



HOUSE OF LORDS

European Union Committee

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22nd Report of Session 2005–06

# The Work of the European Ombudsman

Report with Evidence

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Ordered to be printed 7 February 2006 and published 6 March 2006

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Published by the Authority of the House of Lords

*London:* The Stationery Office Limited  
£price

HL Paper 117

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Professor Ian Harden, Head of European Ombudsman Legal  
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## **ABSTRACT**

The European Ombudsman was established ten years ago and in November the Select Committee took the opportunity to meet the present Ombudsman, Professor Nikiforos Diamandouros, to learn of developments in that time and the direction his office intends to take in the future. The Report draws attention to the very large number of inadmissible complaints received and the steps being taken to remedy the situation, including strengthening the European Ombudsman Liaison Network. The Committee supports the measures being proposed by the Ombudsman. The Report recommends that more should be done at national level to ensure that citizens know to whom to complain, the European Ombudsman or a national ombudsman, so that complaints are lodged with the right authority first time.

# The Work of the European Ombudsman

## *Introduction*

1. On Tuesday 29 November 2005, the Select Committee met Professor Nikiforos Diamandouros, the European Ombudsman, and Professor Ian Harden, Head of the European Ombudsman Legal Department. The purpose of this Report is to make available, for the information the House, the oral evidence given by the Ombudsman and Professor Harden, and to draw attention to a number of issues raised in our discussion with the Ombudsman.

## *1997 Meeting and Report*

2. The Committee last met the European Ombudsman (then Mr Jacob Söderman) in July 1997. At that time the Ombudsman was a relatively new creation and we took the opportunity to learn about his mandate and procedures, the types of complaint he received and the opportunities for obtaining redress provided by the Ombudsman and his staff. We noted how few complaints were received from companies, and how many related to lack of transparency and failure to provide information.<sup>1</sup>

## *Ten years old*

3. In 2003 Professor Diamandouros succeeded Mr Jacob Söderman as Ombudsman. In 2005 the office of Ombudsman had its tenth birthday.<sup>2</sup> A glance at the Ombudsman's most recent Annual Report (for 2004<sup>3</sup>) shows that the amount of work his office handled had grown substantially. We were interested to learn the reasons for this, and to discuss with the Ombudsman his relationship with national ombudsmen, his recent initiatives promoting good administration, and the future direction of his office.

## *Role of the Ombudsman*

4. The essential role of the Ombudsman has not changed. His principal task remains to investigate instances of alleged maladministration<sup>4</sup> by a Community institution or body, including the European Commission, the Council of Ministers and the Court of Justice except when acting in its judicial role. The Ombudsman conducts inquiries, either in response to a complaint<sup>5</sup> or on his own initiative. On finding maladministration the

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<sup>1</sup> The European Ombudsman. 4th Report. 1997–98. HL 18.

<sup>2</sup> Mr Jacob Söderman was appointed, by the European Parliament, as the first Ombudsman on 12 July 1995.

<sup>3</sup> The European Ombudsman Annual Report 2004.

<sup>4</sup> The Ombudsman construes “maladministration” widely. Examples include administrative delay, refusal to supply information, discrimination and abuse of power.

<sup>5</sup> The citizen has two years from the date when he or she knew the facts of the problem within which to complain to the European Ombudsman. It is not necessary for a complaint to be referred to the European Ombudsman by an MEP. There is no fee for making a complaint to the European Ombudsman, which should be in writing. There is a form that can be downloaded from the European Ombudsman website, which can then be completed and submitted by e-mail. However, it is not necessary to make a complaint

Ombudsman can make recommendations to the institution or body concerned. He has no powers to order an institution or body to change a decision or grant redress by annulling decisions or by awarding damages.

5. The Ombudsman's jurisdiction does not extend to the supervision of the activities of national, regional or municipal administrations of the Member States even when they apply Community laws or policies. This factor is important when considering the issue of inadmissible complaints.

#### *Topics raised in evidence*

6. We raised a number of issues on our session with the Ombudsman:
  - Number of complaints (Q 3)
  - Inadmissibility of complaints (QQ 4, 9–11)
  - Network of European Ombudsmen (QQ 4, 6, 7)
  - Geographical origin of complaints (Q 8)
  - Relationship with European Data Protection Supervisor (QQ 12–13)
  - Charter of Fundamental Rights (Q 14)
  - Codes of Good Administration Practice (QQ 14, 15, 18)
  - Fundamental Rights Agency (Q 17)
  - Own initiative inquiries (Q 19)
  - Resources (Q 20)
  - Commission's Transparency Initiative (Q 21)

#### *Inadmissible complaints*

7. The number of complaints made to the Ombudsman has increased year by year, from 842 in 1996 to 3726 in 2004. The increase was gradual up until 2004 when there was a 53% increase. In large part this is a consequence of the enlargement of the Union in 2004. But, as the Ombudsman explained, there were other institutional changes (including the new composition of the Commission and Parliament and the Constitutional Treaty) which may have contributed to the exceptional level of increase. The Ombudsman reported that the 2004 level of increase had not been repeated in 2005 (Q 3).
8. Remarkably, some 74% of the complaints received in 2004 were found, upon examination, to be inadmissible. Many of these complaints should have gone to national ombudsmen but, as the Ombudsman explained, the respective competences of the European Ombudsman and national ombudsmen, in particular as regards complaints which involve EU matters, are not readily known. Following examination, he refers many complainants to an appropriate national agency. While this redirection may be helpful to the citizen making the complaint, all this work must be a drain on resources. The Ombudsman explained what measures were being taken to reduce the number of inadmissible complaints, including the development of an

interactive guide on his website to assist those wishing to make a complaint (Q 4).

