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DRAFT REPORT

on the annual report on the European Ombudsman's activities in 2009
(2010/2059(INI))

Committee on Petitions

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the annual report on the European Ombudsman's activities in 2009 (2010/2059(INI))

The European Parliament,

- having regard to the annual report on the European Ombudsman's activities in 2009,
 - having regard to Articles 24(3) and 228(1) of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Articles 41 and 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 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's communication of 5 October 2005 entitled '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 its resolution of 18 June 2008 on the adoption of a decision of the European Parliament amending its Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties²,
 - having regard to the revision by the Ombudsman of his implementing provisions in order to reflect the changes to the Statute, which revision came into force on 1 January 2009,
 - having regard to its previous resolutions on the European Ombudsman's activities,
 - having regard to Rule 205(2), second and third sentences, of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions (A7-0000/2010),
- A. whereas the annual report on the European Ombudsman's activities in 2009 was formally submitted to the President of Parliament on 19 April 2010 and the Ombudsman, Mr Nikiforos Diamandouros, presented the report to the Committee on Petitions in Brussels on 4 May 2010,
- B. whereas Article 24 of the TFEU lays down that 'every citizen of the Union may apply to the Ombudsman established in accordance with Article 228',

- C. 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',
- D. whereas Article 43 of the Charter states that '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',
- E. whereas, since the TFEU entered into force, the common foreign and security policy and the activities of the European Council have fallen within the remit of the Ombudsman,
- F. whereas pursuant to Article 228 of the TFEU the Ombudsman is now 'elected after each election of the European Parliament for the duration of its term of office' and no longer 'appointed' by the European Parliament,
- G. whereas the work of the Ombudsman contributes towards a Union 'in which decisions are taken as openly as possible and as closely as possible to the citizen', as provided for in Article 1, second paragraph, of the TEU,
- H. whereas the Ombudsman registered 3 098 complaints in 2009 compared to 3 406 in 2008, and whereas 727 complaints (23%) compared to 802 in 2008 were found to be within his mandate,
- I. whereas in 2009 the Ombudsman opened 335 inquiries on the basis of complaints and completed and closed 318 inquiries, 311 of which were based on complaints while seven were own-initiative investigations,
- J. whereas in 179 cases (56% of the total) closed in 2009, the institution concerned accepted a friendly solution or settled the matter, which shows a strong willingness on the part of the institutions and bodies to see complaints to the Ombudsman as an opportunity to remedy mistakes that have occurred and to cooperate with the Ombudsman for the benefit of citizens,
- K. whereas in 2009 the Ombudsman found maladministration to have been committed in 12% of cases (37 inquiries), giving rise to critical remarks in 35 cases,
- L. whereas 15 draft recommendations were issued in 2009,
- M. whereas the most common types of alleged maladministration were lack of transparency, including refusal of information (36% of inquiries), injustice or abuse of power (14%), avoidable delays (13%), procedural errors (13%), negligence (6%), failure by the Commission to fulfil its duty to act as the guardian of the Treaties (6%), legal errors (6%) and discrimination (5%),
- N. whereas the average time taken to consider complaints fell from 13 months in 2008 to 9 months in 2009, which bears witness to the Ombudsman's efforts to shorten the average length of his inquiries and the spirit of cooperation of the institutions concerned;
- O. whereas no case of maladministration led to a special report to the European Parliament in 2009,

