

European Ombudsman

Handbook for Legal Officers

PROVISIONAL - INTERNAL USE ONLY - JANUARY 2012

This document is for the benefit of trainees and LOs beginning in the office. It contains updates to the last edition, but is still in the process of being updated with instructions given to LOs before the current date. In case of doubt, please check the LO notes in the folder S:\Legal\Departmental information\notes or consult Isabelle Foucaud.

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1 INTRODUCTION

1.1 ABOUT THE HANDBOOK

This handbook is for the guidance of Legal Officers (LOs) and trainees in the office of the European Ombudsman. It is intended both as an aid to those who are beginning work and as a reference manual for experienced LOs.

The handbook is an internal guide and is not intended to have any legal effects. It is based on the working practices of the Ombudsman's office. The Ombudsman may revise these working practices at any time.

The Ombudsman is the 'Guardian of good administration' and his staff must therefore be particularly careful to follow the European Code of Good Administrative Behaviour. The Code is published on the Ombudsman's Website.

The Handbook contains references to the Legal section of the Intranet system of the Office SISTEO (LOIS), which is accessible through Internet Explorer on your computer.

1.2 THE WORK OF THE EUROPEAN OMBUDSMAN

The work of the Ombudsman is based on Article 228 TFEU, the Statute of the Ombudsman and the revised implementing provisions adopted by the Ombudsman in accordance with Article 14 of the Statute. Both texts are also available in the legal section of SISTEO.

The possibility to complain to the Ombudsman is one of the rights of citizens of the Union under Article 21 EC. Non-citizens who live in a Member State and companies, associations, or other bodies with a registered office in the Union, may also complain. Complaints may be made either directly, or through a Member of the European Parliament. The Ombudsman also has the power to conduct own-initiative inquiries.

The Ombudsman investigates possible maladministration in the activities of Union institutions, bodies, offices or agencies, other than the Court of Justice of the European Union acting in its judicial role. No action by any other authority or person may be the subject of a complaint to the Ombudsman. The Ombudsman normally deals with complaints publicly, unless the complainant requests that the complaint be treated as confidential.

The European Ombudsman co-operates closely with a network of ombudsmen and similar bodies in the Member States. Each national ombudsman office appoints a liaison officer (an up-to-date list is available through SISTEO/LOIS).

The European Ombudsman deals with queries from national and regional ombudsmen on questions of Union law and transfers complaints to them in appropriate cases.

The Treaty requires the European Ombudsman to be completely independent in the performance of his duties and to neither seek nor take instructions from any body.

The Ombudsman reports annually to the European Parliament. The Annual Report is published as a printed document and electronically on the Website. An announcement is also published in the Official Journal.

1.3 LANGUAGES

Complaints may be submitted to the European Ombudsman in any of the official languages of the EU.

The working language of the office is English. Correspondence with institutions, bodies, offices or agencies of the Union is normally conducted in English.

All correspondence with the complainant is conducted in the language of the complaint. If necessary, the responsible LO provides the Ombudsman with an unofficial translation of letters presented for signature.

If an LO needs assistance in reading or writing the language of a complaint, he/she should consult with his/her HLU in order to first find a competent person within the office. This is usually quicker than using the European Parliament's translation service. It can also be more effective, since there is greater opportunity for discussion. The colleague assisting in the language in question should however not be requested to provide a translation, as such, or a detailed analysis, and should limit his/her assistance to the provision of basic information and the simple and quick adaptation of standard letters. If a translation is needed for the purpose of complaint dealing or drafting of a detailed reply, the LO or trainee in charge of the complaint will request a translation from the European Parliament's translation service, after having obtained the approval from his/her HLU

If the official language of the complaint is not covered by the Office, the translation is made by the European Parliament's translation service. In order to ensure the coherence of the translation, it is better to ask for the translation of the whole correspondence, even if a standard letter in the language of the complaint already exists. However, if available, the latter should be sent to the EP's translation service for information. The LO should send the English version of the correspondence to be translated, together with the standard letter in the language of the complaint, if available, to the assistant of the Head of Legal Department, who will ensure that the necessary documents are transmitted to the 'TranslationEO' mailbox.

The Ombudsman's letters should not contain grammatical or spelling errors. A letter drafted by a non-native speaker should be checked either by a colleague native speaker of that language or by the lawyer linguists.

Letters, which may be complaints, are sometimes addressed to the European Ombudsman in non-Union languages. These letters receive a standard response in three languages (EN, FR, DE).

1.4 THE ROLE OF A LEGAL OFFICER

The main functions of an LO are to:

- deal with complaints and own-initiative inquiries
- monitor and manage his/her caseload and ensure a sustained pace in each inquiry, avoiding delays and backlogs
- propose own-initiative inquiries
- supply information for statistics

- prepare decision summaries for the Annual Report and other publications
- put complaint summaries, decisions and decision summaries on the S:\ drive
- attend and contribute to LO meetings organised in his/her unit
- keep up-to-date with legal and other important developments in the Union and in their respective Member State and inform the office about them
- submit reports to the Ombudsman on missions, visits and meetings
- participate in information campaigns in relation to his/her Member State.

Each complaint is registered by the Registry Unit. The Registry sorts out the complaints which are outside the European Ombudsman's mandate. These complaints are dealt with by the Registry according with the procedure described under section below. Complaints which are within the Ombudsman's mandate are assigned by one of the two Directors to a particular LO. The LO examines every complaint promptly and contacts the Registry immediately if it has been wrongly classified as a complaint, in order to prevent the acknowledgement of receipt from being sent and to have the correspondence properly classified.

Otherwise, the LO analyses the complaint and prepares a summary in accordance with section 2.1 below.

When dealing with a complaint or own-initiative inquiry, the LO's task is to make proposals to the Ombudsman and to implement the latter's instructions. Decisions on complaints within the mandate are decisions signed by the Ombudsman: except for the acknowledgement of receipt of a complaint, all outgoing correspondence bears the Ombudsman's signature¹.

Each LO deals personally with the complaints that are assigned to him/her. The LO must not ask another member of staff to make proposals for dealing with the case. If the LO considers that another LO should deal with the case, for example, because of the assignment of similar cases, a proposal may be made to the HLU and then to the competent Director. The only exception to this rule is that a trainee's tutor may ask the trainee to make proposals on a case. However, the LO remains responsible for checking the proposal and presenting it to the Ombudsman.

The acknowledgement of receipt informs the complainant of, among other things, the name and telephone number of the LO who is dealing with the complaint. This allows complainants the possibility to obtain information easily concerning the handling of their complaint at any stage. Where an inquiry has been opened and the complaint is transferred to another LO, the new LO promptly drafts a letter for the Ombudsman's signature informing the complainant of the change. The LO is responsible for updating data in SUPERVISEO concerning his/her cases and has a duty to amend, delete and supplement data in order to keep information on his/her cases up-to-date. This should normally be done immediately after an action has taken place. SUPERVISEO records the progress of each case and enables the LO to monitor the deadlines involved. The LO informs the Registry promptly of changes and developments which should be included in the database for complaints. See also section 1.5.3 below.

¹ The LO should consult his or her supervisor or HLU before initiating any telephone contacts with the complainant or institution (see telephone procedures under section 1.5.3.)

LOs deal with telephone inquiries from complainants in accordance with Articles 12 and 22 of the Code of Good Administrative Behaviour.

The LO deals, as far as possible, with complaints in date order, unless the Ombudsman, the Directors or the HLU decides that a particular case should be given priority. A request from a complainant for priority treatment for his/her case should receive a reasoned reply from the Ombudsman.

1.4.1 Mission reports

LOs must submit to the Ombudsman a concise written report on each mission where he/she has accompanied the Ombudsman. If appropriate, the report should include a short text suitable for publication in the Annual Report (see the next section). After approval by the Ombudsman, the report is usually made available to all staff through SISTEO/Legal-Lois/Mission reports. Mission reports are normally drafted "for internal use only". However, LO's should bare in mind that such report can become public documents if somebody ask for public access to those documents.

In the case of information visits coordinated by the Communication Unit, the latter is responsible for the follow-up, including the text to be included in the Annual Report.

See below for reports on inspections of documents or the taking of oral evidence.

When an LO attends a conference or seminar, the programme and any papers from the conference or seminar should be deposited in the library or by made available on SISTEO. The mission report should provide information on any important legal points which arose and identify any interesting papers. LOs should also take the opportunity of such missions to distribute information material about the European Ombudsman. They should identify in advance the quantity and nature of the material to be distributed.

1.4.2 Material for the Website and the Annual Report

Publication of decisions on the website

Since 1 July 1998, all of the Ombudsman's decisions and draft recommendations have been published in full on his website in English and also in the language of the complainant, if different. A number of earlier decisions, which are frequently requested by researchers, are also available on the website. Special Reports are published on the website in all the official languages of the Union if the budget allows this. The only exception applies to inquiries closed after a 'telephone procedure', or when the complaint has been dropped by the complainant without the European Ombudsman having conducted any inquiry.

In the case of a non-confidential decision, the LO saves the decision in both English and the language of the complainant under *S:\Legal\Decisions\Decis[Year]\[LO's first name]*. The Communication Unit uses the texts of the decisions, as saved under *S:\Legal\Decisions\Decis[Year]\[LO's first name]*, to prepare the versions displayed on the website. Before putting the decision on the website, the complainant's address is removed and the complainant's name is replaced with an initial.

In the case of a confidential decision, the LO saves the decision under S:\Legal\Decisions\Decis[Year]\[LO's first name]. In addition, the LO produces an anonymised version in English and in the language of the complainant, if different. The anonymised versions are saved under S:\Legal\Decisions\Decis[Year]\Anonymised.

In the anonymised version of the decision, the complainant is referred to as 'X' and considered to be masculine. Furthermore, any element which could identify the complainant is modified or removed. For instance, instead of saying that "the complainant worked for the Commission Delegation in Nairobi", we might say that "the complainant worked for a Commission delegation in an African country."

The anonymisation of a confidential decision is carried out by the LO concerned because it requires knowledge of the case and the exercise of judgement.

It is important that these instructions are correctly followed, so that the complainant's request for confidentiality and his/her personal data are protected.

If the LO has a query as to how to anonymise a particular case, he/she should consult the Head of the Legal Department.

NB: It might be appropriate, in certain circumstances, to invite the complainant to give his/her comments on the draft anonymised decision. A template letter can be found on SISTEO/resources/drafting templates **???????**:

As you are aware, your complaint referred to above has been dealt with as confidential. Confidentiality implies that there is no public access to the complaint or to other documents contained in the file. The Ombudsman's decisions on confidential complaints are published on his website, after the removal of any information which is likely to lead to the identification of the complainant ('anonymisation'). This implies, among other things, that the masculine form is used throughout the anonymised version of the decision.

My decision on your complaint, sent to you on [date], has been anonymised by my services according to the standard practice. However, in light of the circumstances of your case, I have decided to send you a copy of the anonymised version before publication, in order to allow you to express your view as to whether the anonymisation is adequate. Please find enclosed a copy of the anonymised version of my decision.

I would be grateful to receive your reply by [one month]. THIS COULD BE REMOVED from the handbook and put in the templates

Publication of summaries of decisions on the Ombudsman's website

A summary must be produced in English for every decision closing an inquiry, except when the inquiry was closed after a 'telephone procedure', or when the complaint was dropped by the complainant without the Ombudsman having conducted any inquiry. All such summaries are a vital communication tool in that they explain clearly and simply the Ombudsman's work to citizens and highlight the results he obtains.

The Directors and the Secretary-General select individual summaries to be translated into all the official languages of the Union. These selected summaries are published on the website in all official languages and constitute the main news items on the Ombudsman's website.

See Appendix 4 below for information on how to prepare a summary.

Submitting the summary for approval

Once the competent HLU has approved a draft decision, the LO prepares a draft summary of the decision and the usual accompanying letters. He/she then sends them all for approval to his/her Director for approval.

Once approved by the competent Director, the LO sends the summary, the draft decision and the usual letters to the lawyer-linguist for checking. The EO requires that the lawyer-linguists' previous visa is apparent from the e-mail. A copy of the summary is sent to the SG.

Once the Ombudsman has approved the various drafts, the LO sends it to the Directors' assistant, who saves the summaries in the appropriate folder.

Material for the Annual Report

The Annual Report may include references to presentations made by the Ombudsman's staff. This is based on the visiting group information gathered by the responsible members of the Communication Unit. Where LOs make presentations that are not coordinated by these Units, they should inform the Head of the Communication Unit by e-mail so that this information can be taken into account for the Report. The same applies when LOs participate in interesting events. In both cases, LOs should indicate the title of the event, as well as the date, location, nature of their participation (speech, etc), and the approximate number of participants.

As mentioned in section 1.4.1 above, where LOs accompany the Ombudsman to an event (on mission or otherwise), a short text suitable for publication in the Annual Report should be prepared and sent to the Head of the Communication Unit by e-mail.

1.4.3 Duty of confidentiality

LOs should familiarise themselves with the provisions of:

- Article 339 TFEU and Article 4 of the Statute of the Ombudsman concerning confidentiality;
- Article 4a of the Statute of the Ombudsman and Articles 13 and 14 of the implementing provisions concerning the complainant's access to his or her file and public access to documents.

LOs should also be aware of the provisions of Regulation (EC) 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices or agencies and on the free movement of such data (2001 OJ L8/1 and should consult the Ombudsman's data protection officer when appropriate. LOs should be aware that the Ombudsman has signed a Memorandum of Understanding (MOU) with the European data Protection Supervisor (EDPS). The text of this MOU is available on the Ombudsman's Website and on SISTEO.

Although complainants are made aware that their complaint will be dealt with openly unless they request confidentiality, some complainants might be surprised if their names and addresses are revealed to e.g. journalists without asking their permission. The names and

addresses of complainants should not therefore be revealed to third parties, unless the complainant has given his or her express consent.

Any confidential documents in the possession of an LO must be kept securely under lock and key.

In case of doubt about issues of confidentiality, the LO should promptly consult his or her HLU or the competent Director.

In order to preserve space for negotiation and discussion, correspondence concerning a possible friendly solution is confidential, except vis-à-vis the complainant, until the case is finally closed.

1.5 THE ADMINISTRATION OF COMPLAINTS-HANDLING

1.5.1 Registration and assignment

All complaints are transmitted to the Registry, who gives it a unique registration code based on the number of complaints received, the year and the initials of the responsible LO; for example, 1399/2002/IJH. The Registry also enters details of the complaint in the database. The Head of the registry identifies, assigns to a member of his unit and deals with the complaints which are outside the mandate of the Ombudsman. The assignment of complaints identified as being within the mandate of the Ombudsman is carried out by one of the Directors, or delegate.

Complaints inside the mandate and admissible should always be assigned to LOs.

Where an admissible complaint contains allegations against more than one institution, there will be a different registration number for each of the institutions concerned.

Once the complaint has been registered and assigned, the Registry transmits a digital copy electronically to the responsible person. The Registry also prepares a standard acknowledgement of receipt, signed by the Head of the Registry, in the language of the complaint.

The acknowledgement of receipt informs the complainant of:

- the procedure for considering the complaint
- our publicity practices
- the fact that time limits for administrative or judicial proceedings are not suspended while the Ombudsman deals with the complaint (Statute, Article 2.6).
- the name and telephone number of the LO who is dealing with the complaint (see also section 1.5.3 on notes of telephone calls).

For outgoing correspondence see section 1.6 below.

Correspondence addressed to an individual member of staff is transmitted promptly to the Registry for registration.

If one of the Directors transfers a complaint from one LO to another during the course of an inquiry, the complainant is informed of the change and the initials of the new LO are added to the registration number.

1.5.2 Multiple complaints

When complaints are signed by different persons but with exactly the same content, the following rules apply :

If the postal addresses are different, the complaints are registered separately.

If there is only one postal address, the complaints all receive the same number.

However, if more than 10 complaints on the same subject are received, the 11th and subsequent complaints are registered under the same number, in order to avoid distortion of statistics. For the sake of efficiency, such complaints are normally assigned to the same LO, unless there are different languages involved. If there is an inquiry, the complaints are treated jointly. In order to avoid complaints received in one year being registered under a previous year's number, the procedure for numbering multiple complaints on the same subject is re-started at the beginning of each year.

1.5.3 Complaint files

The file on each complaint is maintained by the Registry. After closure of the complaint the file is transferred to the archives.

Complaints related correspondence

The Registry adds to the relevant file copies of all incoming and outgoing correspondence, as well as all other documents relevant to the inquiry and the eventual decision: e.g. notes relating to the inspection of documents, hearing of witnesses, or meetings to discuss a possible friendly solution. The LO who is dealing with the case is responsible for transmitting the appropriate other documents to the Registry for registration and filing.

Notes of telephone calls

LOs and trainees should draft a written note of any telephone conversations relating to complaints, unless the contents of the telephone communication are clearly insignificant for the Ombudsman's inquiry (this does not apply to telephone calls relating to a new complaint, which can simply be referred to in the relevant summary).

Such notes should contain at least the following information:

- 1- The complaint reference
- 2- The date and time of the call
- 3- The name of the correspondent
- 4- Who initiated the call
- 5- The points made by the correspondent and the LO

6- The LO's name and the date of the note.

LOs and trainees should consult their relevant HLU before initiating a telephone call in relation to a complaint.

Trainees should always submit to their relevant HLU notes of telephone calls. LOs should do so if the telephone call raises an important issue concerning the handling of the case, or if the call is from anyone other than the complainant.

Such notes should be given to the Registry to be registered as part of the file on the complaint.

Working notes

LOs also normally keep working notes on each complaint with which they are dealing. These are not part of the file, though they normally contain copies of documents contained in the file. The LO concerned should dispose securely of the working notes when they are no longer required. Relevant working notes should however be registered and joined to the file as preparatory documents.

1.5.4 Confidential complaints

A complaint is treated as confidential if the complainant so requests, or if the Ombudsman so decides on his own initiative in accordance with Article 10 of the Implementing Provisions.

The standard acknowledgement of receipt informs complainants of our publicity practices. Normally, therefore, it is the complainant's responsibility to ask for confidentiality.

However, if there appear to be grounds for the Ombudsman to treat the complaint as confidential on his own initiative (e.g. if it appears that the complainant may be mentally ill, or if a complaint contains allegations against a third party) the LO makes a proposal to the Ombudsman accordingly.

The Registry maintains the files on confidential complaints separately for greater security. LOs should pay special attention to the security of their working notes on confidential cases.

1.5.5 Statistics

Statistics about our work are of great importance. They are included in the Annual Report and other publications, as well as being used for management purposes.

Legal officers provide the necessary data by supplying the Registry with completed statistical information sheets as follows:

- statistical sheet 1, for every new complaint where no inquiry is opened
- statistical sheet 2, for every new complaint where an inquiry is opened
- statistical sheet 3, for every case closed after an inquiry
- Statistical sheets 1 and 2 ask the LO to assign keywords to the complaint.

There are four key-word fields for complaints which are within the mandate and admissible, even if there are no grounds for an inquiry. Three are completed in every case, the fourth only where appropriate. Multiple entries in each field are possible.

There is only one key-word field for cases that are outside the mandate, or inadmissible,

For further explanation of keywords see appendix 2 below.

The Directors' assistant uses the information available in the database to update internal management information about the complaints situation of each LO.

1.5.6 Deadlines

Good administration requires that decisions be taken within a reasonable time and without unnecessary delay. The Ombudsman must therefore be able to reach decisions on complaints within a reasonable time.

To make this possible, the Ombudsman has established the following internal management targets for his own office:

- (i) registration and acknowledgement of complaints within one week of reception;
- (ii) analysis of admissibility within one month;
- (iii) decision closing inquiries within one year, unless there are exceptional circumstances which justify a longer inquiry.

In inquiries concerning complaints within the mandate, if the Ombudsman requires further information from the complainant before asking the institution concerned for an opinion, he normally sets a one month deadline for the complainant to clarify or complement some aspects of his /her complaint.

In accordance with the Statute, the Ombudsman normally gives the institution a three-month deadline for its opinion. This gives it the opportunity to make a full examination of the subject of the complaint and allows time for possible translation needs.

