



EUROPEAN PARLIAMENT

2009 - 2014

---

*Session document*

---

**A7-0020/2009**

6.10.2009

# REPORT

on the annual report on the European Ombudman's activities in 2008  
(2009/2088(INI))

Committee on Petitions

Rapporteur: Chrysoula Paliadeli

## CONTENTS

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT .....	10
RESULT OF FINAL VOTE IN COMMITTEE.....	14

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the annual report on the European Ombudsman's activities in 2008 (2009/2088(INI))

*The European Parliament,*

- having regard to the annual report on the European Ombudsman's activities in 2008,
  - having regard to Article 195 of the EC Treaty,
  - 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 duties<sup>1</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'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 decision of 18 June 2008 amending 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>2</sup>,
  - having regard to the revision by the Ombudsman of his implementing provisions in order to reflect the changes to the Statute, which revised implementing provisions 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 (A7-0020/2009),
- A. whereas the annual report on the European Ombudsman's activities in 2008 was formally submitted to the President of Parliament on 21 April 2009 and whereas the Ombudsman, Mr Nikiforos Diamandouros, presented the report to the Committee on Petitions in Strasbourg on 14 September 2009,

B. whereas Article 41 of the Charter of Fundamental Rights states: 'Every person has the

---

<sup>1</sup> OJ L 113, 4.5.1994, p. 15.

<sup>2</sup> OJ L 189, 17.7.2008, p. 25.

right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union',

- C. whereas Article 43 of the Charter states: '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 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,
- E. whereas, although eight years have passed since the adoption of Parliament's resolution of 6 September 2001<sup>1</sup> approving the Ombudsman's Code of Good Administrative Behaviour, the other main institutions have not yet fully complied with Parliament's request that they bring their practice into line with the provisions of that code,
- F. whereas the Ombudsman registered 3 406 complaints in 2008, compared to 3 211 in 2007, and whereas 802 complaints, compared to 870 in 2007, were found to be within the Ombudsman's mandate,
- G. whereas the findings of the 355 completed inquiries, of which 352 were linked to complaints and 3 were own-initiative investigations, show that in 110 cases (corresponding to 31% of the complaints investigated) no maladministration was ascertained,
- H. whereas in 129 cases (36% of the total) closed in 2008, 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,
- I. whereas four cases were closed in 2008 after an amicable resolution had been achieved and whereas, at the end of 2008, 25 proposals for amicable solutions were still under consideration,
- J. whereas the most common allegation of maladministration dealt with by the Ombudsman in 2008 was lack of transparency (in 36% of inquiries opened),
- K. whereas in 2008 the Ombudsman increasingly made use of more informal procedures aimed at the prompt resolution of complaints, which proves the extent to which the Ombudsman is respected and demonstrates the institutions' readiness to help citizens,

---

<sup>1</sup> European Parliament resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (OJ C 72 E, 21.3.2002, p. 331).

- L. whereas in 2008 the Ombudsman closed 44 inquiries with critical remarks, and whereas a critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future,
- M. whereas it is with a view to improving the EU institutions' performance in the future that the Ombudsman has made increasing use of further remarks by which he identifies an opportunity to enhance the quality of the administration, and whereas further remarks were made in a total of 41 cases in 2008,
- N. whereas 23 draft recommendations were issued in 2008, of which eight were accepted by the institution concerned, and four draft recommendations from 2007 led to a decision in 2008,
- O. whereas one case of maladministration led to a special report to the European Parliament in 2008, and whereas submitting a special report to Parliament represents a valuable means by which the Ombudsman can seek the political support of Parliament and its Committee on Petitions in order to bring satisfaction to citizens whose rights have been infringed, as well as promoting the improvement of standards of EU administration,
- P. 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,
- Q. 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,
- R. whereas the critical comments regarding maladministration voiced by the Ombudsman in the 2008 report (critical remarks, draft recommendations and special report) may serve as a basis for avoiding a repetition of errors and malfunctions in future by the implementation of appropriate measures by the institutional and other bodies of the European Union,
- S. whereas the cooperation established by the Ombudsman within 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 re-directing complainants to the ombudsmen or other similar bodies most able to assist them,
- T. whereas the role of the Ombudsman in protecting the interests of EU citizens in the face of the institutions and bodies of the European Union has evolved in the 14 years since the office was created, thanks to the Ombudsman's independence and Parliament's democratic scrutiny of the transparency of his activities,
- U. whereas the activities of the Ombudsman and of the Committee on Petitions must remain

separate and – as a general rule aimed at avoiding potential conflicts as regards their respective prerogatives – should include reciprocal referral of their respective files,