9. Clearly there are a large number of citizens of the European Union who do not know what the Ombudsman's mandate is and which complaints should be addressed to him and which to their national authorities. To what extent this is explicable by the lack of knowledge of the role of national ombudsmen, by national history and by cultural attitudes is unclear. The low rate of inadmissible complaints from the United Kingdom reflects well on Ann Abraham, the Parliamentary Commissioner for Administration, and her fellow ombudsmen. But, as far as at least some other Member States are concerned, there is a problem which needs to be addressed not just by the Ombudsman but also at the local domestic level.
10. **We support the steps being taken by the Ombudsman to rectify the problem of inadmissible complaints, including the initiatives he is taking to provide information to potential complainants at the earliest point. We also consider that more should be done at Member State level, especially by national ombudsmen, to improve awareness of the mandate of the Ombudsman and their own mandates, so as to ensure that citizens lodge complaints with the right authority first time.**

*Relations with national ombudsmen—the Network*

11. The Ombudsman explained that co-operation with national colleagues is of fundamental importance for two major reasons. First, it would be impossible for the Ombudsman to deal with all complaints involving the Union. He said that even if “probably no more than 5 per cent of the entire population (450 million) of the European Union will ever in their lifetime have reason to have contact with European institutions, you are still talking about a very large number. So the only way to do it is through very systematic and very intensive and extensive collaboration and co-operation with colleagues at the national level”. Second, the principle of subsidiarity is also relevant to the activities of the European Ombudsman. The vast majority of complaints, even violations of Community law, occur and take place at national or regional level. Subsidiarity, the Ombudsman reiterated, means that decisions need to be taken as close to the citizen as possible (Q 6). **We agree.**
12. The European Ombudsman Liaison Network was established in 1996 to promote a free flow of information about Community law and its implementation and to make possible the transfer of complaints to the body best able to deal with them.
13. The Ombudsman gave examples of how it was intended to strengthen the Network. First, there would be “a statement—I suppose something akin to a mission statement in different contexts—which will be simple and be able to describe to potential users what to expect of the Ombudsman generally, be it at the national or European level”. Second, he is exploring the possibility of a “one-stop shop solution: in other words, establishing a single telephone number which can be used by potential users of the ombudsman institution and which can guide them to the right person, thereby saving them effort, energy and time in trying to find out the relevant information. So the combination between the single telephone number and a much more modern, interactive website might yield results and co-operation” (Q 6).

14. As already mentioned, **we encourage the Ombudsman in his efforts to reduce the number of inadmissible complaints. Strengthening the Network in the manner described should assist in that task. We are confident that the United Kingdom's Parliamentary Commissioner for Administration will play a full and constructive part in this work.**

*The EU Charter of Fundamental Rights*

15. The status of the EU Charter of Fundamental Rights has been a matter of some controversy and it will be recalled that there was much discussion of this subject in the context of the Constitutional Treaty. Although the Charter is currently not legally binding it is a document to which the Community institutions, especially the Commission and the Court of Justice, pay close attention.
16. The Ombudsman reported that the Charter is important to him in setting a benchmark by which to judge the behaviour of the Union's institutions. He said: "My predecessor has taken the position that since (the Council, the Commission and the Parliament) have declared solemnly that the Charter is for them a solemn proclamation, therefore they can be held accountable and bound by it. Since then I have taken the view that, if there is non-observance of any particular provision of the Charter by any of these three institutions, this constitutes *prima facie* maladministration: this position has not been contested to date by any of the three institutions. So notwithstanding the fact it is not legally binding, the Charter has in fact been a very important instrument in the hands of the European Ombudsman" (Q 14).
17. **We draw the attention of the House to this further example<sup>6</sup> of how important the Charter of Fundamental Rights, although not binding as a matter of law, is in practice. It provides a marker against which the acts of Union institutions can be measured and assessed.**

*Codes of Good Administration*

18. The European Code of Good Administration has been prepared by the Ombudsman and explains what Article 41 of the Charter (Right to good administration) should mean in practice.<sup>7</sup> It provides a useful yardstick when investigating alleged maladministration.
19. In his Annual Report the Ombudsman has suggested that the European Code of Good Administration might be converted into or replaced by a law on good administration. We queried whether this was the best way forward. He explained how all the major institutions of the European Union have adopted some form of a code; very many of which are very similar one another. However, in the Ombudsman's view, the existence of a large number of codes is very confusing for the citizen (Q 15).
20. The Ombudsman explained that what he is striving for at the present time is the adoption, through an inter-institutional agreement, of a uniform code. He believes that the European Code would provide a good basis for such a code and that that would have the support of the Commission (Q 15). In the Ombudsman's view, "the important thing is to be able to lessen the degree of

<sup>6</sup> In our Report *Human Rights Proofing EU Legislation*, we described the important role which the Charter lays in determining those fundamental rights that form part of the general principles of Community law: 16th Report 2005–06, at paras 8–9.

<sup>7</sup> The European Code of Good Administration (2005), at p 7.

confusion that may arise among citizens when confronted with a multitude of codes. Once we have that, the particular legal character of that code, I think, would be less important at this point, and I am much more prepared to move piecemeal towards the future, secure the capacity to be able to serve citizens better in a uniform code and then to assess the situation down the road and see if we need to go one step further” (Q 18).

21. **Any unnecessary proliferation of codes seems undesirable and potentially confusing. We therefore welcome the Ombudsman’s initiative to promote the European Code of Good Administration and will be interested to see the reactions of the Union’s institutions to his proposal for its universal adoption. This approach seems far preferable to the creation of some administrative law or statute.**

#### *Own-initiative inquiries*

22. The Ombudsman dealt with a total of eight own-initiative inquiries in 2004, including one on good administration in the European Schools and another on an internal complaints procedure for seconded national experts. He explained the criteria employed in deciding whether to launch such an inquiry. In his Annual Report the Ombudsman has signalled his intention to increase the number of own-initiative inquiries. As we discussed with him, this has implications for resources.