If the Ombudsman requires further information from the institution concerned, he normally sets a one month deadline. This period is reasonable since the institution has already had the opportunity to examine its position on the subject of the complaint. However, in the particular case of inquiries to the Commission, the deadline given should never be less than two months in order to respect the length of its internal procedures.

Unless there are exceptional circumstances, deadlines are set to fall on the last day of the month, since this makes for simplicity of monitoring (e.g. complaint sent to Commission on 14 January 2006; deadline for opinion is 30 April 2006).

Note: The Commission has agreed to the EO's proposal that the normal time limit for an opinion on complaints against refusal of a confirmatory application for access under Regulation 1049/2001 should be two months. See also section 3.3.1 below.

If there is a good reason in a particular case why the institution cannot meet a deadline, the Ombudsman can accept the request for extension of the deadline to a specific date, provided

that the request is reasoned and is made before the expiry of the original deadline. If the institution does not request that extension before the deadline, the Ombudsman shall write to the institution reminding it of its obligations. If there is significant delay without a request for an extension, the responsible LO proposes action to the Ombudsman, normally a further letter to the institution. The complainant's are informed of the institution's request for extension of a deadline and of the reasons it has put forward for that request.

The Registry and the Directors' assistant monitor deadlines using the computerised database and inform the Directors and the responsible LO of delays. However, each LO should also monitor deadlines using his or her own records (see section 1.4 above).

The complainant is normally invited to make observations within one month on the opinion of the institution and on its answers to any further inquiries. In practice, it should be remembered that deadlines are intended mainly for the benefit of complainants, and that the complainant is not obliged to make any observations. Therefore the Ombudsman does not normally write reminder letters to a complainant.

The responsible LO dealing with an inquiry into an admissible case should normally submit a proposal for the next step in the case no later than two months after the complainant's observations have been received, or the deadline for observations has passed. **This is an extremely important obligation of all LOs and their particular attention and care is required in its respect.**

1.6 OUTGOING COMPLAINTS CORRESPONDENCE

All outgoing correspondence in relation to complaints and own-initiatives is signed by the Ombudsman personally. There are however two exceptions: the acknowledgement of receipt of a complaint, which is signed by the Head of the Registry and the letters/e-mails to the complainants in the framework of telephone procedures which are signed by the responsible LO (see.....).

The above rules apply to e-mail correspondence as well as to letters and faxes. All e-mail correspondence with complainants is approved by the Ombudsman and sent from the "euro-ombudsman" e-mail account in the name of the Ombudsman.

Letters should be drafted with the relevant provisions of the Code of Good Administrative Behaviour in mind (especially Articles 12-14). They should also be free from errors, including typographical and linguistic errors.

1.6.1 Monitoring and prior linguistic checking of the work of legal officers and trainees

- During 2003, a system was introduced for monitoring the caseload of LOs and for linguistic prior checking of draft documents presented for the Ombudsman's signature. Material cannot be presented to the Ombudsman for signature until corrected by lawyer linguists.

The objectives of language checking

The objectives of language checking are both external and internal.

- The external objective is to help the Ombudsman to deliver a prompt and high-quality service to citizens. *High-quality* means that documents signed by the Ombudsman must be not only substantively accurate but also correct from a presentational and linguistic point of view. Internal summaries and notes, which are part of the file on a complaint (and to which the complainant therefore has the right of access) should also be substantively accurate and clearly presented.

The internal objective is to assist legal officers and trainees to maintain and, if possible, raise the quality of their work in the future.

Responsibilities of the person presenting work to be checked either by his/her HOU/Director or by the lawyer-linguists .

Promptness

Documents should be presented early enough to allow adequate time for checking, correction of any errors, presentation to the Ombudsman for signature, and copying and subsequent dispatch by the Registry.

In relation to the one-month deadline, this means that a proposal should normally be made within two weeks from the date when the complaint is transmitted to the LO. The responsible legal officer also has to inform his or her HLU of any case in which the one-month deadline has passed, giving the reason.

As regards inquiries in admissible cases, the responsible legal officer should normally submit a proposal for the next step in the case no later than two months after the complainant's observations have been received, or the deadline for observations has passed. If the responsible legal officer is not in a position to submit a proposal, he or she has to inform his or her HLU, giving the reason.

Quality

The person who presents the document should do his or her best to ensure that it is ready for signature without corrections. He or she should promptly make any corrections requested by the person responsible for the language checking and/or the supervisor and also try to learn from the corrections, thereby raising the quality of the work in future.

Responsibilities of the persons checking (lawyer linguist and supervisor)

The lawyer linguist and the HLU/Director should identify any errors of substance or presentation in documents for signature.

Provided that the sense is clear, it is not essential to correct every linguistic or presentational error in internal summaries or notes, though such corrections may be useful in order to help the LO or trainee to avoid errors in future.

During the annual staff reports procedure, the Directors consult the relevant HLUs who are responsible for checking and monitoring the work of LOs. Similar consultation takes place as regards the work of trainees in relation to a possible extension of traineeship.

In case of serious or persistent problems as regards quality or respect for deadlines, the HLU informs the relevant Director immediately, so that a solution can be found.

The HLU should also ensure that the relevant Director is informed of, and if appropriate consulted about, complaints which raise important issues of principle, or which are likely to be of significant public interest.

See also the checklist in appendix 6 below.

1.6.2 Standard letters

Standard letters for many purposes exist in all the official languages. Access to the standard letters is through the "resources" page of SISTEO/LOIS .

For reasons of efficiency and consistency, LOs must always use the standard letters as a basis for correspondence in all appropriate cases.

In preparing the final version of a letter, the LO uses language assistance as necessary and performs a quality check for linguistic, typographical and other errors (e.g.; erroneous deadlines such as 30 February or 31 September). It is also important to ensure that the standard letter is customised for the correct institution, body, office or agency, by checking the name and address of the institution, the name of the President and the name of the responsible official to whom the correspondence is copied in the case of the European Parliament and the Council, for example.

1.6.3 Signature, dispatching and filing

Documents for the signature of the Ombudsman should be prepared in the appropriate templates respecting the visual identity of the Ombudsman. Don't use former letters you have drafted in the past, because perhaps they are no longer up-to-date.

If the letter is to be copied to other recipients or if there are enclosures this is indicated at the bottom of the last page after the Ombudsman's name. In order to avoid possible doubts or mistakes in the sending of documents, it is good practice to list enclosures sent if there are more than one.

Examples :

If a complaint has one or more annexes

Enclosures : - complaint dated 7 March 2004 including 1 annex
- complaint dated 7 March 2004 including x annexes

If we are sending a complaint and further correspondence

Enclosures : - complaint dated 7 March 2004 [including x annex(es)]
- further correspondence of 10 April 2004, 15 April 2004 and 5 May 2004

NB: In the case of the Commission, EPSO, the European Investment Bank, the European Economic and Social Committee, and the Parliament where enclosures are sent electronically only add "sent by e-mail".

If the complaint is confidential, all related correspondence is marked CONFIDENTIAL.

The paper dossier should also contain documents for the Ombudsman's information. In the case of a letter to the complainant saying that there is to be no inquiry:

- a copy of the complaint
- a summary of the complaint in English: see section 2.2 below
- a note in English explaining the proposal
- a completed statistical sheet 1

If the case involves a new or interesting question concerning the Ombudsman's mandate, the conditions of admissibility of a complaint, or the requirement of grounds, the LO also includes a proposed text for the Annual Report.

For letters to the complainant and the institution announcing the opening of an inquiry:

- a copy of the complaint
- a summary of the complaint in English: see section 3.2 below
- a note in English explaining the proposal
- a completed statistical sheet 2

If appropriate, the Legal Officer should include in the dossier a proposal to use registered post for a particular letter.

When the letter has been signed by the Ombudsman, the dossier is returned to the responsible LO. After removing the documents included for the Ombudsman's information, the LO promptly transmits the dossier to the secretaries responsible for outgoing correspondence, together with a transmission sheet. The secretary stamps the date and protocol number on the letter, makes copies for the file and the LO and dispatches the original letter. (IS THIS STILL ACCURATE, PETER?)

No change of any kind may be made to a letter that has been signed by the Ombudsman. If a correction or amendment is necessary, the LO must present a new letter for signature.

1.7 SPECIAL RULES CONCERNING E-MAIL

Official e-mail correspondence should normally be received in and sent from the "euro-ombudsman" account. LOs should not inform complainants or other citizens of their individual e-mail addresses.

An LO who receives complaints-related e-mail in his or her own e-mail account prints it out and transmits it to the Registry for registration and assignment in the normal way. The LO should reply to the e-mail informing the complainant that the correspondence has been received and registered and, if appropriate, that the Ombudsman will reply in due course.

See section 1.5.2 above for guidance on how to deal with mass e-mail campaigns.

2 THE DECISION WHETHER TO OPEN AN INQUIRY

2.1 INTRODUCTION

After registration in the Registry and assignment of complaints within the mandate by the Directors, a digital copy is transmitted electronically to the responsible LO. The LO examines the complaint promptly and, after having consulted with his/her HLU, informs the competent Director if it has been wrongly classified as a complaint, or if he or she is aware that similar complaints have been assigned to another LO. The Director might decide to re-assign the complaint or to treat it as normal correspondence and shall inform the Head of the Registry.

2.1.1 Is it a complaint or something else? (for example, a request for information)

The fundamental principle is to give effect to the author's intentions. A letter which seems to be intended as a complaint is registered as such, even if the issue is not within the Ombudsman's mandate. The vital thing is a description of a problem and a request or wish for intervention to solve it. Naturally, if the author expressly states that it is not a complaint, then it is not.

In case of doubt, the registry should normally register it as a complaint. There are two reasons for this. First, our business is dealing with complaints and most people who contact us know that. Second, registration as a complaint provides a clear framework for dealing with the matter and ensures that our work is recorded as an output.

Some people may be offended if we treat a letter as a complaint when it was not intended as such. To prevent this, the person drafting the answer to a complaint outside the mandate should avoid qualifying the citizen's letter as a complaint. He/she could refer instead to the subject, problem or grievance which the author raises. The rest of the standard letter explains why we cannot deal with the matter as a complaint and, if possible, gives advice about a competent body. This is normally the most helpful reply, even if the author did not intend the letter as a complaint.

2.1.2 Should it be registered as a new complaint?

There is nothing to prevent one person making several different complaints, either at the same time or over a period. Each separate complaint should be registered with a separate number.

Where a complaint has been closed, subsequent correspondence from the complainant should not automatically be registered under the old number. If it is a new claim or allegation which requires an answer, it should be registered as a new complaint. In case of doubt, the question should be submitted to the competent HLU.

2.1.3 Other cases

In all other cases, the LO promptly prepares in English a summary of the complaint, including an analysis of whether it meets the conditions necessary to open an inquiry.

In order to ensure accurate statistics, the summary and analysis should be performed even in cases where the complainant drops the complaint before the Ombudsman has made a decision on admissibility.

The summary is part of the file on the case and the complainant therefore has the right of access to it. It should be written in a correct and business-like way and should not contain any irrelevant material or remarks.

Based on experience, the information needed to provide an adequate summary of a complaint outside the mandate should normally fit on one page. Some cases may need a slightly longer summary, for example to give background information on previous complaints, or to explain why there are insufficient grounds for an inquiry, or why some of the allegations and claims are inadmissible at this stage.

Again based on experience, summaries of complaints that lead to an inquiry usually need to be two or three pages in length.

Please treat the above as guidelines, not mechanical rules.

In exceptional cases, it may be necessary for a summary to be significantly longer. If the facts or the legal issues raised are particularly complex, the main part of the summary should give a brief overview and the more detailed material should be put in an annex.

Please note that if the essential elements of a complaint cannot be briefly and easily summarised, the LO should consider whether the object of the complaint is sufficiently identified (Art 2.3 of the Statute). It should not be necessary to study extensive annexes in order to discover the essential elements of the case and the complainant's allegations and claims. In case of doubt, consult your HLU at an early stage.

The Ombudsman can only open an inquiry into a complaint if the complaint is within the mandate, fulfils the conditions of admissibility and if there are grounds to do so.

The letter informing the complainant of the decision to open an inquiry or not should be dispatched within one month of the date of registration of the complaint.

The standard letters do not contain any advice to the complainant (except SL-A-8) and this element should be added by the LO as appropriate.

The different reasons for not opening an inquiry are analysed in section 2.3.

If the LO proposes to open an inquiry, the summary is prepared in accordance with section 3.2 below. The inquiry procedure is described in the rest of Part 3.

2.1.4 Procedures for dealing with further correspondence from complainants

The responsible LO should examine further correspondence promptly to find out what it contains and check whether it in fact relates to the complaint number under which it has been registered.

If it is a new complaint, the LO should have it registered as such. If it is not complaint-related, the LO should have it registered as ordinary correspondence.

In the case of a complaint awaiting a decision on admissibility, the responsible LO takes the further correspondence into account in the summary of the case and the subsequent letter to the complainant.

In a case where an inquiry is open, further correspondence, even if sent only for information, is normally forwarded to the institution concerned and the complainant is informed accordingly.

In other cases, if it is absolutely clear that the further correspondence was sent only for information, the LO records this fact in a brief note for the file and no further action is taken. (Trainees should submit the relevant note to their supervisor.) If there could be any doubt, it is prudent to send a brief reply informing the complainant that the letter has been received and that the Ombudsman assumes that it was meant only for information. This gives the complainant a chance to correct any misunderstanding.

If a reply is required, the LO drafts the appropriate reply for the Ombudsman's signature and submits it to his or her HLU and afterwards to the competent Director, together with a note for the Ombudsman. Naturally, the reply should be as professional and helpful as possible.

Letters complaining about our decisions or procedures should be dealt with as a priority (an angry complainant who may be satisfied if we answer quickly and constructively is likely to become even more annoyed if a reply is delayed). LOs should bear in mind that in case of further correspondence challenging the EO's decision, a prompt and thorough answer to all points raised of fact and law raised in the complainant's letter, is of utmost importance.

Special procedures

1 Very frequent correspondence for information

In cases of very frequent correspondence that is only for information, notes may be prepared monthly relating to all the correspondence in that period. Such notes will normally be brief. Exceptionally and with the approval of the head of the legal department, frequent e-mail correspondence may be recorded only electronically.

2 Repetitive correspondences seeking a reply

In very exceptional cases of repetitive correspondence, it may be necessary to inform a complainant that further correspondence will not be answered unless there are new elements. The appropriate final letter should only be proposed for the Ombudsman's signature with the approval of the relevant Director. There are however certain pre-requisites that must be met before correspondence with complainants or citizens in general can be discontinued. Please consult your hierarchy before proposing any such measures to the Ombudsman.

2.2 SUMMARY AND ANALYSIS IF THERE IS NO INQUIRY

If no inquiry is to be opened, the summary and analysis of the complaint includes:

1 The following information, as far as possible (please use the appropriate template):

- who is complaining?

- against whom?
- what is the complaint about?
- what act or omission is the subject of the complaint?
- when did it happen?
- what is the precise allegation? (e.g. that a decision is unlawful)
- what are the grounds for this allegation?
- what is the complainant's claim? (e.g. that a decision be revoked, or to receive compensation).

2 The reason or reasons for not opening an inquiry

3 Possible advice to address another competent body or proposal for a transfer to such a body.

If the complainant requests confidentiality, the summary states this.

2.3 THE REASONS FOR NOT OPENING AN INQUIRY

The reasons for not conducting an inquiry are classified into three categories: (i) the complaint is outside the mandate; (ii) it is within the mandate, but inadmissible; or (iii) although within the mandate and admissible, in very specific and limited number of cases, the Ombudsman considers that there are no grounds for an inquiry.

Sometimes there will be more than one possible reason for not opening an inquiry. The reason given in the letter to the complainant is normally the highest applicable reason in the following hierarchy:

- 1 Not against a Union institution, body, office or agency
- 2 Against Court of Justice of the European Union in its judicial role
- 3 Author/object not identified
- 4 Being dealt with or settled by a court
- 5 Time limit exceeded
- 6 Lack of prior administrative approaches
- 7 Non-exhaustion of remedies in staff cases
- 8 Does not concern possible maladministration
- 9 No grounds to justify an inquiry because another competent body is already dealing or has dealt with the matter
- 10 Not sufficient grounds to justify an inquiry.

There is no point in giving multiple reasons why a complaint cannot be dealt with. Normally only the highest reason in the hierarchy is used, to ensure consistency of treatment. However, two exceptions should be noted.

(i) A complaint from an unauthorised complainant. Most such complaints are outside the mandate or inadmissible for another reason, usually because they are not against a Union institution, body, office or agency. In such cases, Article 2 (1) is used and the complainant is also informed that only a citizen of the Union or a natural or legal person residing or having its registered office in a Member State of the Union) is entitled to complain. In the case of a complaint from a candidate or accession state the following is used:

Finally, I would like to take this opportunity to inform you that, when a State joins the European Union, its nationals become citizens of the Union and that one of the rights of citizenship is to complain to the European Ombudsman. Please find enclosed a leaflet that outlines the work of the Ombudsman.

(ii) If a complaint seeks to contest a decision of a national court, the letter of inadmissibility refers both to Article 2.1 and to Article 1.3 of the Statute.

The reference to Article 1.3 could be as follows:

I also draw your attention to the fact that Article 1.3 of the Statute of the European Ombudsman provides that the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling.

Note that the complainant is not required to be individually affected by the alleged maladministration or to have suffered personally from it in any way: i.e. actio popularis complaints are admissible: see e.g. case 794/96/VK (1997 Annual Report).

2.3.1 Unauthorised complainant

Legal basis: Article 228 TFEU (ex Article 195 EC), Article 2.2 Statute

A complaint may be made by "any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union."

Standard letter: SL-A-1

Resident is interpreted to mean a person who is physically present in the territory of a Member State, even if he or she may not be legally resident: case 972/96 (1996 Annual Report p. 15).

NB complaints are not normally rejected only on the ground that they are not from an authorised complainant: see 2.3 (i) above. Current practice is that if a complaint from an unauthorised person is otherwise within the mandate and admissible, consideration is given to the possibility of an own-initiative inquiry into the alleged case of maladministration.

2.3.2 Not against a Union institution, body, office or agency

Legal basis: Article 228 TFEU (ex Article 195 EC), Article 2.1 Statute

Standard letter: SL-A-2

The Union institutions are those listed in Article 13 TEU: the European Parliament, the Commission, the Council, the Court of Auditors and the Court of Justice of the European Union.

There is no definition or authoritative list of Union bodies. The term includes bodies established by the Treaties, such as the European Investment Bank, the Economic and Social Committee, the Committee of the Regions, the European Central Bank, the European External Action Service (EEAS), as well as bodies set up by legislation under the Treaty. The so-called "decentralised agencies" are also Union bodies:

- Community Plant Variety Office
- European Medicines Agency
- European Agency for Safety and Health at Work
- European Centre for the Development of Vocational Training (Cedefop)
- European Environment Agency
- European Foundation for the Improvement of Living and Working Conditions
- European Monitoring Centre for Drugs and Drug Addiction
- The European Monitoring Centre on Racism and Xenophobia
- European Training Foundation
- Office for Harmonisation in the Internal Market
- Translation Centre for Bodies of the European Union
- European Agency for Reconstruction
- European Aviation Safety Agency
- European Maritime Safety Agency
- European Food Safety Authority
- Eurojust

A list of the agencies can be found in the *Europa* website: http://europa.eu/index_en.htm

The Ombudsman has considered that the following are not Union institutions, bodies, offices or agencies:

The Centre for the Development of Industry and the Technical Centre for Agricultural and Rural Co-operation, both established under the Lomé Convention and governed by the ACP - EC Committee of Ambassadors: cases 41/97/(VK)OV and 218/98/OV (1998 Annual Report).

The European Molecular Biology Laboratory, case 374/96/PD (1996 Annual Report).

Eurocontrol, cases 911/99/ME and 1113/99/PR.

The European University Institute, case 2225/2003/(ADB)PB summarised in chapter 3 of the 2004 Annual Report.

The European Schools: cases 199/23.10.95/EP/B/KT (1996 Annual Report) and 989/97/OV (1997 Annual Report). However, the Ombudsman has dealt with complaints concerning the European Schools and with complaints concerning the Centre for Development of Industry

(CDI), insofar as the complaints were directed against the Commission and Council. In relation to the European Schools, the Ombudsman considered that the Commission has a general responsibility, arising from its representation on the Governing Boards and the provision of funding by the Communities but that this responsibility does not extend to matters of internal management.

