concerned had been examined and rejected because they did not meet the published criteria.

3.2 According to the Commission, it corrected this error in its letter of 6 June 1995 to Dr de Dominicis. The letter of 6 June 1995 from DG XVI signed by Mr Leygues stated that the Italian projects arrived at the Commission more than two months after the deadline of 31 October 1994 when the meeting of the committee of experts had already taken place. The letter did not apologize for, or indeed make any reference to, the letter of 2 March 1995. It created the impression that it was inconsistent with the first letter rather than a correction.

3.3 In its replies to the Ombudsman, the Commission has already accepted that the letter of 2 March 1995 was inappropriate. No further remark in relation to this letter is called for. However, the letter of 6 June 1995 should have explicitly acknowledged and apologized for, the error in the letter of 2 March 1995. The Commission fell below standards of good administration in failing to admit that a mistake had been made and to offer an apology.

4) Departure from the principle of funding one project in each Member State

4.1 There appears to be no specific legal provision under the Treaty or relevant Regulations that requires the funding of one project per Member State. The general principles of equality and non-discrimination require that projects be considered on an equal basis, not that there should one project per member state.

4.2 The letter from DG XVI of 4 October 1994 indicated that, in principle, there would be one project per member state, but subject to the quality of the projects. There does not appear therefore to have been any specific commitment by the Commission as a matter of policy to one project per Member State. According to the Commission, of the seven projects selected for further examination only four were finally accepted.

4.3 In these circumstances, the fact that the outcome of the selection process did not represent one project per Member State does not appear to provide any grounds for criticism of the process. Nor do there appear to be any grounds for suspecting that there was discrimination against Italy in the selection process.

4.4 As regards the complainants' claim that all the projects should have been rejected, the fact that further examination of projects was undertaken does not appear to provide any grounds for considering that the projects concerned had not been properly submitted. It is normal that detailed examination should take place before public money is spent.

CONCLUSION

The Ombudsman's examination of this complaint revealed maladministration by the European Commission in the form of procedural errors as detailed in points 2.2 and 3.3 above. There appeared to be no evidence, however, to support the complainants' allegations of bad faith or discrimination.

Since the application procedure for pilot projects for 1994 was closed, it was not possible to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

FURTHER REMARKS BY THE OMBUDSMAN

In its comments to the Ombudsman made on 15 May 1996, the Commission twice stated that the project of the foundation arrived at the Commission at the end of January 1995. In its later reply to the Ombudsman's specific question the Commission acknowledges that the project arrived at DG XV1 on 20 December 1994.

In view of point 2.3 of the above decision, this disparity has no practical significance. However, the Ombudsman is seriously concerned that part of the information supplied to him by the Commission during his inquiries into this complaint was wrong.

One of the most basic requirements of good administrative behaviour is to provide correct information, especially to the bodies responsible for scrutiny of their activi-

ties. The Ombudsman therefore requested the Commission to emphasise to its officials the importance of supplying accurate information to the Ombudsman.

3.5 CASES OF MALADMINISTRATION LEADING TO DRAFT RECOMMENDATIONS FROM THE OMBUDSMAN

3.5.1 The European Environment Agency

DISCLOSURE OF THE REASONS FOR REJECTING A CANDIDATE

Decision and recommendations in complaint 46/27.07.95/FVK/PD against the European Environment Agency

The complaint

By letter of 25 July 1995, Mrs von K. lodged a complaint with the European Ombudsman. In her complaint, Mrs von K. alleged that she had not been given reasons why she had failed in a selection procedure organized by the European Environment Agency for filling a post as project manager; furthermore, according to Mrs von K., her letters addressed to the Agency, asking for the reasons, had remained unanswered.

The inquiry

As the European Ombudsman did not take up his duties until 27 September 1995, he was not able to give immediate attention to the complaint. By letter of 27 March 1996, the Environment Agency forwarded its comments on the complaint. In its comments the Environment Agency gives information in relation to the procedure of the selection process. A translation of the comments was forwarded to Mrs von K., who submitted observations thereupon by fax of 27 May 1996. In her fax, Mrs. von K. communicated to the European Ombudsman that she would like to receive information about the selection criteria according to which the candidates were assessed and the actual profile of the successful candidate. Furthermore, Mrs. von K. questioned whether equal opportunities were provided for women in the selection procedure.

By letter of 2 July 1996, the European Ombudsman forwarded the complainant's observations to the Environment Agency and asked a number of questions regarding:

the criteria established by the selection committee, the qualification profile of the

person who obtained the post for which Mrs. von K. had applied, information as to why Mrs. von K. never received a communication giving the reasons for not having been chosen for the post.

In its letter of 16 July 1996 responding to the European Ombudsman's request, the Environment Agency made the following points: The criteria used by the selection committee as well as the qualification profile of the person who obtained the post for which Mrs. von K. had applied were disclosed by the Environment Agency to the European Ombudsman and were to be dealt with confidentially. The Environment Agency met the necessary requirements to ensure equal treatment as regards to men and women.

THE DECISION WITH RECOMMENDATION

According to the information given to the European Ombudsman, there is no indication that the Environment Agency discriminated by sex in the selection procedure.

As regards the non-disclosure of the selection criteria to the candidate and the qualification profile of the person who obtained the post, the European Ombudsman states the following:

Mrs. von K., received no reasoned decision for the rejection of her candidature. According to the case law of the European Court of Justice the authority responsible for the selection of candidates is required to give reasons for its decision. This obligation to state reasons is valid in particular at the stage when a complaint by an unsuccessful candidate is rejected. The purpose of that obligation is both to enable the Community judicature to review the legality of the decisions and to give the person concerned a sufficient indication to determine whether such decisions are well founded or contain defects allowing their legality to be challenged.

The extent of the obligation must be determined on the basis of the particular facts of each case. Mrs. von K. requested to be informed about the reasons for her failure. The European Ombudsman did not see why the reasons could not have been disclosed to her.

The European Ombudsman considered that the Environment Agency should have disclosed the reasons for its decision to reject the candidature to Mrs. von K.

After having attempted to achieve a friendly solution in accordance to Article 3.5 of the Statute, he informed the European Environment Agency that he considered the non-disclosure to Mrs. von K. of the reasons for the rejection of her candidature to be an instance of maladministration.

He therefore asked the European Environment Agency for the detailed opinion foreseen by Article 3 (6) of the Statute of the European Ombudsman by no later than 30 April 1997. The detailed opinion could consist of acceptance of the

Ombudsman's decision and informing him that the recommendation has been implemented.

The European Environment Agency informed the European Ombudsman by a letter of 6 February 1997 that it had accepted the recommendation made by the Ombudsman and disclosed the reasons to the candidate.

3.6 OWN INITIATIVE INQUIRIES BY THE OMBUDSMAN

PUBLIC ACCESS TO DOCUMENTS HELD BY COMMUNITY INSTITUTIONS

Decision and recommendations in the own initiative inquiry 616/PUBAC/F/IJH

In June 1996, the Ombudsman began an own-initiative inquiry into public access to documents held by the Community institutions and bodies, other than the Council and Commission.

Background to the inquiry

The specific reason for the inquiry was that the Ombudsman had received a number of complaints which appeared to suggest that the staff of Community institutions and bodies are not always adequately instructed as to how to deal with requests for documents and that documents are sometimes disclosed only after a considerable delay.

The more general reason was that part of the Ombudsman's mission is to enhance relations between the Community institutions and bodies and European citizens. The creation of the Ombudsman's office was meant to underline the commitment of the Union to democratic, accountable and transparent forms of administration. The inquiry appeared appropriate from this perspective since public access to documents is an important aspect of transparency.

The focus of the inquiry

There is at present no Treaty provision, or general Community legislation, about public access to documents. However, Declaration 17 attached to the Final Act of the Treaty on European Union is in the following terms:

The conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.

The Commission and the Council have subsequently adopted their own, publicly available, rules about access to documents that they hold. [1]

Such rules can promote transparency and good relations between citizens and the Community institutions and bodies in three ways:

- the process of adopting rules requires the institution or body to examine, for each class of documents, whether confidentiality is necessary or not. In the context of the Union's commitment to transparency, this process itself may help encourage a higher degree of openness;
- if rules are adopted and made publicly available, people who request documents can know what their rights are. The rules themselves can also be subject to public scrutiny and debate;
- clear rules can promote good administration, by helping officials deal accurately and promptly with public requests for documents.

It was therefore decided to focus the own-initiative inquiry on the question of whether Community institutions and bodies other than the Council and Commission had established publicly available rules on access to the documents they hold.

In the present state of Community law, the inquiry was confined to whether rules exist and are publicly available. It did not ask whether the rules themselves are the right ones to ensure the degree of transparency that European citizens increasingly expect of the Union. In fact, the Commission and Council rules are quite limited compared to the rules governing some national administrations. In particular, they do not require registers of documents to be published. Nor do they give any right of access to documents held by one body, but originating in another.

The institutions and bodies covered by the inquiry

The inquiry was addressed to fifteen Community institutions and bodies, consisting of:

- the Community institutions in the sense of Article 4 of the Treaty, other than the Council and Commission;
- four bodies established by the Treaty, *and*
- eight of the ten "decentralized Community agencies". (The remaining two decentralized agencies - the Community Plant Variety Office and the European Agency for Safety and Health at Work - were excluded from the inquiry because they were not yet operational).

[1] The Council and Commission adopted a joint Code of Conduct (OJ 1993 L 340/41), implemented through Council Decision of 20 December 1993 on public access to Council documents (OJ 1993 L 340/43) and Commission Decision of February 1994 on public access to Commissions documents, OJ 1994 L 46/58.

THE INQUIRY

The Ombudsman asked the institutions and bodies to inform him about their situation as regards public access to documents and in particular whether they had issued general rules which are easily available to the public or internal guidelines to staff on public access and confidentiality.

The replies contained information about requirements of confidentiality and information policies, as well as about rules and guidelines on public access to documents.