1. Approves the annual report for the year 2008 presented by the European Ombudsman and its structure, combining a summary of the year's activities with an overview of the complaints and inquiries and a thematic analysis of the Ombudsman's decisions, covering the most significant findings of law and fact contained in the Ombudsman's decisions in 2008, as well as the problems raised at various stages of the procedure;
2. Considers that clearer presentation of the statistical data, including the new method of calculating and the new layout, has made the report more comprehensible, accessible and user-friendly;
3. Calls for all EU 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;
4. Considers that the Ombudsman has continued to exercise his powers in an active and balanced 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 make use of their rights in relation to those institutions and bodies;
5. Calls on the Ombudsman to pursue his efforts in raising awareness of his work and to promote his activities effectively and transparently; 6. Considers that the term 'maladministration' should continue to 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 sloppy, negligent in their duty to their citizens or lacking in transparency or have infringed other principles of good administration;
7. Regards the role of the Ombudsman in enhancing openness and accountability in the decision-making processes and administration of the European Union as an essential contribution 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(2) of the Treaty on European Union;
8. Repeats its call, expressed in previous resolutions, for all EU institutions and bodies to adopt a common approach with regard to the Code of Good Administrative Behaviour;
9. Notes that the Code of Good Administrative Behaviour proposed by the Ombudsman, as approved by Parliament on 6 September 2001, serves as a guide and resource for the staff of all Community institutions and bodies and has been regularly updated and published on the Ombudsman's website;
10. Welcomes the revision of the Ombudsman's Statute, in particular the Ombudsman's

strengthened powers of investigation which will help to ensure that citizens can have full confidence in his ability to conduct a thorough investigation of their complaints without restrictions;

11. Stresses the need to contribute to the public understanding of the duties of the Ombudsman by providing citizens, companies, non-governmental organisations and other entities with information, and considers that easily understood, accurate and high-quality information may help to reduce the number of complaints which do not fall within the Ombudsman's mandate; 12. Considers that the figure in respect of inadmissible complaints remains unsatisfactory although understandable, and recommends in view of this that a continued information campaign be conducted amongst European citizens designed to raise their awareness of the functions and competence of the members of the European Network of Ombudsmen;
13. Recognises the Ombudsman's efforts to improve the institutions' performance and his endeavours aimed at further shortening the current average length of inquiry of 13 months;
14. Welcomes the constructive cooperation between the Ombudsman and the EU institutions and bodies and endorses him in his role of external control mechanism and, in addition, as a valuable source of ongoing improvement to European administration;
15. Welcomes the signing on 9 July 2008 of a Memorandum of Understanding between the Ombudsman and the European Investment Bank and the agreement by the Union's agencies to adopt the European Code of Good Administrative Behaviour in their relations with citizens;
16. Calls on the Ombudsman to maintain a watching brief and ensure that the Commission makes 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 EU law, and requests that he continues to liaise with the Committee on Petitions in this connection;
17. Reiterates that it considers that, if an institution refuses to follow a recommendation contained in a special report by the Ombudsman despite Parliament having 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; invites the committee responsible for the Rules of Procedure to propose appropriate provisions, to be introduced into the Rules, for the initiation of such an action;
18. Notes that the Ombudsman has presented a special report criticising the Commission for having failed adequately to justify its treatment of freelance auxiliary conference interpreters over 65 years of age, on which Parliament adopted a resolution on 5 April

2009<sup>1</sup>;

19. Considers that, when the Ombudsman and the Committee on Petitions, acting within their respective mandates and competences, investigate overlapping issues, such as, respectively, the manner in which the Commission has conducted infringement proceedings and the alleged infringement itself, they can achieve a much more useful synergy through close cooperation;
20. Welcomes the excellent relationship between the Ombudsman and the Committee on Petitions within the institutional frameworks as regards reciprocal respect of competences and prerogatives;
21. Recognises the useful contribution made by the European Network of Ombudsmen, of which the Committee on Petitions is a member, in line with the principle of subsidiarity, in securing extra-judicial remedies; welcomes the collaboration between the European Ombudsman and ombudsmen and similar bodies at national, regional and local levels in the Member States, and urges further strengthening of the exchange of best practice, thereby allowing for the rapid spread of best practices among Member States;
22. Welcomes the publication on the Ombudsman's website in 2008 of two studies regarding the follow-up given by the institutions concerned to critical and further remarks made in 2006 and 2007;
23. Encourages the Ombudsman to continue to place great emphasis on events involving information for citizens and, hence, potential complainants, since it is clear that the demarcation of responsibilities and decision-making processes between the European, national and regional levels is still too confusing and hard to grasp for many citizens and businesses;
24. Welcomes the enhanced information campaign promoted by the communications strategy adopted by the Ombudsman, which leads to greater awareness of citizens' rights and Community competences, as well as a greater understanding of the Ombudsman's sphere of competence;
25. Notes that each institution has its own website enabling complaints, petitions, etc. to be lodged, and that this can frustrate citizens in distinguishing between the various institutions; supports, therefore, the development of an interactive manual designed to assist citizens in identifying the most suitable forum for resolving their problems;
26. Welcomes the Ombudsman's new website as a very substantial response to this issue;
27. Suggests that this idea be developed further, and that a common website of the European institutions be put in place to help citizens and refer them directly to the institution