#### *Resources*

23. When the office of Ombudsman was established he had a total staff of 13 and an annual budget of EUR 1,200,000. That has risen to 51 and by 2005 the budget had risen to EUR 7,312,614.<sup>8</sup> The last increase in staff, 38 to 51 posts from 2004 to 2005 (an increase of 33%) is explained in the Annual Report as being a consequence of enlargement and the need to have adequate knowledge of languages and legal systems in the new Member States.
24. As mentioned above, the Ombudsman intends to launch more own-initiative inquiries. We asked whether this meant that he would be asking for more resources or would be finding efficiency savings elsewhere. It appears the Ombudsman will do that extra work within existing resources. He noted, with gratitude, the recent addition to his resources and believed information technology would help increase efficiency so as to release resources to take on extra own-initiative inquiries. The Ombudsman said: “So the answer to your question is that I have not so far considered the possibility of going before (the European) Parliament and asking for additional resources, and unless I am faced with some kind of avalanche, concerning a particular complaint or particular instance of maladministration it is not my intention to factor that into my budget for the foreseeable future” (Q 20).
25. **If the Ombudsman, with the assistance of the national ombudsmen as described above, can get the inadmissible complaints problem under control that should, we believe, free up more resources. While own-initiative inquiries are undoubtedly an important element in the Ombudsman’s armoury, how those resources are to be used is a question to which we would wish to return.**

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<sup>8</sup> *The European Ombudsman Budget*, by Juan Manuel Fabra Valles, in *The European Ombudsman, Origins, Establishment, Evolution (2005)*.

## **APPENDIX: LIST OF PREVIOUS REPORTS**

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Evidence by Commissioner Franco Frattini, Commissioner for Justice, Freedom and Security on Justice and Home Affairs Matters (1st Report, HL Paper 5)

The Future Financing of the Commons Agriculture Policy (2nd Report, HL Paper 7)

The Constitutional Treaty: Role of the ECJ: Primacy of Union Law—Government Response and Correspondence with Ministers (3rd Report, HL paper 15)

Correspondence with Ministers: June 2004 to February 2005 (4th Report, HL Paper 16)

The 2006 EC Budget (5th Report, HL Paper 22)

Completing the Internal Market in Services (6th Report, HL Paper 23)

European Union Fisheries Legislation (7th Report, HL Paper 24)

Evidence from the Legal Affairs Committee of the European Parliament on European Contract Law, Rome II and Better Regulation (8th Report, HL Paper 25)

Ensuring Effective Regulation in the EU (9th Report, HL Paper 33)

Evidence from the Minister for Europe—the European Council and the UK Presidency (10th Report, HL Paper 34)

The European Union's Role at the Millennium Review Summit (11th Report, HL Paper 35)

The United Kingdom Presidency: Defra's Priorities (12th Report, HL Paper 36)

Proposed EU Consumer Credit Harmonisation Directive: Interim Report (13th Report, HL Paper 37)

Economic Migration to the EU (14th Report, HL Paper 58)

Scrutiny of Subsidiarity: Follow-up Report (15th Report, HL Paper 66)

Human Rights Proofing of EU Legislation (16th Report, HL Paper 67)

The World Trade Organisation: The Hong Kong Ministerial 13th–18th December 2005 (17th Report, HL Paper 77)

Too much or too little? Changes to the EU Sugar Regime (18th Report, HL Paper 80)

Review of Scrutiny: Common Foreign and Security Policy (19th Report, HL Paper 100)

Paediatric Medicines: Proposed European Union Regulation (20th Report, HL Paper 101)

Including the Aviation Sector in the European Union Emissions Trading Scheme (21st Report, HL Paper 107)

European Small Claims Procedure (23rd Report, HL Paper 118)

Annual Report 2005 (25th Report, HL Paper 123)

# Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION

TUESDAY 29 NOVEMBER 2005

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Present	Blackwell, L	Radice, L
	Bowness, L	Renton of Mount Harry, L
	Grenfell, L (Chairman)	Thomas of Walliswood, B
	Harrison, L	Tomlinson, L
	Maclennan of Rogart, L	Woolmer of Leeds, L
	Marlesford, L	Wright of Richmond, L
	Neill of Bladen, L	Wallace of Saltaire, L

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## Examination of Witnesses

Witnesses: PROFESSOR NIKIFOROS DIAMANDOUROS, European Ombudsman, and PROFESSOR IAN HARDEN, Head of European Ombudsman Legal Department, examined.

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**Q1 Chairman:** Professor Diamandouros and Professor Harden, welcome both of you to the Select Committee on the European Union. It is a real pleasure to see you here, we have not had the pleasure of meeting with the Ombudsman since 1997, some eight years ago, when your predecessor came to see us and we are very happy to have this opportunity to meet with you. This meeting is on the record and it is being webcast. We will send you a transcript of the discussions so that you have a chance to look through it and see that what you have to say has been properly reflected. We will get that to you as quickly as we can. We are very happy to see Professor Harden, Head of your Legal Department, here with you too, and it goes without saying if at any point you would like Professor Harden to join in the conversation, that is fine with us.

*Professor Diamandouros:* Thank you.

**Q2 Chairman:** I think we might start by hearing an opening statement from you if we may.

*Professor Diamandouros:* Thank you, my Lord Chairman. My Lords, I am very grateful to have been given the opportunity to provide evidence before this Committee. I know my predecessor has done it already; it is a very welcome opportunity for me to be able to do so now. I will briefly say that I am in the United Kingdom as part of an information tour, which I am undertaking throughout the European Union. I have already visited all the 25 Member States, always as the guest of my colleagues, in this particular case of course Ann Abraham, the incumbent Parliamentary Commissioner for Administration. The purpose of the information tour is for me to be able to reach out to the various constituencies within the European Union, to inform citizens and residents of

the Union of their rights as European citizens and to help them to understand how the European Ombudsman can help them make use of these rights and of the various instruments of the European Union. It is in that context that I very much welcome the opportunity to provide evidence to this Committee.

**Q3 Chairman:** Thank you very much indeed. Maybe we could proceed to the questions. We know that between 1996 and 2004 the number of complaints that the Ombudsman has received has more than quadrupled. One supposes that the enlargement of the European Union may be partly responsible for this, on the other hand there may be other reasons. Could you enlighten us a little on this?