Confidentiality requirements

Some replies referred to requirements of Community law that certain types of document should be confidential. This information is important, because rules about access to documents that are adopted as a matter of internal organisation must be consistent with existing legal obligations of confidentiality. However, it did not appear that any of the institutions or bodies gave public access to all documents that were not specifically covered by legal obligations of confidentiality.

Information policies

Several replies dealt with the information policy of the institution or body. In many cases, it appears that there is a strong commitment to providing information in a usable and easily accessible form, both to specific interested audiences and to the general public. In some cases, a commitment to openness and transparency is part of the mandate of the institution or body. In others, it is the result of a policy decision. A commitment to openness and transparency in information policy was emphasised in replies from the European Parliament about its political work, from the Court of Justice about its judicial work, and from the Economic and Social Committee, the European Investment Bank, the European Centre for the Development of Vocational Training, the European Environment Agency and the European Agency for the Evaluation of Medicinal Products about their activities in their various policy fields.

The provision of information is an important contribution to transparency and is essential in order to facilitate participation by groups and individual citizens in the work of the Community. The Ombudsman therefore welcomed information about the positive information strategies of Community institutions and bodies.

However, an information strategy is not a substitute for rules about what to do when citizens take the initiative by asking for documents that have not been put in the public domain. In particular, citizens have a legitimate interest in the organisation and functioning of institutions and bodies that are paid for from public funds. This may lead to requests for administrative documents, which are not usually covered by an information strategy.

The adoption of rules and guidelines on public access to documents

From its reply, it appeared that the Office for Harmonization in the Internal Market had already adopted rules about public access to documents. The Ombudsman therefore decided that the inquiry did not need to be pursued further in relation to that body.

The replies from the European Training Foundation, the European Foundation for the Improvement of Living and Working Conditions, the European Monitoring Centre for Drugs and Drug Addiction indicated that they intended to adopt rules and guidelines on public access to documents in the near future. The Court of Justice and the European Investment Bank stated that they were willing to consider the adoption of such rules and, in the case of the Bank, that a study of the question was under way.

The European Monetary Institute explained that it deals with highly sensitive issues in the monetary and financial field and that Article 11.2 of its Statute provides that all documents drawn up by the EMI shall be confidential unless its Council decides otherwise. This reply appeared to relate to documents in the monetary field.

The reply from the Committee of the Regions indicated that it had adopted as an internal guideline the Council and Commission Joint Code of Conduct and that it is currently preparing the necessary steps to inform the public of the applicability of the Code to requests for documentation of the Committee of the Regions.

The reply from the European Agency for the Evaluation of Medicinal Products indicated that its staff are briefed on public access and that it uses the same classification system as the Commission for at least some documents.

FURTHER INQUIRIES

In September 1996, the Ombudsman wrote again to the three bodies which had indicated that they were planning to adopt rules and guidelines and to the European Investment Bank, which had indicated it was studying the question, to ask for a copy of the rules eventually adopted.

He also wrote to the European Parliament, European Monetary Institute, European Environment Agency, the Translation Centre for Bodies of the European Union and the European Agency for the Evaluation of Medicinal Products to ask about access to documents of an administrative kind, which had not been mentioned in the replies to the original letter, and whether the institution or body concerned would adopt in relation to such documents rules similar to those of the Commission and Council.

He wrote to the Court of Justice, the Court of Auditors, the Economic and Social Committee and the European Centre for the Development of Vocational Training to

suggest they consider the adoption of rules on public access to documents similar to those of the Commission and Council.

Summary of the present position concerning rules on public accessments

On the basis of replies to both the original and further inquiries, it appears that:

- the Office for Harmonization in the Internal Market has already adopted rules which are easily available to the public concerning access to documents.
- the following eight institutions and bodies have agreed to adopt such rules:
  The Court of Justice;
  The Court of Auditors;
  The Committee of the Regions;
  The European Training Foundation;
  The European Foundation for the Improvement of Living and Working Conditions;
  The Translation Centre for Bodies of the European Union;
  The European Monitoring Center for Drugs and Drug Addiction
- the following bodies are currently considering the adoption of such rules:
  The European Parliament;
  The European Investment Bank;
  The Economic and Social Committee.

DECISION

On the basis of the information supplied to the Ombudsman by the institutions and bodies covered by the enquiry it appeared that most, but not all, intended to follow the good example set by the Council and Commission in adopting rules governing public access to documents.

In considering this position, it is important to recall the requirements of Community law as declared by the Court of Justice[1] :

"So long as the Community legislature has not adopted general rules on the right of public access to documents held by the Community institutions, the institutions must take measures as to the processing of such requests by virtue of their power of internal organization, which authorizes them to take appropriate measures in order to ensure their internal operation in conformity with the interests of good administration."

It therefore appears that, in relation to requests for access to documents, Community institutions and bodies have a legal obligation to take *appropriate measures* to act

[1] Case C-58/94, *Netherlands v Council*, judgement of 30 April 1996

in conformity with the interests of *good administration*. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

Good administration requires that all Community institutions and bodies should take into account the Union's commitment to transparency. This commitment appears from Declaration n 17 attached to the Final Act of the Treaty on European Union and from numerous subsequent acts including, in particular, the Interinstitutional Agreement on democracy, transparency and subsidiarity of 25 October 1993[1]. Transparency requires not only that documents should be publicly available to the maximum extent possible, but also that any denial of access to documents should be justified by reference to rules laid down in advance.

Furthermore, Article C of the Treaty on European Union provides that "the Union is served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives (...)". European citizens are therefore entitled to expect a consistent approach to the question of public access to documents. This does not necessarily require a single set of rules that applies to all Community institutions and bodies. However, it does exclude arbitrary differences as to whether or not rules exist and are made publicly available. None of the Community institutions or bodies covered by the inquiry has presented evidence that the adoption of rules governing public access to documents would be impractical or unduly burdensome in its specific circumstances. The adoption of such rules is therefore an appropriate measure in relation to the processing of requests for documents.

CONCLUSION

On the basis of the above analysis, the Ombudsman concluded in December 1996 that failure to adopt and make easily available to the public rules governing public access to documents constitutes an instance of maladministration.

RECOMMANDATIONS

In view of the above, the Ombudsman made the following draft recommendations to the institutions and bodies covered by the inquiry that have not already adopted rules concerning public access to documents:

1) The institutions and bodies should adopt rules concerning public access to documents within three months.

2) The rules should apply to all documents that are not already covered by existing legal provisions allowing access or requiring confidentiality.

[1] OJ 1993 C 329/133

3) The rules should be made easily available to the public.

As regards the Court of Justice, the European Parliament and the European Monetary Institute, these recommendations apply only to administrative documents.

The relevant institutions and bodies were informed of these draft recommendations. In accordance with Article 3 (6) of the Statute of the Ombudsman, they shall 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.

4 RELATIONS WITH THE EUROPEAN PARLIAMENT AND THE EUROPEAN COMMISSION

The mission of the European Ombudsman is to protect and promote, within the limits of his mandate, the rights of European citizens under Community law. This mission is shared with other organs of the Community that have different mandates. Effective action to secure the rights of citizens requires cooperation, good working relations, mutual trust and regular contacts between the Ombudsman and other Community organs, in particular the European Parliament and the European Commission.

4.1 THE EUROPEAN PARLIAMENT AND THE COMMITTEE ON PETITIONS

Cooperation between the Committee on Petitions of the European Parliament and the Ombudsman is of special importance. Under Article 8d of the Treaty establishing the European Community, citizens of the Union have the right to petition the European Parliament and to complain to the European Ombudsman. The Ombudsman and the Committee on Petitions of the Parliament are thus intended to be complementary institutions.

From the beginning of the office of the European Ombudsman, close cooperation has been established with the Committee on Petitions and there is regular contact between the two secretariats. The respective functions and working methods of the two bodies have been clarified. There is an agreement between the Committee and the Ombudsman concerning the mutual transfer of complaints and petitions, in appropriate cases and with the consent of the complainant or petitioner. The agreement operated successfully in 1996; 10 petitions were transferred to the Ombudsman to be dealt with as complaints and five complaints were transferred to the Committee on Petitions to be dealt with as petitions.

The Ombudsman made his first visit of 1996 to the Committee on Petitions on 30 January, attending a meeting of the Committee in Brussels. After a useful exchange of views on future cooperation, Mr SÖDERMAN and Mr. Edward NEWMAN, Chairman of the Committee on Petitions, gave a joint press conference. On this occasion, Mr SÖDERMAN also had a meeting with Mr Stig BERGLIND, Director of the Information Directorate of the European Parliament.

The Committee on Petitions is responsible for examining the Annual Report of the

Ombudsman and making its own report about it to the Parliament. The Ombudsman transmitted his Annual Report for the year 1995 to the President of the Parliament on 22 April 1996 and presented it to the Committee on Petitions in Brussels on 23 April. He presented the Annual Report for 1995 at the plenary session of the European Parliament in Strasbourg on 20 June 1996. This was followed by discussion in the Parliament of the Annual Report and of the Committee on Petitions' report. The Ombudsman then gave a joint press conference with Mr NEWMAN, Chairman of the Committee on Petitions and Mrs Nuala AHERN, Vice-Chairman of the Committee and rapporteur for the Committee's report.

On 25 November, Mr SÖDERMAN attended a meeting of the Committee on Petitions in Brussels, together with Ms Daniela TIRELLI, the administrative assistant responsible for the reception of complaints. He gave the Committee an overview of the present situation of his work and of the collaboration being planned with national ombudsmen and similar bodies. The Ombudsman's presentation was followed by a lively discussion of the latter topic, as well as of cooperation with the Committee itself. During his stay in Brussels, Mr SÖDERMAN also had the opportunity to meet the rapporteur for the 1997 budget, Mr FABRA-VALLÈS.

As well as visits to the Committee on Petitions, Mr SÖDERMAN also attended a meeting of the Committee on the Rules of Procedure on 2 July in Brussels, accompanied by legal officer Kyriakos TSIRIMIAGOS. The Ombudsman addressed the Committee about his activities.