---

<sup>1</sup> Texts adopted, P6\_TA(2009)0340.



competent to handle their complaint, thereby reducing the number of inadmissible complaints filed with the European Ombudsman;

28. Calls on the European Ombudsman to commit himself to directly forwarding, after obtaining the consent of the complainant concerned, each complaint that falls within the competence of a national or regional ombudsman;
29. Instructs its President to forward this resolution to the Council, the Commission and the European Ombudsman, and to 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 2008 was formally submitted to the President of the European Parliament, Hans-Gert Pöttering, on 21 April 2009 and the European Ombudsman, Nikiforos Diamandouros presented his report to the Committee on Petitions on 14 September 2009.

The report provides a clear and comprehensive overview of the European Ombudsman's activities over the last year. The various inquiry findings are presented in a user-friendly way using examples and are broken down by categories such as nature of alleged maladministration or institution concerned. The new presentation of the statistical data and the new layout has made the report far more comprehensible than the previous reports. A new six-page Overview 2008 has also been produced. This new publication records the most important results obtained for complainants and highlights the main policy issues dealt with over the past year.

### **Complaints and inquiries**

The Ombudsman registered 3406 complaints in 2008 compared to 3211 in 2007. This represents a 6% increase compared to 2007. 802 complaints were found to be inside the Ombudsman's mandate. Of these 228 complaints were declared admissible but without grounds for opening an inquiry, and 293 inquiries were opened on the basis of complaints. 281 complaints were declared inadmissible.

Most of these inquiries concerned the European Commission (66%). Complainants also targeted the administration of the European Parliament (10%), the European Personnel selection Office EPSO (7%), the Council (3%) and the European Anti-Fraud Office OLAF (2%). Twenty other EU institutions and bodies were the subject of further 37 inquiries (13%).

The most common type of alleged maladministration was lack of transparency (36% of all inquiries), including refusal of information or documents, 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.

A record number of inquiries were closed in 2008. Most were closed within less than a year (52%) and one third (36%) within three months. Of these 352 were linked to complaints and 3 were own-initiative inquiries.

In 110 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 2008, 129 cases (36%) 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 regards 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 8 cases<sup>1</sup>, 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.

In some cases, a friendly solution can be achieved if the institution or body concerned offers compensation to the complainant. Any such offer is made *ex gratia*, i.e. without admission of legal liability and without creating a legal precedent. An example is case 1162/2007/FOR, where the Council agreed to make an *ex gratia* payment of 1000 euro in the recognition of the inconvenience and stress that the complainant had suffered.

When a friendly solution is not possible, the Ombudsman closes the case with a critical remark, or makes a draft recommendation. A critical remark confirms to the complainant that his or her complaint is justified and indicates to the institution or body concerned what it has done wrong, so as to help it avoid maladministration in the future. In 2008, the Ombudsman closed 44 inquiries with critical remarks.

The Ombudsman criticised e.g. the European Parliament, because it in 2005 had rejected a journalist's request for information about the allowances paid to the five Maltese MEPs, citing data protection reasons. The journalist lodged a complaint with the Ombudsman, arguing that taxpayers have a right to know how MEPs spend public money. After having consulted the European Data Protection Supervisor, who agreed with the Ombudsman's position, the Ombudsman called on Parliament to disclose the requested information, in the light of the public's legal right of access to documents. Parliament maintained its refusal. It announced, however, that it would publish general information on MEPs' allowances on its website and alluded to the possibility of re-assessing the situation in 2009. The Ombudsman issued a critical remark, regretting that Parliament had not complied with the law as interpreted by the Court of First Instance. He, however, welcomed Parliament's decision to better inform the public about MEPs' allowances via its website.

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 published on his website, in 2008, two studies of the follow-up undertaken by the institutions involved to all critical remarks and further remarks issued in 2006 and 2007.

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 2008, eight draft recommendations were made.

