

European Ombudsman's activities in 2006

European Parliament resolution of 25 October 2007 on the annual report on the European Ombudsman's activities in 2006 (2007/2131(INI))

The European Parliament,

- having regard to the annual report on the European Ombudsman's activities in 2006,
 - having regard to Articles 195, 230 and 232 of the EC Treaty,
 - having regard to Article 43 of the Charter of Fundamental Rights of the European Union,
 - having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties¹,
 - having regard to its resolution of 6 September 2001 amending Article 3 of the regulations and general conditions governing the performance of the Ombudsman's duties²,
 - having regard to the framework agreement on cooperation concluded between the European Parliament and the Ombudsman on 15 March 2006, which entered into force on 1 April 2006,
 - having regard to the Commission communication of 5 October 2005 on 'Empowerment to adopt and transmit communications to the European Ombudsman and authorise civil servants to appear before the European Ombudsman' (SEC(2005)1227),
 - having regard to the letter of 11 July 2006 sent by the European Ombudsman to the President of the European Parliament with a view to initiating the procedure for the revision of the Ombudsman's Statute,
 - having regard to Rule 195(2), second and third sentences, of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions (A6-0301/2007),
- A. whereas the annual report on the European Ombudsman's activities in 2006 was formally submitted to the President of Parliament on 12 March 2007 and whereas the Ombudsman, Mr Nikiforos Diamandouros, presented the report to the Committee on Petitions in Brussels on 2 May 2007,
- B. whereas, under Article 41 of the Charter of Fundamental Rights, 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union',

¹ OJ L 113, 4.5.1994, p. 15. Decision as amended by Decision 2002/262/EC, ECSC, Euratom (OJ L 92, 9.4.2002, p. 13).

² OJ C 72 E, 21.3.2002, p. 336.

- C. whereas, under Article 195(1) of the EC Treaty and Article 43 of the Charter of Fundamental Rights, any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role,
- D. whereas it is essential, in the context of increasing participatory democracy in Europe and of better communicating the European Union to its citizens, that citizens receive from the European institutions and bodies prompt and substantive responses to their enquiries, complaints and petitions, and whereas it is essential that those institutions and bodies be given the necessary budgetary and human resources to ensure that citizens receive such prompt and substantive responses,
- E. whereas, although one parliamentary term has come to an end since the adoption of the resolution of 6 September 2001 in which Parliament approved the European Ombudsman's Code of Good Administrative Practice, and the next parliamentary term has run half its course, the other main Union institutions have not yet complied with Parliament's urgent request to bring their practice into line with the provisions of that code,
- F. whereas in 2006, although the number of complaints stabilised at the high level reached in 2004, over three-quarters of them still fell outside the Ombudsman's remit, mainly because they did not concern a Community institution or body,
- G. whereas, in 95 cases (or 26% of the cases examined) the Ombudsman's enquiries revealed no maladministration,
- H. whereas the activities of the Ombudsman and the Committee on Petitions must remain separate and as a general rule, to avoid conflicts as regards their respective prerogatives, should include reciprocal definitive referral of their respective files,
- I. whereas the year 2006 saw a significant decline in the number of cases of maladministration in which an amicable settlement was reached, accompanied by an equally striking rise in the number of enquiries closed with a critical remark, and a lower rate of acceptance of the Ombudsman's draft recommendations by the institutions,
- J. whereas neither the critical remarks contained in decisions closing irremediable cases of maladministration, nor recommendations or special reports by the Ombudsman have binding effect, as his powers do not extend to directly remedying instances of maladministration, but are intended to encourage self-regulation on the part of the European Union's institutions and bodies,
- K. whereas submitting a special report to the European Parliament remains the Ombudsman's ultimate means of taking action when an institution refuses to comply with a recommendation by the Ombudsman,
- L. whereas since the entry into force of the Treaty of Nice Parliament has enjoyed the same right as the Member States, the Council and the Commission to bring an action before the Court of Justice of the European Communities on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EC Treaty or of