The Ombudsman also maintains regular contact with other services of the European Parliament. On 14 February, he had a meeting in Brussels with Mr Sergio GUCCIONE, Director-General of the Information and Public Relations Directorate of the Parliament. On 15 February, he attended the meeting of the Heads of the European Parliament information offices in the Member States and gave a speech about the history and development of the ombudsman institution and discussed forms of future cooperation.

The Citizens' Mail service of the European Parliament responds to citizens' requests for information about the European Union, its institutions and activities. Requests for information addressed to the Ombudsman have been referred to Citizens' mail in cases where they could be dealt with most effectively by that service.

On 29 May, the Ombudsman and senior legal officers Mr Ian HARDEN and Mr Peter DYRBERG visited the Legal Service of the European Parliament in Luxembourg and met with the Parliament's jurisconsult Mr Gregorio GARZÓN CLARIANA. Mr SÖDERMAN also had a meeting with Mrs Monique SCHUMACHER at the European Parliament information office in Luxembourg and with a group of journalists.

4.2 THE EUROPEAN COMMISSION

The other European institution with which the Ombudsman maintains a regular dialogue and cooperation is the European Commission. Most of the complaints that lead to an inquiry by the Ombudsman concern alleged instances of maladministration in the activities of the Commission. This is normal, since the Commission is the main Community organ that makes decisions having a direct impact on citizens.

Under Article 155 of the Treaty establishing the European Community, the Commission has responsibility to ensure that Community law is observed, in particular by Member States. It can bring proceedings in the Court of Justice for this purpose under Article 169 of the Treaty. As "Guardian of the Treaties", the Commission has an important responsibility for ensuring that the legal rights of citizens of the Union are respected. Citizens have the possibility to complain to the Commission if they feel their rights are being infringed, particularly by a Member State. To facilitate such complaints the Commission has published a standard complaint form in the *Official Journal*.[1]

During a visit to Brussels on 29-30 January, Mr SÖDERMAN met Mr Jean-Louis DEWOST, Director General of the Legal Service of the Commission, Mr Erkki LIIKANEN, Commissioner, and Mrs Ranveig JACOBSSON from the Cabinet of Mrs Anita GRADIN, Commissioner. Mr SÖDERMAN and his Secretary General Mr GIRAUD visited Brussels again on 20-21 March and met Mr David WILLIAMSON, Secretary General of the European Commission and the Directors General of the Commission.

Mr Ian HARDEN, Principal Officer of the Ombudsman, and legal officer Vicky KLOPPENBURG, visited Commission premises in Brussels on 5 November to carry out the first inspection of documents in relation to complaint against the Commission (complaint 132/21.9.95/AH/EN). The inspection of documents was preceded by a meeting with Commission officials at which the latter explained the Commission's procedures for the handling of complaints to the Commission alleging an infringement of Community law by a member state.

The Ombudsman and his secretariat also cooperate with the Commission in various activities linked to Citizenship of the Union. Mr SÖDERMAN attended the meeting of the Heads of representations of the European Commission in the member states on 22-23 May in Strasbourg, giving a short presentation of his work and discussing the forms of future cooperation with the representations.

During a visit to Brussels on 25-26 November, the Ombudsman also visited the Director General for Consumer Policy Service (DG XXIV), Mr Spyros PAPPAS, and

[1] OJ 1989 C 26, p.6, 1.2.89

also met Mr DEGLAIN of the United States Mission to the European Union. The Ombudsman gave a talk about his role and activities.

The Ombudsman was represented by Mr HARDEN at a conference in Brussels on 2 December, organised jointly by the Directorate General for Consumer Policy Service (DG XXIV) and the European Employers' Federation (UNICE), on "Company and Consumer Dialogue in Europe". The keynote speaker was Commissioner BONINO. Mr HARDEN chaired the working session on public and private ombudsman systems.

5 Relations with national Ombudsmen and similar bodies

The implementation of many aspects of Community law is the responsibility of national, regional or local administrations in the member states. Complaints from citizens who consider that such authorities have infringed their rights under Community law are outside the mandate of the European Ombudsman, even when a right of Union citizenship is involved, such as the freedom of movement guaranteed by Article 8a of the EC Treaty. In many cases, such complaints could be effectively dealt with by national Ombudsmen or similar bodies, who are increasingly involved in dealing with matters that concern the implementation of Community law by national administrations.

To further develop an effective and close system of cooperation to safeguard the rights of European citizens, a seminar on "The respective role of the Community and National institutions and bodies in the supervision of the application of European Community law" was held on 12 and 13 September 1996 in Strasbourg.

The programme for the seminar included valuable contributions from Mrs Nuala AHERN, Vice Chairman of the Committee on Petitions of the European Parliament, Mr Jean-Louis DEWOST, Director General of the Legal Service of the Commission, Mrs Anita GRADIN, Member of the European Commission, Mr Hans GAMMELTOFT-HANSEN, National Ombudsman of Denmark, Mr Gregorio GARZÓN CLARIANA, Jurisconsult of the Legal Service of the European Parliament, Mr Kevin MURPHY, National Ombudsman of Ireland, Mrs Christa NICKELS, Chairman of the Petitions' Committee of the German Bundestag, Mr Gil Carlos RODRIGUEZ IGLESIAS, President of the Court of Justice, and Mrs Ursula SCHLEICHER, Vice President of the European Parliament.

The concluding session of the seminar was devoted to discussion of future cooperation between national Ombudsmen and similar bodies and the European Ombudsman. It was agreed that a flexible form of cooperation on equal terms should be set up, with the purpose of making citizens' rights under Community law a living reality at all levels within the Union and its Member States.

The first step in developing the process of cooperation has been the creation of a network including liaison officers from each of the national ombudsmen and similar bodies and the European Ombudsman. The network is intended 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.

A further seminar for liaison officers is foreseen for 1997. An important mechanism of cooperation will be the development of an Internet user group for the network, coordinated by the European Ombudsman.

A seminar to the national Ombudsmen and similar bodies was arranged in Strasbourg in September, 1996. The working sessions were held in the room Willy Brandt at the European Parliament.

Mr Jacques Pelletier, the National Ombudsman of France, in discussion with Ursula Schleicher, the Vice-President of the European Parliament.

Mr Söderman exchanging views with Mr Jean-Claude Eeckhout, Director, Secretariat · General of the European Commission

Mr Hans Gammeltoft-Hansen, National Ombudsman of Denmark, outlining the developments in his approach to complaints involving the application of Community law. On the podium, from left to right Mr Kevin Murphy, the National Ombudsman of Ireland, Mr Martin Oosting, the National Ombudsman of the Netherlands, Mrs Ursula Schleicher, the Vice-President of the European Parliament.

6 INFORMATION STRATEGY

The Ombudsman's information strategy in 1996 aimed to raise the level of awareness amongst European citizens of the existence and functions of the European Ombudsman.

The information strategy had two main objectives. The first was to inform potential complainants of their right to complain and how to exercise it. The second was to help improve relations between the Union and its citizens by informing the broader public of the Ombudsman and his role in helping to realize the Union's commitment to open, democratic and accountable forms of administration.

The information strategy was put into effect through publications, both conventional and on the Internet, public lectures and participation in conferences and meetings and media interviews and publicity.

6.1 PUBLICATIONS

A brochure entitled "How to complain to the European Ombudsman" had already been prepared in autumn 1995. The brochure, which includes a standard form for making a complaint to the Ombudsman, was widely distributed during the first part of 1996.The main target audience for this first publication was potential complainants. To meet growing demand, a second edition was prepared in spring 1996. The text of the brochure was also published in the Official Journal of the European Communities (C 157, 1 June 1996) and made available on the Internet, (http://www.europarl.eu.int).

A smaller, more colourful brochure entitled "The European Ombudsman - Questions and Answers" was prepared in autumn 1996. This brochure is intended both for potential complainants and to inform the broader public about the work of the Ombudsman. The initial print run was one hundred thousand copies and, on the basis of demand so far, it will be necessary to re-print the brochure in 1997.

"Questions and Answers" has been distributed throughout the institutions and bodies of the Union, for the information of officials as well as the public, to the information offices of the European Parliament and the European Commission in the Member States; and to the offices of the National Ombudsmen and similar bodies. With the assistance of the Office for Official Publications, the brochure was also sent to a number of specific targets such as consumer organisations, Chambers of Commerce and professional organisations. Further distribution to the relays and

networks (Info centres in Europe, Euro Info-points, European documentation centres, Euro-Libraries and others) is currently under way.

The European Ombudsman also figures in Citizens First, a joint initiative of the European Parliament and European Commission, part of the "Information Programme for European citizens".

The first Annual report of the Ombudsman was presented at a plenary session of the European Parliament on 20 June 1996. The report was distributed to European institutions, international Ombudsman institutions, Ombudsmen in the Member States, University libraries, European documentation centres and to the media. It was also printed in the Official Journal and made available on the Internet.

The Ombudsman intends to make full use of the new opportunities for information and interaction provided by the Internet. These, however, are an addition to and not a substitute for conventional forms of publication, which continue to be accessible to a much greater proportion of the population than has access to the Internet. Information about the Ombudsman is currently available on the World Wide Web site of the European Parliament. Subject to availability of resources, it is intended that the Ombudsman should develop a separate web site containing a much wider range of material, including decisions, and with interactive possibilities for citizens.

6.2 CONFERENCES AND MEETINGS

During the first full year of operation of the European Ombudsman's office in Strasbourg, Mr SÖDERMAN visited most Member States, participating in European and international congresses, seminars and meetings, giving lectures and making speeches on his role and functions as European Ombudsman. Regular visits were made to Brussels and Luxembourg for official purposes and it is intended to complete the cycle of visits to other Member States in 1997 by visiting Denmark, Germany, Austria and Portugal.