As regards comitology committees, the case-law of the CFI suggests that they should be regarded as coming under the Commission and not as separate Union bodies (see Case T-188/97, *Rothmans International BV v Commission*, judgement of 19 July 1999 paras 58-60).

Complaints against individual MEPs

Complaints against individual MEPs are outside the Ombudsman's mandate because they do not concern an act of a Union institution, body, office or agency. They are therefore closed on the basis of Article 2.1. Normal practice is to send a copy of the complaint and of the Ombudsman's reply to the MEP for information.

Complaints contesting a decision of a national court

If the complainant seeks to contest a decision of a national court, the letter of inadmissibility refers both to Article 2.1 and to Article 1.3 of the Statute.

2.3.3 CJEU in its judicial role

Legal basis: Article 228 TFEU (ex Article 195 EC)

Standard letter: SL-A-3

The Presidents of the Court of Justice and the Court of First Instance (now the General Court) have stated that the Courts are acting in their judicial role when dealing with requests for access to case-files held in the Courts' registries: see case 126/97/VK.

2.3.4 Author/object not identified

Legal basis: Article 2.3 Statute

Standard letter: SL-A-4

Author: In order to send a reply/decision/correspondence to a complainant, we need to have his/her name and address, or at least his/her e-mail address. If we have an address but no name, the letter is sent to the address. If we have no address, the LO prepares the appropriate letter to close the case, which remains on the file after signature by the Ombudsman. The same applies when we have no name and no address. The reason for closing the case should be appropriate for the circumstances (for instance Article 2.1, 2.2 or 2.4 of the Statute) and not always Article 2.3, which should only be used if the object of the complaint is unclear (see below).

Object: If it is not possible to make a summary of the complaint because it is too unclear, or if the complainant can reasonably be expected to state his or her own complaint more precisely (e.g., a company or a lawyer), then the complaint should be treated as inadmissible because its

object cannot be identified. A brochure including the standard complaint form should be enclosed with the letter to the complainant.

2.3.5 Court proceedings

Legal bases: Article 228 TFEU excludes an inquiry by the Ombudsman if *"the alleged facts are or have been the subject of legal proceedings"*.

Article 1.3 Statute *"The Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling"*.

Standard letters:

SL-A-5 if the complainant wants the Ombudsman to investigate a case which is being, or has been, dealt with by a court anywhere in the world.

SL-A-6 if the complainant requests the Ombudsman's intervention in proceedings before a court anywhere in the world, or if the complaint questions the soundness of a court's ruling.

For a case where both provisions applied, see 223/98/IJH (1998 Annual Report p. 24).

The Article 228 TFEU exclusion applies where the parties are the same, i.e. the complainant and the institution, body, office or agency complained against are, or were, also parties in the legal proceedings.

If the same issue is currently before a court, but the parties are not the same, the Ombudsman may decide to suspend any inquiry until the court gives judgement: see e.g. joined cases 463/96/PD, 770/96/PD and 1017/96/JMA (Annual Report 1997) and the decision on case 463/96/PD.

If the complaint does not refer to a court case, we normally do not make inquiries about the question at the stage of deciding admissibility. If the complainant, or the institution, body, office or agency concerned, subsequently inform about legal proceedings, the Ombudsman then decides whether to suspend his inquiries, or terminate them under Article 2.7 of the Statute.

NB (i) Where a complainant seeks to contest a decision of a national court, the letter of inadmissibility should refer both to Article 2.1 and to Article 1.3 of the Statute. (see 2.3.2 above). (ii) for complaints against the Court of Justice of the European Union, see section 2.3.3 above.

2.3.6 Time limit

Legal basis: Article 2.4 Statute

"A complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint"

Standard letter: SL-A-7

The time-limit also applies if the complaint is about an alleged failure to answer by the institution, body, office or agency concerned. If the complainant has waited for more than two

years for an answer before complaining, he should be invited to repeat its question to the institution before turning to the EO.

2.3.7 Lack of prior administrative approaches

Legal basis: Article 2.4 Statute

"A complaint ... must be preceded by the appropriate administrative approaches to the institutions and bodies concerned."

Standard letter: SL-A-8

It is for the Ombudsman to decide what prior administrative approaches, if any, are appropriate. The idea is for the institution, body, office or agency concerned to have the possibility to correct its behaviour, or at least explain itself, before a complaint is made to the Ombudsman. The prior approach could be made in writing or by telephone.

Prior administrative approaches are not considered appropriate for *actio popularis* complaints in which the institution is obviously aware of the issue concerned and has already had an opportunity to define its position. see e.g. case 794/96/VK (1997 Annual Report); joined cases 971/96/PD, 1039/96/PD, 1111/96/ PD and 48/97/PD (the MEPs allowances cases: 1997 Annual Report).

In cases where the complainant writes to the Ombudsman at the same time as, or very shortly after addressing the institution concerned, the complaint is inadmissible under Article 2.4. The letter to the complainant should suggest waiting a reasonable time for a response from the institution before possibly renewing the complaint. As a rough rule of thumb, two months is long enough to wait before making a complaint to the Ombudsman.

As regards Article 258 TFEU (infringement) complaints, the starting point is that the Commission is aware of the file and has had the opportunity to explain its position to the complainant. Normally, therefore, it is not appropriate to require the complainant to carry out additional administrative approaches before complaining to the Ombudsman.

If the complainant is clearly putting forward new evidence to support the complaint against the Member State, it may be appropriate in some cases for the complainant first to bring such evidence to the attention of the Commission.

Experience suggests, however, that it is rare for a complainant to come up with new evidence as opposed to a repetition, or different interpretation, of evidence that the Commission already has in its possession.

Furthermore, additional administrative approaches may not always be appropriate even when the complainant does present new evidence: for example, if the complainant argues that the Commission should have discovered the new evidence for itself, or if there are also allegations of deficiencies or irregularities in the procedure leading to the closure of the case.

In those few cases where it is appropriate to ask the complainant to make additional administrative approaches, it would be helpful to depart from the standard wording and to explain the reason why the Ombudsman considers that additional approaches are appropriate.

2.3.8 Failure to exhaust internal remedies (work relationships with the institutions)

Legal basis: Article 2.8 of the Statute

"No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies (now Union institutions, bodies, offices and agencies) and their officials and other servants unless all possibilities for submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations, have been exhausted by the person concerned (...)"

Standard letter: SL-A-9

Article 2.8 of the Statute refers only to Article 90 (1) and (2) of the Staff Regulations. Once these internal procedures have been exhausted, the complainant may choose either to pursue his complaint in accordance with Article 91 of the Staff Regulations, by appeal to the Court of Justice of the European Union, or to complain to the Ombudsman.

The mere fact that the complainant disagrees with an answer given under Article 90 (2) of the Staff Regulations is not an allegation of maladministration. Nor is it evidence to support an allegation of maladministration.

A complaint to the Ombudsman by an official or other servant who had the possibility to submit a complaint under Article 90 (2) and who failed to do so before the deadline expired does not comply with the condition laid down by Art. 2 (8) (see cases 545/2000/IP; 546/2000/IP; 547/2000/IP).

Advice in cases where Article 2.8 applies

The complainant should be advised of the possibilities under Article 90 (1) and/or (2) of the Staff Regulations as appropriate. If the AIPN is the Commission, the complainant should also be informed of the possibility to address the Commission's Staff mediator using the following standard wording.

As well as the formal procedures of the Staff Regulations, you have the possibility to contact the Commission's internal staff mediator, Mr Peter GALEZOWSKI (acting mediator). His telephone number is 296 47 02. You should note that contact with the staff mediator does not suspend time-limits under the Staff Regulations.

Cases in which Article 2.8 does not apply

A complaint does not concern work relationships merely because it is made by someone working in a Union institution, body, office or agency. Therefore Article 2.8 does not, for example, apply to someone working in an institution who alleges that the institution has failed to follow tendering procedures for the award of a supply contract. In such cases, the possible application of Article 2.4 of the Statute should be examined (see section 2.3.7 above).

Although external candidates in recruitment competitions may lodge an appeal under Article 90 (2) of the Staff Regulations, Article 2.8 does not apply to such persons because they are not members of the Union staff.

As regards existing Union staff who complain about their treatment in a recruitment competition in which they have participated, the Ombudsman takes account of the fact that, where a decision of a competition selection board is at issue, the case law of the Court allows an action to be brought before the General Court, within the period of three months laid down by the Staff Regulations, without a prior Article 90(2) appeal. The Ombudsman does not apply Article 2.8 in a more restrictive way.

However, experience has shown that before opening an inquiry into a complaint about recruitment, it is necessary to identify an allegation of possible maladministration (2.3.9) and sufficient grounds in support of the allegation to justify an inquiry (2.3.11). The mere fact that the complainant disagrees with the decision of a Selection Board is not an allegation of maladministration. Nor is it evidence to support an allegation of maladministration.

2.3.9 Does not concern possible maladministration

Legal basis: Article 228 TFEU (ex Article 195 EC)

Article 2.2 Statute

Standard letter: SL-A-10

At the stage of deciding whether or not to open an inquiry the Ombudsman is not seeking to determine whether there is maladministration, but whether the complaint concerns possible maladministration.

The identification of maladministration during an inquiry is dealt with in Part 4 below.

At the stage of deciding whether or not the Ombudsman should open an inquiry into a complaint, the responsible LO should ask him or herself the following question:

"assuming every allegation made by the complainant is true, would there be an instance of maladministration?"

If the answer is no, then no inquiry should be opened.

The generally-accepted definition of maladministration, included in the 1997 Annual Report, is that

Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.

The complaint should therefore contain, even if only implicitly, an allegation that the institution, body, office or agency concerned has failed to act in accordance with a binding rule or principle. It can also be useful to apply the non-exhaustive list of examples of maladministration given in the 1995 Annual Report:

- administrative irregularities or omissions
- abuse of power
- negligence
- unlawful procedures

- unfairness
- malfunction or incompetence
- discrimination
- avoidable delay
- lack or refusal of information

In the case of discretionary administrative decisions, the complaint does not concern maladministration unless there is an allegation that the institution, body, office or agency concerned has acted outside the limits of its legal authority. It is not enough that the complainant merely hoped for a different decision. This is particularly important in staff cases: the Ombudsman should not open an inquiry unless the complainant makes an allegation which, if true, would be an instance of maladministration.

A complaint which concerns only the merits of a Regulation or Directive, or the wisdom of a decision taken in the exercise of political authority does not raise an issue of maladministration. Therefore the Ombudsman does not deal with complaints against decisions of the European Parliament or its Committees, including the Committee on Petitions (see section 2.4.1 below).

2.3.10 Insufficient/No grounds

Legal basis: Article 228 TFEU and Article 3 of the Statute, which provide that the Ombudsman "*shall conduct inquiries for which he finds grounds*" or "*that he considers justified*". Even if all conditions for the admissibility of a case are fulfilled, the Ombudsman still has the discretion to decide not to open an inquiry. The reason for such a decision has to be given to the complainant e.g.: the case is dealt with or is being considered by another competent body (for example if a petition has been addressed to the European Parliament); the claims are too general in nature; there is not enough supporting evidence supplied;. Any other reasoning for not opening an inquiry into complaint within the mandate should be avoided.

Please see hereunder how to proceed in those situations where or the institution's position or behaviour seem, *prima facie*, adequate or reasonable.

If the complaint is unclear, apply Article 2(3) of the EO Statute: object of the complaint not identified.

The templates for Insufficient/No grounds decisions are available on SISTEO/Legal-Lois/Drafting templates/No grounds decision (+ 'Letter to the institution'; 'Text' and 'Letter to the complainant'). They have to be used in all cases except for cases closed under Article 228 TFEU because:

- the allegations/claims are too general in nature;
- not enough supporting evidence is supplied; or
- a petition has been addressed to the European Parliament.

In such cases, the template 'No grounds - Simple letter' must be used.

The decision is only sent to the institution when this is considered appropriate. Only the anonymised English version of the decision is sent to the institution. The letter to the complainant is not sent to the institution.

The decision is drafted in English. Once approved by the Head of Legal Unit, and then by the competent Director, it is sent to the Lawyer-Linguist for checking. It is then submitted to the Ombudsman. If necessary, the decision is translated into the language of the complainant by the Legal Officer in charge of the case, or sent to the translation service of the European Parliament if the language is not covered by the office or if the HLU considers it appropriate (please refer to section 1.3 'Languages' of the handbook).

The letter sent to the complainant is drafted by the LO in the language of the complainant.

In some cases where another competent body is not already dealing with the matter, it may be appropriate to transfer the complaint or advise the complainant accordingly.

Although it is important to clearly inform the complainant of the reasons why the Ombudsman is not opening an inquiry, we should never give the impression of arguing on behalf of the institution, body, office or agency against which the complaint is made. If an issue needs to be explored the ombudsman should open the inquiry and let the institution, body, office or agency speak for itself in its opinion.

On the other hand if any issue needs to be clarified by the complainant, if supporting evidence is missing from the complaint, the Ombudsman should open an inquiry and ask the complainant to complete the information he/she has submitted, instead of rejecting the complaint as unclear or not supported by sufficient evidence. Even in those cases where the institutions' answer and behaviour appears to be correct, the Ombudsman should not immediately issue a decision of no-grounds to open an inquiry. The Ombudsman should rather open the inquiry into the complaint and ask the complainant to indicate precisely the reasons why he/she does not accept the specific points or arguments that the institution has put forward. Only after having received the complainant's further clarifications, and if the Ombudsman is not satisfied, should he issue a decision closing his inquiry with a finding either of *"no further inquiries justified"* or even of *"no mal administration found"*. If the Ombudsman is satisfied with the complainant's clarifications he should then proceed to ask an opinion from the institution concerned.

The circumstances of each individual case determine how precise the complainant's allegations need to be and how much supporting evidence is needed to justify an inquiry. Normally, for the reasons explained in section 2.3.8 above, a higher threshold is applied in staff cases.

Admissible cases should always be assigned to LOs. This also applies to Insufficient/No grounds complaints, even if the reason is that there is not enough supporting evidence supplied. If a trainee notices that such a case has been assigned to him/her, he/she should inform his or her HLU, who will then ask the HLD to transfer the case to an LO. The HLU may ask the transfer to be made to himself/herself, with a view to asking the trainee concerned to be involved in the handling of the case.

2.4 COMPLAINTS INVOLVING THE COMMITTEE ON PETITIONS

Article 24 TFEU and Article 227 TFEU establish the right to petition the European Parliament. According to Annex VI of the Parliament's Rules of Procedure, the Committee responsible for the examination of petitions is the Committee on Petitions.

The Committee on Petitions is also responsible for Parliament's relations with the Ombudsman. In this capacity, it examines and reports on the Ombudsman's Annual Report and may also report on any special reports made by the Ombudsman (European Parliament Rules of Procedure, Rule 179).

2.4.1 Complaints against the Committee on Petitions

Complaints *against* decisions of the Committee on Petitions are considered outside the Ombudsman's mandate (Article 2(2) EO Statute). They do not concern possible maladministration because they are against a decision of a political body. Use the standard letter available on SISTEO/Legal-Lois/Drafting templates.

A complaint about the administrative procedures of the Committee on Petitions should be dealt with in the same way. The Ombudsman considers that these proceedings fall within the political responsibility of the European Parliament to organise its services so as to carry out its institutional functions. Such a complaint would therefore raise political issues and not possible maladministration (see complaint 420/96 1996 Annual Report p. 15).

However, where a complainant alleges that he/she sent a petition to Parliament and did not receive an answer, contact can be established with the Registrar of Parliament ('*le Greffe*'), in order to ascertain whether a petition has indeed been received. As a rule, the Registrar of Parliament sends an acknowledgement of receipt for each individual petition. The possible follow-up given by Parliament to each petition is, however, a matter that falls within the institution's political work and is, therefore, outside the Ombudsman's mandate. We can and should control whether an acknowledgement of receipt has been sent by Parliament's administration (*Greffe*), given that it has confirmed it would do so in all cases. If no acknowledgement of receipt has been sent to the petitioner, the LO may refer to section 3.3.5 of the handbook concerning 'telephone procedures'. The Ombudsman should not investigate whatever follow-up the Committee on Petitions has given to the petition.

A copy of any complaint against the Committee on Petitions is normally forwarded to the Committee for information, except if it is confidential, together with a copy of the Ombudsman's reply to the complainant, explaining that the complaint is outside of his mandate.

2.4.2 Complainants who also submit a petition

Cases may arise in which a person who has addressed a petition to the European Parliament also complains to the Ombudsman about the same matter.

If the complaint is outside the mandate or inadmissible, the Ombudsman informs the complainant accordingly and also notes that the matter is being, or already has been, dealt with by the European Parliament as a petition.

For complaints which are within the mandate and admissible, the Ombudsman normally considers that there are no grounds for an inquiry if the complainant has already submitted a petition on the same subject and the Committee on Petitions is currently dealing with it (e.g. case 646/97/IJH, 1997 Annual Report p 29).

Similarly, if the Committee on Petitions has closed the case, there are usually no grounds for an inquiry, unless there is new evidence. Use the standard letter 'No grounds - Simple letter' available on SISTEO.

2.5 COMPLAINTS INVOLVING DATA PROTECTION ISSUES

In dealing with cases that involve data protection issues, LOs' proposals should take into account the provisions of the Memorandum of Understanding (MoU) signed by the EO and the EDPS on 30 November 2006 (available in s:legal\main topics\data protection). In particular, LOs should have regard to the provisions of the MoU concerning:

- the provision of information to complainants about the EDPS and possible transfers with the consent of the complainant;
- the provision of information to the EDPS in certain circumstances
- avoidance of duplication of procedures;
- the need for the EO and the EDPS to adopt a consistent approach to legal and administrative aspects of data protection.

Complaints concerning matters being dealt with or having been dealt with by the EDPS should lead to decisions of no-grounds to open an inquiry by the Ombudsman (see above section).

2.6 TRANSFERS AND ADVICE TO CONTACT OTHER BODIES

2.6.1 General Principles

Transfer of complaints and the giving of advice to complainants are an important part of the EO's activities to help citizens. Careful judgement is required in each case.

The European Ombudsman (EO) transfers a complaint when he sends it directly to a competent body to be dealt with. Advice is a suggestion to the complainant to address a competent body.

If a complaint is outside the mandate of the EO, or inadmissible, it should be transferred if all the following conditions are met:

1. another body exists that is competent to deal with the complaint;
2. that body can accept transfers from the EO;
3. the complainant consents to the transfer;
4. the object of the complaint is clear and the complaint contains sufficient information for the other body to be able to deal with it. (*How much information is sufficient and whether, for example, supporting documents are needed, may vary*)

between the different bodies to which we transfer: see below as regards the French and Belgian ombudsmen).

If a transfer is not possible or appropriate, the EO seeks to advise the complainant of another body that could help, especially if the case involves issues of EU law.

The *European Network of Ombudsmen* facilitates transfers and advice. It comprises:

- national ombudsmen of the Member States (including the committee on petitions of the German Bundestag);
- national ombudsmen of recognised EU Candidate States;
- regional ombudsmen of the Member States (including petitions committees of the German Länder);
- the ombudsmen of Iceland and Norway;
- the Committee on Petitions of the European Parliament.

When considering a complaint against the authorities of a State covered by the Network, the responsible LO should always consider whether it is appropriate to transfer the complaint to a national or regional ombudsman.

Transfer to the European Parliament, or advice to petition the European Parliament, is appropriate where a complaint raises political issues such as the desirability of changing EU law or competences.

The EO may also transfer cases to the Commission, especially if it is known that the Commission is already dealing with the subject in the Article 258 TFEU procedure.

If the complainant is looking for a solution to a specific problem rather than seeking compensation or a decision of principle, a transfer to, or advice to contact, the appropriate SOLVIT centre may be appropriate. Note, however, that SOLVIT is not an independent mechanism to investigate and report on complaints: each SOLVIT centre is part of the relevant national administration.