- P. whereas the critical remarks and recommendations of the Ombudsman are not legally binding but have the aim of encouraging self-monitoring by the institutions and bodies of the European Union and may serve as a basis for avoiding a repetition of errors and malfunctions in future,
- Q. whereas the role of the Ombudsman has evolved since the office was created, thanks to the Ombudsman's independence and the democratic scrutiny of his activities performed by Parliament and the Committee on Petitions,
- R. whereas it is essential that the European institutions and bodies make full use of the necessary resources in order to fulfil their obligation to ensure that citizens receive prompt and substantive responses to their enquiries, complaints and petitions,
- S. having regard to the Ombudsman's Code of Good Administrative Behaviour, which Parliament adopted by its resolution of 6 September 2001,
- T. whereas the European Network of Ombudsmen makes it possible to redirect complainants to the ombudsmen or other similar bodies which are expected to provide the assistance most appropriate to their level and to exchange information and good practices,
- U. whereas the work of the Ombudsman and that of the Committee on Petitions are complementary and promote greater effectiveness of their respective work,
1. Approves the annual report on the European Ombudsman's activities in 2009;
 2. Recalls that the entry into force of the Lisbon Treaty increases the democratic legitimacy of the Ombudsman thanks to his election by the European Parliament and extends his remit to include the common foreign and security policy and the activities of the European Council,
 3. Welcomes the fact that, with the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights, which is now legally binding, defines the right to good administration as one of the fundamental rights vested in citizens of the Union; calls therefore on the Ombudsman, in his everyday consideration of complaints, to enforce the Charter of Fundamental Rights;
 4. Considers that transparency, access to information and respect for the right to good administration are vital preconditions for maintaining citizens' confidence in the institutions to assert their rights;
 5. Considers therefore that the term 'maladministration' should continue to be broadly interpreted so as to include not only infringements of legal rules or general principles of European administrative law, such as objectivity, proportionality and equality, non-discrimination and respect for human rights and fundamental freedoms, but also instances where an institution fails to act consistently and in good faith, or to take into account the legitimate expectations of citizens, including when an institution has itself undertaken to respect certain norms and standards without being obliged to do so by the Treaties or secondary legislation;
 6. Congratulates the Ombudsman on the clear and comprehensive presentation of his work; suggests nonetheless that in future reports the summary of activities and thematic analysis should place greater emphasis on structural problems and general trends;

7. Considers that the Ombudsman has exercised his powers in an active and balanced way during the reporting period, both with regard to examining and handling complaints and conducting and concluding inquiries 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;
8. Welcomes the excellent relationship between the Ombudsman and the Committee on Petitions within the institutional framework as regards reciprocal respect for their competences; favours the continuation of the practice already established by the Ombudsman of sending a representative to each meeting of the Committee on Petitions;
9. Recognises the vital contribution made by the European Network of Ombudsmen, represented by 94 offices in 32 countries, of which the Committee on Petitions is a member, in line with the principle of subsidiarity; welcomes the collaboration between the European Ombudsman and ombudsmen and similar bodies at national, regional and local levels in the Member States;
10. Notes that the Ombudsman registered 3 098 complaints in 2009 and that 318 inquiries were completed and concluded during that year;
11. Welcomes the large number of procedures concluded by an amicable resolution or by the institution concerned (56%), which bears witness to the constructive cooperation which exists between the Ombudsman and the institutions and bodies of the Union; encourages the Ombudsman and the institutions and bodies of the Union to continue to apply this approach;
12. Welcomes the Ombudsman's endeavours which resulted in his shortening the average length of his inquiries to 9 months; calls for all EU institutions and bodies to be given the necessary budgetary and human resources to ensure that rapid action is taken in response to complaints and petitions;
13. Notes that more than a third of the inquiries opened by the Ombudsman in 2009 concerned a lack of transparency; calls therefore for the current revision of Regulation 1049/2001 not to restrict the existing right of access to information and documents but to adopt a more proactive approach;
14. Welcomes the progress made in 2009 as regards facilitating the Ombudsman's access to confidential Council documents;
15. Notes the communication and website development strategy, which, according to the Ombudsman, has helped to cut the number of inadmissible complaints, and encourages the Ombudsman to continue his efforts to inform Europe's citizens about his role and the limits to his powers and about their rights;
16. Calls for the Ombudsman to be involved in devising and monitoring the practical arrangements for citizens' initiatives, in an attempt to anticipate questions relating to its functioning and more particularly those which may lead to complaints;
17. Endorses the Ombudsman's opinion that, in addition to respect for the binding rules which apply to administrators, it is essential to develop a genuine tradition of service to the public in order to ensure good administration; calls on the Ombudsman, therefore, more often to take the initiative to promote such a tradition of service on the part of the European institutions and citizens;