GREECE

During a visit to Greece on 11-12 November, Mr SÖDERMAN attended a meeting arranged by Professor Anthony MAKRIDIMITRIS, University of Athens. Among the speakers of the meeting were Mr Alekos PAPADOPOULOS, Minister of Interior Affairs, Professor PAVLOPOULOS, University of Athens, Mr Nikos Chr. CHARALAMBOUS, Commissioner for administration of Cyprus, and Mr SÖDERMAN who gave a speech entitled "The institution of the Ombudsman. The control of maladministration in Greece and Europe".

A book about establishing an ombudsman office in Greece was presented on the occasion and information was given by the Minister of Interior Affairs about draft legislation to establish an Ombudsman in Greece.

During his stay in Athens, Mr SÖDERMAN also had the opportunity to meet Mr Nikos KOSTITSIS of the European Parliament information office in Athens.

SPAIN

Mr SÖDERMAN visited Spain on 3- 5 May for a meeting with non-governmental organizations and associations at the representation of the European Commission in Madrid. He paid a visit to the Defensor del Pueblo, Mr Fernando Alvares de MIRANDA and had a dinner with Mr Carlos BRU, President of the European Movement. He gave a press conference at the representation of European Commission in Madrid and visited the information office of the European Parliament.

During a visit to Spain on 6-8 November, Mr SÖDERMAN presented a paper on the role of the European Ombudsman at the University of Salamanca and gave a press conference to the regional press. During his stay, he had a further meeting with Mr Alvarez de MIRANDA. He also met members of the Parliamentary Committee of the Spanish Parliament, which oversees the work of the Spanish Ombudsman, el Defensor del Pueblo.

Mr SÖDERMAN paid a visit to the Basque region at the invitation of Basque Council of the European Movement on 9-10 December 1996 and gave a lecture in the Council on the role of the European Ombudsman. Among the participants were several MEPs, all the members of the Basque Council of the European Movement, the President of the Regional Court, and directors from several media of the region.

In Vitoria Gasteiz he met the regional President, Mr Lendakari ARDANZA, the President of the Parliament, Mr LEIZAOLA, the current Basque Ombudsman, Mr MARKIERI, and the Mayor of Vitoria, Mr CUERDA

All the events were closely followed by a large number of journalists from newspapers, radio and TV and reported extensively by the regional and national media. A press conference was arranged at the office of the Basque Ombudsman, el Ararteko, and special interviews given to DEIA, El Correo Español-El Pueblo Vasco, and El Mundo.

IRELAND

Mr SÖDERMAN and Mr Jean-Guy GIRAUD, Secretary-General visited Ireland on 4-5 March. Mr SÖDERMAN participated in a seminar "Defending European

Jacob SÖDERMAN with (from left to right) Mr Thorkrel NESSHEIM, Legal Consultant of the Norvegian Ombudsman, and Mr Jon ANDERSEN, Chief Legal Consultant of the Danish Ombudsman, at the working session and General Assembly of the European Ombudsman Institute in September 1996 in Ljubljana, Slovenia.

Citizens' Rights" arranged jointly by the European Movement and the information office of the European Parliament in Dublin. At the meeting, he presented a paper on "The Role of the European Ombudsman".

During his stay in Ireland Mr SÖDERMAN also visited the Irish Ombudsman, Mr Kevin MURPHY and the European Parliament information office.

ITALY

Mr SÖDERMAN visited Italy 29 February-3 March. He participated in a conference "La difensa civica nell' Europa delle Regioni. Diritti e cittadinanza: tutela e promozione" at the University of Padua, where he gave a lecture on the theme "European citizenship and citizens' rights in Europe". In Bologna, he attended a conference on the theme "Incontro con il Difensore civico europeo. L'esperienza del Difensore civico nella società regionale a confronto con il Mediatore europeo istituito con il Trattato sull'Unione europea del 1992" and made a speech on the roles of the European and national Ombudsmen.

In Rome, Mr SÖDERMAN attended a conference on "The Citizens and the European Union. Toward the Revision of the Maastricht Treaty" organized by the Movimento Federativo Democratico and the representation of the European Parliament in Italy. Mr SÖDERMAN gave a talk about the role of the European Ombudsman. While in Rome, he also had the opportunity to visit the European Parliament information office.

THE NETHERLANDS

Mr SÖDERMAN, together with his Press Officer, Mrs Ilta HELKAMA, paid a visit to the Hague, the Netherlands on 20-22 November and participated in the conference "The Information Society and Government Information in Europe" where he presented a paper on his own-initiative inquiry about public access to documents within the EU institutions and bodies.

Mr SÖDERMAN also gave a lecture about the role of the European Ombudsman at the Office of the Dutch National Ombudsman in the Hague and had a meeting with the representatives from Dutch organizations and medias at the European Parliament information office.

During his visit, Mr SÖDERMAN also met with Mrs BLOM-DE KOCK VAN LEEUVEN, Ombudsman of The Hague.

SWEDEN

Mr SÖDERMAN gave a lecture on the role of the European Ombudsman in a Seminar on European Law organized by the National Board of Trade, Kommerskollegium, in Stockholm on 22 March. After a meeting with Mr Claes EKLUNDH, Chief Parliamentary Ombudsman of Sweden, he gave a press conference at the information office of the European Parliament in Stockholm.

Mr SÖDERMAN in Vitoria Gasteiz in December 1996 with the regional President, Mr Lendakari ARDANZA (center), members of the Basque Council of the European Movement and the Ombudsman's Senior Legal Officer, Mr José MARTINEZ ARAGON (right).

UNITED KINGDOM

Mr SÖDERMAN visited London on 27 March and met with Mr John AVERY, Deputy Parliamentary Commissioner of the United Kingdom. He also paid a visit to the representation of the European Commission and to the information office of the European Parliament in London. During his visit, Mr SÖDERMAN was interviewed on the Selina Scott show on television, and gave interviews to Europe Today, BBC World Service Radio, and the Law Society Gazette.

For other conferences as well as visits to the European Ombudsman office, see Appendix B, p. 109, and for speeches given by the Ombudsman, Appendix C, p. 113.

6.3 MEDIA RELATIONS

The information strategy towards the mass media has aimed to inform both potential complainants and the general public about the new European Ombudsman institution providing remedies for European citizens against maladministration in the activities of Community institutions and bodies. At the same time, it has been essential to take steps to prevent false expectations that might simply result in an increase in complaints that are outside the mandate. A key element of the information strategy has therefore been to provide the press with understandable and accurate information about the Ombudsman's decisions. In addition, a short article describing the functions of the Ombudsman was made available for reproduction to a large number of trade and other specialized journals with readerships expected to include potential complainants.

Press conferences were arranged regularly in Member States during Mr SÖDERMAN's visits, as well as on other special occasions, such as the first meeting of the European Ombudsman with the Committee on Petitions in Brussels on 30 January 1996, the presentation of his first Annual report to the Parliament in Strasbourg on 20 June 1996, and the seminar arranged for the national ombudsmen and similar bodies in Strasbourg on 12 September 1996.

Mr SÖDERMAN was interviewed by a considerable number of journalists from a variety of Member States. He also met with several groups of journalists and acquainted them with his work. He contributed to The European with columns related to his work. (See Appendix D, Articles and interviews, p.115)

APPENDIX A: STATISTICS CONCERNING THE WORK OF THE EUROPEAN OMBUDSMAN IN 1996

A) CASES DEALT WITH DURING 1996

1. TOTAL CASELOAD FROM 1.1.96 TO 31.12.96: 1041

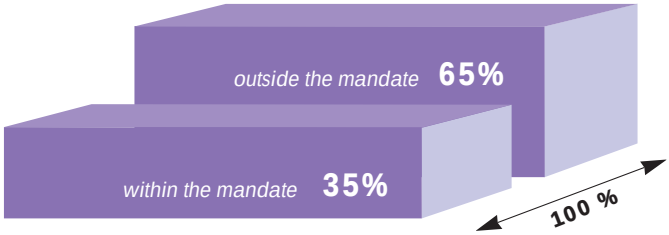
- Complaints not closed on 31.12.95: **196**
- Complaints received in 1996: **842**
- Own initiatives of the European Ombudsman: **3**

2. EXAMINATION OF ADMISSIBILITY / INADMISSIBILITY COMPLETED: 89%

3. CLASSIFICATION OF THE COMPLAINTS

a) According to the mandate of the European Ombudsman

- within the mandate: **323**
- outside the mandate: **598**



b) Reasons for being outside the mandate [1]

- not an authorized complainant: **5**
- not against a Community institution or body: **542**
- against Court of Justice or Court of First Instance in judicial role: **3**
- does not concern maladministration: **57**

[1] Some complaints are closed for 2 or more reasons

c) Analysis of complaints within the mandate

Admissible complaints: 254

- inquiries initiated : **207** [1]
- no grounds for inquiry: **47**
  - dealt with or being considered by committee on petitions: **11**
  - others: **36**

Inadmissible complaints: 69 [2]

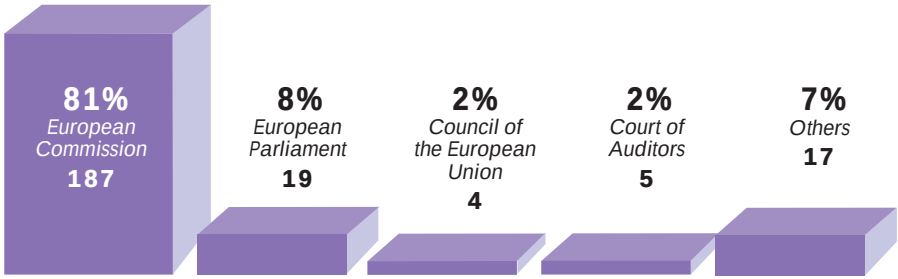
Inadmissible because:

- author / object not identified: **30**
- time limit exceeded: **12**
- prior administrative approaches not made: **16**
- internal remedies not exhausted in staff cases: **4**
- being dealt with or settled by a Court: **9**

B) INQUIRIES INITIATED: 210

(207 admissible complaints and 3 own initiatives of the European Ombudsman)