SOLVIT tries to solve cross-border problems between a business or a citizen on the one hand and a national public authority on the other, in cases where there is possible misapplication of EU law. According to SOLVIT, the policy areas it has dealt with include:

- Recognition of professional qualifications and diplomas
- Access to education
- Residence permits
- Voting rights
- Social security
- Employment rights
- Driving licences
- Motor vehicle registration
- Border controls
- Market access for products

- Market access for services
- Establishment as self-employed
- Public procurement
- Taxation
- Free movement of capital or payments.

SOLVIT says it is ready to consider other possible areas within the above-mentioned remit (for example, "cross-border problems between a business or a citizen on the one hand and a national public authority on the other, where there is possible misapplication of EU law").

A complainant should not be advised to turn to the Commission or to SOLVIT if it is clear that no infringement of Union law has occurred.

If a complaint involves data protection issues, the complaint may be transferred to the EDPS (see 2.5 above).

Before proposing a transfer or advice, the LO should make sure (i) that the complaint is within the competence of the other body and (ii) that the latter can handle a complaint in the language used by the complainant. Every national office in the European Network of Ombudsmen has a liaison officer who can be contacted for this purpose (names and contact details are available through SISTEO/Legal-Lois – Liaison network). A transfer to SOLVIT also requires the agreement of the centre in question (see 2.6.2.1 below).

The national or regional ombudsman wish to be informed when a complainant, who has submitted a complaint which is outside the mandate of the EO, was given the advice that he/she could potentially complain to them. The Registry will provide such information to the members of the network on a quarterly basis.

2.6.2 Transfers

Transfer of a complaint is possible with the consent both of the competent body and of the complainant.

Subject to the exceptions mentioned in section 2.6.6 below, all members of the European Network of Ombudsmen accept transfers of complaints from the EO.

The standard complaint form invites the complainant to accept, or reject, the possibility of a transfer. If the complainant has not used the form, a standard letter is available on SISTEO/Legal-Lois to seek consent to a transfer in an appropriate case. Other standard letters in relation to transfers are also available on SISTEO/Legal-Lois.

It should be noted that in cases where a transfer is possible but where the complainant has not yet given his or her consent for the transfer, the procedure is to close the case and offer to transfer the case to the competent body if the complainant sends his consent within a month. The closure therefore intervenes immediately and is independent from the transfer of the case, which may or may not take place depending on the complainant's reaction.

In some cases, more than one different body could be competent. For example, where a complaint alleges infringement of Union law at the national level, a national ombudsman, the Commission, or the Committee on Petitions of the EP could all be competent. Transfer of a

complaint to more than one body is not possible. When a complainant has consented to a transfer on the complaint form, the Ombudsman normally transfers to the most appropriate body. This requires judgement in each case. In some cases of this kind, it may be preferable to give advice.

Where a single complaint contains different aspects for which different bodies are competent, it is normally best to give appropriate advice (see 2.6.5 below).

When a complaint is transferred, the original complaint is enclosed with the EO's letter to the competent body. A copy of the complaint is kept in the EO's file on the case. In the case of a complaint with extensive annexes, the annexes may be omitted from the copy kept in the EO's file. The omission and the reason are mentioned in a note in the file.

2.6.3 Transfer of a complaint to be dealt with as a petition by the European Parliament

There is an agreement between the Committee on Petitions of the European Parliament and the Ombudsman concerning the mutual transfer of complaints and petitions in appropriate cases.

For transfers *from* the Committee on Petitions to the Ombudsman, see below [section 2.6.7](#).

Petitions should formally be presented to the European Parliament and not to the Committee on Petitions of the European Parliament.

The following guidelines are given so that we adopt a consistent approach in our summaries and letters to complainants.

When a complaint is *transferred* to the European Parliament to be dealt with as a petition, the summary and the letter to the complainant should state that the petition has been transferred to the [European Parliament](#). The letter of transfer is addressed, in English, to the [President of the European Parliament](#) (SL-B-4) and copied to the chairman of the Committee on Petitions. The Ombudsman also informs the complainant by letter of the action taken ([SL-B-2](#)).

The original complaint is enclosed with the Ombudsman's letter to the President of the European Parliament. A copy of the complaint is kept in the Ombudsman's file on the case.

If a complaint has an extensive number of annexes, they may be omitted from the copy kept in the Ombudsman's file. The omission of the annexes and the reason for doing so is mentioned in a note placed in the Ombudsman's file on the case.

To ensure a smooth flow of information, the responsible LO informs his or her HLU and the competent Director of any transfer of a complaint to be dealt with as a petition by the European Parliament. The Director then informs the Head of the Secretariat of the Committee on Petitions, normally by e-mail.

When a complainant, whose complaint has been transferred to the EP, asks for *information* regarding the handling of his/her petition, he/she should be invited to contact the [Committee on Petitions of the European Parliament](#).

2.6.4 Transfers to SOLVIT

Before transferring a case to SOLVIT, the relevant SOLVIT centre should be contacted to make sure that it will accept the case.

SOLVIT centres are not normally willing to accept a transfer unless the complainant, or the EO, can identify a cross border problem involving a possible misapplication of EU law. The transfer letter should normally mention the specific legal provision that may have been misapplied.

2.6.5 Advice

It is not the EO's role to give legal advice to complainants. Furthermore, to do so can be risky, because the facts as presented by the complainant are often unclear and not always reliable.

Advice to address another body should be given in cautious terms, informing the complainant of the possibility that the other body could deal with the matter. It is important not to give the complainant the impression that the complaint is being transferred.

In all cases where advice is given to contact another body, the address, whenever possible, including a name and other available contact details should be provided.

References to websites and (public) e-mail addresses should be given to a person who has contacted the EO electronically, or who has specifically requested such details. The EO's website contains links to the websites of national ombudsmen and similar bodies in the European Union.

If there appears to be a legal problem and no competent body exists to which the complainant can be advised to turn, the LO should consider whether to include the following: *"If you have not already done so, you may think it advisable to consult a lawyer concerning your case"*. If it is clear that the complainant has already consulted a lawyer, it is normally appropriate to put *"I note that you have already consulted a lawyer concerning your case"*.

When more than one body could be competent to deal with a case, the complainant may be advised of the options available, though long lists of possibilities should be avoided. Whenever it is clear that a national or regional ombudsman could deal with the matter, this is the preferred advice.

Where a single complaint contains different aspects for which different bodies are competent (e.g., a complaint against both national authorities and the EU legislator), the complainant should be advised as to which body is competent for each of the different aspects. If a standard letter is sent to a national or regional ombudsman in such a case, it should make clear that we have advised the complainant to turn to that ombudsman only to the extent that the complaint concerns a national or regional body within the ombudsman's competence.

The European Ombudsman cannot be expected to have a comprehensive knowledge of problem-solving and complaints-handling procedures in every Member State, especially as regards matters outside the scope of Union law. As a service to the citizen, however, the responsible LO or trainee should use his or her knowledge of the Member State concerned to offer appropriate advice, if possible.

2.6.5.1 Advice to contact a member of the European Network of Ombudsman

Some national or regional ombudsmen require complainants to have used available internal complaints procedures before they will accept a case. When appropriate, complainants should be advised of the relevant internal complaints procedure and of the possibility to turn to the ombudsman subsequently. The ombudsman does not need to be informed of this advice.

If the institution to which the complainant is advised to turn consists of a single ombudsman, the address given to the complainant should normally include the name of the ombudsman, e.g.:

Mr Hans Gammeltoft-Hansen

Folketingets Ombudsmand

Gammel Torv 22

DK - 1457 Copenhagen K

Denmark

See, however, section 2.6.6 below as regards the UK Parliamentary Ombudsman.

If the relevant ombudsman office contains more than one ombudsman (e.g., Austria, Belgium, Hungary, Lithuania, Sweden) and for committees on petitions, no name is given to the complainant, e.g.:

Riksdagens ombudsmän

Box 16327

103 26 Stockholm

Sweden

The EO however addresses his correspondence to the Chief or Head ombudsman, the chairman of the Committee on petitions or the Head of office, as appropriate.

Up-to-date contact details for national and regional ombudsmen in the European Network of ombudsmen are available on LOIS – Liaison network - List of Ombudsmen & Similar Bodies and Liaison Officers. Names and addresses of national or regional ombudsmen should be checked against this document (and not be derived from earlier EO correspondence or other websites).

2.6.5.2 Advice if appropriate administrative approaches have not been made

If a complaint is inadmissible because appropriate administrative approaches have not been made (Art. 2.4 of the Statute), the complainant is usually advised to address the Union institution, body, office or agency concerned. If it is clear that the complainant has identified the wrong institution, body, office or agency, this should be explained. The EO's letter always gives the contact details of the institution, body, office or agency to which appropriate administrative approaches should be made.

Normally, the letter indicates the possibility for the complainant to make a new complaint to the European Ombudsman if the administrative approaches do not lead to a satisfactory response within a reasonable time.

Care should be taken to avoid giving the impression that the European Ombudsman is advising the complainant to complain to an institution, body, office or agency against itself.

2.6.5.3 Advice to petition the European Parliament

When a complainant is *advised* that he could consider petitioning the European Parliament, the letter to the complainant should invite him/her to send his/her petition to the President of the European Parliament or to submit a petition via the EP's website:

<https://www.secure.europarl.europa.eu/parliament/public/petition/secured/submit.do?language=EN>

2.6.5.4 Advice to contact SOLVIT

The EO's letter advising a complainant to contact SOLVIT should normally include the following standard wording, which may be adapted if the circumstances of the case so require:

Although I am unable to begin an inquiry into your complaint, you may wish to consider contacting SOLVIT regarding the matter. SOLVIT is a problem-solving network, coordinated by the European Commission, with centres in each EU Member State. SOLVIT deals with cross-border problems between a business or a citizen on the one hand and a national public authority on the other, in cases where there is possible misapplication of EU law. SOLVIT aims to resolve problems within ten weeks.

Below you will find the relevant contact details for the [as appropriate] SOLVIT centre, to which you could submit your complaint. If they are able to handle your complaint, they will then liaise with the [as appropriate] SOLVIT centre(s), in order to find a solution.

Unless the complaint mentions the specific legal provision that may have been misapplied, it would be helpful for the EO's letter to the complainant to do so, wherever possible, so that the complainant can include this information in the approach to SOLVIT.

2.6.6 Exceptions and special arrangements

2.6.6.1 Transfers

The United Kingdom Parliamentary Commissioner cannot accept transfers from the EO because complaints must be submitted through a member of the national Parliament.

The French Ombudsman has requested the EO systematically to transfer cases rather than to give advice to contact him or his "*délégués*". The Federal Ombudsmen of Belgium have made a similar request.

2.6.6.2 *Advice*

The European Parliament is not informed of advice that a petition could be submitted to it. (Our understanding is that the Committee on Petitions is satisfied to be informed in the Annual Report of the total number of cases in which such advice has been given).

The EO does not advise complainants to contact the French Médiateur (or délégués) or the Federal Ombudsmen of Belgium but normally transfers the complaint (see 4.1 above). Exceptionally, it may be appropriate to inform the complainant in general terms that the relevant ombudsman is competent to deal with complaints against national authorities, rather than to transfer (for example, if the complaint expresses a generalised sense of grievance against the national authorities, with no specific focus).

Advice to contact the UK Parliamentary Ombudsman should either make clear that a complaint must be submitted through a Member of Parliament, or take the form of suggesting that the complainant contact the Parliamentary Ombudsman's services for advice on possible means of redress.

In some cases, for example if a complaint against national authorities is framed in very general terms, it may be best only to inform the complainant that the relevant ombudsman is competent to deal with complaints against such authorities without advice to contact that ombudsman and without therefore informing the ombudsman in writing.

2.6.7 Petitions transferred from the Committee on Petitions of the European Parliament to the European Ombudsman

As noted in the Ombudsman's 1995 Annual Report and in the corresponding Report of the Committee on Petitions, there is an agreement between the Committee and the Ombudsman concerning the mutual transfer of complaints and petitions in appropriate cases and with the consent of the complainant or petitioner (see above section 2.6.3 on transfers by the Ombudsman to the Committee on Petitions).

The above-mentioned agreement provides for the Committee on Petitions, with the consent of the complainant, to transfer a petition to the Ombudsman to be dealt with as a complaint if the petition concerns allegations of maladministration in the activities of a Union institution, body, office or agency.

Before a transferred petition is registered as a complaint, it should be transmitted to a legal officer who will check that the file contains evidence that the petitioner has consented to the transfer. A contact with the secretariat of the Petition's Committee is necessary if there is no evidence that the petitioner has consented to the transfer. Once it has been checked that the petitioner has given his agreement, the transferred petition is registered as a complaint. The Registry sends a special version of the standard letter of acknowledgement to the petitioner/complainant. The admissibility of the complaint is then examined.

The Ombudsman sends a copy of the letter of admissibility/inadmissibility to the chairman of the Committee on Petitions for information. If an inquiry takes place, the Ombudsman also sends a copy of the final decision letter to the chairman of the Committee on Petitions for information.

A transfer is only possible if the Committee on Petitions has not already begun to deal with the matter itself by addressing an inquiry to the Commission about the petition.

2.6.8 Transmission to the Ombudsman of the file on a petition.

In some cases, after receiving the institution's opinion on a petition, the Committee on Petitions has considered that there could be an instance of maladministration in the activities of the institution. It has then closed its examination of the petition and transmitted the file to the European Ombudsman.

The European Ombudsman does not deal with such cases as transfers.

In an appropriate case, the file transmitted by the Committee on Petitions may form the basis of a decision by the European Ombudsman to open an own-initiative inquiry. The decision to open an own-initiative inquiry is a discretionary decision of the Ombudsman.

In such cases, the European Ombudsman informs the chairman of the Committee on Petitions and the petitioner of whether or not he will open an own-initiative inquiry. If an inquiry is opened, the chairman of the Committee on Petitions and the petitioner are kept informed of its progress.

3 CARRYING OUT INQUIRIES

3.1 THE BASICS

3.1.1 The procedures in outline

1. Identify precisely the complainant's allegations and claims in a summary
2. Ask the complainant for clarifications or further information or evidence.
3. Send the complaint to the institution, body, office or agency for an opinion
4. Check the opinion
5. Send the opinion to the complainant for possible observations
6. Check any observations received
7. Examine the file to consider the next step
8. If necessary, carry out further inquiries / inspect documents / hear witnesses
9. If there appears to be maladministration, seek a friendly solution, if possible
10. If the friendly solution is not accepted, consider issuing a draft recommendation.
11. If the DR is not accepted, consider making a special report to Parliament or any alternative ways of drawing attention to the case.
12. Draft a decision closing the complaint.

It is the responsibility of each LO to put these procedures into effect for the cases with which he or she is dealing.

NB:

- (i) Steps 8 and 9 are not necessary in every case.
- (ii) Some cases may lead to draft recommendations and/or a special report. How to prepare draft recommendations and special reports is explained in Part 5 of the Handbook below (sections 5.2.6 and 5.2.7 respectively).
- (iii) A special procedure exists for complaints about unanswered letters (telephone procedures).

3.1.2 Fair procedure

It is a basic principle of fair procedure that the Ombudsman's decision on a complaint cannot take into account information contained in documents provided by one party, unless the other party has had the possibility to respond.

The institution's opinion on the complaint, its answers to any further inquiries and its responses to any proposal for a friendly solution or draft recommendations are therefore normally forwarded to the complainant, who has the possibility to submit observations.

Similarly the institution must have had the opportunity to comment on any material submitted by the complainant which is taken into account in the Ombudsman's decision.

3.1.3 Three essential rules

- The scope of the closing decision is limited to the issues dealt with in the inquiry.
- The scope of the inquiry into a complaint is limited to the allegations and claims made by the complainant. In general, the LO should not raise new issues.
- The scope of the inquiry is normally defined by the original complaint. The closing decision can only deal with extra allegations, claims or grounds submitted by the complainant during the course of the inquiry if the institution concerned has had the opportunity to answer them.

3.1.4 Further correspondence from complainants

- The responsible LO should examine further correspondence promptly and deal with it in accordance with point 2.1.4 above.

3.2 SUMMARY AND ANALYSIS FOR AN INQUIRY

3.2.1 Drafting the summary

The summary is part of the file on the case. It should be written in a correct and business-like way and should not contain any irrelevant material or remarks.

If an inquiry is to be opened, the summary and analysis of the complaint must be prepared using the appropriate template available on SISTEO. The summary must include:

1 The following information

- who is complaining?
- if the complainant has requested confidentiality, the summary should indicate this.
- against whom?
- what is the complaint about?
- what act or omission is the subject of the complaint?
- when did it happen?
- what is the precise allegation or claim? (e.g. that a decision is unlawful, or that damages should be paid)
- what are the grounds for this allegation or claim?
- what does the complainant want? (e.g. revocation of a decision, or compensation).

2 A judgement that the complaint is within the mandate, meets all the criteria of admissibility and concludes that there are grounds for opening an inquiry, either by asking the complainant for clarifications or by asking the institution for an opinion. These matters are all dealt with in

section 2.3 above on reasons for not opening an inquiry. The following should be specifically stated:

- the relevant date or dates for the two year limit
- the complainant's prior administrative approaches (unless actio popularis)
- in a case concerning work relationships, that the Article 90 procedures have been used
- that the complainant has not also addressed a petition to the European Parliament about the case
- whether there is any information about a possible court case
- the possible instance(s) of maladministration, assuming that the complainant's allegations are true
- the rule or principle that would be breached if what the complainant says is true.
- the eventual relevance of the European Charter of Fundamental Rights

Our main duty is to try to help citizens to achieve their rights. Especially when the complainant is an ordinary citizen, we must make an effort to understand the complaint and its grounds, if they have not been very well expressed.

Please note however that if the essential elements of a complaint cannot be briefly and easily summarised, the LO should consider whether the object of the complaint is sufficiently identified (Art 2.3 of the Statute). It should not be necessary to study extensive annexes in order to discover the essential elements of the case and the complainant's allegations and claims. In case of doubt, consult your supervisor at an early stage.

If the complaint contains two or more allegations or claims, the summary should state them separately and number them. Obviously, the allegations and claims should be identical in the summary of the complaint, the opening letters to the institution and to the complainant, and in the closing decision.

The information contained in the fields 'Concerning', 'Allegations' and 'Claims' are published on the website when an inquiry is conducted towards the institution. Therefore, these sections must be drafted with the utmost care:

- The information given in the 'Concerning' section will become the title of the case published on the website. It must be as short as possible and self-explanatory. It should be drafted in the style of a title and not as an entire sentence.
- The elements given in the 'Concerning', 'Allegations', and 'Claims' sections must systematically be anonymised for all cases, irrespective of whether the case is confidential. The text approved by the SG in the 'Summary Admissible' document will be automatically posted on the website.
- From the moment that the 'Summary Admissible' document is approved by the Ombudsman/SG, the LO should ensure that the information contained in the opening letter is fully consistent with the 'Concerning', 'Allegations', and 'Claims' contained in the 'Summary Admissible' document, given that the information contained in the document will be published on the website.

3.2.2 Terminology

In order to avoid confusion and to make our work consistent, the following uniform vocabulary has been adopted:

Allegation: an accusation that the institution, body, office or agency has failed to act in accordance with a rule or principle which is binding on it. As noted above, we should always identify which rule or principle the allegation concerns.

For example, a complainant might allege that an institution, body, office or agency has: violated the rules governing a tender procedure; refused access to a document for reasons that are legally wrong; failed to provide adequate reasons for its decision; applied the wrong article of a Regulation in dealing with the case; failed to deal properly with a certain issue, etc.

Claim: what the complainant wants: for example, that a tender procedure should be cancelled; access to a document should be given, or that he should receive compensation.

NB: when used as a verb, “claim” can sometimes be followed by a noun: e.g. “the complainant claims compensation”; “the complainant claims damages”. Normally, however, claim should be followed by a verb. Special care should be taken to use correct syntax. Here are some examples of correct usage:

The complainant claims that the Commission should carry out an inquiry.

The complainants claim that the Commission should apologise for the late payment.

The complainant claims that the Commission should take disciplinary action against the responsible officials.

In all of the above examples, it is important to follow “claim” by a verb, rather than a noun. One should not therefore write:

The complainants claim an inquiry by the Commission.

The complainants claim an apology by the Commission for the late payment.

The complainant claims disciplinary action by the Commission against the responsible officials.