*Professor Diamandouros:* I would be happy to do that. It is indeed the case that there has been a very major increase, particularly in the year 2004, when we had a 53 per cent increase in complaints compared to 2003. On the other hand, in the 10 years the institution has been around, the increase has varied from about 5 to 17 per cent, depending on the years. Why in 2004? I should think it is probably an exceptional year in which we had a new European Parliament, a new European Commission, the enlargement of the European Union and also a great deal of debate around the proposed Constitutional Treaty. So all of that, along with the fact that by the end of 2004 I had visited all 25 Member States in a very intensive information campaign, might provide a plausible explanation for why we had the increase in that year. This year, 2005, the complaints have maintained themselves at the same level as last year, which means we have not had another 53 per cent

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increase; we have in fact had a very modest increase or have stayed at the same level.

**Q4 Chairman:** The next question is rather a familiar one to us, and that is making sure a proper distinction is made between state level and European Union institutional level, and we know you have problems here. Clearly there are a large number of people, citizens of the European Union, who do not know what your mandate is and they do not understand what complaints should be addressed to you and what should be addressed to their national authorities, and you have provided us with an interesting statistic about that. What can you do to improve awareness of your mandate? It is obviously an information problem. Are you under-resourced or is it at the national level where your mandate has not been properly explained?

*Professor Diamandouros:* You are quite right that this is one of the major concerns I have and it stems from the fact that it is very difficult for the average person, however sophisticated he or she may be, to make the distinction between violation of community law at national level, where community law is involved nevertheless, and the European level. What I have tried to do is to tackle this thing in three ways. I try to provide information, given in the form of brochures, which describe what the Ombudsman can and cannot do, precisely focusing on the limitations of my mandate and the fact that it is exclusively at the level of European issues that I can do that. Secondly, I try to work very closely with my colleagues throughout the Union, through an instrument called the Network of European Ombudsmen, which was set up under Jacob Söderman and which we have resolved to intensify and deepen in our latest meeting in The Hague earlier this year. This is a mechanism which allows us to transfer cases from the European level to the national level, to the appropriate authorities, shall I say, to exchange information and best practice, and to reach the citizens of the Member States, informing them of what would be the appropriate level of potential redress. The third and final step, which at this point I am exploring how to do, is an interactive guide for complaints on our website. In other words, we are now very significantly overhauling our website, trying to make it much more interactive, much easier for citizens to access information and therefore to be guided accordingly. Let me lastly say, Chairman, that we also manage, despite the fact that about 70–75 per cent of the complaints are beyond my remit, to provide concrete information to 70 per cent of those who sent that 70–75 per cent, and guide them towards the specific institution that can provide them with the information to address their problem. Specific information does not mean, “Please address the

Ombudsman in your country” but rather names, addresses, telephone numbers, e-mail addresses, things like that, so they are very clearly guided.

**Q5 Chairman:** That must be quite time-consuming for you, to have to guide 70 per cent of the wrongly-directed questions to the right quarters. I am sure you will be very happy to see the 70 per cent coming down as rapidly as possible.

*Professor Diamandouros:* Yes, indeed.

**Chairman:** Lord Tomlinson on my left, who is a former Member of the European Parliament, will ask the next question.

**Q6 Lord Tomlinson:** Professor Diamandouros, I think you have already to a large degree answered the question I was going to ask. You have answered it by having Ann Abraham here with you and I think all members of the Committee very much welcome what you have said about your information tour being very much done in collaboration with the national ombudsmen and you have also referred to the Network of European Ombudsmen and some of the figures you have given us. How important is it to develop this process of communication between yourself and the national ombudsmen? Are there any institutional benefits which can be achieved from establishing yet closer working relationships? If so, what closer working relationships would you like to envisage, would you see as being mutually beneficial, both to yourself, to the national ombudsmen and thus to the European citizen?

*Professor Diamandouros:* My Lord, the co-operation with national colleagues is of fundamental importance to the work of the European Ombudsman for two major reasons. One very obvious one is that it is a sheer impossibility for one institution to be able to address the needs of 450 million potential complainants. Even if—I am thinking intuitively—probably no more than 5 per cent of the entire population of the European Union will ever in their lifetime have reason to have contact with European institutions, you are still talking about a very large number. So the only way to do it is through very systematic and very intensive and extensive collaboration and co-operation with colleagues at the national level. The second consideration has to do, of course, with the fact that the principle of subsidiarity needs to inform the activities of the European Ombudsman, which translates into the fact that decisions need to be taken as close to the citizen as possible. The vast majority of complaints, even violations of Community law, occur at the national or regional level and therefore it is important that I collaborate with my colleagues at these levels to be able to inform them and, through them, to inform also the

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major institutions in these countries, particularly the public administration and the judiciary, which are two of the major institutions through which knowledge about Community law and its application at the Member State level can spread. That is a major reason why we resolved on 12 and 13 September this year in The Hague, at the biennial meeting of the national ombudsmen, to strengthen and deepen the Network of Ombudsmen. I can mention two very good examples of how this could be done. We are, for one, thinking of coming up with a statement—I suppose something akin to a mission statement in different contexts—which will be simple and be able to describe to potential users what to expect of the Ombudsman generally, be it at the national or European level, and, of course, more specifically of the European Ombudsman. I expect to be able to put this statement in draft form before my colleagues at the next seminar of the national ombudsmen, which will take place in Strasbourg in 2007. Beyond that, I am also exploring the possibility of coming up with what we would call a one-stop shop solution: in other words, establishing a single telephone number which can be used by potential users of the ombudsman institution and which can guide them to the right person, thereby saving them effort, energy and time in trying to find out the relevant information. So the combination between the single telephone number and a much more modern, interactive website might yield results and co-operation.

**Q7 Lord Tomlinson:** Can I pursue one small question. Because of the importance of this Network of European Ombudsmen, are you, in the stages of the general discussions that there are with the next round of accession countries, participating in any discussion with their national ombudsmen, so that as and when there is a time of further enlargement they are in a position to hit the ground running?