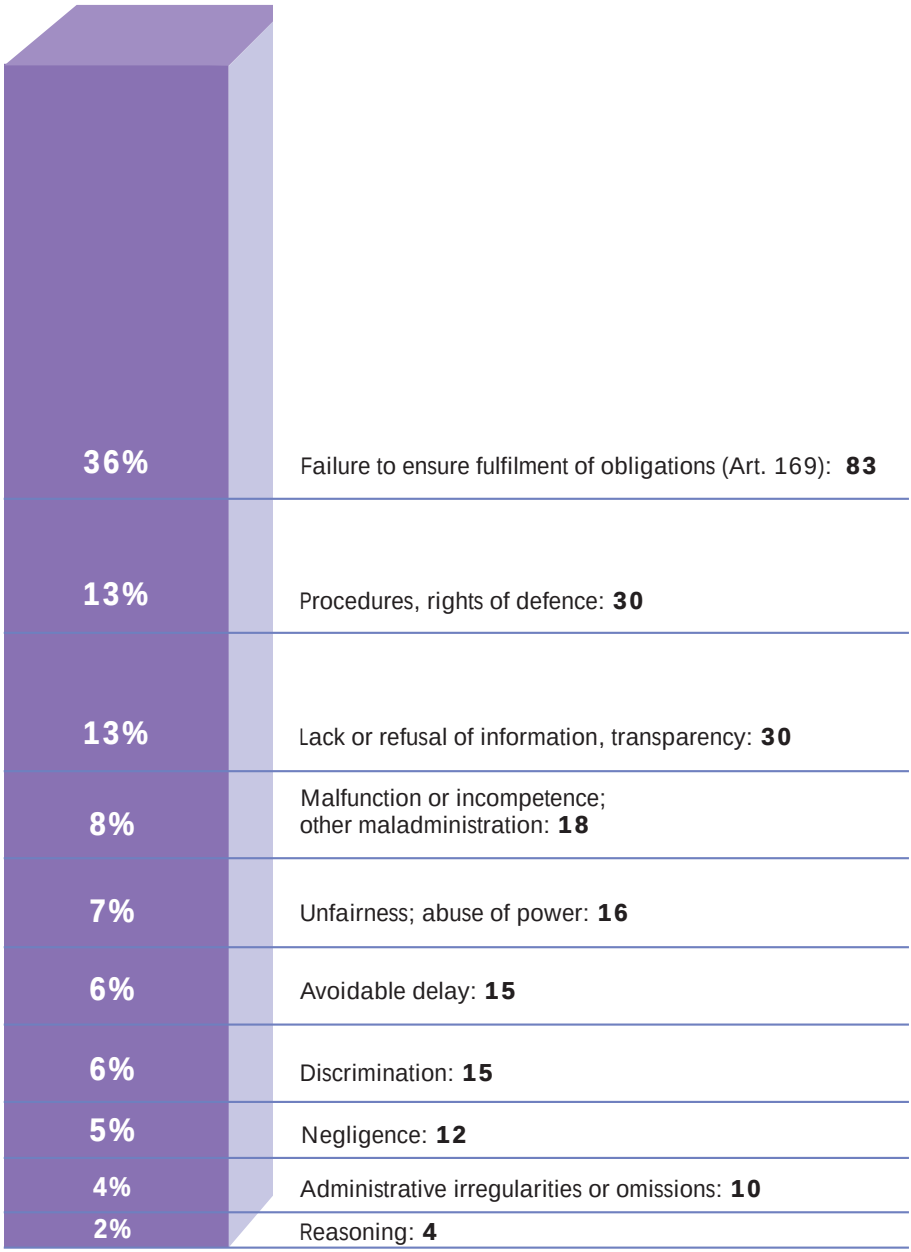
1. INSTITUTIONS AND BODIES SUBJECT TO INQUIRIES [3]



Others:
- Court of Justice: **2**
- European Environment Agency: **2**
- Economic and Social Committee: **2**
- Committee of the Regions: **2**
- Other bodies subject to the own initiative related to public access to documents: **9**

[1] Of which 39 concerning French nuclear tests in Mururoa and 27 related to Newbury Bypass (United Kingdom)
[2] Some complaints are closed for 2 or more reasons
[3] Some cases concern 2 or more institutions or bodies

2. Type of maladministration alleged[1]



[1] In some cases, two types of maladministration are alleged

C) TOTAL NUMBER OF DECISIONS CLOSING THE FILE ON A COMPLAINT OR CONCLUDING AN INQUIRY: 816

1. COMPLAINTS OUTSIDE THE MANDATE: 598

5 of these complaints have been transferred to the European Parliament, and **243** complainants have been advised to contact another agency :

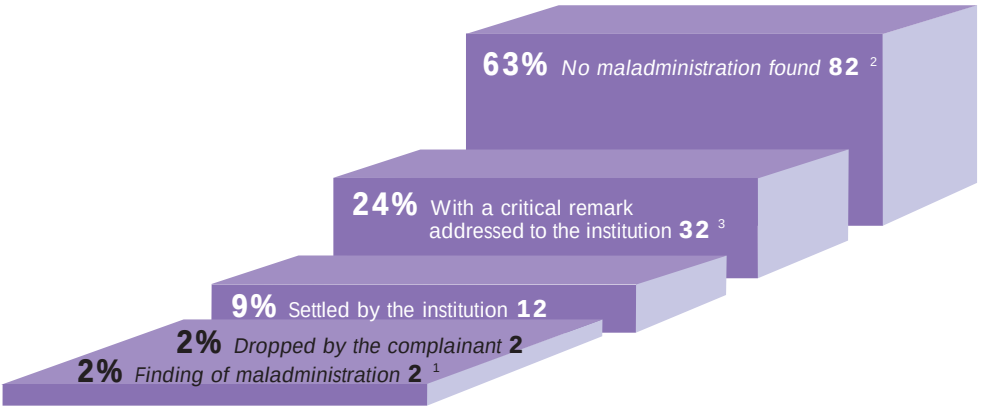
- National / regional ombudsman or petitions committee: **130**
- To petition the European Parliament: **42**
- European Commission: **43**
- Court of Justice: **1**
- Court of Auditors: **1**
- Citizen's mail service of the European Parliament : **6**
- Others: **20**

2. COMPLAINTS WITHIN THE MANDATE, BUT INADMISSIBLE: 69

3. COMPLAINTS WITHIN THE MANDATE, ADMISSIBLE, BUT NO GROUNDS FOR INQUIRY: 47

4. INQUIRIES CLOSED WITH REASONED DECISION: 102[1]

(An inquiry can be closed for 1 or more of the following reasons)



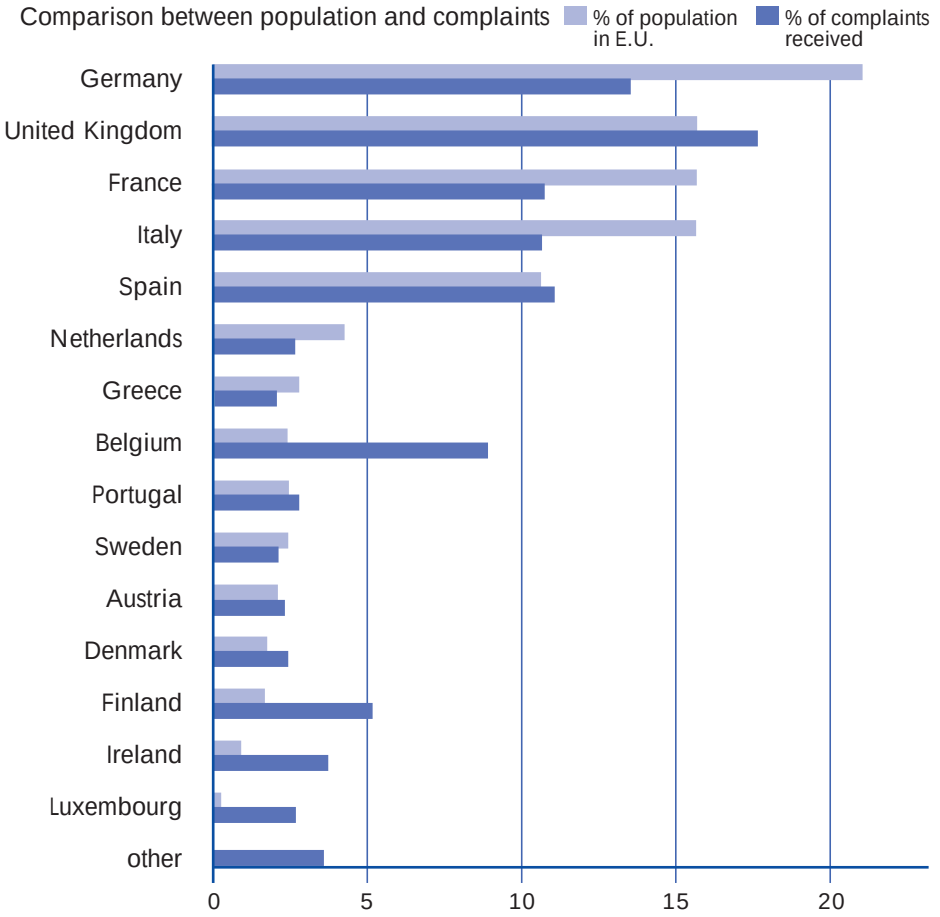
[1] Of which 1 own initiative
[2] 39 related to the French nuclear tests in Mururoa and 27 related to Newbury Bypass (United Kingdom)
[3] 27 related to the Newbury Bypass (United Kingdom)

D) INFORMATION CONCERNING THE COMPLAINTS REGISTERED IN 1996 (842 COMPLAINTS)

1. SOURCE OF COMPLAINTS

- Sent directly to the European Ombudsman: **803**
  - by individual citizens: **717**
  - by companies: **40**
  - by associations: **46**
- Transmitted by a Member of the European Parliament: **29**
- Petitions transferred of the European Ombudsman: **10**

2. GEOGRAPHICAL ORIGIN OF THE COMPLAINTS



APPENDIX B: CONFERENCES AND VISITS

CONFERENCES

Mr Jacob SÖDERMAN participated in the First Congress of the Iberoamerican Federation of Defenders of the People, Attorneys, Commissioners and Chairmen of Public Human Rights Commissions. The Congress was arranged by the Mexican Human Rights Commission on 15-19 April in Queretaro, Mexico. Other participants at the conference came from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, el Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela, Spain and Portugal. Mr SÖDERMAN presented a paper on "The role of the Ombudsman within the European Union".