Argument: the grounds, evidence and reasoning that the complainant puts forward to support his allegation(s) and claim(s). In ordinary English, the word “claim” is often used to mean argument in this sense. We should use the word argument in order to avoid confusion. Arguments may comprise a statement of facts, inferences drawn from facts and sometimes legal reasoning.

The arguments must be set out in the summary. This is useful for two reasons. First, to check that there are sufficient grounds for an inquiry. Second, the arguments are usually part of the 'COMPLAINT' section of the closing decision. The supporting arguments are not published on the website.

3.3 OPENING AN INQUIRY INTO A COMPLAINT WITHIN THE MANDATE AND ADMISSIBLE

3.3.1 Letter to the complainant requesting clarifications

If the complaint is within the mandate and admissible but, (1) it is not supported by enough material evidence, (2) if the allegations and claims are not sufficiently clear or (3) if the position expressed by the institution appears to be, *prima facie*, reasonable and correct, the Ombudsman should open an inquiry and ask the complainant to clarify or complement his/her complaint. The opening letter to the complainant can already briefly indicate the Ombudsman preliminary view on the complaint and should ask precise questions that will help the Ombudsman further to assess the case. The letter indicates the deadline for the opinion. Unless there are exceptional circumstances, the deadline is one month. A template of these letters is available on SISTEO/Legal-Lois/Drafting templates.

On the basis of the supplementary evidence/arguments provided by the complainant, the Ombudsman shall consider whether he should ask for the institution's opinion, or decide to close the case with a decision of "*no further inquiries justified*" or of "*no maladministration found*".

3.3.2 Letter to the institution asking for its opinion

Substance and presentation

The LO prepares a letter, for the Ombudsman's signature, to the Head of the institution, body, office or agency concerned requesting an opinion on the complaint.

The letter is based on the standard letter available under SISTEO/Legal-Lois/Drafting templates and should include a clear and well-organised list of the complainant's allegations and claims, as explained in section 3.2.2. If there are more than one allegation and claim, the opening letter should number these for the sake of clarity.

If the complaint contains allegations and claims which the EO rejects, these should be dealt with separately after the above-mentioned list of allegations/claims taken up for inquiry.

Deadlines

The letter indicates the deadline for the opinion. Unless there are exceptional circumstances, the deadline is three months from the end of the current month (e.g. if the Ombudsman forwards the complaint on 14 January 2006; the deadline for the opinion should be 30 April 2006).

NB: The Commission has agreed that the normal time limit for opinions on complaints concerning the refusal of a confirmatory application for access under Regulation (EC) No 1049/2001 should be two months. The opening letter to the Commission should conclude as follows:

The present complaint concerns the refusal of a confirmatory application for access under Regulation (EC) No 1049/2001. By letter dated 18 June 2004, the President of the Commission agreed that the deadline for opinions on such complaints should be two months. I would, therefore, be grateful if the Commission could send its opinion by (date).

The normal three-month deadline should still be applied for all other institutions, bodies, offices and agencies.

Confidentiality

If the complaint is confidential, the Ombudsman's letter is marked CONFIDENTIAL.

Translations of opinions

The Commission, Council and Parliament normally provide a translation of the opinion into the language of the complainant. Letters addressed to other institutions, bodies, offices and agencies should request such a translation.

Enclosures

A copy of the complaint, including all the supporting documents sent by the complainant, is enclosed with the Ombudsman's letter.

Electronic transfer of documents relating to complaints

A simplified procedure for the transmission of complaint-related documents has been adopted with the Commission, EPSO, the European Investment Bank, the European Economic and Social Committee and Parliament.

When writing to these institutions, the cover letter is sent by e-mail at the same time as the hard copy is dispatched. If the letter contains enclosures, these are only sent electronically and this fact is mentioned in the letter.

LOs should take care to mention this in the way suggested by the templates available on SISTEO: [Enclosure(s): XXXXXXXX (sent by e-mail)]

3.3.2 Letter to the complainant

The LO also prepares a standard letter to the complainant (available under SISTEO/Legal-Lois/Drafting templates), in the language of the complaint, informing him or her of the inquiry conducted towards the institution. See also section 1.6. above on rules and procedures for outgoing complaints correspondence.

3.3.3. Information letter to national/regional ombudsmen in infringement cases

As from September 2010, the relevant national/regional ombudsman is informed when (i) the EO opens an inquiry into a complaint against the Commission's handling of an infringement complaint, or (ii) the EO requests the Commission to consider dealing with a complaint as a potential infringement complaint.

The letter mentions the first paragraph of the opening letter (with the allegations and claims). No copy of the opening letter is sent. The identity of the complainant is not communicated to the ombudsman. In case the relevant ombudsman wishes to have the name of the complainant, the latter will be asked for his/her consent.

Common sense is required concerning which ombudsman to inform in countries which have ombudsmen at both the national and regional levels.

The templates are available under SISTEO/Legal-Lois/Drafting template/Standard letters/Opening letters/Information letter to the relevant ombudsman in infringement cases.

3.3.4 Multiple complaints

Multiple complaints about the same subject are normally treated jointly. Unless there are identical allegations and claims in every complaint, the summary and the Ombudsman's letter to the institution, body, office or agency concerned should identify which complaints contain particular allegations and claims.

Multiple complaints which arrive at the same time are all sent to the institution, body, office or agency concerned. If they arrive over a period of time, later complaints in the series do not have to be forwarded if they contain no new and relevant material.

3.3.5 'Telephone procedures'

Work in progress on this section don't know how to delete his....

If a complainant alleges that a Union institution, body, office or agency has *failed to reply* or has not completely and fully replied to written correspondence, a *telephone procedure* may be used to try and ensure that the complainant receives a prompt reply.

This procedure is as follows:

- The responsible LO sends an e-mail to his/her HLU proposing for the special procedure to be used. The HLU's e-mail authorising the use of the telephone or extended telephone procedure forms part of the file on the case and is copied to the Registry. The date of the HLU's approval is considered as the date of the decision on admissibility that will be registered in the database of complaints.
- The LO telephones the institution, body, office or agency concerned and sends the relevant PDF version of the complaint to the appropriate contact person within it. The LO makes clear to the institution that the purpose of this procedure is to try to obtain rapidly an answer to the complainant's request. The institution must therefore provide an answer rapidly (normally within no more than 15 days). If not the EO will be forced to open a fully-fledged written inquiry and ask the institution for an opinion. The LO also asks the institution to send to the EO a copy of the answer provided to the complainant.
- If the procedure is successful, meaning that the institution answered the complainant, The LO in charge of the case asks the complainant whether he/she is satisfied with the answer received (a copy of the answer can be again sent to the complainant). This request is in

form of a letter signed by the LO, but should be send by e-mail if available (a template is available on SISTEO).

- If the complainant is satisfied the case is closed as "*settled by the institution*". If the complainant is not happy with the answer he/she received, the Ombudsman must make his own assessment. If he considers that the answer provided by the institution was complete and accurate, he will close the case with a decision of "*no further inquiries justified*". If he considers that the answer is insufficient or inaccurate, he should either conduct a further telephone procedure with the institution or open a written inquiry towards the institution asking the pertinent questions.
- All standard letters are available under SISTEO/LEGAL-LOIS/Drafting templates. The draft letters are submitted for signature by the Ombudsman, once approved by the HLU and the competent Director and checked previously by the Lawyer-Linguists. Once checked, the draft letters are sent for final approval using the e-mail templates available under Sisteo/Legal/Lois/Submission of drafts.

All the correspondence to and/or from the institution, body, office or agency should be transmitted to the Registry for registration.

A proposal to use one of these special procedures must be made rapidly so that the complainant can be informed, within the one-month deadline, either that the case has been settled, or that the Ombudsman has begun a normal inquiry. Furthermore, a reply from the institution, body, office or agency cannot normally be considered as "prompt" unless it arrives quickly enough for the Ombudsman to be able to close the complaint as settled within one month of the date of registration. The LO has no formal authority to establish a deadline for a reply from the institution, body, office or agency. Informally, he or she should indicate, in a friendly way, that if a copy of the reply to the complainant can be sent to the Ombudsman within a week or two, it will be unnecessary for the Ombudsman to open a normal written inquiry.

The telephone procedure is not used if there is reason to suspect that the failure to reply may be deliberate rather than an oversight. In such cases, a normal inquiry is opened.

A trainee who thinks that a case may be suitable for a telephone procedure informs his or her HLU, who will then ask the relevant Director to transfer the case to an LO (complaints that give rise to inquiries, be it under the normal or the telephone procedures, may not be assigned to trainees). The HLU may ask the transfer to be made to himself/herself, with a view to asking the trainee concerned to be involved in the procedure.

3.4 CHECKING THE OPINION

When the opinion arrives, the LO must immediately check to see if it

- (a) responds fully and properly to all the allegations and claims listed in the Ombudsman's request for an opinion;
- (b) questions the admissibility of the complaint, or the Ombudsman's competence to deal with it;

(c) contains documents that the institution considers to be confidential/non-public.

If the opinion fails to respond fully and properly to all the allegations and claims, the LO must inform his or her Head of Legal Team promptly, so that the question of sending a new letter can be considered. This is of vital importance: the worst case scenario is to identify some months later that the opinion is inadequate.

3.4.1 Issues concerning admissibility or the Ombudsman's competence

In all cases, the complainant should be given the opportunity to comment on the institution's view, normally by sending the opinion for observations. If appropriate, the letter to the complainant inviting observations refers specifically to the institution's view and requests additional information from the complainant.

When the observations are received, or the deadline has passed, the LO must *promptly* make a proposal as to how to proceed. **This proposal should be made within two months after the deadline for observations from the complainant.**

If the institution's view that the complaint is outside the mandate or inadmissible is justified, the case should normally be closed. In exceptional cases, where an objection relates to admissibility rather than to the mandate, it may be appropriate for the Ombudsman to continue dealing with the matter on his own initiative. The Ombudsman should immediately write to the institution concerned, acknowledging the point that it has made and explaining why he intends to continue the inquiry on his own initiative.

If the institution's position is not justified and the case is ready to be closed, it may be sufficient to deal with the matter in the closing decision. However, if the institution's position is strongly stated (for example, as an objection to the Ombudsman's dealing with the complaint) or if it raises an issue of principle, then it may be prudent to answer in a separate letter before the closing decision. (The closing decision should also deal with the question).

If there are to be steps in the inquiry before the closing decision (e.g. further inquiries, friendly solution proposal) the question should be dealt with as a preliminary matter in the relevant letter to the institution, to avoid giving the impression that the Ombudsman has ignored it.

The time limit

In making the initial decision on admissibility, the Ombudsman normally gives the citizen the benefit of the doubt if there is uncertainty about the application of the two-year time limit. If the institution's opinion clearly shows that the time limit has been exceeded, the case should be closed, unless there are exceptional circumstances which justify an own-initiative inquiry.

Legal proceedings

No matter how convincing the evidence of a court case between the institution concerned and the complainant about the same subject matter, fair procedure requires that the complainant must still be given the opportunity to state his or her view before Article 2.7 of the Statute is applied.

Appropriate administrative approaches

If the institution succeeds in showing that administrative approaches described by the complainant did not in fact take place, it will normally be appropriate to close the case.

In other circumstances, even if the Ombudsman considers that the institution's view of the initial admissibility of the complaint could be correct, it may be efficient both for the institution and the complainant for the Ombudsman to continue the inquiry rather than to close the case so that administrative approaches can take place. The Ombudsman should immediately write to the institution concerned, acknowledging the point that it has made and explaining why he intends to continue the inquiry.

3.4.2 Possible maladministration outside the scope of the complaint

When examining the institution's opinion to decide whether to look for more information, the LO should remember the second essential rule in section 3.1.2 above.

The scope of the inquiry into a complaint is limited to the allegations and claims made by the complainant. In general, the LO should not raise new issues.

If the Ombudsman's inquiry into a complaint reveals a possible instance of maladministration which is not relevant to the complainant's case, it should not be pursued in the inquiry or dealt with in the closing decision. If appropriate, the Ombudsman could open an own-initiative inquiry into the matter.

3.4.3 Documents that the institution considers to be confidential/non-public

If the opinion contains documents that, according to the institution, cannot be released to the complainant, the opinion and the documents in question shall be returned to the institution concerned. The Ombudsman does not accept opinions containing documents that cannot be communicated to the complainant. The LO draws the attention of the institution to Articles 5.1 and 5.2 and 13 of the Ombudsman Implementing Provisions concerning access to the complaint file.

If the opinion contains documents that, according to the institution, can only be released to the complainant, but which in its view cannot be communicated to other persons, the opinion and its annexes are registered in full and measures are taken to ensure that special care is taken to examine those documents in the case of a request for access to documents (cf. case 1331/2007/JMA and 2449/2007/VIK).

3.5 THE COMPLAINANT'S OBSERVATIONS

The institution's opinion is forwarded to the complainant with an invitation to make observations on it within one month (e.g. Ombudsman writes on 15 June 2006, deadline for observations is 31 July 2006). Use standard letter SL-C-4.

In practice, deadlines are intended mainly for the benefit of the complainant, who is not obliged to make any observations. Therefore the Ombudsman does not normally write reminder letters to a complainant. Furthermore, provided that they arrive in time to be taken into account, observations are accepted outside the deadline, subject to what is said below about new allegations, claims or grounds.

When the complainant's observations arrive the LO should immediately check if there are new allegations, claims or grounds which are clearly linked to the original complaint and which could be appropriately dealt with at the same time. If so, the observations should be forwarded to the institution concerned so it has the possibility to give an opinion on them.

If the new allegations or claims do not fit in very well with the original complaint, the complainant should be told that they cannot be dealt with in this procedure but that there is the possibility to make a new separate complaint on the issue.

3.6 THE NEXT STEP

When the institution's opinion and the complainant's observations have been received, or the deadline for possible observations has expired, the LO examines the file and makes a proposal to his HLU, within a maximum of two months, either to close the case with a reasoned decision or to continue the inquiry.

Except for the situations identified in section 3.4.1 above (objections to admissibility, Article 2.7 of the Statute), the possible reasons for closing a case at this stage are:

- (i) Dropped by the complainant
- (ii) Settled by the institution
- (iii) No maladministration
- (iv) With a critical remark when, exceptionally, a friendly solution or a draft recommendation are not appropriate.

The requirements for each possibility are set out in Part 5 below. Note that it is unusual to close a case with a critical remark at this stage. Normally there should be either an attempt to achieve a friendly solution, or a request for further information. See the section on critical remarks below.

Unless the requirements for one of the possible reasons for closing the case are met, the LO makes a proposal for how to continue the inquiry.

If more information is needed to determine whether or not there is maladministration, the normal way to proceed is to make further inquiries by letter to the institution.

The Ombudsman's powers of inquiry also include inspection of documents and the taking of oral evidence.

If there is a *prima facie* case of maladministration the LO should propose to seek a friendly solution.

3.7 FURTHER INQUIRIES BY LETTER

Addressing a letter of further inquiries to the institutions can be justified when key aspects of the inquiry, necessary for taking a decision, are not clear after the opinion of the institution and the observations of the complainant have been examined. This can be the case when the facts are controversial or unclear, or when the institution did not address one or more aspects of the complaint. If the information requested is however purely factual or limits itself to requesting

missing documents or applicable internal regulations, it should be considered whether an exchange of e-mails with the institution and/or telephone call would not suffice.

The questions to the institution, body, office or agency should be as precise as possible and relate to the inquiry into the complaint. There is no point in asking a question if the possible answers will not help the Ombudsman to decide if there is maladministration or not.

If the complainant has sent observations, the Ombudsman's letter to the institution mentions this fact and encloses a copy. If the Ombudsman wants the institution to answer to points made in the observations, the letter should clearly identify the points concerned and specifically request an answer. Legal Officers should avoid asking the institution to merely comment, in general, on the observations of the complainant. However, unless the complainant has formulated his or her points in a clear and precise manner, the LO should summarise the complainant's points in the Ombudsman's letter to the institution.

If the observations include new allegations, claims or grounds, which are clearly linked to the original complaint and which could be appropriately dealt with at the same time, the Ombudsman's letter should mention this fact and request an opinion on them.

The normal deadline for the institution's reply is the end of the following month (e.g. Ombudsman writes on 5 or 25 September 2006, the deadline for observations is 31 October 2006). In the case of the Commission, which has particularly lengthy internal procedures for adopting its answers, the Ombudsman has agreed that the deadline should be no less than two months.

The complainant should be informed that further inquiries were made. The letter informing the complainant of this fact should also inform him/her that he/she will be given the opportunity to submit observations on the institution's further opinion. The letter of further inquiries does not have to be forwarded to the complainant. However, if asked, the complainant can be sent a copy of the letter of further inquiries in English.

If the institution concerned is the Commission, and the responsible LO considers that the further inquiry is important enough to merit drawing it to the responsible Commissioner's attention, he/she should check whether the direct document transmission system applies to the Commissioner concerned (see the list of applicable Commissioners, available under SISTEO/LEGAL-LOIS: "Contacts-Com.Cab."). If appropriate, the LO should apply the procedure as explained in Appendix 8.

3.8 INSPECTION OF DOCUMENTS

Legal basis: Statute, Article 3.2:

"The Community institutions and bodies (now Union institutions, bodies, offices and agencies) shall be obliged to supply the Ombudsman with any information he has requested of them and give him access to the files concerned. They may refuse only on duly substantiated grounds of secrecy."

The institution, body, office or agency must obtain the prior agreement of the Member State before giving the Ombudsman access to documents "originating in a Member State and classed as secret by law or regulation". They shall give access to other documents originating in a Member State after having informed the Member State concerned."

The Ombudsman's inspection of documents must be clearly distinguished from public access to documents. Inspection by the Ombudsman does not result in either the public at large or the complainant obtaining access to confidential documents, since the Ombudsman and his staff have the same duty of confidentiality in relation to such documents as the responsible Commission services: Statute Article 4 (see also Article 3 and 13 of the Ombudsman Implementing Provisions).

3.8.1 Procedure for inspection of documents

The Ombudsman writes to the institution, body, office or agency concerned to announce the inspection. Details of time and place are confirmed in writing.

The inspection is normally carried out by the LO responsible for the case, accompanied by another member of the Ombudsman's staff. Before beginning the inspection, the LO normally meets representatives of the institution concerned and explains the inspection procedure. The LO requests the services of the institution concerned to identify any documents that they regard as confidential, or as containing confidential information. The report of the inspection should note that this was done and ensure that any documents identified as confidential by the services of the institution concerned are so marked in the list of documents inspected and that any confidential information included in the report on the inspection is marked as such.

The services of the institution concerned may remain present to observe the inspection.

The right to inspect includes the possibility to read the documents, to make notes, and to take photocopies. If the services of the institution concerned seek to prevent or impose unreasonable conditions on the inspection of any documents, the LO informs them that this is considered as a refusal.

If inspection of any document is refused, the LO asks the services of the institution, body, office or agency concerned to state the duly substantiated ground of secrecy on which the refusal is based.

The LO may seek instruction from the HLU/Director if any problems arise during an inspection.

The LO should prepare a complete list of the documents which are inspected or copied. If necessary, the LO may request the assistance of the services of the institution concerned in preparing the list.

LOs must not sign any form of undertaking or any acknowledgement other than a simple list of the documents inspected or copied. If the services of the institution concerned make such a proposal, the LO transmits a copy of it to the Ombudsman.

Following the inspection, the LO prepares an inspection report. If the documents inspected are confidential, the report is drafted with due consideration to this fact, and the confidential documents are handled in accordance with the Ombudsman's relevant security rules. The

Registry has put in place the necessary measures to ensure confidentiality of such documents in the paper and digital files.

Experience shows that it can be useful to send a draft of the report, on an informal basis, to the officials of the institution who were present at the inspection and invite them to inform the LO in case they consider that there are serious inaccuracies or omissions. It should however be borne in mind that any comments made by these officials are mere suggestions and that the decision on the contents of the report remains exclusively with the Ombudsman's Office. The report is submitted to the HLU for approval. It is added to the file once approved by the Ombudsman. A copy of the report is sent to the institution and the complainant, the latter being invited to submit observations (usual deadline). The LO checks and ensures that no confidential information or documents are sent to the complainant.