*Professor Diamandouros:* Indeed, this is the case. In what we call the Network of European Ombudsmen, we now include 30 countries rather than 25. In fact, we include in addition to the 25, Iceland and Norway as part of the European Economic Area, and then all the candidate countries. I note that the candidate countries, with the exception of Turkey, have, at this point, either nominated or elected an ombudsman. Turkey has introduced legislation in the National Assembly in order to provide for a national ombudsman. I have personally been to all but one of the candidate countries. I expect to visit Croatia and Bulgaria again—Bulgaria has just elected an ombudsman. I have been to Turkey twice trying to promote the adoption of pertinent legislation. In my former capacity as the first national ombudsman of Greece,

I had multiple occasions to visit all of these countries, including the candidate countries, and therefore have long-established relations and a network of contacts there, which will be useful to me as European Ombudsman in the future, when further enlargement of the European Union produces a commensurate increase in the pool of potential complainants.

**Chairman:** This question has sparked a lot of interest because I have two supplementaries on this.

**Q8 Lord Harrison:** I remember when your predecessor was appointed he was asked whether a man of the North, as he was, could serve the whole European Union. He answered, as his name was Söderman he was also a man of the South, so he could. You are a man of the South and you have most experience in that area of the European Union, and I am pleased to hear you are setting up this network. Page 26 of your Annual Report refers to the geographical origin of complaints, and I hope and believe that when you talk to your fellow ombudsmen that you ask them about some of the things this table clearly shows. For instance, the top three complaining countries, two of which have newly arrived, are the smallest countries—Malta, Luxembourg and Cyprus—but of the four who least complain, and Britain complains the least, there are three major countries, namely, United Kingdom, France, Italy and Latvia. I wonder if you and your colleagues have worked on these statistics, which are fascinating, in terms of what it tells you about the knowledge that people have of complaining to the Ombudsman and anything else which might arise from the division of having 25 countries?

*Professor Diamandouros:* It is indeed very much the case that Jacob Söderman, being a man of the South in his own name—who for reasons I have never been able to divine, has referred to me as the only Nordic Greek he knows—produced and installed an infrastructure for addressing the kind of questions you have just put to me. The answer to your question, my Lord, is very complex because there are different reasons explaining different outcomes but let me at least try to reply by making two points. The United Kingdom, for example, has about 13 per cent of the population of the Union but about 5 per cent of the number of complaints coming to the Ombudsman as a percentage of the total. On the other hand, the quality of the complaints coming to the European Ombudsman from the United Kingdom is, on average, higher, judging quality in terms of admissible complaints. I would venture to consider that, probably, this results from the fact that, in this country, most citizens and residents are better aware of the Ombudsman as an institution because of the plethora of ombudsman schemes, be they in the private or the public sector, which exist

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in this country, and therefore it makes it much easier for people to acquire the requisite sophistication to know how to apply to the European Ombudsman. On the other hand, in the new Member States and particularly post-Communist democracies, there is a great tendency to look to the Ombudsman as a mechanism for denouncing rather than for resolving; denouncing the state authorities, denouncing iniquitous arrangements. I would use as an example Poland, which has arguably the largest national ombudsman institution in the Union with about 300 people working for the incumbent national ombudsman, who receives about 60,000 complaints per year. Poland is already ranked fourth in the number of complaints coming to me in absolute numbers, 98 or 99 per cent of which are inadmissible because there is insufficient knowledge of what the European Ombudsman can do and also because, as is typical or peculiar to the eight post-Communist democracies, there is a lack of trust in institutions, including the court system, the prison system, and the social security system. So I have a significant number of complaints coming to me denouncing the court system, asking me to intervene, or the prison system, or the social security system. So there are variations. My last comment on that, if I may, is that size is not necessarily the critical ingredient here, but rather greater exposure and familiarity with the processes of the European Union. So Belgium and Luxembourg are countries that have a significant number of administrative complaints and, relative to their population, a higher percentage, primarily because the institutions are there and lots of people inhabiting those countries know about the rules of the game. Lastly, the more recent democracies in the southern part of Europe have an interesting twist, which concerns environmental questions. In other words, Spain, Portugal, Italy and Greece have witnessed a significant increase in complaints, in large part based on Community law, concerning the environment and linked to industrial tourism in that part of Europe.

**Q9 Lord Neill of Bladen:** Professor, I apologise for not being here when you started your evidence. We can spend a lot of time on these fascinating statistics, but one page I am interested in is page 21 of your Annual Report for 2004 on Transfers and Advice. In the very first heading, quite a large number, almost a thousand cases, 906, are “advice to contact ombudsman or petition a regional or national parliament.” What I am interested in is, what degree of analysis do you have to carry out in order to tender that advice? For example, we have in England, as you know, the same language about maladministration and quite a lot of learning about what that embraces, but I do not know what it is

like across the rest of the Community, the other 24 countries, whether there is a problem on exactly what is the scope of jurisdiction of a particular ombudsman. A similar question arises in Parliament. What do you have to do in looking at an inadmissible complaint as far as you are concerned before you decide, “This is advice to go to whatever ombudsman”? Do you understand my point?

*Professor Diamandouros:* Sure. To give you first the quantifiable answer, we usually try, successfully, to determine admissibility within the space of one month. So, it takes us about one month to be able to determine whether a complaint is admissible or not. The substantive criteria for admissibility have to do primarily with whether the complaint concerns a European institution or not. In the vast majority of cases in the category you pointed to, these are simply complaints directed against national authorities rather than European authorities, so the major criterion is, “Does it fall within the remit of the European Ombudsman? Does it concern a European institution?” There is a bewildering variety of misunderstandings of what a European institution is, including assertions that the ministry of a Member State is by definition a European institution, since the Member State is a member of the European Union, and you have to explain all these things. But within about a month we can determine admissibility and then we can answer that. My Head of Legal Services points to an area I have not answered. The way we usually address the issue of whether a question falls within the remit of a colleague, is by phrasing it very carefully and then by writing two letters, one to the complainant and one to the other ombudsman. The letter to the ombudsman will say, “This is not within my mandate. We believe it may fall within your mandate. It is for you to determine and it is in fact for the complainant to contact you directly.” So we put them in touch but we do not necessarily transfer the files unless we have the express authorisation from the complainant upon request to so do, and further we will in fact signal to the colleague at the national level our belief that it may fall within his or her mandate but leave it for them to determine.