---

<sup>1</sup> Cases OI/5/2005/PB (EPSO), 754/2007/BU (OLAF), 2448/2008/WP (ECJ), 3490/2005/(ID)PB (EC), 3784/2006/FOR (EC), 2672/2008/VL (EC), 1162/2997/FOR (Council) and 893/2006/BU (EASA).

If an institution or body fails to respond satisfactorily to a draft recommendation, the Ombudsman may send a special report to the European Parliament. This constitutes the Ombudsman's ultimate weapon and is the last substantive step he may take in dealing with a case, since the adoption of a resolution and the exercise of Parliament's powers are matters for the political judgment of the Parliament.

In 2008, the Ombudsman submitted one special report to Parliament, criticising the Commission for age discrimination of freelance interpreters, to which the Committee on Petitions, with Miguel Angel Martínez Martínez as rapporteur, drafted a report and adopted a resolution on 5. maj 2009<sup>1</sup>.

The Ombudsman also launched three inquiries on his own initiative. Two of these concerned cases which had been submitted by a non-authorized person (i.e., a complainant who is not a citizen or resident of the Union or a legal person with a registered office in a Member State). The third involved the use of the Ombudsman's own-initiative power to tackle what appeared to be a systemic problem concerning the European Commission's Early Warning System (OI/3/2008/FOR).

In 2008, the Ombudsman concluded an own-initiative inquiry into the timeliness of payments by the Commission. The inquiry was launched for the second time in December 2007 and revealed, that late payment continues to constitute a serious problem. While the Ombudsman commended the Commission for the measures already taken to reduce payment delays, he called on it to make further improvements, especially regarding more vulnerable contractors, such as individual citizens and small and medium-sized companies and organisations. The Ombudsman announced that he would carry out a new investigation in early 2009.

As an alternative to opening a written inquiry into possible maladministration, and with the aim of solving the relevant problem rapidly, the Ombudsman makes use of informal, flexible procedures, with the agreement and co-operation of the institution or body concerned. During 2008, 101 cases were settled after the Ombudsman's intervention succeeded in obtaining a rapid reply to unanswered correspondence.

### **Priorities of the European Ombudsman**

The main priorities of the European Ombudsman is 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 90 offices in 31 countries. One of the purposes of the Network is to facilitate the rapid transfer of complaints to the competent ombudsman or similar body. During 2008, the Ombudsman advised 888 complainants to turn to a national or regional ombudsman, and 191 complainants were referred to the Committee on Petitions. In some cases, the Ombudsman considers it appropriate to transfer the complaint to the Commission or

---

<sup>1</sup> P6\_TA(2009)0340.

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. Before transferring a complaint or advising the complainant, the Ombudsman's services make every effort to ensure that the most appropriate advice is given.

The Ombudsman strive 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, 75 presentations were made by the Ombudsman and his staff at conferences, seminars, and meetings during 2008. The Ombudsman also made information visits to Cyprus, Greece, Latvia and Lithuania with a view to promote awareness of the Ombudsman's role in these countries. He also gave six press conferences and over 30 interviews, and 17 press releases were issued and distributed to journalists and interested parties throughout Europe.

Amongst the particular interesting publications produced and distributed in 2008 was a new guide to the Ombudsman's work, produced in the 23 official EU languages. This publication was distributed to key stakeholders and to the general public.

The Ombudsman's website was updated regularly during 2008 in order to transform it to a modern, dynamic, interactive and constantly evolving service to citizens, and the new website was finally launched at the beginning of 2009.

## **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.

With the adoption on 18 June 2008 of the report on a Decision 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 duties<sup>1</sup>, proposed by the Ombudsman in 2006, the Parliament agreed to a qualitative expansion of the Ombudsman's powers without affecting the nature of his competences or the non-binding effect of his decisions. By supporting the changes proposed, the European Parliament and its Committee on Petitions has demonstrated its confidence in the work of the Ombudsman and his efforts to improve the service that he can provide for citizens, thus strengthening their trust in the European Union and its institutions.

---

<sup>1</sup> A6-0076/2008

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	1.10.2009
<b>Result of final vote</b>	+: 19 -: 0 0: 1
<b>Members present for the final vote</b>	Margrete Auken, Simon Busuttil, Bairbre de Brún, Pascale Gruny, Roger Helmer, Peter Jahr, Lena Barbara Kolarska-Bobińska, Miguel Angel Martínez Martínez, Erminia Mazzoni, Willy Meyer, Mariya Nedelcheva, Chrysoula Paliadeli, Ernst Strasser, Csaba Sándor Tabajdi, Diana Wallis, Angelika Werthmann
<b>Substitute(s) present for the final vote</b>	Sandrine Bélier, Kinga Göncz, Gerald Häfner
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Pablo Arias Echeverría