18. Deplores the number of complaints concerning avoidable delays in registering requests, handling cases and taking decisions; proposes that the revision of the Financial Regulation should include provision for financial compensation in the event of manifest and prolonged delays;
19. Notes that the Ombudsman has completed an own-initiative inquiry into the rules which the Commission applies to applications by members of the public for access to documents concerning infringement proceedings; favours increased cooperation with the Committee on Petitions and suggests that the Ombudsman keep that Committee regularly informed about the own-initiative inquiries which he is conducting and the results thereof; calls on the Commission to adopt a more open and proactive attitude towards information about infringement proceedings;
20. Considers that the Code of Good Administrative Behaviour proposed by the Ombudsman and approved by Parliament in its resolution of 6 September 2001 serves as a guide and resource for the staff of all Community institutions and bodies; welcomes the fact that the Code of Good Behaviour has been approved by the Economic and Social Committee; welcomes the fact, also, that a Memorandum of Understanding has been concluded with the European Investment Bank concerning the handling of complaints; calls on the Ombudsman to consider revising the Code of Good Behaviour on the basis of the experience gained in the past 10 years and in that way to promote and exchange good practices;
21. Regrets that complaints about the inadequate application by a Member State of EU law received by national ombudsmen are not recorded by the European Ombudsman; suggests that the European Ombudsman consider pooling them in order to facilitate better understanding of the problem;
22. Calls on the Ombudsman to encourage national ombudsmen to hold regular exchanges of views with their national parliaments, modelled on those which have been established between the European Ombudsman and the European Parliament;
23. Calls on the Commission to draft a European administrative law common to all the bodies, institutions and agencies of the Union;
24. Draws the attention of the Ombudsman to the new procedure for selection of staff by EPSO and suggests monitoring its application and analysing the developments observed;
25. Supports the idea of an Intranet portal common to all members of the European Network of Ombudsmen in order to disseminate results regularly;
26. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States and their ombudsmen or similar competent bodies.

EXPLANATORY STATEMENT

Introduction

The annual report on the European Ombudsman's activities in 2009 was formally submitted to the President of the European Parliament, Jerzy Buzek, on 19 April 2010, and the European Ombudsman, Nikiforos Diamandouros, presented his report to the Committee on Petitions on 4 May 2010.

The report provides an overview of the European Ombudsman's activities over the last year. The various inquiry findings are broken down by categories such as nature of alleged maladministration or institution concerned. A six-page Overview has also been produced. This publication records the most important results obtained for complainants and highlights the main problems dealt with over the past year.

Complaints and inquiries

The Ombudsman registered 3 098 complaints in 2009, as against 3 406 in 2008. This represents a 9% fall compared to 2008. 727 complaints were found to be covered by the Ombudsman's mandate. Of these, 162 complaints were declared admissible but without grounds for opening an inquiry, and 335 inquiries were opened on the basis of complaints, while 230 were declared inadmissible.

Most inquiries opened by the Ombudsman in 2009 concerned the European Commission (56%). Complainants also targeted the administration of the European Parliament (11%), the European Personnel Selection Office EPSO (9%), the Council (4%) and the Court of Justice (3%). 23 other EU institutions and bodies were the subject of a further 59 inquiries (17%).

The most common type of alleged maladministration was lack of transparency (36% of all inquiries), including refusal of information, the high number of which the Committee on Petitions has noted with concern, since an accountable and transparent EU administration is decisive for building citizens' trust in the EU.

The number of inquiries closed in 2009 was 318. Most were closed within less than a year (70%) and more than half (55%) within three months. Of these, 311 were linked to complaints and 7 were own-initiative inquiries.

In 58 cases the inquiry revealed no maladministration, a finding which is not necessarily a negative outcome for the complainant, since he or she gets a full explanation from the institution or body concerned, and there may be an opportunity to identify a potential improvement in the quality of administration provided by an institution or body.

During 2009, 166 cases (56%) were settled to the satisfaction of the complainant by the institution or body concerned. These cases were either settled by the institution or a friendly solution was agreed. This reflects a growing willingness to regard complaints made to the Ombudsman as an opportunity to correct mistakes and to cooperate with the Ombudsman for the benefit of European citizens. In his Annual Report the Ombudsman highlights 9 cases¹ which constitute illustrative examples of best practice. These cases serve as a model for all

EU institutions and bodies in terms of how best to react to issues that the Ombudsman raises.

When a friendly solution is not possible, the Ombudsman closes the case with critical remarks, or makes a draft recommendation. Critical remarks confirm to the complainant that his or her complaint is justified and indicate to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2009, the Ombudsman closed 35 inquiries with critical remarks.

It is important for the institutions and bodies to follow up on critical remarks from the Ombudsman, taking action to resolve outstanding problems and thus to avoid maladministration in the future. It is with a view to ensuring that the institutions and bodies learn from their mistakes and that maladministration is avoided in future that the Ombudsman has published on his website a study of the follow-up undertaken by the institutions involved to all critical remarks and further remarks issued in 2008. It is worth noting that the level of satisfaction with the action taken in response to these critical remarks was 79%.