**Q10 Chairman:** When you say it takes a month to establish the admissibility, is that a month from the date that the complaint is received in your office because I assume there is a bit of a backlog? Or is it that once you have got your hands on it, it has come to the top of the in-tray, so to speak, the month is from that date?

*Professor Diamandouros:* My Lord, we try, usually with success, not to have any significant backlog—“significant” is the critical word here. We usually take one week to acknowledge receipt of a

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complaint and then we take one month from the moment it has been received to determine admissibility. We do not have significant backlogs in this particular area. At the end of the year, obviously we do have cases that we have not been able to handle but usually they are ones that arrive towards the end of the year and therefore they have to be transferred to the next calendar year.

**Chairman:** Lord Wright has dealt a lot with data protection, so I will ask him to ask the next question.

**Q11 Lord Wright of Richmond:** I am chairman of the Sub-Committee on Home Affairs, and a lot of the scrutiny and reports we have done over the last period have revealed concerns about data protection and data safeguards. When you say you remit subjects to colleagues, I take it you are referring to national ombudsmen?

*Professor Diamandouros:* Yes.

**Q12 Lord Wright of Richmond:** What about the European Data Protection Supervisor? Do you both deal with complaints on data protection or do you tend to remit complaints to him?

*Professor Diamandouros:* I very much appreciate the opportunity to address this novel dimension of my relationship with a new institution. I have had occasion to meet with the new Data Protection Supervisor, Mr Hustinx, on at least two occasions, immediately following his appointment and, more recently, one year following his taking office. We follow a very pragmatic approach, which is that we will seek the advice of the Data Protection Officer in case any particular complaint involves a data protection aspect. It is entirely feasible and reasonable to find cases that contain substantive issues of maladministration but that also raise issues of data protection. In this latter case, we will certainly reach out and ask for advice. Mr Hustinx, along with Mr Bayo Delgado, the assistant supervisor, visited me only last month and we have benefited very much from the paper on *Public access to documents and data protection* which they issued in July 2005; we found this very useful and we have been able to rely on it. Also, we interact with them informally, and they have agreed that, in the event we need to consult with one another, we will do so. So we are mindful of the data protection dimension and we are very deeply appreciative of Mr Hustinx's pragmatic approach. He does not wish to raise the spectre, if I can use that word, of data protection as a mechanism for impeding further investigations.

**Q13 Lord Wright of Richmond:** Have you had any cases, or do you know whether the European Data Protection Supervisor has had any cases, of

referring complaints back to the national, in our case, Information Commissioner?

*Professor Diamandouros:* I have not had any cases, and I am not aware if Professor Harden has had a case, involving a transfer to the national level. He did not mention that as far as I recall.

*Professor Harden:* My Lord Chairman, my recollection is also that the European Data Protection Supervisor in his meeting with the Ombudsman did not mention his relationship with the national data protection supervisors. To my knowledge, the European Ombudsman has not had occasion to refer matters to the Information Commissioner or to equivalent offices in other Member States. But that would seem to be an appropriate course of action if such a complaint were to come to the European Ombudsman in error.

**Lord Wright of Richmond:** Thank you very much.

**Chairman:** Lord MacLennan has a question on the Charter of Fundamental Rights.

**Q14 Lord MacLennan of Rogart:** Professor, I would like to ask about the relationship of the Code and the Charter to each other. In your introduction to the Code this year, you speak of it as amplifying the generality of the Article 41 provision in the Charter. Do you see the rights spelt out in the Code as being desirable justiciably, so that if the Charter was implemented, made part of the Union's constitutional provision, more than declaratory as it now is, these rights would result in the enactment of the Charter if those are spelt out in detail in the Code?

*Professor Diamandouros:* I think I would be able to give you two complementary answers to that. To begin with, although indeed, as you very correctly pointed out, the Charter is not a binding instrument at this point, the fact remains that the three major institutions of the European Union—the Council, the Commission and the Parliament, which account for over 90 per cent of the complaints reaching the European Ombudsman—proclaimed it solemnly in December 2000. My predecessor has taken the position that since these three institutions have declared solemnly that the Charter is for them a solemn proclamation, therefore they can be held accountable and bound by it. Since then I have taken the view that, if there is non-observance of any particular provision of the Charter by any of these three institutions, this constitutes *prima facie* maladministration; this position has not been contested to date by any of the three institutions. So notwithstanding the fact it is not legally binding, the Charter has in fact been a very important instrument in the hands of the European Ombudsman. As concerns particularly Article 41 [of the Charter] and the Code, of course we see the Code as trying to, so to speak, be more specific

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about this particular article. It provides, if you like, a snapshot of the case-law of the [Community] court at the time the Charter was drafted. I think the important thing is that we tend to conceive of Article 41 as an open-ended article, such that it allows us to be able to take in new advances in case-law and new developments. We do not believe it was intended to be an exhaustive explanation of the rights in the Charter.

**Q15 Lord Maclellan of Rogart:** The European Parliament passed a resolution to enforce the Code of Practice, have the other major institutions of which you spoke similarly accepted the Code in the manner in which they accepted the Charter as being declaratory and giving greater specificity and binding them?