The Vth round table with the Ombudsmen of Europe, organised by the Council of Europe, took place in Limassol, Cyprus, 8-10 May 1996.

The meeting was attended by more than 20 Ombudsmen of European countries and representatives from the various bodies of the European Convention on Human Rights (ECHR), i.e. the European Court of Human Rights, the European Commission of Human Rights, the steering Committee for Human Rights and the Committee on legal affairs and Human Rights of the Parliamentary Assembly. The European Ombudsman's office was represented by Mr. Kyriakos TSIRIMIAGOS, Legal Officer of the Ombudsman.

Three subjects were discussed at the meeting : 1. The function of the ombudsman and how it is perceived by the organs of the ECHR. 2. The appreciation by the ombudsmen and organs of the ECHR of acts or omissions by public authorities adversely affecting the citizens and the impact of their work on government action. 3. The ombudsman and the action of other organs of the Council of Europe as concerns the protection and promotion of Human Rights.

The Round Table meeting was preceded by an informal meeting of the European Ombudsmen, organized by Mr Nicos Chr. CHARALAMBOUS, Commissioner for administration in Cyprus.

Mr Jean-Guy GIRAUD, Secretary General of the European Ombudsman, participated in a conference entitled "Une nouvelle fonction européenne - la médiation" arranged by the French Ombudsman, Mr Jacques PELLETIER, in Paris on 30-31 May.

Jacob SÖDERMAN attended the "Working Session and General Assembly of the European Ombudsman Institute" in Ljubljana, Slovenia on 21 September 1996. The main topic of the working session was a paper presented by Professor Harald STOLZLECHNER entitled "Flucht aus der Kontrolle" dealing with the difficulties to guarantee supervision by the ombudsman, when parts of the public sector are privatized.

The conference was hosted in a professional and generous way by Mr Ivan BIJAK, the National Human Rights Commissioner of Slovenia, and his collaborators and staff.

Mr. Ian HARDEN, Principal Officer of the European Ombudsman, delivered a paper on the work of the European Ombudsman at a seminar held at the École Nationale d'Administration, Strasbourg, 19 September 1996.

Ian HARDEN attended the 17th biennial Congress of the International Federation for European Law (FIDE) in Berlin, 9-12 October 1996. The Congress involved participants from several Community institutions and bodies, including the President of the Court of Justice, Mr. Gil Carlos RODRIGUEZ IGLESIAS and other judges and advocates general of the Court of Justice and Court of First Instance, as well as academics and practitioners in the field of Community law.

The Congress examined three topics: "National constitutional law vis-à-vis European integration" (General-Rapporteur: Professor Michel FROMONT); "Energy and environmental protection in a European perspective"(General-Rapporteur: Professor Peter BADURA); and "Procedures and sanctions in economic administrative law" (General-Rapporteur: Prof. Dr. Koen LENAERTS, Judge at the Court of First Instance).

Jacob SÖDERMAN participated in the VIth International Conference of the International Ombudsman Institute (IOI) in Buenos Aires, Argentina on 20-24 October 1996. The theme of the conference was "The Ombudsman and the Strengthening of Citizens' Rights. The Challenge of the XXI Century".

The conference was attended by members of the IOI and observers representing 86 countries. This reflects the establishment of many new ombudsman offices during recent years, especially in Latin America and Eastern Europe.

During the conference Sir John ROBERTSON from New Zealand presented a paper on different ombudsman offices and the future of ombudsman concept. Dr. Leo VALLADORES LANZA from Honduras spoke about the challenges the ombudsman

concept faces in Latin America. Sir Brian ELWOOD gave a speech about harmonizing the general ombudsman activities with those related to specialized ombudsmen and Mr. Jacques PELLETIER from France spoke about the ombudsman as a mediator.

Jacob SÖDERMAN presented a paper on "Community law and the role of the European Ombudsman" to high government officers and judges at an academic institution related to the Ministry of Defence. At the working lunch organized by CORI, an institution dealing with foreign policy, he discussed the European Ombudsman concept in relation to Mercosur.

VISITS TO THE EUROPEAN OMBUDSMAN

The Turkish Ambassador, Mr ACKZER paid a visit to the European Ombudsman on 13 February 1996.

Mrs Christa NICKELS, Chairman of the Petitions Committee of the German Bundestag, visited the European Ombudsman on 13 February.

The Constitutional Committee of the Finnish Parliament paid a visit to the European Ombudsman on 14 March. Mr SÖDERMAN talked about his mandate and work. Mr John E. TOMLINSON, MEP, Chairman of the Temporary Committee of Inquiry, and Mr Edward NEWMAN, MEP, Chairman of the Committee on Petitions, explained the mandate and work of their respective Committees.

The Chancellor of Justice of Finland, Mr JORMA S. AALTO accompanied by Mrs Eva-Brita BJÖRKLUND, Referendary Counsellor and Mr Olli SALORANTA, Consultant from the Office of the Chancellor visited the office of the European Ombudsman on 26 March to discuss future cooperation.

A delegation of the Human Rights Commission of the Mexican Parliament visited Strasbourg on 24 April. Mr SÖDERMAN acquainted them with the work of the European Ombudsman.

Mr Anton CAÑELLAS, Regional Ombudsman of Catalonia, acquainted himself with

the activities of the Ombudsman during his visit to Strasbourg on 17-19 September 1996. Mr CAÑELLAS also met Mr José María GIL-ROBLES GIL-DELGADO, Member of the European Parliament, Mr Edward NEWMAN, Chairman of the Committee on Petitions, and Mr Saverio BAVIERA, Secretary of the Committee on Petitions, and the Catalonian Members of the European Parliament.

The Deputy Ombudsman of Slovenia, Mr Aleš BUTALA accompanied by Mr Karel ERJAVEC, Chief of Cabinet, visited the European Ombudsman's office on 10 October 1996.

Members of the research division of the Swedish Parliament (Riksdag) visited the office of the European Ombudsman on 21 October, 1996. Mr HARDEN gave a presentation about the work of the European Ombudsman.

Appendix C: Complete list of speeches given by Mr Söderman

European citizenship and citizens' rights in Europe

University of Padova
29.2.1996, Padova, Italy

The European Ombudsman and the national Ombudsmen

Conference - *'Meeting with the European Ombudsman - Comparison between the role of the Ombudsman in regional society and the European Ombudsman established by the 1992 Treaty on European Union'.*
1.3.1996, Bologna, Italy

The European Ombudsman and the Union citizenship

International seminar *'The citizens and the European Union toward the revision of the Maastricht Treaty'*
2.3.1996, Rome, Italy

The European Ombudsman and the Union citizenship

Seminar on Citizens' rights organized by the European Movement, Irish Council
4.3.1996, Dublin, Ireland

The role of the European Ombudsman

Seminar on European Law organized by Kammerskollegium
22.3.1996, Stockholm, Sweden

The ombudsman and the concept of European citizenship

First congress of the Iberoamerican federation of defenders of the people, attorneys, commissioners and chairmen of the public human rights' commissions
15-19.4.1996, Queretaro, Mexico

The role of the European Ombudsman as a protector of European citizens' rights

Presentation of the first Annual report of the European Ombudsman to the European Parliament
20.6.1996, Strasbourg, France

THE OMBUDSMAN AND EUROPEAN CITIZENSHIP

Sixth international congress of the International Ombudsman Institute
'The Ombudsman and the strengthening of citizens' rights - the challenge of the 21st century'
20-24.10.1996, Buenos Aires, Argentina

THE EUROPEAN OMBUDSMAN AND THE LEGAL PROTECTION OF CITIZENS' RIGHTS

University of Salamanca
7.11.1996, Salamanca, Spain

OMBUDSMAN, TYPES OF CONTROL OF MALADMINISTRATION IN GREECE AND EUROPE

University of Athens
11.11.1996, Athens, Greece

THE CITIZEN'S RIGHT TO INFORMATION

Conference *'Information Society and Government information in Europe'*
21-22.11.1996, the Hague, the Netherlands

THE ROLE OF THE EUROPEAN OMBUDSMAN AND EUROPEAN CITIZENSHIP

Basque Council of the European Movement,
9.12.1996, Vitoria, Spain

APPENDIX D: ARTICLES AND INTERVIEWS

THE CONTRIBUTIONS OF MR SÖDERMAN TO "THE EUROPEAN":

The friendly face of public service
January 1996

Ombudsman finds voter misgivings
February 1996

Public rights in pursuit of truth
March 1996

The road to rights is paved with laws
May 1996

Making headlines is no substitute for action
June 1996

Dinosaurs are jealously guarding their nests
August 1996

The Union needs a dose of glasnost
October 1996

MEETINGS WITH GROUPS OF JOURNALISTS

A group of twelve journalists specialized in European questions from the Centre Universitaire d'Enseignement du Journalisme, CUEJ, in Strasbourg visited the European Ombudsman on 21 February and acquainted themselves with the role of his office.

A group of sixteen Swedish journalists visited the European Ombudsman 13 March, getting acquainted with his mandate and activities.

Mr SÖDERMAN gave a speech on his mandate and the functioning of his office to a group of thirty journalists at the dinner of the National Union of Journalists on 10 September 1996 in Brussels.

A group of thirteen journalists met with Mr SÖDERMAN during their visit to Strasbourg on 12 November, arranged by the Turku School of Economics and Business Administration.

A group of ten journalists from the European Journalists Association met with the European Ombudsman on 11 December 1996 and got acquainted with his role and functions.