3.9 THE TAKING OF ORAL EVIDENCE

Legal basis: Statute, Article 3.2, 5th indent:

"Officials and other servants of the Community institutions and bodies must testify at the request of the Ombudsman; they shall speak on behalf of and in accordance with instructions from their administrations and shall continue to be bound by their duty of professional secrecy".

So far the need to use this provision has arisen only in cases involving the Commission. On the basis of experience in the first case (1140/97/IJH) the Ombudsman wrote to the Secretary General of the Commission on 7 July 1999 setting out a general procedure to apply in future cases:

- 1 The date, time and place for the taking of oral evidence are agreed between the Ombudsman's services and the Secretariat General of the Commission, which informs the witness(es). Oral evidence is taken on the Ombudsman's premises, normally in Brussels.
- 2 Each witness is heard separately and is not accompanied.
- 3 The language or languages of the proceedings is agreed between the Ombudsman's services and the Secretariat General of the Commission. If a witness so requests in advance, the proceedings are conducted in the native language of the witness.
- 4 The questions and answers are recorded and transcribed by the Ombudsman's services.
- 5 The transcript is sent to the witness for signature. The witness may propose linguistic corrections to the answers. If the witness wishes to correct or complete an answer, the revised answer and the reasons for it are set out in a separate document, which is annexed to the transcript.
- 6 The signed transcript, including any annex, forms part of the Ombudsman's file on the case.

The letter to the Commission announcing that oral evidence will be taken should recall the above procedure, which should also be applied, by analogy in cases concerning other Union institutions, bodies, offices or agencies.

The complainant is informed that oral testimony has been taken. A copy of the signed transcript, including any annex is forwarded to the complainant on request. A one-month deadline for possible observations is set if the transcript is forwarded.

LOs should note that Articles 5.3 and 13 of the Ombudsman's Implementing Provisions foresee that if the Ombudsman decides that the official giving evidence will do so in confidence, the complainant shall not have access to that information.

3.10 SEARCHING FOR FRIENDLY SOLUTIONS

Legal basis: Statute Article 3.5

"As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."

The procedure of seeking a friendly solution applies only if the Ombudsman considers that there is maladministration.

Any proposal by an LO to seek a friendly solution must therefore identify the instance of maladministration (see Part 4 below) in the case and indicate how the proposed friendly solution would eliminate it.

However, in order to avoid an aggressive tone in the friendly solution letter, the Ombudsman normally presents his finding along the following lines: "in light of the foregoing, the Ombudsman's provisional conclusion is that (an aspect of the Institution's behaviour) could constitute an instance of maladministration". Recently, the Ombudsman has used other formulations which avoid stating, even if provisionally, that there could be an instance of maladministration. The Ombudsman has rather identified some problems or shortcomings in the institution's behaviour that could probably be solved to the complainant's satisfaction if the institution could adopt a certain measure which he proposes in his friendly solution.

After the Head of Legal Unit and the competent Director have approved the proposal for a friendly solution, the LO checks, normally by telephone, that the complainant would accept it. This telephone contact is a sensitive step. The LO should prepare the phone call together with his/her HLU or another experienced LO. A note of the telephone conversation is prepared and included in the file.

If the complainant's response is positive, the LO prepares a letter to the institution concerned. It is essential that the letter to the institution identify clearly the problems or deficiencies detected (the instance of maladministration) and the proposed friendly solution, since if the latter is rejected the Ombudsman will, normally, proceed to make a draft recommendation.

It should be noted that a friendly solution proposal should concentrate only on the aspect(s) for which the Ombudsman made a provisional finding of maladministration or detected some problems or shortcomings in the institution's behaviour, and indicate the proposed solution to that/those problem(s). The friendly solution must not provide a full examination of all points and allegations; this makes the proposal more focussed and easier to communicate. The remaining aspects will be dealt with in the final decision, or not at all, depending on the complainant's reaction.

The complainant should receive a copy of the friendly solution proposal. If the complainant reads English, the English version can be sent to him/her. The LO can check with the complainant first. A translation is sent to the complainant if s/he asks for one.

If the institution involved is the Commission, and the direct document transmission system applies to the Commissioner concerned (see the list of applicable Commissioners, available under SISTEO/LEGAL-LOIS: "Contacts-Com.Cab."), the LO should apply the procedure as explained in Appendix 8.

4 WHAT IS MALADMINISTRATION?

Neither the Treaty nor the Statute defines the term maladministration.

The 1995 Annual Report explained that

"... there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance."

The Report also contained a non-exhaustive list of some possible forms of maladministration:

- administrative irregularities or omissions
- abuse of power
- negligence
- unlawful procedures
- unfairness
- malfunction or incompetence
- discrimination
- avoidable delay
- lack or refusal of information

The 1997 Annual Report provided a definition of the term maladministration:

"Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it."

Therefore when the Ombudsman finds maladministration he should identify the binding rule or principle which the institution, body, office or agency concerned has failed to respect.

The possible sources of a binding rule or principle are:

- Treaties and binding Community/Union acts
- Case-law of the Court of Justice of the European Union
- The European Convention on Human Rights and the case-law of the European Court of Human Rights
- The Code of Good Administrative Behaviour
- The Charter of Fundamental Rights of the EU
- Case-law of the European Ombudsman
- Authoritative commentaries (for example, the Council of Europe Handbook The Administration and You, 1996).

4.1 DISCRETIONARY POWERS

A Union institution, body, office or agency has a discretionary power when it has legal authority to choose between two or more possible courses of action. Although very broad discretionary powers may exist, they are always subject to the fundamental principles of administrative law, including the giving of reasons for decisions. The fundamental principles of administrative law form part of the Code of Good Administrative Behaviour (see especially Articles 4-11).

An institution, body, office or agency must therefore act within the limits of its legal authority and commit no manifest error of appreciation when making a discretionary decision. Provided that it has done so, the Ombudsman, just like the EU courts, does not seek to question its decision.

4.2 TENDERS AND CONTRACTS

Contracts to which a Union institution, body, office or agency is a party are governed by national law.

In dealing with complaints concerning an existing contractual relationship with a Union institution, body, office or agency the Ombudsman does not seek to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

The Ombudsman therefore limits his inquiry to examining whether the Union institution, body, office or agency has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman concludes that his inquiry has not revealed an instance of maladministration. This conclusion does not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

The following standard wording is used in cases involving a disputed allegation of a breach of contract:

According to Article 228 TFEU (ex Article 195 EC), the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies ". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it. Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the Union institutions, bodies, offices or agencies is concerned.

However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. In particular, the Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Union institution, body, office or agency has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

The tendering procedures used by the Union institution, body, office or agency for the award of contracts are governed by Union law and are therefore dealt with normally.

5 DECISIONS CLOSING INQUIRIES

This section requires extensive revision. Please note that the new drafting templates are available in:

<http://www.sisteo.ep.parl.union.eu/LOIS/Drafting%20templates/Home.aspx>

5.1 BASIC PRINCIPLES

A case which has been declared admissible in letters to the complainant and the institution concerned must eventually be closed by a decision of the Ombudsman.

Draft recommendations and special reports do not themselves close a case. If draft recommendations are accepted or partially accepted by the institution, body, office or agency concerned, this is the reason for closure (see section 5.2.6 below). If the draft recommendations are not accepted, there will normally be a special report to the European Parliament, after which the case is closed (see section 5.2.7 below). The techniques for preparing draft recommendations and special reports are similar to those for preparing decisions. Therefore they are dealt with in this section of the Handbook, under the corresponding reason for closure.

The Ombudsman's decisions closing a complaint are drawn up according to the template available under 'Sisteo/Legal-Lois/Drafting templates/Decisions /Decision-Text'. The document containing the decision is sent with a covering letter to the complainant. A copy of the decision is sent to the institution, body, office or agency concerned.

A decision should be a self-contained document so that anyone reading it can understand it without requesting more information. It should be as concise, clear and logical as possible.

For the possible sources of rules and principles see Part 4 above.

Decisions should not include the names of officials, since the Ombudsman's inquiries concern the institution.

Before presenting a draft decision, please read it thoroughly and ensure not only the substantive quality and accuracy of the legal reasoning but also check for typographical and other errors. The spell check in Word is a useful aid, but it is not infallible. Remember that your performance will be evaluated by your hierarchy, also according with the quality of the drafts you submit for approval. It is therefore appropriate to thoroughly check the substantive and formal quality of your drafts before you submit them. Appendix 3 below contains detailed instructions on the style and format of decisions. Appendix 4 explains how to prepare a summary for the Annual Report.

5.2 THE POSSIBLE REASONS FOR CLOSING A CASE

5.2.1 Dropped by the complainant

NB: A case may be closed for more than one reason, if there are multiple allegations or claims which are dealt with separately in the decision.

If the complainant decides to drop the complaint after an inquiry has begun the file is closed for this reason.

This reason is used only if the complainant abandons the case. Usually, complainants who inform us that they wish to drop their complaint do so because the Union institution, body, office or agency concerned has changed its position after the complainant's approach to the Ombudsman. Such cases are closed as settled by the institution.

5.2.2 Settled by the institution

In some cases, the Union institution, body, office or agency changes its position after learning that the complainant has approached the Ombudsman. If the complainant no longer wishes to pursue the case because he or she is satisfied with the institution's action, the case is closed as "settled by the institution."

In cases of doubt, the LO should propose to contact the complainant to check that he or she is satisfied, either in writing or by telephone.

5.2.3 No maladministration

Statistically, no maladministration is the most frequently used reason for closing a case. It is not necessarily negative for the complainant, provided that the complaint has been taken seriously and properly investigated.

The Ombudsman's inquiry is confined to the allegations and claims made by the complainant and the complainant must provide some supporting evidence. No inquiry should begin unless the complainant has provided sufficient evidence to justify an inquiry (see section 2.3.11 above).

If the complainant has provided such evidence then we must carry out a proper inquiry before concluding that there is no maladministration.

It should also be recalled that the complainant is not obliged to supply observations on the opinion of the institution, body, office or agency concerned. We cannot close a case merely because there are no observations. We must first check that the institution's opinion properly answers all the allegations and claims made in the complaint.

5.2.4 Friendly solution

Legal basis: Article 3.5 Statute

The criteria for launching a search for a friendly solution and the procedures used are dealt with in section 3.10 above.

A case is closed as a "friendly solution achieved" if:

- (i) the Ombudsman has launched the procedure to look for a friendly solution and
- (ii) the complainant is satisfied as regards the allegation or claim concerned. If the complainant is not satisfied with the result to which he/she had previously agreed, the EO should rather

close the case as "no further inquiries justified". No criticism should be made of the institution that accepted the Friendly solution proposed by the Ombudsman.

5.2.5 Critical remark

Legal basis: Article 7 Implementing provisions.

A critical remark means that at least one of the complainant's allegations of maladministration is justified, but that it is not possible for the institution to put the matter right. A critical remark has two purposes: (i) to give the complainant the satisfaction of a finding of maladministration, even though nothing can be done to put it right and (ii) to indicate clearly to the institution, body, office or agency concerned what it has done wrong and how it should have behaved, so as to help avoid similar maladministration in the future.

When is a critical remark appropriate?

A critical remark is an appropriate way to close a case in which the Ombudsman finds maladministration only if three conditions are met:

- 1 no friendly solution is possible, or the search for a friendly solution has been unsuccessful and there are good reasons for not making a draft recommendation.
- 2 it is not possible for the institution, body, office or agency concerned to eliminate the instance of maladministration
- 3 the instance of maladministration has no general implications.

If either the second or third condition is not met, the Ombudsman makes a draft recommendation rather than a critical remark.

A critical remark is also made if the Ombudsman considers that it is not appropriate to submit a special report in a case where the institution, body, office or agency concerned fails to accept a draft recommendation.

A critical remark does not, however, constitute redress for the complainant. Where redress should be provided, it is best if the institution concerned takes the initiative, when it receives the complaint, to acknowledge the maladministration and offer suitable redress. In some cases, this could consist of a simple apology.

By taking such action, the institution demonstrates its commitment to improving relations with citizens. It also shows that it is aware of what it did wrong and can thus avoid similar maladministration in the future. In such circumstances, it is unnecessary for the Ombudsman to make a critical remark. If there is a suspicion that the individual case may result from an underlying systemic problem, however, the Ombudsman may decide to open an own-initiative inquiry, even though the specific case has been resolved to the complainant's satisfaction.

The structure of a critical remark

A critical remark should be structured as follows:

- 1 A statement of the relevant facts

2 A statement of the rule or principle which the institution, body, office or agency concerned has breached

3 unless obvious, what the institution, body, office or agency should have done in the circumstances to avoid maladministration.

Points 2 and 3 are useful to maximise the educative potential of the critical remark. Thus constructed, a critical remark also explains and justifies the Ombudsman's finding of maladministration and thereby seeks to strengthen the confidence of citizens and institutions in the fairness and thoroughness of the Ombudsman's work.

Examples:

The complainant's request for information from the Commission received neither a substantive reply nor a holding reply for over six months. According to the Commission's Code of Good Administrative Behaviour, if a reply to a letter cannot be sent within fifteen working days, the member of staff responsible should send a holding reply, indicating a date by which the addressee may expect to be sent a reply. The Commission's failure to follow its own Code in this case was an instance of maladministration.

The European Parliament decided to take away a former MEP's privileges. Every citizen has the right to know the reasons for an administrative decision which adversely affects his or her interests and to be heard before such a decision is made. Before taking away the former MEP's privileges, Parliament should therefore have told him what he had done wrong and given him the opportunity to put his side of the case. It should also have communicated its reasoned decision to him promptly. Its failure to do so was an instance of maladministration.

The critical remark is stated in the section "Conclusions" of the decision as well as in the covering letter which is sent to the President of the institution, body, office or agency concerned. For an example of a decision containing a critical remark, see decision 1202/2009/GG .

The register of critical remarks

A register of critical remarks from the beginning of 2002 has been established. It is available on SISTEO/Legal-Lois/Complaints Data. This should help facilitate the follow-up of critical remarks by the Ombudsman.

Critical remarks are numbered in the register (as e.g. **CR 1/2002**). If a decision contains more than one critical remark, each should be numbered separately. The register should also include the reference number of the case in which the critical remark was made and the date of the decision.

It seems unnecessary, and difficult in practice, to include the number in the decision letter to the complainant, or in the covering letter to the institution. The Webmaster will allocate numbers to critical remarks when the relevant decision is put on the Website and maintain the register that is available through SISTEO/Legal-Lois/Complaints Data, with links to the text of the critical remarks in the decisions on the Website.

When the database will be further developed, it should be possible to generate the register of critical remarks dynamically from the database, together with similar registers of draft

recommendations and further remarks. At this stage, consideration could be given to publishing the registers on the Website.

5.2.6 Draft recommendation(s) accepted or partially accepted by the institution

Legal basis: Article 3.6 Statute, together with Article 8 of the implementing provisions.

Article 3.6 of the Statute provides for the Ombudsman to send a report to the institution, body, office or agency concerned, where appropriate making draft recommendations. The institution, body, office or agency must send a detailed opinion within three months. The Ombudsman's letter to the institution specifically refers to the requirement of a detailed opinion and points out that the detailed opinion could accept the Ombudsman's decision and describe the measures taken to implement it.

Draft recommendations are addressed to the institution, body, office or agency concerned. They are drawn up according to the template available under 'Sisteo/Legal-Lois/Drafting templates/[Draft recommendations/Draft recommendation - Text](#)'

Draft recommendations, which can be used as a model, are available on the Ombudsman's website.

The document containing the draft recommendation(s) is sent with a [covering letter to the institution, body, office or agency concerned](#).

Draft recommendations made in the context of a complaint are forwarded [to the complainant](#), for information, in his/her language. When the detailed opinion from the institution, body, office or agency is received, it is forwarded to the complainant for possible observations.

If the Ombudsman considers that the detailed opinion is a satisfactory response, he closes the case with a decision accordingly. When appropriate, the case is considered as closed with partial acceptance of the draft recommendation (option 'DR partly agreed by the institution' in the Statistical information sheet 2). This conclusion must be clearly stated in the closing letters and in the Decision. It has to be noted that 'partly agreed' should not become a source of 'negotiation', and that this conclusion should only be used when the institution has genuinely responded to central points in the Draft recommendation in a constructive and cooperative manner. In the context of a complaint, the decision is addressed, as normal, to the complainant with a copy to the institution, body, office or agency concerned.

If the detailed opinion of the institution, body, office or agency is not satisfactory, the Ombudsman might consider making a special report to the European Parliament.

In his Annual Report for 1998, the Ombudsman pointed out that the possibility for him to present a special report to the European Parliament was of inestimable value to his work. He added that special reports should therefore not be presented too frequently, but only in relation to important matters where the Parliament was able to take action in order to assist the Ombudsman¹. The Annual Report for 1998 was approved by the European Parliament. The LO in charge of a case, which touches upon an important issue of principle and has particular circumstances that would make it appropriate and/or necessary to submit a special report to Parliament, should discuss the matter with the HLU and the HLD.

¹ Annual Report for 1998, pages 27-28.

If the Ombudsman decides not to make a special report, he will close a case with a decision making appropriate critical remarks. In some cases where the Ombudsman did not consider it appropriate to make a special report to Parliament, he has made his conclusions public by issuing a relevant press release. He has also in some cases informed particular institutions of his decisions like the Court of Auditors or particular interinstitutional bodies of the EU civil service like the College of Heads of Administration, which might have an interest in the subject matter of the inquiry. In another case he has informed a specific committee of the European Parliament competent on the subject matter (social affairs committee).

If the Ombudsman decides to make the special report, he sends it to the institution, body, office or agency concerned. In the context of a complaint, he informs the complainant of this action. The special report may contain one or more recommendations. These should be based on the draft recommendations made to the institution, body, office or agency concerned. Any changes should be explained and justified.

If the institution involved is the Commission, and the direct document transmission system applies to the Commissioner concerned (*see the list of applicable Commissioners, available under SISTEO/LEGAL-LOIS: "Contacts-Com.Cab."*), the LO should apply the procedure as explained in Appendix 8.

After having submitted a special report to the European Parliament, in accordance with Article 3(7) of his Statute, the Ombudsman closes the case with a very short decision. In fact, the Ombudsman's Statute provides that the submission of a report to the European Parliament is the final step in an inquiry by the Ombudsman. For a model letter, please see previous cases (e.g. case 3453/2005/GG).

5.2.7 Following a special report

Legal Basis: Statute, Article 3.7

A special report to the European Parliament is made if the Ombudsman considers that the detailed opinion forwarded to him by an institution, body, office or agency to which he has made draft recommendations is unsatisfactory.

A copy of the special report is also sent to the institution, body, office or agency concerned, and to the complainant in the context of a complaint.

A special report normally includes recommendations. Any difference between the recommendations and the earlier draft recommendations should be explained and justified.

In accordance with Rule 179 of the Parliament's Rules of Procedure, the special report is dealt with by the committee responsible (i.e. the Committee on Petitions), which may draw up a report.

A special report is translated into all languages and published on the Website.

The decision closing a case following a special report is normally short, formal and unpublished; since the results of the Ombudsman's inquiry are dealt with fully in the special report itself.

5.2.8 Other

Other possible reasons for closing a case are:

- 1 Article 2.7 Statute, termination because of legal proceedings. The result of any inquiries carried out is "filed without further action", so the decision is short and formal: see e.g. case 458/27.2.96/HS/B/KT, 1997 Annual Report, p. 170.
- 2 If the Ombudsman discovers during the course of his inquiry that the complaint is outside the mandate or inadmissible
- 3 If the Ombudsman discovers during the course of his inquiry that another competent body is dealing with the matter, he may consider that there are no grounds for him to continue his inquiry (cf. section 2.3.10 above).

5.3 FURTHER REMARKS

A further remark may be made when the Ombudsman has not found maladministration, but where he considers that the institution, body, office or agency has an opportunity to improve the quality of its administration in the future. A further remark should therefore be constructive in tone and should not contain criticism of the institution concerned. However, as with a critical remark, a further remark is quoted in the covering letter to the institution, body, office or agency concerned.