*Professor Diamandouros:* My Lord, this is a subject very close to my heart and thank you for giving me a chance to address it. The answer is that all the major institutions of the European Union have adopted some form of a code; very many of which are very close to one another. This, however, notwithstanding, my position is that the existence of a large number of codes creates a very confusing situation for the citizen, particularly for the new Member States, who come in and are being told that there is a different code for each of its major institutions. For example, the Parliament has adopted this Code, the Commission's Code is very close to this one, but the fact still remains we have this variety. I have already raised the issue with the European Commission. I had occasion to meet with the President and the College of Commissioners in May this year, specifically to raise this matter with them and to plead with them to move forward to make provision for the adoption of a uniform code that would be applicable to all the institutions of the Union. I am persuaded that this Code could serve as a very good basis for such a uniform code and I have derived a considerable degree of encouragement from the fact that President Barosso has indicated that it is his intention, and the intention of the Commissioners, to move in that direction. I recently have had occasion to speak with Vice President Wallström, who is responsible for relations with the Ombudsman, and I am reinforced in the sense that there may be movement towards the development of a uniform Code in the year 2006.

**Q16 Lord Blackwell:** Your introduction to the Code was written in January 2005, of course since then the Constitution has been dropped and the Charter along with it. There is no right which does not also imply a cost to somebody else, so whether or not the Charter of Fundamental Rights is the right balance is a matter of debate. Given that it has never been adopted by the UK Parliament, by the

European Union as a whole, could not a citizen complain to you that if one of these institutions is taking an action in accordance with the Charter of Fundamental Rights that is in fact maladministration, that they are taking action on the basis that is not part of the legal base?

*Professor Diamandouros:* My Lord, any citizen is free to complain to me about maladministration. It is an inalienable right of a citizen to do that. It is my obligation to delve into the facts and determine whether I find there to be a case of maladministration or not. My own policy, if I may say so, is, in fact, to base myself not exclusively on the Charter of Fundamental Rights but to be guided by the European Convention on Human Rights, the case-law of the courts in the European Union but also the case-law of the European Court of Human Rights. We try to bring in and be guided and informed by a variety of instruments, and therefore to try and enforce fundamental rights particularly in areas concerning due process, which we find to be increasingly very important. So I would have to delve into the facts specifically to be able to determine whether indeed the allegation of maladministration by the sheer invocation of the Charter will, in fact, be a case of maladministration. However, given the fact I rely on other instruments as well I am probably inclined to believe this is not an easy case to make but I still have to look at the facts. It is my obligation, so to speak, to do that.

**Chairman:** Still on fundamental rights, Lord Bowness.

**Q17 Lord Bowness:** Professor Diamandouros, you actually in your Report put citizens' rights as your first challenge; "The first challenge is to ensure citizens' rights under European law are respected at every level of the Union", and indeed in that chapter you talk about the Charter of Fundamental Rights, if I may say so quite rightly, and the fact it has been proclaimed by the three major institutions. I would be interested to know, given you see that as your first priority, how you think the proposed Fundamental Rights Agency will impinge on your work. While I am asking the question, do you perhaps even think it is necessary, given your role and, although outside your jurisdiction, given the role of the Council of Europe?

*Professor Diamandouros:* My Lord, ombudsmen see themselves as institutions which operate outside the narrowly conceived field of politics. I could give you a political answer, which would be that it is not for me to determine what the political process of the European Union will be in establishing the Agency, but I will not do that. I will simply say to you that there is, I think, convincing evidence to suggest that if the Agency of Fundamental Rights of the European Union is constructed properly—and I will

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comment on that in a second—it could complement the work of the European Ombudsman and also provide very valuable information concerning fundamental rights to all the institutions in the Union. So the important thing is how the Agency will come out eventually through the legislative process. The draft we have before us certainly suggests that there is ample room for profiting from its existence; the proposed Agency can serve as an observatory, as a monitoring mechanism and will in fact be able to provide us with valuable information concerning the extent to which Member States observe and adhere to fundamental rights, and to that extent the Ombudsman could certainly profit from it. Having said that, I would also say that we have to draw another important distinction between my two roles. In other words, I certainly will continue to have the role of holding the Agency accountable, as one of the bodies of the Union, and therefore supervise it and act as a mechanism of external control and accountability for it. This is a different role from the one of co-operation with the Agency through information exchange and policy development in the human rights field, and I very much look forward to being able to do that. I think it would also be very useful for my national colleagues to profit from that. So assuming the eventual form of the outcome of the legislative process is as close to what now exists, I see the Agency as being a potentially valuable instrument of information and co-operation for the European Ombudsman.

**Chairman:** We have just under 10 minutes left and I suggest we have time for two questions only. You have covered very well, Professor, the European Code of Good Administration already so I think we might go straight on to the next two questions.

**Q18 Lord Marlesford:** I am not clear at all, my Lord Chairman, why the Professor actually feels he needs to convert the Code, which is an organic living thing which develops, into a statute. Who is really going to benefit from that? I would also like to know which countries are in favour of doing that and which have expressed no view and which are against.

*Professor Diamandouros:* My Lord, I hope I did not speak of a statute in my remarks. Let me put it this way, my predecessor and I have also thought of the possibility of promoting the creation of a single administrative code law. This certainly would have been much easier eventually under the provisions of the Constitutional Treaty, which provided the legal basis for doing that. My own thinking has evolved in this particular area, which is why in my remarks I suggested what I am now striving for is the adoption, through an inter-institutional agreement, of a uniform code which would not be the same

thing as a legal instrument or indeed a statute. From my point of view, the important thing is to be able to lessen the degree of confusion that may arise among users when they are confronted with multiple codes. Once we have that, the particular legal character of that code, I think, would be less important at this point, and I am much more prepared to move piecemeal towards the future, secure the capacity to be able to serve citizens better in a uniform code and then to assess the situation down the road and see if we need to go one step further.

**Q19 Lord Woolmer of Leeds:** You reminded us that you can take your own initiative to launch inquiries into what appears to be systemic problems in institutions, and you tell us you completed two in 2004. You also tell us that you intend to launch more inquiries on your own initiative in order to identify problems and encourage best practice amongst European institutions. What criteria do you intend to apply in pursuing that particular objective?