any rule of law relating to its application, or misuse of powers,

- M. whereas in 2006 the Ombudsman, by submitting two special reports¹ to Parliament after the rejection of the relevant draft recommendation by the Council and the Commission, made judicious use of his powers,
- N. whereas the Ombudsman's new approach to the Commission, which consists of promoting a culture of service as an integral component of good administrative practice and a key means of remedying flawed actions or conduct, must be implemented from the bottom up on a consensual basis,
- O. whereas the critical comments voiced by the European Ombudsman in respect of 41 cases of maladministration contained in the 2006 report (critical observations, draft recommendations and special reports) may serve as a basis for avoiding a repetition of errors and malfunctions in future by the taking and implementation of appropriate measures by the institutional and other bodies of the EU,
- P. whereas the voluntary cooperation established by the Ombudsman in the European Network of Ombudsmen has functioned for over ten years as a flexible system for exchanging information and best practice and as a means of directing complainants to the Ombudsmen or other similar bodies most able to assist them,
- Q. whereas the role of Ombudsman charged with protecting European citizens has evolved in the decade or more since the office was created, thanks to the Ombudsman's independence and Parliament's democratic scrutiny of the transparency of his activities,
- R. whereas the Ombudsman has declared that he is willing to use his powers of own-initiative inquiries when third-country citizens resident outside the EU address a complaint to the Ombudsman which in other respects falls within his mandate,
- S. whereas on 30 November 2006 the Ombudsman and the Data Protection Supervisor signed a Memorandum of Understanding concerning cooperation and the modalities of the exercise of their respective powers,
- T. whereas one of the fundamental principles of European integration is the democratic equality of all European citizens, without any discrimination on the grounds of nationality or language, and whereas there are still numerous complaints from citizens, associations or firms about their failure to receive the information they requested in their own language in connection with Community tender or competition procedures,
- U. whereas the Ombudsman reiterated, in July 2006, his call for the Statute of the Ombudsman to be amended and whereas one of his requests, for the amendment of Article 3 of the Statute, has already been approved by the European Parliament on the basis of its abovementioned resolution of 6 September 2001,
- 1. Approves the annual report for 2006 submitted by the European Ombudsman, and

¹ Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG and Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the European Commission in complaint 289/2005/(WP)GG.

approves the form in which it is presented, combining a summary of the year's activities and a thematic analysis of the Ombudsman's decisions and the problems raised at various stages of the procedure; calls on the Ombudsman, however, to introduce technical changes to make it easier to read the various chapters, such as tables for the statistics and summaries for the analytical section;

2. Calls for all European institutions and bodies to be given the necessary budgetary and human resources to ensure that citizens receive prompt and substantive responses to their enquiries, complaints and petitions;
3. Considers that the Ombudsman has continued to exercise his powers in a balanced and energetic way both with regard to examining and handling complaints, and conducting and concluding enquiries, and with regard to maintaining constructive relations with the European Union's institutions and bodies and encouraging citizens to avail themselves of their rights in relation to those institutions and bodies;
4. Encourages the European Ombudsman to pursue his efforts and to promote his activities effectively and flexibly so that, in the eyes of citizens, he represents the custodian of sound administration in the Community institutions;
5. Stresses that a key purpose of any intervention by the Ombudsman is to seek an amicable settlement between the complainant and the institution and to prevent a dispute before the courts;
6. Agrees that the term 'maladministration in the activities of the Community institutions or bodies' should be broadly interpreted so as to include not only unlawful administrative acts or infringements of binding legal rules or principles but also, for example, cases where the administrative authorities have been slothful, negligent or lacking in transparency or have infringed other principles of good administration;
7. Encourages the Ombudsman to continue to promote a genuine culture of service as an integral component of good administrative practice in order to ensure that the European Union's public administration is geared towards openness and dialogue with members of the public using their services, recognising and apologising for mistakes and seeking satisfactory solutions for complainants;
8. Considers that it is not enough that some of the other institutions and Community bodies, primarily the Commission and the Council, have adopted separate codes of good administrative conduct (in the case of the Commission, the code of 13 September 2000 covering its staff's relations with the public, and in the case of the Council, the code of 25 June 2001 on its staff's professional relations with the public);
9. Notes that the 'European Code of Good Administrative Behaviour' proposed by the European Ombudsman, and approved by the European Parliament on 6 September 2001, covers the staff of all Community institutions and bodies and, unlike the other codes, has been regularly updated and published on the Ombudsman's website;
10. Stresses that the code's *erga omnes* effectiveness was explained by the Ombudsman in his letter of 11 March 2002 to the President of Parliament, which is published on the Ombudsman's website; considers, therefore, that no other code with more limited application may replace, or derogate from, the 'European' code of conduct;