In cases where it is possible for the institution concerned to eliminate the instance of maladministration, or in cases where the maladministration is particularly serious, or has general implications, the Ombudsman normally makes a draft recommendation to the institution or body concerned, which must respond with a detailed opinion within three months. During 2009, 15 draft recommendations were made. In addition, 7 draft recommendations made in 2008 received responses in 2009, and two cases were closed as a result of draft recommendations made in 2007.

If an institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament.

In 2009, the Ombudsman did not submit any special reports to Parliament.

The Ombudsman also launched four inquiries on his own initiative. These involved the use of the Ombudsman's own-initiative power to tackle what appeared to be a systemic problem within the institutions, such as that raised at the Commission regarding access to documents relating to infringement proceedings. The aim was to ensure that members of the public knew how to gain access to documents relating to infringements and, if they were denied access, that they could determine whether it was the Commission or the Member State that was responsible for the denial and whether it was based on national or EU law.

Priorities of the European Ombudsman

The main priorities of the European Ombudsman are to ensure that citizens' rights under EU law are respected at every level in the Union and that EU institutions and bodies conform to the highest standards of administration.

The Ombudsman has continued his efforts to improve the quality of information provided to citizens and potential complainants concerning their rights under EU law, especially through the European Network of Ombudsmen. The Network, which includes the Committee on Petitions, consists of roughly 94 offices in 32 countries. One of the purposes of the Network is

to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. In 977 cases handled in 2009, the Ombudsman forwarded the complaint which had been referred to him to a member of the European Network: he advised 792 complainants to turn to a national or regional ombudsman, and 185 complainants were referred to the Committee on Petitions. In some cases, the Ombudsman considers it appropriate to transfer the complaint to the Commission or to SOLVIT, a network set up by the Commission to help people who face obstacles when trying to exercise their rights in the Union's internal market. The Ombudsman also stepped up his cooperation with Europe Direct.

The Ombudsman strives to make certain that the EU institutions and bodies adopt a citizen-centred approach in all their activities, by seeking every opportunity to achieve friendly solutions to complaints and by launching more inquiries on his own initiative in order to identify problems and encourage best practice. To promote this goal he continues to develop contacts with the Members and officials in the EU institutions and bodies with a view to promoting the culture of service within the EU administration.

In the light of the importance of ensuring that those who might have problems with the EU administration know about their right to complain to the Ombudsman, 145 presentations were made by the Ombudsman and his staff at conferences, seminars and meetings during 2009. The Ombudsman also made information visits to Cyprus, Slovakia, the Czech Republic, Finland, Estonia and Italy with a view to promoting awareness of his role in these countries. He also gave six press conferences and more than 40 interviews. 21 press releases were distributed to journalists. The Ombudsman's network regularly publishes a newsletter and has established an electronic discussion forum for its members.

Amongst the particularly interesting publications produced and distributed in 2009 were the Annual Report and the new '2008 Overview'.

The Ombudsman's new website, launched on 5 January 2009, is regularly updated. This new service to citizens is constantly evolving. Of particular interest is the interactive guide, whose purpose is to help members of the public to identify the most appropriate institution to complain to; in 2009, 26 000 people received replies using the interactive guide. The country from which the largest number of visitors to the website come is Spain, followed by Italy, Germany, France and Belgium.

Conclusion

The Committee on Petitions encourages the Ombudsman to continue to work with the institutions to promote good administration and service culture and to increase the communication efforts, so that citizens who might need to make use of his services are properly informed of how to do so.

The Committee on Petitions encourages the Ombudsman to seek amicable solutions to cases. This reflects a growing willingness to regard complaints made to the Ombudsman as an opportunity to correct mistakes and shows that the institutions are willing to cooperate with the Ombudsman.

The Committee on Petitions encourages the Ombudsman to use his own-initiative power to tackle systemic problems within the institutions, as he did in 2009 regarding a lack of transparency and refusal to provide information.

By supporting the Ombudsman, the European Parliament and its Committee on Petitions have demonstrated their confidence in his work and his efforts to improve the service that he can provide for citizens, thus strengthening their trust in the European Union and its institutions and improving their image of them.

NB: The Explanatory Statement heading needs formatting so that it appears in the Table of Contents.