*Professor Diamandouros:* The usual criteria employed by the Ombudsman to determine whether there is need to launch an own-initiative investigation are either qualitative or quantitative, to put it very briefly. In other words, if I find evidence of a large number of complaints concerning a particular institution, I have *prima facie* evidence that there are systemic problems and therefore, potentially, systemic maladministration. This would be one reason that would prompt me to consider launching an own-initiative investigation. Conversely, I may also decide that a single case, which might represent an egregious violation of fundamental rights warrants, the launching of an own-initiative investigation irrespective of the fact, in quantifiable terms, it is one and not many. These are two of the major criteria that I use to try to determine whether there is a reason to launch an own-initiative investigation. Beyond that, I can be reactive in terms of a case or I can be pro-active if I find that there is an issue that is being discussed in the public domain that touches upon very important concerns, and that might also prompt me to consider that. To give you an illustrative example: this past year, I launched an own-initiative investigation into the area of disabilities. I had a series of complaints from disabled persons and decided to launch a broad range inquiry, inviting input from colleagues in the 25 Member States by using the website and the electronic means available to us. So, I would say, this is a hybrid of a case; I could have made a narrowly constructed investigation of complaints on a particular area of disability but I chose, in fact, to broaden it to be able to investigate and to ask the

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Commission what it is going to be able to achieve on broader issues concerning disabilities.

**Q20 Lord Woolmer of Leeds:** If you intend to be more proactive, which appears to be the thrust of that, does that mean that you intend to look for more financial resources or are you going to fund more proactive inquiries from existing resources?

*Professor Diamandouros:* My Lord, I think it is incumbent upon me to be able, in fact, to square the circle; it is incumbent upon me to be able to try and provide the best of my existing resources. I will say, frankly, that I was grateful to the European Parliament for having agreed to very significantly increase my budget but that was based on facts rather than intentions. When I had a 53 per cent increase in complaints in the year 2003, this was, I think, sufficient evidence for the Parliament to provide for additional resources. From then on I figured I can also rely, and we have been able to do so, on information technology and other kinds of technology that allow us to be able to reduce the workload of my colleagues and therefore to channel their energies into such kinds of initiatives. So the answer to your question is that I have not so far considered the possibility of going before Parliament and asking for additional resources, and unless I am faced with some kind of avalanche, concerning a particular complaint or particular instance of maladministration, it is not my intention to factor that into my budget for the foreseeable future.

**Chairman:** A final quick question and, I think it will have to be, a quick answer.

**Q21 Baroness Thomas of Walliswood:** Professor Diamandouros, transparency, or the lack of it, has been a concern for many years and you have written a special report that there is a requirement on the Council to meet publicly. Meanwhile, the Commission has launched a transparency initiative—a phrase which I must say fills me with doom! I wondered how you thought these two approaches were going to interact. Do you think

they are complementary or do you think they are getting in a muddle as to who is deciding what?

*Professor Diamandouros:* My Lady, ombudsmen are very flexible institutions. Therefore, they can in fact choose to profit from whatever is available to them. So the answer to your question is that I certainly will pursue with vigour the agenda concerning the reinforcement of transparency and openness, both by proactive and reactive means, as is evidenced in my special report to Parliament, and will then also profit from whatever other instruments the European Union has put forward. I have had occasion to speak with Vice President Kallas, who is very much in charge of the initiatives for transparency vis-à-vis the public administration of the European Union, and I have been encouraged by his willingness, in fact, to co-operate with the Ombudsman to help us out. I do not know how the transparency initiative will play itself out. I think it is an important and welcome development that the Commission is increasingly recognising the need for transparency, but let us recall that “transparency” entered into the vocabulary and imagery of the Union institutions only six or seven years ago, at the turn of the Century. I very much welcome that and am also very encouraged by the fact that Vice President Wallström comes from a country with a very strong tradition of openness and transparency and is very much willing to work with us to promote that. So I remain steadfastly devoted to that goal and I shall make use of whatever is there for me.

**Q22 Chairman:** Thank you very much indeed. We have to let you go, Professor. You have been very kind to stay a little longer than we had originally envisaged but that just shows, as does the intensity of the conversation we have had, the great interest that we have in what you are doing and the great interest that we have had this afternoon in hearing you respond to our questions. It has been extremely illuminating and very helpful. So I thank you and Professor Harden very, very much indeed, and may I take this opportunity to wish the post of Ombudsman a Happy 10th Birthday?

### Letter from the European Ombudsman to the Chairman

Following a highly successful visit to London at the end of November, I am writing to thank you for inviting me to give public evidence to the House of Lords European Union Select Committee and for the excellent quality of discussion that followed my presentation. I very much appreciated the opportunity to meet with you and your colleagues and to inform you of the work of the European Ombudsman, and was most impressed by the high level of knowledge of the Committee’s Members, the pertinence of the questions asked and the high attendance at the meeting.

I am convinced that my visit to the UK achieved its aim of informing parliamentarians, civil servants, ombudsman colleagues and others working in the field of non-judicial dispute resolution, the academic community, potential complainants and other citizens of the work of both the European Ombudsman and of the European Network of Ombudsmen which my office co-ordinates.

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I would like to wish you continued success in your work, particularly given the increasingly important role that Members of the European Union Select Committee will have in reconnecting Europe with its citizens. If I can be of any assistance to you in the future, then please don't hesitate to get in touch.

I send you my best wishes for the New Year and hope that we will have the chance to meet again in the future.

*13 January 2006*

**Letter from the Chairman to the European Ombudsman**

Thank you very much for your letter of 13 January. We found our session with you extremely useful, and I am glad that you were pleased with it. Your presentation was very informative and persuasive, as were your answers to our questions. All members much appreciated the discussion and I am glad that they demonstrated their genuine interest in the work of the European Ombudsman.

We expect to publish our short report, including the evidence you gave us, in the course of next month. You will, of course, receive a copy immediately on publication.

Once again, may I thank you most warmly on behalf of the Select Committee for taking the time to meet with us and for giving us such a valuable insight into the role and activities of the Ombudsman. We wish you well in your continuing efforts to inform interested institutions and constituencies of the valuable work you and your colleagues are doing.

With best personal regards.

*19 January 2006*