Fourteen journalists, members of the Nordisk Journalistcenter, had a meeting with Mr SÖDERMAN during their visit to Strasbourg on 11 December 1996.

ARTICLES AND INTERVIEWS IN THE MEDIA

Le Figaro: Un médiateur dans le jungle bureaucratique - Jacob Söderman, un Finlandais de 57 ans, aura la rude tâche de résoudre les différends opposant des particuliers à l'administration communautaire (2.1.1996)

Helsingin Sanomat (11.1.1996)

La Croix: La création d'un Médiateur européen (12.1.1996)

Agence France Presse (17.1.1996)

Aamulehti (22.1.1996)

Helsingin Sanomat: Satoja turhia valituksia EU:n oikeusasiamiehelle (31.1.1996)

Demari: Söderman ottanut vastaan liki 300 valitusta - EU-oikeusasiamiehen tehtäviä ei tunneta (31.1.1996)

Europe 7 jours: Médiateur européen: six mois d'arbitrage (12 February 1996)

Associated Press (13.2.1996)

Financial Times: Britons top complaints to EU-Ombudsman. Britons take troubles to EU ombudsman (23.2.1996)

Lakimiesuutiset: EU:n oikeusasiamies Jacob Söderman: Kanteluita on tullut paljon (February 1996)

Europees Parlament: Ombu(d)sje komt zo (February 1996)

Tribuna del Parlamento europeo: El Defensor del Pueblo europeo recibe 380 reclamaciones en cuatro meses (February 96)

La Repubblica, Bologna: Il difensore civico della communità. Mr. Soderman ci difende dall'Europa (1.3.1996)

Irish Times: Greater co-operation urged between the European and Irish Ombudsmen. Office caters for all EU residents (5.3.1996)

Hungarian TV (11.3.1996)

Kangaroo Group Newsletter: The European Ombudsman - an important part of the Citizens' Europe. Le médiateur européen - un élément important pour l'Europe des citoyens (March 1996)

Keskisuomalainen: Söderman arvioi Euroopan Unionin avoimuuden lisääntyneen nopeasti (10.3.1996)

Dagens Industri (13.3.1996)

Here & There/EP News: Ombudsman defending EU citizens' rights (11-15.3.1996)

Dagens Nyheter: EU's klagomur i Finland (22.3.1996)

Svenska Dagbladet: Britterna klagar mest (22.3.1996)

France 3/Rédaction européennne: EUROPEOS: "Le citoyen face à l'Union européenne" (26.3.1996)

BBC/Europe (27.3.1996)

Selina Scott Show (27.3.1996)

Hufvudstadsbladet (29.3.1996)

Tribune pour l'Europe: L'Ombudsman nouveau est arrivé ! (March 1996)

Euro-op: Le droit de petition. le Médiateur européen (Hiver 1996)

Expresso: Despachantes portugueses vencem na Europa (13.4.1996)

La Jornada: Se reunirán 30 ombudsman de América y Europa en Querétaro (14.4.1996)

Les Petites Affiches: Un nouvel instrument de démocratisation des institutions de l'Union: Le Médiateur européen (22.4.1996)

Spanish Radio 5: "Objectivo Europa" (29.4.1996)

The Cyprus Weekly: Europe's Ombudsman to discuss Cyprus. Top jurists in Limassol (3-9.5.1996)

ABC: "Todas las Administraciones del mundo necesitan alguien que las supervise" - Declaraciones a ABC del Defensor del Pueblo Europeo (4.5.1996)

El Mundo: El Defensor del Pueblo resolvió cuatro casos desde julio de 1995 (4.5.1996)

Pohjolan Sanomat: Kielten kautta pääsee kulttuuriin (19.5.1996)

ORF/Austrian TV (22.5.1996)

Dernières Nouvelles d'Alsace: Europe: le double jeu du médiateur (25.5.1996)

Luxemburger Wort: 80 Prozent der Beantstandungen gegen EU-Organe sind unzulässig - Noch keine Beschwerde eines Luxemburgers (30.5.1996)

Tageblatt: Europas Ombudsman in Luxemburg. Beschwerden gegen die EU (30.5.1996)

Letzeburger Journal: Europäischer Bürgerbeauftragter auf Arbeitsbesuch in Luxemburg: Hunderte von Missständen seit Amtsantritt des Ombudsmanns Beklagt - Zahlreiche Beschwerden über angeblichen Mangel an Transparenz (30.5.1996)

Le Republicain Lorrain: Le médiateur européen en visite à Luxembourg (30.5.1996)

El Ciervo, revista mensuel de pensamiento y cultura: El papel del Defensor del Pueblo europeo (May 1996)

Europa van Morgen: Hoe kan bij de Europese Ombudsman een klacht worden ingediend ? (5.6.1996)

European Voice: EU's King Solomon warms to role of citizens' champion (6-12.6.1996)

Italia Oggi: Mediatore - Sotto la lente tutti gli abusi communitari (14.6.1996)

Europaregionali: Mediatore europeo, garanzia di transparenza (14.6.1996)

Iltalehti:"Arvostelun kohteena oleminen kuuluu asiaan" - Jacob Söderman turhien valitusten postilaatikko (15.6.1996)

SWF (17.6.1996)

BBC (18.6.1996)

YLE/TV news (Finnish and Swedish sections) (18.6.1996)

BBC/Radio (19.6.1996)

SWF/TV (19.6.1996)

Europa Forum: Post für den Ombudsmann - Erster Tätigkeitsbericht des Europäischen Bürgerbeauftragten (17.-21.6.1996)

ABC: El Defensor defendido (21.6.1996)

Europa 24 Ore: Il mediatore presenta il bilancio e dà le istruzioni per le denunce (21.6.1996)

Berligske Tidende: Ombudsmand må afvise de fleste klager (21.6.1996)

Europe: EP / Ombudsman (22.6.1996)

To BHMA Το νέο όργανο για τα παράπονά σας – Ο Διαμεσολαβητής σας περιμένει (23.6.1996)

Helsingin Sanomat: Söderman moittii EU:ta tulkkien valinnasta (25.6.1996)

Europe: EU/Citizens' Europe: First report by Ombudsman details complaints received and follow-up action and reports on the initiative on transparency concerned Parliament, the Court of Justice and the Court of Auditors (26.6.1996)

Europe: EU / Citizens' Europe: Parliament welcomes first report on activities of European Ombudsman and asks all institutions to cooperate with him - for a computer link with citizens (26.6.1996)

Demari: Jacob Södermanin mielestä ihmiset ansaitsevat hyvän hallinnon - Kantelun käsittely on kestävyysurheilua (26.6.1996)

INC - Hebdomadaire de l'Institut National de la Consommation: Médiation - Le médiateur européen (28.6.1996)

Deutsche Tagepost: Anwalt für die Bürger Europas - Der Bürgerbeauftragte des Strassburger Parlaments legt seinen Jahresbericht vor (29.6.1996)

Tribune pour l'Europe: Le Médiateur en place (June 1996)

"Ευρωπαϊκό Κοινοβούλιο", Η ετήσια έκθεση του Ευρωπαίου Διαμεσολαβητή, Ιούνιος 1996.

Europa Oggi: Bilancio dell'attività del Mediatore (June 1996)

Europees Parlament: Klagen staat vrij (June 1996)

Tribuna del Parlamento europeo: El Defensor del Pueblo - en breve (June 1996)

Tribuna da Europa: Provedor de Justiça europeu recebe 537 queixas em seis meses (June 1996)

Which: New Euro Ombudsman (June 1996)

Nytt fra Europa: Ombudsmannen i arbejde (June 1996)

Europa information från industriförbundet: Hur klaga hos ombudsmannen (June 1996)

Gaceta Juridica de la CE: Cronica de legislation, I. Derecho Comunitario - ¿Cómo se presenta una reclamación al Defensor del Pueblo europeo? (June 1996)

Svenska Dagbladet: Offebtligheten utreds i EU (3.7.1996)

Dagens politik: EU:s ombudsman efterlyser öppenhet (3.7.1996)

Hufvudstadsbladet: Söderman backar upp öppenhet (editorial) ; Söderman tar strid för öppenhet i EU (3.7.1996)

Helsingin Sanomat: Söderman patistaa avoimuutta unioniin (4.7.1996)

Demari: Söderman ajaa avoimuutta EU:hun (3.7.1996)

Turun Sanomat: Suomalaisille suitsutusta europarlamentissa - Euroopan ensimmäinen oikeusasiamies Jacob Söderman ajaa avoimuutta (3.7.1996)

Keskisuomalainen: Hallinnon julkisuutta lisättävä EU:ssa (editorial) (5.7.1996)

Helsingin Sanomat: Avoimuus avain EU:n hyväksyntään (editorial) (7.7.1996)

Commission en direct: Ombudsman's first report (11.-17.7.1996)

Helsingin Sanomat (15.7.1996)

Aachener Zeitung: EU sammelt Klagen. Simone Veil leitet Gruppe - Ombudsman (19.7.1996)

Kauppalehti: Jacob Söderman rakentaa toimivaa toimistoa - EU:n oikeusasiamiehellä pieni mutta tehokas henkilökunta. Oikeusasiamies Jacob Söderman ajaa avoimuutta EU:n hallintoon (30.7.1996)

European Voice: EU complaints procedure set to be reviewed (1-7.8.1996)

Ilta-Sanomat: EU-ehdokkaat: Jacob Söderman on paras - Ahtisaaren toiminta saa heikoimmat arvosanat (26.8.1996)

Broadcasters: TV series on EU (August 1996)

Sigma (10.9.1996)

Alsace: Les lenteurs de l'Europe - Les plaintes enregistrées par le Médiateur concernent surtout les délais administratifs (12.9.1996)

Dernières Nouvelles d'Alsace: Comment s'adresser au Médiateur européen? (13.7.1996)

Europe: Médiateur: Promouvoir la coopération entre les médiateurs nationaux et européen (14.9.1996)