11. Urges all the institutions to cooperate constructively with the Ombudsman at all stages of the procedure, to abide by amicable settlements, to follow up his critical remarks and to apply his draft recommendations;
12. Encourages the Ombudsman to draw up a list every year of best administrative practices and a list of practices which are not consonant with his decisions, and to present a study of the outcome of his critical comments;
13. Urges all those who are the subject of critical remarks to respect and take account of those remarks in their future actions, so as to avoid any instances of inconsistency between official pronouncements and administrative actions or failures to act;
14. Reminds all Community institutions and bodies of their obligations under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹, which must be effectively applied, not least to ensure the credibility of the proposed revision thereof which is currently under consideration, and their obligations under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²;
15. Calls on the Commission once again to make proper use of its discretionary powers to initiate infringement proceedings under Article 226 of the EC Treaty or to propose penalties under Article 228 of the EC Treaty, while taking scrupulous care to avoid delays or unjustifiable failure to take prompt action, which are incompatible with the Commission's powers to oversee the application of Community law;
16. Considers that, if an institution refuses to follow a recommendation in a special report by the Ombudsman even though Parliament has approved that recommendation, Parliament could legitimately use its powers to bring an action before the Court of Justice in respect of the act or omission which was the subject of the Ombudsman's recommendation;
17. Urges all Community institutions and bodies, and the Member States' permanent representations, to cooperate in the interests of transparency and compliance with the rules of good administration embodied in the report, without shifting their responsibilities to powerful central bodies such as the Presidency of the Council or the Board of Governors of the European Schools, over which it would be difficult for the Ombudsman to exert control;
18. Calls on the European Personnel Selection Office to ensure that it complies effectively and fully with the rules and established practice as regards the openness and transparency of competition procedures, particularly as regards candidates' access to information relating to them about the marking of papers, to put an end to linguistic discrimination and to refrain from evading its own responsibilities by reference to decisions made by selection boards;
19. Warmly welcomes the declaration of the European Ombudsman of his intention to deal

¹ OJ L 145, 31.5.2001, p. 43.

² OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

with the lending activities of the European Investment Bank (EIB) outside the EU using his powers of own inquiry, and notes that the Ombudsman will need to evaluate and ensure the internal capacity to deal with complaints in that regard;

20. Invites the Ombudsman to consider concluding a Memorandum of Understanding with the EIB on the modalities of cooperation between the institutions as regards the exercise of the Ombudsman's powers to investigate complaints concerning instances of maladministration in the activities of the EIB, and takes the view that the EIB would be best placed to actively inform citizens affected by projects financed by the Bank of the possibility of complaining to the Ombudsman, including when these are third-country nationals resident outside the EU;
21. Welcomes the fact that the Ombudsman can conduct inquiries into the behaviour of bodies operating under the EU's third pillar;
22. Notes that the Ombudsman has presented the above-mentioned two special reports, one of which has already achieved its intended purpose and the other of which will be examined by Parliament; supports the conclusions addressed by the Ombudsman to the Council concerning the need to apply consistent rules on the language regimes used by the Council Presidencies and on the need to clarify the status of the Presidency as part of the Council as an institution;
23. Would welcome a tightening-up of internal parliamentary procedures in order to guarantee, in future, swifter processing of the Ombudsman's annual report by Parliament's Committee on Petitions;
24. Urges the Ombudsman to submit to Parliament any requests he deems appropriate to improve the exchange of information between their respective departments and strengthen cooperation, within the framework laid down by Article 1 of the Framework Agreement on cooperation of 15 March 2006, with particular reference to communications, information technology and translation;
25. Is pleased that constructive relations have been maintained with Parliament's Committee on Petitions, both with regard to the Ombudsman's participation in meetings of the Committee and with regard to reciprocal respect of competences and prerogatives; invites the Ombudsman, therefore, to forward to the Committee on Petitions his position in relation to the most important inquiries initiated by him in good time so as to achieve useful synergies;
26. Confirms its favourable opinion, as expressed in 2001, of the Ombudsman's request for the Statute of the Ombudsman to be amended with regard to access to documents and the hearing of witnesses, endorsing the principle that the changes subsequently requested will serve to clarify the Ombudsman's powers in view of the increasing demands placed upon him in the exercise of his office and the fact that, in practice, the main European institutions have already accepted the majority of them;
27. Stresses that these changes should not affect the basis and nature of the Ombudsman's role as guardian of citizens' interests in relation to the European Union's public administration;
28. Recognises the useful contribution of the European Network of Ombudsmen, in line with

the subsidiarity principle, in securing extra-judicial remedies;

29. Encourages mutual consultation between the Ombudsman and the Committee on Petitions, in connection with the European Network of Ombudsmen, to resolve issues which have already been dealt with as the subject of petitions;
30. Welcomes the increasing participation of the media in publicising the work of the Ombudsman and applauds the communications strategy adopted by the Ombudsman using various means of informing citizens and raising public awareness which, by helping to establish a variety of forms of dialogue aimed at bringing citizens closer to European Union institutions and bodies, should, in the longer term, lead to greater awareness of citizens' rights and Community competences, as well as a greater understanding of the European Ombudsman's sphere of competence;
31. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States and their ombudsmen or similar competent bodies.