5.4 PROCEDURE FOR PREPARATION OF DECISIONS

Language checking

- 1 When opening inquiries, LOs may submit their allegations and claims to the lawyer-linguist for prior checking if they are unsure about the accuracy of the language used.
- 2 Friendly solution proposals, draft recommendations and closing decisions, including their accompanying letters to the complainants and the institutions concerned, should only be submitted to the lawyer-linguist for checking after approval by the appropriate HLU and the relevant Director. Special reports, own-initiative inquiries, queries from national Ombudsmen and summaries of decisions should be submitted to the lawyer-linguist in the same way. HLUs may, however, authorise special arrangements for language checking after consulting the Directors.
- 3 The lawyer-linguist indicates corrections and queries using the TRAK change function on an electronic version of the draft. He/she then sends the document with revisions by e-mail to the LO who submitted it and to the LO's HLU in copy.
- 4 The LO who has prepared the draft should carefully check all the proposed revisions and deal with any queries. In the case of substantive queries, the LO should re-submit the text to his/her HLU for approval. The LO is responsible for the text presented to the EO

after the language check and should seek to learn from the corrections made in order to improve the quality of future work.

5 If substantive revisions are required after drafts are re-submitted to HLUs, the responsible HLU may instruct the LO concerned to submit the text for a further language check. In such cases, the LO should inform the lawyer-linguist that the draft has already been checked and clearly indicate the area of substantive revision.

Presentation to the EO (THIS PART SHOULD BE CHECKED TO SEE IF IT NEEDS ADAPTATION)

1 Once counter-signed by the principal supervisor, decisions are submitted to the Ombudsman for signature on headed paper, if the language of the complaint is English, or on ordinary paper, if the language of the complaint is not English. In the latter case the words: "Final English version of decision in case xxxxx" are used instead of the closing formula "yours sincerely".

2 When the Ombudsman has signed the decision, the LO proceeds directly to step 3 if the language of the complaint is English.

If necessary, the decision is translated into the language of the complaint, either by the LO or by the translation service. In the latter case, the LO checks the translation, or submits it for checking by a person in the office who is competent in the language concerned. When the translation is complete, the LO submits the decision for the Ombudsman's signature on headed paper in the language of the complaint.

Clarification of the procedure for decisions requiring translation

When the Ombudsman approves the English version of a decision, he is merely authorising the document to be sent for translation. The decision on the case is only made when the Ombudsman signs it in the authentic language, on headed paper.

If the Ombudsman approves an English version on which he has made hand-written corrections, he is indicating that he does not need to check that the corrections have been made before the document is sent for translation. The idea is to avoid unnecessary delay in sending the document for translation. The LO should of course make the corrections required by the Ombudsman before sending the corrected text for translation.

In a case where **no** hand-written corrections have been made, the LO should present in the final signataire:

(1) The original plain paper English version of the document, bearing the Ombudsman's signature;

(2) The document in the authentic language, on headed paper, for the Ombudsman's signature. It should be accompanied by an English version of the document, without the Ombudsman's signature, for transmission to the institution.

In this case, the original of (1) and a copy of (2) are to be added to the file on the case and should therefore be scanned for the digital archive.

In a case where hand-written corrections **have** been made, the LO should also present in the final signataire:

(3) the corrected English version of the document on plain paper. The Ombudsman can then check that his corrections have indeed been implemented and sign the corrected and final English version, which replaces the version with the hand-written corrections (1).

In this case, the original of (3) and a copy of (2) are added to the file and should be scanned. (1) in this case is merely a working document and should neither be added to the file, nor scanned.

It is important that the LO should present the signataire in a way that makes clear what is being presented. The LO should normally add an explanatory note at the beginning for this purpose. The note should explain, when appropriate, that the EO approved the EN version with hand-written corrections and that a clean copy of the EN version with these corrections implemented is enclosed for the EO's signature, in addition to the decision in the complainant's language.

3 The LO copies the decision in English and in the language of the complainant if different to the correct year and name sub-directory of s:\legal\decisions. The document should be given a name of the following pattern: 619-06en.doc, 619-06de.doc (the latter being the decision in the language German of the complainant).

4 Make a summary of the decision in English for the Annual Report if appropriate (see Appendix 4 below).

NB: See section 1.4.2 in case of confidential complaints

5.5 FOLLOW UP BY INSTITUTIONS ON CRITICAL REMARKS OR FURTHER REMARKS

Each year the Ombudsman makes a study of the follow-up given by the institutions to the critical remarks and further remarks made by the Ombudsman in the previous year. The study is sent to all the institutions and bodies and published on the website.

The study looks at follow-up in terms of *systemic* improvements that raise the quality of administration, thus making maladministration less likely to occur in the future. In dealing with critical remarks, the study does not focus on the specific instance of maladministration that led to the remark, but on the lessons that the institution concerned has learnt for the future.

For the purpose of the study, whenever an institution sends a follow-up on a critical remark or a further remark, the responsible LO should draft a note on that follow-up within one month and submit it to his/her Head of Legal Unit.

The template as well as guidelines for drafting notes on the follow-up to critical and further remarks are available under SISTEO/Legal-Lois/Resources/ Notes on the follow-up to critical and further remarks. Once approved by the competent Director, the note is sent to his assistant, who saves it in the appropriate folder, and to the colleagues mentioned in the template (the Director's assistant and to the colleagues which have the responsibility for preparing this study). The note is also sent to the Registry to be registered as an incoming document ('Entrée') in the file.

In case an institution responds to both critical and further remarks in the same case, the note is saved in both folders.

5.6 PROCEDURES IF THE COMPLAINANT WISHES TO CONTEST A DECISION OF THE OMBUDSMAN, OR COMPLAIN AGAINST THE RESPONSIBLE LO

Unfortunately we are not always able to satisfy complainants. This section deals with two different ways in which complainants may express dissatisfaction.

5.6.1 Requests for information about how to contest a decision of the Ombudsman

The responsible LO proposes a reply for the Ombudsman's signature. This must be done as a matter of priority.

It is important that we provide consistent, accurate and helpful information to complainants who write to request information about how to contest a decision of the Ombudsman.

A request for the Ombudsman to review or revise his own decision on a complaint should be dealt with on its merits. The following guidance is only relevant in such cases if the complainant also requests information about possibilities for external remedies.

The guidance does not take the form of a standard letter, because it is important to respond to the individual request. In doing so, however, it may be appropriate to include one or more of the following elements:

- The European Ombudsman must submit an annual report to the European Parliament on the outcome of his inquiries. (*If appropriate in answering the specific request, reference should also be made to Article 8 of the Statute.*)
- A decision by the Ombudsman that there is maladministration does not create enforceable rights for a complainant. Nor does a finding of no maladministration deprive the complainant of the possibility to seek a judicial remedy against the Union institution, body, office or agency concerned.
- Neither Article 228 TFEU nor the Statute of the Ombudsman¹ provide for any appeal or other remedy against the Ombudsman's decisions.
- The General Court has taken the view that the Ombudsman's submission to the European Parliament of a report finding a case of maladministration is not a measure capable of being challenged in annulment proceedings.²

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

² Order of the Court of First Instance of 22 May 2000 in Case T-103/99, *Associazione delle Cantine Sociali Venete v European Ombudsman and European Parliament* 2000 ECR II-4165

- The General Court has declared inadmissible proceedings brought against the Ombudsman under Article 265 of the TFEU for failure to act.¹
- The Court of Justice of the European Union has held that it is possible to bring an action for damages against the European Ombudsman based on the latter's alleged mishandling of a complaint. According to the Court, in very exceptional circumstances a citizen may be able to demonstrate that the Ombudsman has committed a sufficiently serious breach of Union law in the performance of his duties likely to cause damage to the citizen concerned.²
- If you require detailed advice about any possible legal remedies that may be available to you, you could consult a lawyer.

A draft model letter is included in appendix 5 below.

5.6.2 Complaints against the LO responsible

In fairness to both the complainant and the LO concerned, the reply to a complaint against an LO should normally be proposed to the Ombudsman by the Secretary-General after prior approval by the competent Director.

If a letter of complaint is received, the LO should promptly prepare a note informing the Ombudsman of this fact and giving his or her response to the complainant's allegations. A copy of the note is included in the file on the case.

The Ombudsman then decides on the appropriate action, which could be to transfer the case to another LO or HOU.

If a complainant requests information about how to contest a decision of the Ombudsman and at the same time complains or expresses dissatisfaction with the responsible LO, both procedure under 5.6.1 and 5.6.2 apply.

¹ Order of the Court of First Instance of 22 May 2000 in Case T-103/99, *Associazione delle Cantine Sociali Venete v European Ombudsman and European Parliament* 2000 ECR II-4165

² Case C-234/02 P, *European Ombudsman v Frank Lamberts*, Judgment of the Court of 23 March 2004.

6 OWN-INITIATIVE INQUIRIES

Legal basis: Article 228 TFEU (ex Article 195 EC):

"... the Ombudsman shall conduct inquiries... either on his own initiative or on the basis of complaints submitted to him... "

In practice the own-initiative power has been used in six kinds of cases:

- (i) if there have been a number of complaints on the same subject, so that an initiative could be useful in finding out whether there is a more general problem and, if there is, finding a solution
- (ii) if the Ombudsman considers that an allegation of maladministration made in a complaint should be investigated despite the fact that the complaint does not meet all the conditions of admissibility, or is submitted by a non-citizen or non-resident (see note below)
- (iii) to enable the Ombudsman to investigate an allegation of maladministration without revealing the identity of the complainant to the institution concerned
- (iv) where appropriate, following the transmission to the Ombudsman of the file on a petition which the Committee on Petitions has examined (see section 2.6.6 above)
- (v) where appropriate, following the reply of a Union institution, body, office or agency to a query from a national ombudsman.
- (vi) where the Ombudsman decides to conduct a visit to an agency of EU (see examples in the relevant section of the EO's website).

The procedure for dealing with complaints applies by analogy to an own-initiative inquiry. However, the opening letter to the institution must always explain the Ombudsman's reasons for opening an own-initiative inquiry. In cases (ii) - (v) the replies of the institution, body, office or agency concerned are normally forwarded to the interested party, for possible observations. The interested party is also informed of the closing decision, which is addressed to the Union institution, body, office or agency concerned.

The list of own-initiative inquiries can be obtained from the Registry.

Note

Where an own-initiative inquiry is opened on the basis of a complaint which is submitted by a non-citizen or non-resident of the EU, the normal procedure for own initiatives should apply and the final decision on the case should be addressed to the institution in question with a copy to the complainant (and not vice versa).

7 QUERIES FROM NATIONAL OMBUDSMEN

Article 5 of the Statute provides for the European Ombudsman to cooperate with authorities of the same type in certain Member States, insofar as it may help to make his enquiries more efficient and better safeguard the rights and interests of complainants.

At a seminar for national Ombudsmen and similar bodies held in Strasbourg in September 1996 it was agreed that:

"The European Ombudsman will receive queries from national Ombudsmen about Community law and either provide replies directly, or channel the query to an appropriate Union institution or body for response."

Queries are numbered separately from complaints: e.g. Q2/2006/IP. The list of queries can be obtained from the Registry.

Most queries are dealt with through a procedure analogous to that used for inquiries. The Ombudsman forwards the query to the appropriate institution, body, office or agency, usually the Commission, with a three month deadline for an opinion (see SL-D-1). When the reply is received, it is forwarded to the national ombudsman. A request for clarification, or a supplementary query, is dealt with through the same procedure

If the national ombudsman does not reply, or replies that he is satisfied with the institution's opinion, the Ombudsman closes the case. The EU institution to which the query was forwarded is also informed of the closure of the case.

In a case where the national ombudsman considers that the institution's reply is wrong, the European Ombudsman may open an own-initiative inquiry into a possible instance of maladministration, if there are grounds to do so (see e.g. Q5/98). If there are not sufficient grounds, the European Ombudsman informs the national ombudsman accordingly (see e.g. Q2/97).

If the national ombudsman expressly requests the European Ombudsman not to transmit the query to the institution concerned, the latter limits himself to undertaking research to provide the national Ombudsman with all necessary elements for the case he was examining (Q1/99).

8 PUBLIC ACCESS TO DOCUMENTS

Trainees should immediately consult their tutor about any request by the complainant for access to his or her file or any request for public access. THIS SHOULD BE UPDATED BY THE REGISTRY

8.1 GENERAL PRINCIPLES

Public access to documents held by the Ombudsman's office is governed by Article 14 of the implementing provisions.

LOs can provide copies of documents in accordance with Article 14 under the conditions defined below.

A refusal to give access to a document is a formal reasoned decision of the Ombudsman, made in writing on the proposal of the Head of the Legal Department. LOs should not therefore state that a particular document will not be released. If the document in question does not appear to be a public document as defined by Article 14 of the implementing provisions, the person requesting the document may be so informed, but should also be invited to address the request in writing to the Ombudsman.

If it is not clear what document is being requested, the person making the request should be so informed and invited to address to the Ombudsman, in writing, a request that sufficiently identifies the document.

8.2 REQUESTS FOR ACCESS TO COMPLAINTS-RELATED DOCUMENTS

8.2.1 Written requests

(i.e. requests made by letter, fax or e-mail)

We need to maintain centralised control of how we handle requests in order to ensure prompt and consistent replies, in accordance with the implementing provisions, as well as a central record of requests for statistical purposes.

As a provisional solution, pending approval of a new handbook, requests for public access should be dealt with by the assistant to the HLD in consultation with the responsible LO and HLD.

The same procedure should be used to deal with a request by a complainant for access to his or her own file.

8.2.2 Oral requests

(i.e. requests made in person, or by telephone)

Where an oral request is addressed to a member of staff other than the LO responsible for the relevant complaint file, the request should normally be referred to the responsible LO.

Where an oral request is made to the responsible LO, he or she may provide a copy of the document if it is clear that the document is a public document as defined by Article 14 of the implementing provisions. The responsible LO consults with the Head of the Legal Department in cases of doubt.

8.3 REQUESTS FOR ACCESS TO NON COMPLAINTS-RELATED DOCUMENTS

8.3.1 Written requests

(i.e. requests made by letter, fax or e-mail)

Written requests are dealt with through the usual procedure for correspondence. They will normally be assigned to the press officer, who consults with the Head of the Legal Department on any matters of doubt.

8.3.2 Oral requests

(i.e. requests made in person, or by telephone)

Up to 10 copies of documents which have been produced for distribution to the public and a single copy of an Annual Report are supplied on request, if available.

In the case of oral requests for larger numbers of copies of the above documents, or for documents which have not been produced for distribution to the public, the person concerned is invited to address a written request to the Ombudsman.

8.4 REQUESTS INVOLVING LARGE NUMBERS OF DOCUMENTS

If a request involves copying more than 50 pages the matter should be referred to the Head of the Legal Department to consider whether a charge should be made or on-the-spot access offered as an alternative.

Requests for a whole class of documents (e.g. all complaints from Germany, all complaints against the European Parliament) should be referred to the Head of the Legal Department for a recommendation to the Ombudsman as to whether the request sufficiently identifies the documents concerned.

8.5 ON-THE-SPOT ACCESS

Oral requests for on-the-spot access to documents are dealt with by inviting the person concerned to address a written request to the Ombudsman, or to contact the Head of the Legal Department for clarification.

This procedure applies also in the case of requests for access to documents for purposes of academic research.

APPENDIX 1: TREATY ARTICLES

Treaty on the Functioning of the European Union.

Article 24 TFEU (ex Article 21 EC)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions, bodies, offices or agencies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.

Article 226 (ex Article 193 EC)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission.

Article 227 TFEU (ex Article 194 EC)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

Article 228 TFEU (ex Article 195 EC)

1. A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration

in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be elected after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament acting by means of regulations on its own initiative in accordance with a special legislative procedure shall, after seeking an opinion from the Commission and with the approval of the Council, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

[**Article 339 TFEU \(ex Article 287 EC\)**](#)

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

APPENDIX 2: KEYWORDS

Statistical sheet 1 has to be completed when you propose your decision on in-/admissibility. It contains four fields of key words:

1 Eurovoc

2 Field of law

3 Type of maladministration alleged

4 Subject matter of the case

Key word lists are set out further below.

Key word fields two, three and four are only used when an inquiry is **opened**, or for complaints that are rejected on '**no grounds**'. For complaints that are outside the mandate or inadmissible, only field one is used.

Key word field one (Eurovoc) must always be completed. The list of Eurovoc descriptors is not exhaustive. If you wish to propose the addition of a new Eurovoc descriptor, it must already exist in the Eurovoc list, available under: <http://europa.eu/eurovoc/>. You should make your proposal directly to the HLD, explaining why none of the existing terms would be adequate.

Do not delay sending a case because you are waiting for a reply concerning the appropriate key word to use. Just leave your statistical sheet empty, adding a post-it note for the Registry stating that you will inform them as soon as possible which keyword to insert.

The list of key words for the second third and fourth fields are exhaustive.

The list of key words 2 ('Field of law') is based on the EUR-Lex directory of Community legislation. The list of key words 3 ('Type of maladministration alleged') mainly follows the structure and the content of the European Code of Good Administrative Behaviour, with slight modifications.

Each of these fields may contain more than one word.

If deemed useful, the legal act concerned should be mentioned, by way of information, on statistical information sheet 1 (in the separate field next to key words 2 'Field of law'). There is no need to give a full OJ reference or the name of the issuing institution and the kind of act. The number and date of the legal act are sufficient (e.g. Council Directive 85/337, 27.6.85).

Specific key words should be preferred to more general ones. For example, the complainant argues that the Commission has not given him the possibility to express his views in an Article 81 procedure. As this allegation concerns the rights of defence, the key-word 'Right to be heard and to make statements [*Article 16 ECGAB*]' should be used rather than the more general key word 'Lawfulness (incorrect application of substantive and/or procedural rules) [*Article 4 ECGAB*]'.

If a complaint contains more than one allegation, it is better not to indicate one key word per allegation, but rather to select an appropriate keyword relating to the most significant issue. For example, a person complains in a staff case that he/she was a victim of discrimination because all the members of the Selection Board were of the other sex and the Board did not give sufficient reasons for its decision to exclude him/her from the competition. Here, '[Breach of, or of duties relating to] Absence of discrimination [Article 5 ECGAB]' and '[Breach of, or of duties relating to] Duty to state the grounds of decisions and the possibilities of appeal [Articles 18 and 19 ECGAB]' should both be used.

IMPORTANT: the keyword 3 "Requests for public access to documents [Article 23 ECGAB]" is obligatory for complaints concerning the application of Regulation 1049/2001.

Key Words Eurovoc

The list is available under [SISTEO/LEGAL-LOIS/Resources/Keywords](#). As this list is regularly updated, it is advised to consult it each time a keyword is needed.

Key Words for: Fields of Law; Type of Maladministration Alleged; and 'Subject matter of the case/Union activity concerned'

The lists of these key words are available under:
[SISTEO/LEGAL-LOIS/Resources/Keywords](#).

APPENDIX 3: THE FORMAT OF A DECISION LETTER

This section requires extensive revision. Please note that the new drafting templates are available in:

<http://www.sisteo.ep.parl.union.eu/LOIS/Drafting%20templates/Home.aspx>

The standard form and some standard wordings for decision letters are set out on the next three pages. The model assumes the complaint is against the Commission.

Note the following points of style:

- 1 Italics are used only for direct quotes.
- 2 Paragraph numbers should be used in the part headed THE DECISION and only in this part. If the complaint raises three points, it is very likely that you will have three paragraph numbers and a fourth for the conclusion.
- 3 Indents should not be used generally for the summarising of the complaint, the institution's opinion, or the complainant's observations. They are used when the complaint, the observations or the opinion are presented in the form of separate points with roman numbering ((i) (ii) (iii) etc.)
- 4 Quotes are indented, unless they are an integral part of the text. Quotation marks are double " , and single ' for a quote within a quote.
- 5 The text should be in Times New Roman, 13 point, with any footnotes in 10 point.
- 6 Before presenting a draft decision, please read it through to check for typographical and other errors. The spell check in Word is a useful aid, but be aware that it is not infallible. (For example, it sometimes tries to turn co-operation into Cupertino, a town in California).

(Complainants name and address)

Strasbourg,

Decision on complaint (reference number) against the [Institution]

Dear (complainant's name),

On (date) you made a complaint to the European Ombudsman concerning (xxx)

On (date), I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on (date) and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you. OR The Commission sent its opinion on (date). I forwarded it to you with an invitation to make observations, which you sent on (date).

I am writing now to let you know the results of the inquiries that have been made.