Hufvudstadsbladet: Medborgarnas klagorätt i EU utreds (15.9.1996)

Radio Malte (16.9.1996)

YLE/Radio (16.9.1996)

The European: It's your right to complain (19.-25.9.1996)

Focus Magazine: Le Médiateur Européen (September 1996)

Mittelbadische Presse: Der EU-Bürgerbeauftragte sorgt sich um die Nöte der Europäer - Vom guten Willen der Länder abhängig (2.-3.10.1996)

Irish Times: Complaints to the Ombudsman - Statiscope (14.10.1996)

Mons Berinage/Belgian regional TV (15.10.1996)

Europe: EU / Nuclear energy: European Ombudsman states Commission did not handle the question of French tests in Mururoa badly (21-22.10.1996)

"ΝΑΥΤΕΜΠΟΡΙΚΗ" – Κακοδιοίκηση και πώς μπορεί να ελεγχθεί (5.11.1996)

"ΚΑΘΗΜΕΡΙΝΗ" – Ο Ευρωπαίος Διαμεσολαβητής (7.11.1996)

La Gaceta Regional: Visita - Jacob Soderman pronunció ayer una conferencia en la Universidad. España, tercera nación que más quejas remite al Defensor del Pueblo de la UE (8.11.1996)

El Adelanto: España, tercer país en reclamaciones - Söderman sollicita una mayor transparencia de la administración europea (8.11.1996)

Tribula de Salamanca: España, tercer país que más se queja ante el Defensor del Pueblo de la UE - El ninés Jacob Soderman inauguró el VI Curso del Derecho Comunitario (8.11.1996)

Diario de Burgos: Soderman pide más transparencia a la agministración de la UE (8.11.1996)

El Pais: El Defensor del Pueblo europeo sólo ha resuelto once recursos este año (9.11.1996)

"**ΕΞΠΡΕΣ"** – Ο "Ombudsman" Jacob SÖDERMAN στην ΑΘΗΝΑ – Προστασία από τις ... βλαβερές συνέπειες της κακοδιοίκησης(10.11.1996)

Expanción: Contra la euroburocracia (9.11.1996)

"ΑΥΡΙΑΝΗ" – Τέρμα οι αυθαιρεσίες σε βάρος του πολίτη (12.11.1996)

"ΕΛΕΥΘΕΡΟΤΥΠΙΑ" – Οι Δημόσιες Υπηρεσίες περνάνε από εξετάσεις (12.11.1996)

"ΕΛΕΥΘΕΡΟΣ ΤΥΠΟΣ" – Έλεγχος στη Δημόσια Διοίκηση (12.11.1996)

"ΕΠΙΚΑΙΡΟΤΗΤΑ" – Με εξουσίες ο Συνήγορος του πολίτη (12.11.1996)

HAUS, Hallinnon kehittämiskeskuksen asiakaslehti: Oikeusasiamies Jacob Söderman valvoo EU:n hallintoa (28.11.1996)

Panorama: How to complain to the european ombudsman (25.11. - 1.12.1996)

Strasbourg Magazine: Un médiateur européen à Strasbourg (November 1996)

Europ-News: The European Ombudsman - for the European citizens (leader),
The European Ombudsman - Closeness to European citizen and transparency top priorities (3/1996)

Forum: Das Petitionsrecht - Der Bürgerbeauftragte (3/1996)

Rakennepolitiikka - Strukturpolitik: Miten kannella Euroopan oikeusasiamiehelle (3/1996)

Kuluttajauutiset: Kuinka kannella Euroopan oikeusasiamiehelle ? - Hur man klagar till den europeiska ombudsmannen ? (3/1996)

Advokaatti: Euroopan oikeusasiamies purkaa kansalaisten paineita (3/1996)

Europa, Danish newspaper (4.12.1996)

El Mundo: Söderman visita Euskadi invitado por el Consejo del Movimiento Europeo - El defensor del pueblo europeo pide a la UE garantías de mayor "transparencia" - Reclama que facilite a los ciudadanos el acceso a la documentación (10.12.1996)

El Correo Español - El Pueblo Vasco: El protector europeo "del público" - El finlandés Jacob Söderman, Defensor del Pueblo Europeo, cree que los pequeños países "tienen tanta voz como los grandes" (10.12.1996)

DEIA: "Trabajo para mostar la cara humana de Europa" - He elaborado un documento para recomendar a los organos comunitarios su permiso al acceso publico de documentos (10.12.1996)

APPENDIX E: EXPENDITURE

Article 12 of the Statute of the European Ombudsman provides for the Ombudsman's budget to be annexed to section 1 (European Parliament) of the general budget of the European Communities.

The 1996 budget of the European Ombudsman was transitional. In particular, most administrative requirements were provided by the European Parliament and paid for from its budget. Title 2 of the Ombudsman's budget for 1996 consisted of a single undifferentiated appropriation for current administrative expenditure.

Salaries, allowances and other costs related to employment are contained in Title 1 of the Budget. Title 1 also includes the cost of travel on missions.

From the beginning of 1996, the Ombudsman had a staff of 10. A supplementary and amending budget provided for three additional posts, leading to an establishment plan of 13. All the posts in the Ombudsman's budget are temporary.

Initial appropriations for 1996 amounted to a total of 1 200 000 ECUs. Additional appropriations of 331 000 ECUs were authorized during the year in a supplementary and amending budget and through a transfer from the budget of the European Parliament. Thus, the final figure for appropriations in 1996 was 1 531 000 ECUs.

The following table indicates actual expenditure in 1996 in terms of available appropriations committed.

Chapter	Heading	ECU
10	Members of the Institution	286 941,93
11	Staff in active employment	867 055,76
	Title 1 Total	1 153 997,69
23	Current administrative expenditure	115 261,54
	Title 2 Total	115 261,54
	Total	**1 269 259,23**

The 1997 budget, prepared during 1996, ensures greater transparency by showing the full costs of the Ombudsman's work. The 1997 budget provides for an establishment plan of 16, representing an increase of 3 from the revised establishment plan for 1996.

Total appropriations for 1997 are 2 581 819 ECUs. Title 1 (Salaries, allowances and other costs related to employment) amounts to 1 815 819 ECUs. Title 2 (Buildings, equipment and miscellaneous operating expenditure) contains 764 000 ECUs.

APPENDIX F: THE STAFF OF THE EUROPEAN OMBUDSMAN

The European Ombudsman surrounded by his staff in Strasbourg, April 1997.

At the end of 1996, the Secretariat of the European Ombudsman consisted of the principal officer, a senior legal officer, three legal officers, a press officer, three assistants and four secretaries.

During the year, there were a number of changes in personnel.

Mr Jean-Guy GIRAUD, Secretary General, who had done the preparatory work in setting up the office of the European Ombudsman in Strasbourg and participated in the construction of the institution, returned to the European Parliament from 1 June 1996.

From the same date, Mr Ian HARDEN, then a Senior Legal Officer, was appointed as acting Principal Officer of the European Ombudsman.

Ms Elena FIERRO worked as Legal Officer at the Secretariat from October 1995 to

1 April 1996, from which date Mr Ian HARDEN took up duties as a Senior Legal Officer.

Ms Vicky KLOPPENBURG took up duties as a Legal Officer on 1 June 1996.

Mr Peter DYRBERG, a Senior Legal Officer since 1 January 1996, returned to the Legal Service of the European Parliament on 1 September 1996.

Mr Kyriakos TSIRIMIAGOS, Legal Officer since 1 January 1996, returned to the European Commission on 16 September 1996.

Mrs Benita BROMS took up duties as a Legal Officer on 1 November 1996 and Mr Panayotis THANOU took up duties as an Assistant on the same day.

Mr José MARTINEZ ARAGON took up duties as a Senior Legal Officer on 16 November 1996.

Ms Katja HEEDE was employed as a temporary Legal Officer from 1 October 1996 to 14 February 1997.

European Ombudsman

Jacob SÖDERMAN

Secretariat of the European Ombudsman

Ian HARDEN
Principal Officer
Tel. 00 33 3 88 17 2384

José MARTINEZ ARAGON
Senior Legal Officer
(from 16.11.1996)
Tel. 00 33 3 88 17 2401

Benita BROMS
Legal Officer (from 1.11.1996)
Tel. 0033 3 88 17 2423

Daniela TIRELLI
Assistant
Tel. 0033 3 88 17 2402

Panayotis THANOU
Assistant (from 1.11.1996)
Tel. 0033 3 88 17 2403

Ursula GARDERET
Secretary (from 1.2.1997)
Brussels Antenna - EAS / 103
Tel. 0032 2 284 2180

Murielle RICHARDSON
Secretary
Tel. 0033 3 88 17 2388

Patrick SCHMITT
Usher (from 1.2.1997)
Tel. 0033 3 88 17 7093

Peter DYRBERG
Senior Legal Officer (from 17.2.97)
Brussels Antenna - EAS / 104
Tel. 0032 2 284 2003
Fax 0032 2 284 4914

Vicky KLOPPENBURG
Legal Officer (from 1.6.1996)
Tel. 00 33 3 88 17 2383

Ilta HELKAMA
Press Officer
Tel. 0033 3 88 17 2398

Francesca MANCINI
Assistant
Tel. 0033 3 88 17 2385

Nathalie CHRISTMANN
Secretary of the European Ombudsman
Tel. 0033 3 88 17 2383

Anna RUSCITTI
Secretary
Tel. 0033 3 88 17 2393

Isabelle FOUCAUD
Secretary
Tel. 0033 3 88 17 2391

ADDRESS:

1, av. du Président Robert Schuman
B.P. 403
F - 67001 Strasbourg Cedex

TEL.:

0033 3 88 17 2313
0033 3 88 17 2383

FAX

0033 3 88 17 90 62

INTERNET:

http://www.europarl.eu.int

Photos (except pp.100 and 101): European Parliament

01 06 16 ME-05-97-486-EN-C

Préface

Price (excluding VAT) in Luxembourg: ECU 20

ISBN 92-823-1012-4

OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg