

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

FINAL  
**A6-0301/2007**

26.7.2007

## REPORT

on the annual report on the European Ombudsman's activities in 2006  
(2007/2131(INI))

Committee on Petitions

Rapporteur: Luciana Sbarbati

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### 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 European Parliament Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties<sup>1</sup>,
  - 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 duties<sup>2</sup>,
  - 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 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 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',

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

<sup>2</sup> 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 parliament 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 Behaviour, and the next parliament is half-way through its term, 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 a friendly solution 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 reports 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 the European 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 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, had 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 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 a friendly settlement between the complainant and the institution and prevent a dispute before the courts;
6. Agrees that the term 'maladministration by the Community' 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 friendly solutions, 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 13 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>, 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 data<sup>2</sup>;
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 this 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 it complies effectively and fully with the rules and established practice as regards the openness and transparency of competition procedures, particularly with regard to 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

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<sup>1</sup> OJ L145 of 31.5.2001,p.43

<sup>2</sup> OJ L281 of 23.11.1995, p.31

selection boards;

19. Warmly welcomes the declaration of the European Ombudsman of his intention to deal 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 the 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 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, in 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, and regrets the failure to consult the Committee on Petitions;
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. 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 to bring 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.

## EXPLANATORY STATEMENT

### The culture of service to the citizen

Two years ago, the office of European Ombudsman celebrated its first decade. The Committee on Petitions of the European Parliament, which this year marked the 20th anniversary as a directly elected Parliament under the Single Act, recognises that the Treaty of Maastricht produced a qualitative leap in the rights of European citizenship by offering citizens the possibility of submitting petitions to a parliamentary body, which remains the sole arbitrator, or applying to a more specialised body which, while operating on an extrajudicial basis, follows a procedure, not excluding parliamentary intervention in the event of the Community institution responsible for the instance of maladministration proving reluctant to cooperate. The culture of service to the citizen which is designed to ensure high quality - i.e. transparent, approachable, swift and cooperative administrative services - has been encouraged and strengthened at Community level by the combined efforts of the Committee on Petitions and the Ombudsman, and its first emergence can be traced back to the resolution of 6 September 2001, the date on which the European Parliament adopted the code of good administrative contact proposed by the European Ombudsman.

### Examination of the statistics

The figures for 2006 record that the Ombudsman received **3830** complaints, 2% fewer than in 2005, but at the same record level attained in 2004, which represented a 53% increase compared to previous years. A complaint was transmitted electronically in **57%** of cases, most of which, i.e. **3619** cases, were sent by individual citizens, and only **211** of which were submitted by associations or firms. The nationality of the authors, in descending order was: Spanish (20.4%), German (14%), French (8.7%), Belgian (6.3%), Polish (6%), Italian (5.4%) and British (3.8%). This ranking changes, however, if the percentage of complaints submitted by a country is divided by the percentage of the EU population it represents. On this calculation, in only 22 countries is the quotient greater than one; a ratio greater than one indicates that the country in questions submits more complaints to the Ombudsman than might be expected given the size of its population, as in the case of Luxembourg (with a quotient of 14.2), Malta (10), Cyprus (7.6), Belgium (2.8), Slovenia (2.7) and Spain (2.2). Turning to the question of language distribution of complaints, *English* and *Spanish* each account for over 20% of complaints, *German* and *French* each account for over 10% and *Polish* for over 5%.

In the **95%** of cases where the examination of admissibility was completed, once again the majority did not fall within the mandate of the European Ombudsman (**78.5%**), either because the complaints were not made against a Community institution or body (**93.7%**) or because they did not involve maladministration (**5.4%**). Of the **21.5%** of cases which did fall within the Ombudsman's remit, **449** of the **838** complaints were formally declared admissible, of which **258** led to an inquiry. In 2006, the Ombudsman carried out **582** enquiries in total, of which **315** were already underway in 2005 and **9** were launched on the Ombudsman's own initiative.

As in previous years, the institutional body which was the subject of most enquiries was the Commission, which accounted for **66%** of enquiries (387); the European Personnel Selection Office (EPSO) accounted for **13%** (74) the European Parliament for **8%** (49) and the Council of the European Union for **2%** (11). The predominant type of maladministration alleged was lack of transparency, including refusal of information (**25%**) followed by unfairness or abuse of power (**19%**) and a variety of other types of maladministration, culminating in the least-frequently alleged categories of legal error (**5%**) and failure to ensure fulfilment of Treaty obligations by the Commission (**4%**).

The European Ombudsman's activities continue to be presented by reference to the various stages of the procedure for dealing with complaints, which are represented in more detail where enquiries identified instances of maladministration (request for comments/friendly solutions - **28** proposals in 2006, only one of which was successfully concluded, critical remarks - made in **41** cases in 2006, draft recommendations - of which **13** were proposed in 2006, and special reports, **2** of which were presented to Parliament in 2006). The safeguards this procedure provides for citizens help to strengthen the Ombudsman's powers of persuasion, despite the fact that his decisions are not legally binding. Moreover, the Ombudsman, whose office was instituted by Parliament, while operating independently, enjoys the confidence of Parliament, as shown in its political assessment of his annual and special reports.

The Ombudsman also enjoys the active support of the Committee on Petitions, whose meetings he attended on **four** occasions in 2006, and cooperates with his counterparts in the network of European Ombudsmen, which should be extended and improved. In the European context it should be stressed that, while no such requirement is contained in the implementing rules (Article 2.4) or the European Parliament's Rules of Procedure (Rule 191(9)), routine contacts between the activities of the Ombudsman and those of the Committee on Petitions should include, to avoid conflicts of competence, reciprocal notification of decisions with final effect.

### **Analysis of powers and decisions most frequently affecting certain categories of actions or certain bodies**

The report divides the decisions taken on completed inquiries in 2006 (which were 250) into five categories. These can be broken down into problems relating to lack of openness on the part of Community institutions and bodies (25% of inquiries, 9 decisions under Chapter 3), the role of the Commission as the guarantor of the Treaty in relation to procedures under Article 226 (9 decisions under Chapter 3), the management of contracts, remuneration and grants (8 decisions under Chapter 3) and problems relating to the recruitment and management of the staff of the institutions (18 decisions under Chapter 3).

#### ***Public access to documents***

In many cases brought in connection with exceptions made to public access under Regulation (EC) No 1049/2001, the procedure terminated at the stage of critical remarks, which are a means of attempting to prevent the recurrence of similar incidents in future, in cases where issuing a recommendation would be pointless or inappropriate. This applies to the

Commission's excessively broad interpretation of procedures which can be 'assimilated to court proceedings', in the case in question the WTO dispute settlement procedures (page 91) or the Commission's refusal of access on the arbitrary grounds that disclosing national plans for the allocation of greenhouse gas emission allowances would compromise negotiations in course, or that documents sent or received by Member States had to be treated as internal documents (page 94). The Committee on Petitions considers that it would be highly appropriate for the Ombudsman to carry out in 2007, as announced on 2 May 2007, a detailed study of the practical impact of critical remarks made in 2006.

### ***Failure to take critical remarks on board***

The committee was somewhat surprised, however, at the new approach proposed by the Ombudsman for cases in which his critical remarks evidently had no effect (pages 82, 84 and 92), which would involve promoting a culture of service at the highest levels of the offending Community public administration by approaching the relevant Commissioner. As most of these problems concern the Commission's staff management, if the aim is to create a culture of service in this key sector, the mistakes need to be corrected at source by engaging with the department responsible for the wrongful action or conduct and insisting it comply with the relevant provisions of the European Code of Good Administrative Conduct. By the same token, despite the critical remark which concluded the inquiry into the lack of remedies against a decision by the European School in Brussels concerning a student's marks (pages 90-91), the Ombudsman should not slacken the control he exercises over the Commission and, if need be, the Member States. The fact that the European Schools have adopted a Code of Good Administrative Conduct does not appear to be sufficient, as in the case of the Commission itself, to guarantee the creation of a genuine culture of service.

### ***The role of the Commission as guardian of the Treaty***

With regard to the Commission's discretionary power to take action under Articles 226 and 228 of the EC Treaty in the case of Member States' failure to comply with their Treaty obligations, a properly functioning system is also crucial for the outcome of the consideration of many petitions. Here, many of the questions raised in previous reports continue to apply, for example with regard to the publication of documents relating to infringement procedures, and in particular the correspondence between the Commission and the Member States (de Rossa report, 2003). The cases dealt with in 2006 clearly indicate that the Commission made wrong use of its discretionary powers by failing to take prompt action before legal proceedings were begun, using as a pretext political considerations such as the difficulty of reaching consensus among Commissioners on the delicate subject of the infringement of freedom to provide services by Germany in the sports betting sector. However, the Committee on Petitions is pleased with the good use made of his powers by the Ombudsman, including the special report which rectified the situation (page 110).

The Ombudsman's conclusions seem less clear and incisive when stigmatising the Commission's unjustified delay in handling infringement proceedings at the stage of the letter of formal notice and the sending of a reasoned opinion to the State responsible for the alleged infringement, Spain (page 105). On the other hand, the Ombudsman issued an unambiguous critical remark branding as an act of maladministration a flawed interpretation of a rule or principle of law by the Commission when it equivocated, purely for the sake of convenience,

instead of seeking a ruling on the State's failure to meet its obligations under Article 228 in the case of Germany, which had already been found to have failed to meet its Community obligations with regard to the packaging of certain drinks (page 93). Even more cogent was the Ombudsman's draft recommendation, which was subsequently accepted by the Institution, criticising the indefinite postponement, on the grounds that the Commission wanted to address the underlying question globally, of infringement proceedings under Article 226 against Denmark, which had failed to comply with its obligations in relation to motor vehicle tax (page 103). Delays or inertia of so flagrant a nature should also be subject to political censure by Parliament when the annual report on the implementation of Community law is considered.

### ***Power to initiate investigations***

With regard to contracts and staff management, two of the investigations launched by the Ombudsman on his own initiative show how his powers provide an effective means of goading the administrative authorities into self-regulation: on the one hand, the Commission's favourable reply to including an optional mediation clause in its standard procurement contracts and an undertaking to report back on the matter in the first half of 2007 (page 111), and, on the other hand, Parliament's decision to abolish age limits in its own traineeship programmes (page 113). In contrast, in a completely different context, the Commission's treatment of a series of complaints concerning the development of an industrial port in the Canaries, which is the subject both of an own-initiative inquiry by the Ombudsman (page 112) and petitions to the EP, the problem arises of a possible lack of synchronicity in timing and views with regard to the handling of the same case by the Ombudsman and the European Parliament, if both are called to decide on the merits of the case, while having to consider it from the point of view of different sets of competences. In similar cases, this committee calls on the Ombudsman to present his independent position while making fuller use, under Rule 195(3) of the Rules of Procedure, of the channels open to him for the purpose of constructive dialogue with Parliament.

### ***The role of EPSO in recruitment procedures***

In its report on the Ombudsman's annual report for 2003, this committee warned the European Personnel Selection Office (paragraph 18) to bring competition procedures into line with the principles of transparency and openness, in line with the Ombudsman's special report (1004/97 PD) and the Bösch report (A5-280/00). In particular, with regard to candidates' access to their marked papers, the rapporteur, Mr De Rossa, stressed that at that time, in 2003, all candidates taking part in European institutions' recruitment competitions could count on such rights.

Three years later, in 2006, it was no longer possible to say that any such entrenched right existed, as can easily be seen from the Ombudsman's critical comment concerning the brief and inadequate information on translation error types provided in EPSO's 'evaluation sheet' (674/2004/PB, p. 97). Candidates have a legitimate interest in accessing the information relating to them, which could be compromised in future by systematic use, for pre-selection tests, of varying questionnaires which can be accessed only by computer and are managed by external specialist firms. It is, therefore, very appropriate to open investigations into candidates' access: in particular, to tests and the exact answers to the questionnaires and the

assessment criteria laid down by the selection board for written tests (OI/5/05/PB p. 98); in general, on compliance by EPSO with the essential conditions stipulated in the abovementioned special report of the Ombudsman of 1999.

Moreover, this committee regards as unacceptable EPSO's refusal to apologise to a candidate excluded on the basis of an evident mistake by the selection board assessing his qualifications, despite repeated invitations to do so by the Ombudsman. This was an arrogant abuse of power for which the Ombudsman himself had to make amends, by apologising instead of the EPSO on behalf of the European Communities (p. 108). This is surely the antithesis of the culture of service which should permeate all European bodies and institutions, and it is no coincidence that EPSO comes second in the discreditable list of bodies responsible for incidents of maladministration. This committee urges the Ombudsman, therefore, to subject EPSO to stringent and detailed control, without distinguishing between the *administrative* work of its staff and *selection board decisions*, as rightly argued by the Ombudsman against EPSO (1217/04/OV p. 66), particularly by monitoring EPSO's replies to candidates' complaints concerning compliance with deadlines, formal requirements - starting with candidates' languages - and the protection of personal data.

### **The Ombudsman as a key actor in the Union's democratic life**

In its previous reports, this committee has emphasised the role played by the Ombudsman as guarantor of democratic openness and accountability in the EU's decision-making and administrative bodies (2003), his leading role in providing high quality information on the scope of his mandate (2004) and the added value provided by his intervention in terms of ensuring good administration, not only in connection with instances of maladministration (2005). This year, the focus is on the Ombudsman's role as a key actor in the Union's democratic life<sup>1</sup> when acting as an intermediary between citizens and Community public administrative authorities whose actions fall short of the expected standards. In particular, the focus is on his efforts to highlight the distinction between good and bad administration. The European Ombudsman seems to have responded favourably to the invitation issued in 2004 to clarify the concept of 'maladministration'.

We fully endorse the substance of paragraph 2.2.3 on actions and behaviour which deviate from the standards of good administration. We also appreciate the guidance offered to public community administrative authorities which have been at fault as regards recognising mistakes, offering excuses and seeking satisfactory solutions for complainants. For example, the way in which the EIB reconsidered its refusal of access to an audit report, allowing the complainant to see extensive extracts from it (pp. 77-78) shows the kind of constructive approach which can transform bad conduct into good, and should be taken as a model for similar cases. The committee encourages the Ombudsman, therefore, to draw up an annual list of best administrative practices, including exemplary or 'star' cases (of which there were six in 2006), together with the cases in which institutions acted least creditably.

The Committee on Petitions urges the European Ombudsman to continue to monitor closely

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<sup>1</sup> An expression taken from 'The process of adopting the Ombudsman's Statute' by Ezio Perillo, 'Diritto dell'Unione europea' (2006), vol. 1, p. 143.

relations between the EU Council of Ministers and the public, and relations with the public of the European Parliament itself, in connection with public access to documents, and its scrutiny of the Commission in the exercise of its duties to protect Community law. One of the cardinal principles which must be stressed is **democratic equality of all Europe's citizens, without any discrimination on the grounds of nationality or language**. So, while we welcome the firm position taken by the Ombudsman in censuring the Council for repeated acts of maladministration in connection with the absence of a German-language version on the Presidency internet site, and the special report he presented on 30 November 2006 deserves our full support, his conclusions (p. 109) cannot be used to justify the axiom that some languages are 'more equal than others'.

We also commend the initiatives taken by the Ombudsman, initially, in the form of, proposals that the Council seek a friendly solution, followed by critical remarks addressed to the Member States (pp. 104-5) to deprecate and put an end to commercial sponsorship of the rotating Presidency, in this instance the Irish Presidency. This incident highlighted the delicate problem of conflicts of interest in one of the channels directly linking the institutions at the heart of the Union's legislative system with the national authorities. The Ombudsman was right to raise the problem and should be commended further on reporting on the outcome, on the basis of consultations with the Member States' permanent representations.

### **Increasingly effective cooperation**

The Committee on Petitions is definitely in favour of speeding up its own procedures to ensure the Ombudsman's annual report is considered more quickly (paragraph 4, Schwab report), and encourages the Ombudsman to make a corresponding effort, by submitting his report in the first quarter of the year and adopting certain changes to the presentation of the statistics and the analytical section (Chapter 3 of the current report). However, adequate budgetary appropriations will be required to meet the increasing demands of parliamentary multilingualism, which this year meant that an extra two months were required to produce the other language versions of the English-original report.

Seven years have elapsed since the request by the then Ombudsman, J. Söderman, to end Article 3(2) on the freedom to consult the institutions' files and the unconditional hearing of officials and other staff; in the Almeida Garrett report (A5-240/01), Parliament had substantially accepted (on 6 September 2001) the amendments requested to the decision of 9 March 1994, but the special legislative procedure, despite receiving the agreement of the Commission and the Council, came to a standstill (see OEIL ACI 1999/2215). Your rapporteur, who had already drawn up the opinion for that committee, can do no other than stress the conclusions, approved by the committee on 29 May 2001 (in agreement with the report of the Committee on Constitutional Affairs), and in particular conclusion No 4 concerning full support for the amendments to Article 3 of the Statute proposed by the Ombudsman. 'The Committee cannot but welcome the fact that the Ombudsman has already interpreted his powers and exercised his investigative prerogatives in a progressive fashion without this having called forth any negative reaction from the Commission'. On this occasion, while taking account of the more extensive proposals for amendment of the Statute presented by Mr Diamandouros on 11 July 2006, your rapporteur reiterates her favourable opinion, provided the progressive development of the Ombudsman's powers is consistent and justified in the light of the increasing requirements imposed by the exercise of

his duties, which in effect have already been accepted by the main European institutions. In practice, these amendments involve a qualitative expansion of the Ombudsman's powers without affecting the nature of his competences or the non-binding effect of all his decisions (see case law of the Court of First Instance of 22 May 2000 in Case T-103/99).

This conclusion, accepting the substance of the amendments to the Statute requested, is also consistent with various recent rulings in Community case law. For example, the judgment of the Court of First Instance of 10 April 2002 in Case T-209/00, according to which the Ombudsman does not have the same discretionary power as the Commission with regard to opening infringement proceedings, as he cannot refuse, except on duly justified grounds, to follow up an admissible complaint, or the ruling of the Court of 23 March 2004, in the *Lamberts* Case C-234/02, according to which the Ombudsman's decisions, while not binding, may give rise to an action under Article 288 ECT relating to extra-contractual responsibility. For operational reasons, also, therefore, it is appropriate for the Ombudsman to be placed in a position where he can fully exercise his powers to conduct investigations.

It is essential, therefore, for the Ombudsman to continue to carry out his duties in a robust and flexible manner, reflecting the nature of his activities, which constitute in effect a 'laboratory for the development of soft law'. This committee therefore urges the European Ombudsman also to conduct inquiries under the so-called third pillar, judicial and police cooperation in criminal matters, for example by extending them to the activities of Europol. At the same time, the committee encourages him to use the network of European Ombudsmen and also to exploit the experience of this committee to resolve questions relating to Union policies which need to be settled before a solution can be found to problems at national or local level which have emerged in the further reaches of the network, such as the matter raised by the Friuli-Venezia Giulia Ombudsman on the free movement of goods (page 114).

Finally, to achieve full subsidiarity in extra-judicial remedies, the network should ideally be expanded to include specialised ombudsmen dealing with minors' rights<sup>1</sup>, family problems, the protection of personal data and prisoners or patients' rights, so as to increase its popularity and extend their influence beyond the limits of their territorial jurisdiction with a view to establishing multiple forms of dialogue, which this committee views as a positive sign of the development of increasingly close relations between citizens and institutions under the aegis of the European Union. To conclude, we might point out that, judging from Italy's experience – which has been disappointing – of the office of Ombudsman,<sup>2</sup> the emergence of a multiplicity of local ombudsmen to make up for the absence of a single national ombudsman can enhance the significance and visibility of the European Ombudsman, if it is true – not surprisingly – that the largest number of visitors to the European Ombudsman's website are based in Italy (page 160).

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<sup>1</sup> In Europe there has been a network of children's ombudsmen since 1997.

<sup>2</sup> Article 16 of Law 127 of 15 May 1997 setting up the office of national ombudsmen has not been implemented to date.



## PROCEDURE

<b>Title</b>	Annual report on the European Ombudsman's activities in 2006
<b>Procedure number</b>	2007/2131](INI)
<b>Committee responsible</b> Date announced in plenary	PETI 30.1.2007
<b>Rapporteur(s)</b> Date appointed	Luciana Sbarbati 2.5.2007
<b>Previous rapporteur(s)</b>	
<b>Discussed in committee</b>	25.6.2007
<b>Date adopted</b>	17.7.2007
<b>Result of final vote</b>	+ : 25 - : 0 0 : 0
<b>Members present for the final vote</b>	Marcin Libicki, Kathy Sinnott, Maria Matsouka, Robert Atkins, Simon Busuttil, Daniel Caspary Luis Herrero-Tejedor, Mairead McGuinness, Manolis Mavrommatis, Marie Panayotopoulos-Cassiotou, Andreas Schwab, Rainer Wieland, Proinsias De Rossa, Glyn Ford, Miguel Angel Martínez Martínez, Radu Podgorean, Marian Harkin, Luciana Sbarbati, Margrete Auken
<b>Substitute(s) present for the final vote</b>	Thijs Berman, Lidia Joanna Geringer de Oedenberg, Tatjana Ždanoka
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Elspeth Attwooll, Metin Kazak, Dimitrios Papadimoulis
<b>Date tabled</b>	26.7.2007
<b>Comments</b> (available in one language only)	