If Article 258 TFEU (ex Article 226 EC):

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Union institution, body, office or agency. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

xxx

THE INQUIRY

The [Institution's] opinion

xxx

The complainant's observations

xxx

Further inquiries

After careful consideration of the [institution's] opinion and the complainant's observations, it appeared that further inquiries were necessary.

xxx

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

xxx

THE DECISION

1 Heading

1.1 xxx

2 Heading

2.1 xxx

3 Conclusion

(Dropped by the complainant)

It appears from the information supplied to the Ombudsman by the complainant that s/he wishes to drop the complaint. The Ombudsman therefore closes the case.

(Settled by the institution)

It appears from the Commission's comments and the complainant's observations that the [Institution] has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

(No maladministration)

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the [Institution]. The Ombudsman therefore closes the case.

(Critical remark)

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

xxx

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

(Friendly solution)

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the [Institution] and the complainant. The Ombudsman therefore closes the case.

The President of the [institution] will also be informed of this decision.

FURTHER REMARKS

xxx

Yours sincerely,

P. Nikiforos DIAMANDOUROS

APPENDIX 4: HOW TO PREPARE A DECISION SUMMARY

Introduction

A summary must be produced in English for every decision closing an inquiry, except when the inquiry was closed after a 'telephone procedure', an 'extended telephone procedure', or when the complaint was dropped by the complainant without the European Ombudsman having conducted any inquiry. All such summaries are a vital communication tool in clearly and simply explaining the Ombudsman's work to citizens and highlighting the results he obtains.

The Head of the Legal Department and the Secretary-General select individual summaries to be translated into all the official languages of the Union. These selected summaries are published on the website in all official languages and constitute the main news items on the Ombudsman's website.

Summaries of the Ombudsman's decisions are indispensable, both internally and externally, in helping to raise awareness about the Ombudsman's work - be it by keeping colleagues up-to-date with the Ombudsman's findings, alerting journalists to particular cases, issuing press releases or reaching out to more specialised, target audiences. The guidance provided below includes suggestions on how to draft a good summary.

Drafting the summary

Please use the template available under SISTEO/Legal-Lois/Drafting templates V2/Other templates/Decision summary.

Summaries should be drafted along the following lines:

1. Insert a heading (This is needed for the website):

Name of institution - Finding - Keyword 2 (Field of law) - Keyword 3 (Type of maladministration) and Keyword 4 (Subject matter)

For example: Commission - No maladministration found - 15 Environment, consumers and health protection - Lawfulness (incorrect application of substantive and/or procedural rules) [Article 4 ECGAB] - The Commission as Guardian of the treaty: (Article 258 of the TFEU)

The keywords are necessary to facilitate the preparation of the thematic indices. They should be the same as those contained in the database entry on the case. If necessary, the LO should inform the Registry of modifications to the keywords so that the database entry can be changed accordingly.

2. Insert a subheading

On the first line, add a title which can be used on the website and which refers to the main issue of the complaint, not to the result of the inquiry. The second line should read:

Summary of decision on complaint [complaint reference - add confidential if appropriate] against [name of institution].

Example of a title, 'Refusal to grant access to an internal advisory document' and not 'Commission criticised for refusing access to a document'. The title should be written in sentence case (as if you were writing a normal sentence). If possible, please avoid legal terms which might be difficult for non-lawyers to understand.

3 Main body

1. The context: provide details of the complainant and the situation he/she found himself/herself in. Where possible, please give personal data about the complainant (e.g., nationality, profession) so as to facilitate efforts to raise awareness in the relevant country/sector (e.g., 'a Danish businessman'; 'an English farmer', rather than 'the complainant').

Please also be as specific as possible about the activities of the complainant (e.g., an environmental NGO and the EU programmes or projects they participate in (e.g., 'the European student exchange programme Erasmus', rather than 'the Erasmus Programme').

2. The relevant allegations and/or claims taken up for inquiry.

3. The position of the institution.

4. The Ombudsman's relevant findings.

5. Outcome: whether the institution accepted the Ombudsman's recommendations; whether the complainant was satisfied, and any other important additional information.

If there are several allegations or findings, please concentrate on the most important points. Please avoid references to regulations, articles etc., unless they are explained (e.g. Regulation 1049/2001 on public access to documents).

Be specific about the kind of documents the complainant wanted access to (e.g., in the field of research, finance, health, etc.). Please note: the interest of the reader is often related to the policy field.

6. Time frame: please give one key indication about the beginning of the case (e.g., when was the complaint lodged).

Please **do not use footnotes** in the summary.

In general, summaries should be concise, clear and short, avoiding legal terms where possible. The majority of readers are not lawyers.

Given the very high cost of translations, summaries of decisions should be limited where possible to 2000 characters and should not be above the **absolute maximum of 2200 characters** in length. They should be written in plain English, in the past tense. Summaries must focus on the main point or points of the case. Please see for example:

Summary of decision on complaint 3172/2005/WP on page 69 of the Annual Report 2006.

For confidential complaints, the summary should be anonymised and marked as confidential.

Concerning the submission of summaries for approval, please refer to Chapter '1.4.2. Material for the Website and the Annual Report'

APPENDIX 5: DRAFT STANDARD LETTER TO BE USED WHERE A COMPLAINANT ASKS HOW TO CONTEST A DECISION OF THE OMBUDSMAN ON A COMPLAINT (PLEASE ALSO SEE SECTION 5.6.1 OF THE HANDBOOK FOR FURTHER ELEMENTS THAT MAY BE INCLUDED IN THE LETTER)

Thank you for your letter concerning my decision on your complaint, which, I understand, has *dissatisfied you*. You have therefore asked my advice about any possible legal remedies that may be available to you to challenge my decision,

In reply, it should first be pointed out that the European Ombudsman is a non-judicial remedy and that neither Article 228 TFEU (ex Article 195 EC) nor the Statute of the Ombudsman¹ provides for any appeal or other remedy against his decisions. The work of the Ombudsman is supervised by the European Parliament, to whom the Ombudsman must submit an annual report on the outcome of his inquiries. You could therefore consider submitting your viewpoint to the European Parliament.

As regards the possibility of judicial proceedings, a decision by the Ombudsman that there is maladministration does not create enforceable rights for a complainant. Nor, on the other hand, does a finding of no maladministration deprive the complainant of the possibility to seek a judicial remedy against the institution, body, office or agency concerned. Complainants who wish to pursue judicial remedies therefore have the opportunity to institute legal proceedings against the institution, body, office or agency concerned directly, rather than complaining to the Ombudsman and then challenging the latter's findings. It should be noted in this context that the General Court has taken the view that the Ombudsman's submission to the European Parliament of a report finding a case of maladministration is not a measure capable of being challenged in annulment proceedings under Article 173 (now Article 230) of the EC Treaty.²

If you require further detailed advice about any possible legal remedies that may be available to you, you could consult a lawyer.

I hope that the above information is useful to you.

Yours sincerely,

P. Nikiforos Diamandouros

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

² Order of the Court of First Instance of 22 May 2000 in Case T-103/99, *Associazione delle Cantine Sociali Venete v European Ombudsman and European Parliament* 2000 ECR II-4165

APPENDIX 6: CHECK LIST FOR COMPLAINTS LETTERS PRESENTED FOR THE EO'S SIGNATURE.

Careful attention to all the points in the check-list will minimise the need for signataires to be returned to LOs for correction before signature and also facilitate the dispatch of signed correspondence.

It is the responsibility of the LO/trainee who drafts a letter for the Ombudsman's signature to check the following points:

1 All letters

- Run the spell check (for English use the UK, not the US variety). Think before accepting any proposed changes;
- The headed paper and envelope correspond to the language of the letter;
- Text is correctly aligned on the page;
- At least two lines of text on the signature page above the closing formula;
- Complaint reference number is correct (including year);
- Date of the complaint (check especially the year) is correct;
- Letter is marked CONFIDENTIAL if the case is confidential;
- Enclosures are listed, included in the signataire and clearly identifiable (When enclosures are to be sent by e-mail, the reference number of the document in the digital archive should be given - see also 5th bullet under 3 below concerning the special procedure that applies for the Commission, EPSO, the European Investment Bank, the European Economic and Social Committee, and the Parliament.)
- The envelope is appropriate for the number and size of enclosures.

2 Letters to complainants

In addition to the items in 1 above:

- Name and address of the complainant are correct and complete.

Closing decisions

- The allegations and claims are identical in THE COMPLAINT and THE DECISION and are the same as in the original opening letter.
- Where the decision sent to the complainant is in a language other than English, the signataire should also contain (1) the final English version of the decision with the EO's approval (without hand-written corrections) and (2) a print out of the final English version marked as "Final English version of decision...." without the EO's signature and without being marked as "for translation into...". The latter is sent to the institution together with the decision in the language of the complaint.

3 Letters to institutions, bodies, offices or agencies

In addition to items in 1 above, check that the following all correspond:

- Name of the institution (e.g. European Parliament)

- The address (e.g. - Rue Wiertz, 1047 Brussels, BELGIQUE)
- The addressee (e.g. Mr Solana)
- The person to whom the letter is copied, if applicable (e.g. Mr Piris)

Electronic transfer of enclosures in inquiries

Signataires handed to the Registry should normally contain all enclosures in their full length. However, the following institutions accept PDF-copies of the enclosures **relating to full inquiries**: the Commission, EPSO, the European Investment Bank, the European Economic and Social Committee, and Parliament. In this respect, the following rules apply:

- The cover letter (which is always sent by navette) mentions the enclosures as: "Enclosure(s): [list] (sent by e-mail)". The templates on SISTEO contain relevant indications of this.
- The LO **must** include in the signataire a printout of the first PDF page of each enclosure, bearing the complaint number and registration number so that the secretaries can identify them in the digital archive.
- NB: If an enclosure is a document signed by the Ombudsman – such as a friendly solution or a draft recommendation – that document is also sent by navette. The templates on SISTEO contain relevant indications of this.

4 Internal documents

- All the sections of the statistical sheets are filled in completely, clearly and accurately, i.e. the information is consistent with the final version of the decision. This information is registered in the database at the time of dispatch and its completeness and accuracy are essential for the production of reliable statistics.
- In the case of complaints involving the Commission, the statistical sheet identifies the DG or other service concerned.
- Transmission sheets are filled in.

5 How to address recipients of complaints-related letters written in English

Hereafter are the instructions given by the Ombudsman on how to address recipients of complaints-related letters written in English.

The President or Secretary General of an institution should be addressed as follows :

Mr President, or Madam President,

Mr Secretary General,

In other cases, when the gender of the recipient is known, he/she should be addressed as:

Dear Mr [Surname],

Dear Mrs [Surname],

If the recipient has specified herself as Miss or Ms, then that title should be used instead of Mrs.

When the gender is not known but the recipient provided first name and surname, then he/she should be addressed as:

Dear [first name] [Surname],

When the gender is not known and the recipient provided only one or more initials instead of a full first name he/she should be addressed as:

Dear [Initial(s)] [Surname],

6 Standardised format for addresses

To avoid possible errors and confusion, it seems useful to adopt a degree of standardisation for addresses to be used in all letters submitted for the Ombudsman's signature.

Different countries have different, rules, standards and conventions. The Universal Postal Union provides information on these at:

http://www.upu.int/post_code/en/addressing_formats_guide.shtml

The address of the recipient.

Since all our correspondence is dispatched from France, it is logical to follow the rules of the French Post Office as regards the country field of the address: i.e. the name of the country should be put in French and in capital letters (for the EU-25, see the attached list). It is unnecessary to specify France as a destination country.

As regards the rest of the address, we should normally use the address that the Ombudsman's correspondent has given. The address may be modified or supplemented according to the postal rules of the country of destination, if this seems necessary to ensure correct delivery.

Contact addresses given in the Ombudsman's letters (see also 2.6.3)

If the European Ombudsman cannot deal with a matter, we often give advice as to another institution, body, office or agency which could be competent.

The contact addresses given in the Ombudsman's letters should normally be the one specified by the institution, body, office or agency itself. Where the institution, body, office or agency is located in a different country from the recipient of the Ombudsman's letter, the name of the country should be included as the last line of the address. It should be put in capitals, in the language in which the letter is written.

List of names in French of EU-25 countries

**ALLEMAGNE
AUTRICHE
BELGIQUE
CHYPRE
DANEMARK**

**ESPAGNE
ESTONIE
FINLANDE
FRANCE
GRECE
HONGRIE
IRLANDE
ITALIE
LETTONIE
LITUANIE
LUXEMBOURG
MALTE
PAYS BAS
POLOGNE
PORTUGAL
REPUBLIQUE TCHEQUE
ROYAUME UNI
SLOVAQUIE
SLOVENIE
SUEDE**

7 Standard practice for the use of numerical figures

Numerical figures are written as follows (this practice is adopted in all languages):

EUR 10 million

EUR 328 000.75

EUR 47 300 000

Making use of the "non breaking space" (Ctrl/shift/spacebar) instead of the normal space between the numerals will ensure that the figure appears on one line.

APPENDIX 7: PRESENTATION OF DOCUMENTS IN SIGNATAIRES

Section 1.6.3 (Signature, dispatching and filing of outgoing complaints correspondence) and Appendix 6 (Check list for complaints letters presented for the Ombudsman's signature) of the Handbook provide detailed information on how to present letters to the Ombudsman for signature.

The purpose of the present note is to specify practical details in relation to the preparation of signataires, in order to enable them to be dealt with efficiently. Most of the instructions are a matter of common sense: put yourself in the position of the Ombudsman receiving a signataire and think how the signataire should be presented and organised to enable the Ombudsman to identify, read and, if appropriate, sign the various documents.

Please pay particular attention to the following points:

URGENT MATERIALS

Genuinely urgent matters should be submitted to the EO in a red signataire upon authorisation of the relevant supervisor. The accompanying note, approved by the supervisor and included in the signataire, should contain a brief explanation of why the matter is urgent.

Please note that the Ombudsman should not be expected to deal with matters urgently because the responsible LO or trainee is late in dealing with a case, or has presented the case at the last moment before a given deadline.

Urgent materials should be presented separately, i.e. a red signataire should not also contain non-urgent materials.

PREPARING SIGNATAIRES

The first document relating to each case should be on a right hand page of the signataire.

Each document prepared by the responsible LO or trainee either for the Ombudsman's information (notes, summaries, etc...) or for signature should be presented one page per page of signataire, so that it is readily available for reading.

Letters should be protected from the mark of paper clips by small pieces of paper. The entire text should however be legible and not hidden by the protective paper. The appropriate size of paper clip should be used to avoid documents falling out when the pages of a signataire are turned.

Signataires should contain an e-mail or note which clearly shows that the material has been approved by the appropriate supervisor as well as a copy of the correspondence to which the draft reply refers.

To facilitate signing, pages requiring the EO's signature should be on a right hand page of a signataire and the space reserved for the EO's signature should not be placed on a hole.

Enclosures should be included in the signataire and clearly listed and specified in the letter. (In the case of the Commission, EPSO, the European Investment Bank, the European Economic and Social Committee, and the Parliament, only the first page of each enclosure is included since they are sent electronically only). When submitting a letter inviting the complainant's

observations on an opinion or other reply from the institution concerned, the enclosure may be omitted from the signataire if it is voluminous.

Drafts for admissible and inadmissible cases should be presented in different signataires.

The pages of drafts should be numbered.

Where applicable, the second page of a letter should contain at least two lines of text before the closing formula and signature.

APPENDIX 8: DIRECT TRANSMISSION OF CERTAIN DOCUMENTS TO CONTACT PERSONS IN COMMISSIONERS' CABINETS.

1 Background

The Commission's revised internal procedure for handling the Ombudsman's inquiries (see *Communication from the President in agreement with Vice-President Ms Wallström: Empowerment to adopt and transmit communications to the European Ombudsman and authorise civil servants to appear before the European Ombudsman* (SEC(2005) 1227/4), 4 October 2005) came into operation on 1 November 2005.

According to the Communication, “(t)o nurture a culture of greater willingness, commitment and cooperation with regard to the Ombudsman (and, ultimately, citizens), the individual Commissioners need to take greater ownership of the Commission's handling of the Ombudsman's enquiries.”

The new procedure therefore empowers the Commissioner in charge of the matter under inquiry to answer on behalf of the Commission. In practice, the responsible Commissioner signs the covering letter accompanying the opinion on the complaint and any subsequent replies to the Ombudsman.

2 Direct transmission

At a meeting with the Commission co-ordinators on 6 June 2006, the Ombudsman announced that he would be ready to transmit directly to a contact person in the cabinet of the responsible Commissioner:

- (i) friendly solution proposals;
- (ii) draft recommendations; and
- (iii) certain letters containing further inquiries.

By receiving such documents at an early stage, before the relevant services have formulated a position, the Commissioner should be in a better position to have an input as regards matters for which he or she will be asked to take responsibility.

Direct transmission to the responsible Commissioner's cabinet is in addition to normal transmission via the Secretariat General of the Commission.

The Ombudsman intends to implement the direct transmission procedure progressively, following bilateral meetings with individual Commissioners to explain its purpose and to identify a contact person in his/her cabinet.

The list of contact persons in their cabinets (*s:\legal\contact_persons\Contact persons in Commissioners' Cabinets*) is available through LOIS (in "Contacts-Com.Cab").

3 Practical arrangements

The practical arrangements to put the direct transmission system into operation for the Commissioners mentioned above are as follows.

(a) Information for the Ombudsman

Drafts of friendly solutions and draft recommendations to the Commission should be accompanied by a brief note to the Ombudsman identifying the relevant DG and the responsible Commissioner. Until full implementation in relation to all Commissioners, the note should also state whether the direct transmission system applies to the responsible Commissioner.

In the case of drafts of further inquiries to the Commission, the accompanying note to the Ombudsman explaining and justifying the further inquiries should contain the information mentioned above. If the direct transmission system applies to the responsible Commissioner, the note should also state whether the further inquiries are important enough to merit drawing them to the Commissioner's attention.

(b) Information to and action by the Registry

The *transmission sheet* which serves as a check list for the Registry has to be filled in by the LO at the level of the tick box: "*Direct transmission to Commissioner's cabinet*". The responsible LO should also mention the name of the contact person.

The Registry will send an e-mail containing a brief standard wording to the contact person identified on the transmission sheet, with the document as a pdf attachment. The e-mail will be copied to the responsible LO and the contact person in Mrs Wallström's cabinet. It will be registered as part of the file on the complaint.

The Commission Secretariat-General will be informed of the direct transmission to the responsible Commissioner's cabinet. This will be done by introducing a standard sentence in the "transmission e-mail", used by the Registry for sending all complaints-related documents to the Commission.

The above arrangements apply to documents drafted on or after 1 August 2006.

LO note 3/2006 - IJH 26 July 2006
Updated by JSA on 22 February 2008

APPENDIX 9: ON-THE-DESK GUIDELINES FOR DIFFICULT PHONE CALLS.

On-the-desk guidelines for difficult phone calls.

1. **Identify** your correspondent, present yourself.
2. **Identify** the subject matter - a complaint? an information request? does it concern previous contacts with the correspondent, and if so, who in our office dealt with it at the time?
3. **Take notes** from the beginning for a telephone note (the person might hang up during the call).
4. **Remain calm.**
5. **Be service-minded**, state that you wish to understand the person's problem.
6. **Give basic information only:** (a) Clarify the EO's standard procedures for complaint handling/information requests; (b) do not tell the person what the EO will/would do in the matter; (c) do not give information on the content of drafts circulating internally.
7. **Terminate or transfer** the call if the person becomes unreasonably aggressive, or if s/he asks questions you cannot answer. Examples of how to do this are:

"I'm sorry, but if you can't speak more calmly/politely, I will have to terminate the call".

"I'm sorry, but I don't think I can help you in this matter. I will have to transfer your call to one of my colleagues/superiors". Your HLU/supervisor may not speak the language, so you might have to transfer to another lawyer.

"I am sorry but, as I have already explained to you, the European Ombudsman is not authorised to deal with complaints against Member State's authorities/ private organisations. You have to understand that he cannot exceed his powers. Please do not insist and accept the advice he has given you with an eye to trying to help you solve your problem."

8. Remember to do a telephone note also in cases where either you or the correspondent has hung up. Get the telephone note checked by your supervisor, and inform our switchboard about the call.